

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Colleton County

Honorable Thomas A. Russo, Circuit Court Judge

\_\_\_\_\_  
DESMOND J. SAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001617

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA ) IN THE GENERAL SESSIONS COURT  
COUNTY OF COLLETON ) 2008-GS-15-0370; 2008-GS-15-0371

THE STATE OF SOUTH CAROLINA, )  
STATE, )  
v. )  
DESMOND JAVON SAMS, )  
DEFENDANT. )

TRANSCRIPT OF RECORD

January 28 - 29, 2009  
Walterboro, South Carolina

B E F O R E

THE HONORABLE PERRY M. BUCKNER, JUDGE.

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

DEPUTY SOLICITOR SEAN THORNTON, ESQ.  
Attorney for the State of South Carolina

MR. DAVID MATHEWS, ESQ.  
Attorney for the Defendant

Rebecca H. Hill  
522 Dowling Avenue  
Walterboro, SC 29488  
Official Court Reporter

Jury Selection  
 The State of South Carolina v Desmond Javon Sams  
 2008-GS-15-0370; 2008GS-15-0371  
 January 28<sup>th</sup> - 29th, 2009

| Juror #     | Name                    | Race | Gender | Ct. | Pl. | Df.   | Jury |
|-------------|-------------------------|------|--------|-----|-----|-------|------|
| 117         | Constance M. Mulleady   | W    | F      |     |     | 1     |      |
| 14          | Janet H. Bjork          | W    | F      |     |     | 2     |      |
| 75          | Perry J. Hodges         | W    | M      |     |     |       | 1    |
| 81          | Vernell C. Holloman     | B    | F      |     |     | 3     |      |
| 163         | Christopher B. Varnadoe | W    | M      |     |     |       | 2    |
| 164         | Marilyn H. Wade         | B    | F      |     |     |       | 3    |
| 169         | Kimberly White Footman  | B    | F      |     |     |       | 4    |
| 142         | Leo L. Robertson, Jr.   | W    | M      |     |     |       | 5    |
| 80          | Suzette A. Hollinger    | W    | F      |     |     | 4     |      |
| 104         | Ja Daris S. Manigo      | B    | M      | 1   |     |       |      |
| 133         | Johnny W. Rahn          | W    | M      |     |     |       | 6    |
| 135         | Kevin A. Rhodes         | B    | M      |     |     |       | 7    |
| 26          | Kathy G. Bryant-Jenkins | B    | F      |     |     | 5     |      |
| 21          | Sheila B. H. Brewer     | B    | F      | 2   |     |       |      |
| 87          | Peggy L. Hunt           | W    | F      |     |     | 6     |      |
| 167         | Clifton M. Warren       | W    | M      |     |     | 7     |      |
| 136         | Monroe T. Rice          | B    | M      | 3   |     |       |      |
| 7           | Daniel H. Beach         | W    | M      | 4   |     |       |      |
| 86          | Stephen M. Hughey       | W    | M      |     |     | 8     |      |
| 82          | Vinson T. Holloway      | W    | M      |     |     |       | 8    |
| 57          | Joseph W. Epple, Jr.    | W    | M      |     |     | 9     |      |
| 22          | Sharon J. Broach        | W    | F      |     |     |       | 9    |
| 43          | Anthony M. Davis        | B    | M      | 5   |     |       |      |
| 74          | Karen E. Hiott          | W    | F      |     |     |       | 10   |
| 171         | Alicia L. Williams      | B    | F      |     |     | 10    |      |
| 147         | Lessie F. Smalls        | B    | F      |     |     |       | 11   |
| 174         | Quinton B. Wright       | B    | M      |     |     |       | 12   |
| ALTERNATES: |                         |      |        |     |     |       |      |
| 10          | Kisha L. Belton Conaway | B    | F      |     |     | Alt 1 |      |
| 46          | Sallie A. Davis         | B    | F      |     |     |       | 1    |
| 51          | Leroy Doctor            | B    | M      |     |     |       | 2    |



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#### DEFENSE EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u>                                       |
|------------|----------------------------------------------------------|
| 1.         | Photo - arrest profile                                   |
| 2.         | Videotape statements of Witnesses Ballard and Strickland |

#### COURT EXHIBITS

|    |                                                |
|----|------------------------------------------------|
| 1. | Jury Note - naming Foreperson                  |
| 2. | Lisa Strickland - written statement            |
| 3. | Stephanie Ballard - written statement          |
| 4. | Videotape statement of Desmond Sams            |
| 5. | Jury Note - questions                          |
| 6. | Voluntary manslaughter written charge for file |

1       **THE COURT:** Is the State ready to proceed?

2       **MR. THORNTON:** The State is ready, Your Honor.

3       **THE COURT:** Is the defendant ready to proceed?

4       **MR. MATHEWS:** We are, Your Honor.

5       **THE COURT:** Call your case, Solicitor.

6       **MR. THORNTON:** Your Honor, at this time, the State is  
7 prepared to go forward in the case of The State v. Desmond  
8 Sams, charged with two Indictments, Your Honor, 2008-GS-15-  
9 370, with the offense of murder; 2008-GS-15-371, with the  
10 offense of assault and battery of a high and aggravated  
11 nature. If I could pass the Indictments up, Your Honor?

12       **THE COURT:** Very well. Ladies and gentlemen of my jury  
13 panel, I ask if you would, if you would give me your  
14 attention please. We're about to begin the trial of the  
15 case of The State of South Carolina versus Desmond Javon  
16 Sams.

17       The defendant, Mr. Sams, is being charged by these two  
18 pieces of paper, which I hold in my hand, which we call  
19 indictments. The indictments charge the defendant with the  
20 offenses of murder and assault and battery of a high and  
21 aggravated nature. The elements of those offenses, I will  
22 explain to you in my charge on the law at the conclusion of  
23 the case.

24       I remind you that day before yesterday, the Clerk, or  
25 the Deputy Clerk, put you under oath in order to answer

1 certain questions about the qualifications to serve on the  
2 jury in South Carolina. I am now going to ask you certain  
3 questions about this case in order to determine your  
4 impartiality to serve as a juror on the trial in this case.  
5 The answers you will be providing to me about this case are  
6 also under the oath which you took from the Clerk of Court's  
7 Office on Monday, so I remind you of that fact before we  
8 begin.

9 Now, to the indictments in this case, the defendant,  
10 Desmond Sams, who I'm going to introduce to you in just a  
11 moment, has pled not guilty. That places the burden of  
12 proof on the State to prove each and every element of the  
13 offenses, which I will explain to you, if you're selected as  
14 a juror in the trial of this case, beyond a reasonable  
15 doubt.

16 It will be your duty, ladies and gentlemen of the jury,  
17 to decide whether or not the State has met that burden.

18 Now, first, I'm going to ask that the lawyers who are  
19 going to be trying this case, stand, face my jury panel,  
20 introduce themselves. In the case of the defendant, Mr.  
21 Mathews, I ask that you have him stand, face my jury panel,  
22 and introduce your client; beginning with counsel for the  
23 State of South Carolina.

24 **DEP. SOL. THORNTON:** Thank you, Judge. Good morning,  
25 ladies and gentlemen. We introduced ourselves a little bit

1 earlier, and I am Sean Thornton, the Deputy Solicitor for  
2 the Fourteenth Circuit. With me is Amanda Stilley, and she  
3 also works with our office; and also seated at the table is  
4 Lt. Allen Inabinett, with the Colleton County Sheriff's  
5 Department.

6 **MR. MATHEWS:** I'm David Mathews and I represent Desmond  
7 Sams, standing next to me. This is Fran Pye who works in  
8 our office and she does an awful lot for us.

9 **THE COURT:** Please be seated. All right, ladies and  
10 gentlemen, you've met now the attorneys who are going to be  
11 trying this case. You've also met the defendant in this  
12 case, Desmond J. Sams.

13 I ask, first of all, ladies and gentlemen, is there any  
14 member of my jury panel related by blood, connected by  
15 marriage, or a close personal friend of the defendant,  
16 Desmond Sams, who you have just met and is seated at the  
17 defense counsel table? If so, please stand at this time.

18 (NO ONE STANDS.)

19 **THE COURT:** Let the record reflect, no one is standing.  
20 You have also met counsel for the State of South Carolina,  
21 Deputy Solicitor Sean Thornton, Assistant Solicitor, Amanda  
22 Stilley. Is there any member of my jury panel related by  
23 blood, connected by marriage, or a close personal friend of  
24 either one of the attorneys for the State of South Carolina  
25 in this case for whom you have just met? If so, please

1 stand at this time.

2 (NO ONE STANDS.)

3 **THE COURT:** Let the record reflect, no one is standing.  
4 Has any member of my jury panel ever been represented in the  
5 past, or currently represented, by either Deputy Solicitor  
6 Sean Thornton or Assistant Solicitor Amanda Stilley, whom  
7 you have just met? If so, please stand at this time.

8 (NO ONE STANDS.)

9 **THE COURT:** Let the record reflect, no one is standing.  
10 related by blood, connected by marriage, or a close personal  
11 friend of counsel for the defendant, David Mathews,  
12 Assistant Public Defender of Colleton County, whom you have  
13 just met, also? If so, please stand at this time.

14 (NO ONE STANDS.)

15 **THE COURT:** Let the record reflect, no one is standing.  
16 Has any member of my jury panel ever been represented in the  
17 past, or currently represented, by attorney David Mathews or  
18 the Colleton County Public Defender's Office? If so, please  
19 stand at this time.

20 (NO ONE STANDS.)

21 **THE COURT:** Let the record reflect, no one is standing.  
22 All right, ladies and gentlemen, if you are selected as a  
23 juror in the trial of this case, you must base your decision  
24 solely upon evidence introduced during the trial of the case  
25 when both sides are present with the right of cross-

1 examination. However, I need to tell you a little bit about  
2 the allegations in this case, in order to determine your  
3 impartiality to serve as a juror in the trial of the case.

4 What I'm about to tell you is not evidence, merely  
5 allegations. In fact, the indictments are not evidence.  
6 They merely contain the allegations against the defendant.  
7 The indictments are the formal documents by which the case  
8 is brought into this court.

9 In one indictment, ladies and gentlemen, charging the  
10 defendant, Desmond J. Sams with the offense of murder, it is  
11 alleged that it occurred in Colleton County, on or about,  
12 April the 12th, 2008, that the defendant, did with malice  
13 aforethought, kill and murder Jake Frazier, and that Jake  
14 Frazier did ultimately die in Colleton County as a proximate  
15 result of what occurred on or about April 12th, 2008.

16 In the other indictment, ladies and gentlemen, charging  
17 the defendant with the offense of assault and battery of a  
18 high and aggravated nature. It is alleged in that  
19 indictment that the defendant, Desmond J. Sams, did in  
20 Colleton County, on or about, April 12th, 2008, commit  
21 assault and battery constituting an unlawful act of violent  
22 injury to Lisa Strickland, accompanied by circumstances of  
23 aggravation, and it is alleged that the victim was hit by  
24 the defendant with his fists, and I'll explain the elements  
25 of each of those offenses to you.



1 I tell you about these allegations simply to ask you  
2 this, uninvoked, has any member of my jury panel heard  
3 about, read about, or know anything whatsoever, about the  
4 facts, which are alleged in these cases? If so, please  
5 stand at this time.

6 (NO ONE STANDS.)

7 **THE COURT:** Let the record reflect, no one is standing.  
8 I am advised, ladies and gentlemen, that the potential  
9 witnesses in the trial of this case will be as follows.  
10 Ladies and gentlemen in the courtroom, if you are present in  
11 the courtroom when your name is called by this Court as a  
12 potential witness, please stand and face my jury panel.

13 Lisa Michelle Strickland, Walterboro, South Carolina.  
14 Stephanie Leah Ballard, B-A-L-L-A-R-D, Walterboro, South  
15 Carolina. Sergeant Stephen Dunn, Colleton County Sheriff's  
16 Department. Philip Roberson, formerly Colleton County  
17 Sheriff's Department. Deputy Jason Eubanks, Colleton County  
18 Sheriff's Department. Deputy Terry Carlton, Colleton County  
19 Sheriff's Department. Corporal Craig Stivender, Colleton  
20 County Sheriff's Department. Lieutenant Allen Inabinett,  
21 stand and face my jury panel, Colleton County Sheriff's  
22 Department. Thank you, sir, you may be seated. Detective  
23 Christy Stephens, Colleton County Sheriff's Department.  
24 Jason Benton, Colleton County Fire and Rescue. Adam -- is  
25 it Resonavich? Am I pronouncing that correctly?

1           **DEP. SOL. THORNTON:** Resanovich, Your Honor.

2           **THE COURT:** Resanovich, R-E-S-A-N-O-V-I-C-H, madam  
3 court reporter, Colleton County Fire and Rescue. Richard  
4 Harvey, Colleton County Coroner. Dr. William B. Brewer,  
5 Forensic Science Network, Columbia, South Carolina. Dr.  
6 Stephen E. Battle, B-A-T-T-L-E, Colleton Medical Center.  
7 Dr. Erin Presnell, Medical University of South Carolina.  
8 Sharron Glover -- Ms. Glover, if you would stand and face my  
9 jury panel. Walterboro, South Carolina. Thank you, ma'am,  
10 you may be seated.

11           Patty Lisbon, Ms. Lisbon if you'll stand and face my  
12 jury panel, Walterboro, South Carolina. Thank you, ma'am,  
13 you may be seated. Rebecca Mitchell, Colleton County EMS,  
14 Colleton County Sheriff's Office. Chuck Frasier, Colleton  
15 County Sheriff's Office.

16           Any additional witnesses from the State of South  
17 Carolina?

18           **MR. THORNTON:** None from the State, Your Honor.

19           **THE COURT:** Any additional witnesses from the  
20 defendant?

21           **MR. MATHEWS:** No, sir.

22           **THE COURT:** Any member of my jury panel related by  
23 blood, connected by marriage, or a close personal friend of  
24 any of the potential witnesses in the trial of this case,  
25 whose names I have just called? If so, please stand at this

1 time.

2       **THE COURT:** Give me, just first, if you would please,  
3 your name and your juror number.

4       **JUROR:** I'm Chris Varnadoe, One sixty-three.

5       **THE COURT:** One sixty-three, just one moment.

6       Counsel, this is juror number One sixty-three,  
7 Christopher Varnadoe. Mr. Varnadoe, listen carefully, I  
8 want you to give me a yes or no answer. Are you related by  
9 blood to any of the potential witnesses?

10       **MR. VARNADOE:** No.

11       **THE COURT:** Are you connected by marriage to any of the  
12 potential witnesses?

13       **MR. VARNADOE:** Yes.

14       **THE COURT:** And which witness is that?

15       **MR. VARNADOE:** Craig Stivender.

16       **THE COURT:** Okay. And how are you related to Mr.  
17 Stivender by marriage?

18       **MR. VARNADOE:** He is my wife's cousin.

19       **THE COURT:** He is your wife's cousin by marriage?

20       **MR. VARNADOE:** No, he's my cousin by marriage.

21       **THE COURT:** He's not your cousin; he's your wife's  
22 cousin?

23       **MR. VARNADOE:** Yes.

24       **THE COURT:** All right. So you're related only through  
25 your wife; is that right?

1       **MR. VARNADOE:** Yes.

2       **THE COURT:** All right. The fact that Mr. Stivender is  
3 a potential witness in the trial of this case and Mr.  
4 Stivender is your wife's cousin, would that in any way  
5 affect your ability to give the State of South Carolina, or  
6 the defendant in this case, Mr. Desmond Sams, a fair and an  
7 impartial trial?

8       **MR. VARNADOE:** No, sir.

9       **THE COURT:** Anything else you want to tell me or is  
10 that the only relationship?

11       **MR. VARNADOE:** That's it.

12       **THE COURT:** Thank you, sir. You're doing exactly what  
13 I asked you to do.

14       Pass the microphone back for me, if you would.

15       All right. Just one moment.

16       Yes, sir, if you'd give me your name, juror number for  
17 the record, please?

18       **MADAM CLERK:** Juror number One Thirty-four, Gordon Lee  
19 Rhoden, Jr.

20       **THE COURT:** Counsel, this is juror One Thirty-four,  
21 Gordon Lee Rhoden, Jr. Mr. Rhoden are you related by blood  
22 to any of the potential witnesses in the trial of this case?

23       **MR. RHODEN:** No, sir.

24       **THE COURT:** Are you connected by marriage to any of the  
25 potential witnesses in the trial of this case?

1       MR. RHODEN: No, sir.

2       THE COURT: Are you a close, personal friend of any of  
3 the potential witnesses in the trial of this case?

4       MR. RHODEN: Yes, sir.

5       THE COURT: And which person is that?

6       MR. RHODEN: Coroner Richard Harvey.

7       THE COURT: All right. The fact that you are friends  
8 with Coroner Harvey, who is listed as a potential witness in  
9 the trial of this case, Mr. Rhoden, would that in any way  
10 affect your ability to give the State of South Carolina or  
11 the defendant in this case, Desmond J. Sams, a fair and an  
12 impartial trial?

13       MR. RHODEN: No, sir.

14       THE COURT: Thank you, sir. Anyone else or just  
15 Coroner Harvey?

16       MR. RHODEN: Just Coroner Harvey, sir.

17       THE COURT: Thank you, sir. You're doing exactly what  
18 I asked you to do. Counsel approach.

19       (WHEREUPON A BENCH CONFERENCE WAS HELD OUT OF THE  
20 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING PROCEEDINGS  
21 WERE HELD ON THE RECORD:)

22       THE COURT: This is Juror One sixty-one, Ms. Andrea  
23 Tuten. Ms. Tuten, I received a message that your  
24 grandfather is very ill and your family has requested, so  
25 I'm going to excuse you. Are you okay? Would you like for

1 one of my bailiffs to drive you somewhere? Mr. Padgett?  
2 Ms. Tuten, I'm going to excuse you and let you get on  
3 home -- hold on one second. (TO BAILIFF PADGETT) If she  
4 needs someone to take her home, please arrange to do that.  
5 Ms. Tuten, I'll provide transportation for you. You're  
6 excused for the balance of the week and I hope everything  
7 goes well.

8 Juror number One sixty-one is excused from service.

9 THE COURT: Let the record reflect, no one else is  
10 standing in response to my last question concerning  
11 potential witnesses in the trial of the case.

12 Any member of my jury panel formed any opinion about  
13 the facts which are alleged in this case? If so, please  
14 stand at this time.

15 (NO ONE STANDS.)

16 THE COURT: Let the record reflect, no one is standing.

17 Any member of my jury panel formerly a member of  
18 Colleton County Grand Jury, which found the indictments in  
19 this case? If so, please stand at this time.

20 (NO ONE STANDS.)

21 THE COURT: Let the record reflect, no one is standing.

22 Any member of my jury panel formed any opinion about  
23 the alleged guilt or innocence of the defendant in this  
24 case, Desmond J. Sams? If so, please stand at this time.

25 (NO ONE STANDS.)

1       **THE COURT:** Let the record reflect, no one is standing.  
2       Any member of my jury panel know of any bias or  
3 prejudice they may have about the facts which are alleged in  
4 this case? Any of the parties involved in this case? Any  
5 of the attorneys or respective offices involved in this  
6 case? Any of the witnesses involved in this case? If so,  
7 please stand at this time.

8       (NO ONE STANDS.)

9       **THE COURT:** Let the record reflect, no one is standing.  
10       Any member of my jury panel know of any reason  
11 whatsoever why they can't give the State of South Carolina  
12 or the defendant in this case, Desmond J. Sams, a fair and  
13 an impartial trial? If so, please stand at this time.

14       (NO ONE STANDS.)

15       **THE COURT:** Let the record reflect, no one is standing.  
16 Any additional voir dire from the State?

17       **MR. THORNTON:** No, sir.

18       **THE COURT:** Any additional voir dire from the  
19 defendant?

20       **MR. MATHEWS:** Yes, sir. If we may approach?

21       **THE COURT:** Counsel approach.

22       (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD  
23 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE  
24 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

25       **THE COURT:**

1       **THE COURT:** Let the record reflect, no one is standing.  
2 Any member of my jury panel a member of, or a contributor  
3 to, any group which has as its primary concern the promotion  
4 of law enforcements or victim's rights? These groups would  
5 include MADD, SADD, CAVE or CADRE? If so, please stand at  
6 this time.

7       (JUROR STANDS.)

8       **THE COURT:** Would you give me your name and juror  
9 number, please?

10       **FEMALE JUROR:** Connie Mulleady, number One Seventeen.

11       **THE COURT:** One second, let me check your number  
12 please.

13       Constance M. Mull ---

14       **MS. MULLEADY:** Mulleady.

15       **THE COURT:** Is it M-U-L-L-E-A-D-Y?

16       **MS. MULLEADY:** Yes, Your Honor.

17       **THE COURT:** All right. Yes, ma'am. Are you a member  
18 of, or a contributor to MADD, SADD, CAVE or CADRE?

19       **MS. MULLEADY:** I am not of those groups, but I have  
20 been employed by law enforcement in the past for the police  
21 department at Edisto Beach.

22       **THE COURT:** The fact -- and how were you employed by  
23 law enforcement?

24       **MS. MULLEADY:** Well, as beach patrol, but I am in  
25 constant contact with officers who can make arrests and



1 carry weapons.

2       **THE COURT:** I understand, in fact, I appreciate you  
3 telling me that. The fact that you, in the past, were  
4 employed with beach patrol at Edisto Beach, would that in  
5 any way affect your ability to give the State of South  
6 Carolina or the defendant in this case a fair and an  
7 impartial trial?

8       **MS. MULLEADY:** I don't think so.

9       **THE COURT:** Thank you, ma'am. You may be seated.

10       **MS. MULLEADY:** Thank you, Your Honor.

11       **THE COURT:** Any member of my jury panel, or their  
12 immediate family, presently employed, or formerly employed,  
13 with a law enforcement agency? If so, please stand at this  
14 time.

15 (JURORS STAND.)

16       **THE COURT:** Ma'am, if you're going to stand up for just  
17 what you did, you can be seated. They're already aware of  
18 that.

19       Yes, ma'am, your name and jury number, please?

20       **MADAM CLERK:** Diana L. Scarborough, One forty-four.

21       **THE COURT:** Just one moment, please ma'am. Counsel,  
22 this is juror number One hundred and forty-four, Diana  
23 Scarborough. Ms. Scarborough, are you or a member of your  
24 immediate family employed with law enforcement now or in the  
25 past?

1       **MS. SCARBOROUGH:** I'm retired from the Charleston  
2 County Sheriff's Office, the detention center.

3       **THE COURT:** You're retired from the Charleston County  
4 Sheriff's Office?

5       **MS. SCARBOROUGH:** Correct.

6       **THE COURT:** The fact that you previously worked for  
7 Charleston County Sheriff's Office, would that in any way  
8 affect your ability to give the parties in this case a fair  
9 and an impartial trial?

10       **MS. SCARBOROUGH:** No, sir.

11       **THE COURT:** Thank you, ma'am, you may be seated.

12       Yes, sir, back there, give me your name and juror  
13 number, please, first, only.

14       **MR. RHODES:** Kevin Rhodes, Juror number One thirty-  
15 five.

16       **THE COURT:** Counsel, this is juror number One hundred  
17 and thirty-five, Kevin Rhodes. Mr. Rhodes, was it you or a  
18 member of your immediate family presently or formerly  
19 employed with a law enforcement agency?

20       **MR. RHODES:** My brother, Otis Rhodes.

21       **THE COURT:** Your brother is Otis Rhodes, who's Chief of  
22 the Walterboro Police Department?

23       **MR. RHODES:** Yes, sir.

24       **THE COURT:** The fact that your brother is employed with  
25 law enforcement agency, the Walterboro Police Department,

1 would that in any way affect your ability to give the State  
2 of South Carolina or the defendant in this case, a fair and  
3 an impartial trial?

4 MR. RHODES: No, sir, it wouldn't.

5 THE COURT: Thank you, sir, you may be seated.

6 Yes, ma'am, in the back, give me your name and juror  
7 number, please.

8 MS. SHIDER: Barbara Shider, number One twenty-six.

9 THE COURT: Counsel, this is juror number One forty-  
10 six, Barbara Shider. Ms. Shider, were you or a member of  
11 your immediate family formerly or now, presently, employed  
12 with a law enforcement agency?

13 MS. SHIDER: Yes, I was formerly employed by South  
14 Carolina Highway Patrol, which is now DHS.

15 THE COURT: As a dispatcher?

16 MS. SHIDER: Dispatcher, yes.

17 THE COURT: The fact that you were previously employed  
18 with the South Carolina Highway Patrol, would that in any  
19 way affect your ability to give the State of South Carolina  
20 or the defendant in this case, a fair and an impartial  
21 trial?

22 MADAM CLERK: No, Your Honor.

23 THE COURT: Thank you, ma'am, you may be seated.

24 Yes, sir, your name and juror number?

25 MR. RICE: Monroe Rice, One thirty-six.

1       **THE COURT:** One thirty-six? Is that right, Mr. Rice?

2       **MR. RICE:** Yes, sir.

3       **THE COURT:** Counsel, this is juror number one thirty-  
4 six, Monroe Rice. Mr. Rice, were you or a member of your  
5 immediate family, now or formerly employed with a law  
6 enforcement agency?

7       **MR. RICE:** Yes, my ex-sister-in-law, Laquin Rice,  
8 Colleton County Sheriff's Department.

9       **THE COURT:** Your ex-sister in law is now employed with  
10 the Sheriff's Department or formerly employed with the  
11 Sheriff's Department?

12       **MR. RICE:** Now.

13       **THE COURT:** Now. The fact that your ex sister-in-law  
14 is employed with the Colleton County Sheriff's Department,  
15 would that in any way affect your ability to give the State  
16 of South Carolina or the defendant in this case, a fair and  
17 an impartial trial?

18       **MR. RICE:** No, sir.

19       **THE COURT:** Mr. Rice, since the Colleton County  
20 Sheriff's Department is listed with a number of potential  
21 witnesses, I know I've asked you this question, but I want  
22 it clear for the record, have you heard, read, or know  
23 anything about the facts alleged in this case?

24       **MR. RICE:** No, sir.

25       **THE COURT:** Thank you, sir. You may be seated. Anyone

1 else?

2 (NO ONE STANDS.)

3 THE COURT: Let the record reflect, no one is standing.

4 Any additional voir dire from the defendant?

5 MR. MATHEWS: No, sir.

6 THE COURT: From the State?

7 MR. THORNTON: No, sir.

8 THE COURT: All right. Ten and five, counsel?

9 MR. THORNTON: Ten and five, Your Honor.

10 THE COURT: Ten and five?

11 MR. MATHEWS: Yes, sir.

12 THE COURT: We'll be drawing two alternates. Ten and

13 five on the jury, Madam Clerk, two and one on the

14 alternates. Is the State ready to proceed?

15 MR. THORNTON: The State's ready, Judge.

16 THE COURT: Is the defendant ready to proceed?

17 MR. MATHEWS: Yes, Your Honor.

18 THE COURT: Madam Clerk, would you give us a jury,

19 please?

20 CLERK: Yes, sir.

21 THE COURT: Ladies and gentlemen, so you'll know, we

22 are now using the computer to draw the jury. So we don't

23 draw names out of a hat anymore, and the computer is doing

24 it at random right now, so bear with us. She's printing out

25 the list right now that she's going to hand to me. Nobody

1 knows whose name or what order is on that list, but the  
2 computer, the clerk and I, in just one second. I don't even  
3 know yet. The clerk is going to call names, as the names  
4 are called, you are going to be called to the front of the  
5 courtroom. I ask you to turn around and face the back of  
6 the courtroom -- one more for the law clerk, please, so  
7 you'll be looking toward the back; when your name is called,  
8 please bring your belongings with you. Madam Clerk, would  
9 you give us a jury, please?

10 **MADAM CLERK:** Yes, sir. Number One seventeen,  
11 Constance M. Malleady. What say ye for the State?

12 **MR. THORNTON:** Please present this juror.

13 **MADAM CLERK:** What say ye for the defendant?

14 **MR. MATHEWS:** Please excuse the juror from the trial of  
15 this case.

16 **MADAM CLERK:** Please have a seat back with the panel.

17 Juror number Fourteen, Janet H. Bjork.

18 **MADAM CLERK:** What say ye for the State?

19 **MR. THORNTON:** Please present this juror.

20 **MADAM CLERK:** What say ye for the defendant?

21 **MR. MATHEWS:** Please excuse the juror from the trial of  
22 this case.

23 **MADAM CLERK:** Please have a seat back with the panel.

24 Number Seventy-five, Perry J. Hodges.

25 What say ye for the State?

1       **MR. THORNTON:** Please present this juror.  
2       **MADAM CLERK:** What say ye for the defendant?  
3       **MR. MATHEWS:** Please swear the juror.  
4       **MADAM CLERK:** Please have a seat in the jury box. One  
5 of our bailiffs will show you where to sit.  
6       Number Eighty-one, Vernelle C. Holloman.  
7       What say ye for the State?  
8       **MR. THORNTON:** Please present this juror.  
9       **MADAM CLERK:** What say ye for the defendant?  
10       **THE COURT:** What say the defendant?  
11       **MR. MATHEWS:** Please excuse the juror from the trial of  
12 this case.  
13       **MADAM CLERK:** Please have a seat back with the panel.  
14       Juror number One sixty-three, Christopher B. Varnadoe.  
15       What say ye for the State?  
16       **MR. THORNTON:** Please present this juror.  
17       **MADAM CLERK:** What say ye for the defendant?  
18       **MR. MATHEWS:** Please swear the juror.  
19       **MADAM CLERK:** Please have a seat in the jury box.  
20       One sixty-four, Marilyn H. Wade.  
21       What say ye for the State?  
22       **MR. THORNTON:** Please present this juror.  
23       **MADAM CLERK:** What say ye for the defendant?  
24       **MR. MATHEWS:** Please swear the juror.  
25       **MADAM CLERK:** Please have a seat in the jury box.

1       Number One sixty-nine, Kimberly White-Footman.  
2       What say ye for the State?  
3       MR. THORNTON: Please present this juror.  
4       MADAM CLERK: What say ye for the defendant?  
5       MR. MATHEWS: Please swear the juror.  
6       MADAM CLERK: Please have a seat in the jury box.  
7       Number One forty-two, Leo L. Robertson, Jr.  
8       What say ye for the State?  
9       MR. THORNTON: Please present this juror.  
10      MADAM CLERK: What say ye for the defendant?  
11      MR. MATHEWS: Please swear the juror.  
12      MADAM CLERK: Please have a seat in the jury box.  
13      Juror number Eighty, Suezette A. Hollinger.  
14      What say ye for the State?  
15      MR. THORNTON: Please present this juror.  
16      MADAM CLERK: What say ye for the defendant?  
17      MR. MATHEWS: Please excuse the juror from the trial of  
18      this case.  
19      MADAM CLERK: Please have a seat back with the jury  
20      panel. Juror number One-oh-four, Ja Daris S. Manigo.  
21      What say ye for the State?  
22      MR. THORNTON: Please excuse the juror from the trial  
23      of this case.  
24      MADAM CLERK: Please have a seat back with the panel.  
25      One Thirty-three, Johnny W. Rahn.



1       What say he for the State?

2       MR. THORNTON: Please present this juror.

3       MADAM CLERK: What say ye for the defendant?

4       THE COURT: What say the defendant?

5       MR. MATHEWS: Please swear the juror.

6       MADAM CLERK: Please have a seat in the jury box.

7       Number One Thirty-five, Kevin A. Rhodes.

8       What say ye for the State?

9       MR. THORNTON: Please present this juror.

10      MADAM CLERK: What say ye for the defendant?

11      MR. MATHEWS: Please swear the juror.

12      MADAM CLERK: Please have a seat in the jury box.

13      Number Twenty-six, Kathy G. Bryant-Jenkins.

14      What say ye for the State?

15      MR. THORNTON: Please present this juror.

16      MADAM CLERK: What say ye for the defendant?

17      MR. MATHEWS: Please excuse the juror from the trial of

18      this case.

19      MADAM CLERK: Please have a seat back with the panel.

20      Number Twenty-one, Sheila H. Brewer.

21      What say ye for the State?

22      MR. THORNTON: Please excuse the juror from the trial

23      of this case.

24      MADAM CLERK: Please have a seat back with the panel.

25      Number Eighty-seven, Peggy L. Hunt.

1           What say ye for the State?

2           **MR. THORNTON:** Please present this juror.

3           **MADAM CLERK:** What say ye for the defendant?

4           **MR. MATHEWS:** Please excuse the juror from the trial of  
5 this case.

6           **MADAM CLERK:** Please have a seat back with the panel.  
7 One Twenty-seven, Clifton M. Warren.  
8 What say ye for the State?

9           **MR. THORNTON:** Please present this juror.

10          **MADAM CLERK:** What say ye for the defendant?

11          **MR. MATHEWS:** Let's let Principal Warren get back to  
12 work. Please excuse the juror from the trial of this case.

13          **MADAM CLERK:** Please have a seat back with the panel.  
14 Number One thirty-six, Monroe T. Rice.  
15 What say ye for the State?

16          **MR. THORNTON:** Please excuse the juror from the trial  
17 of this case.

18          **MADAM CLERK:** Number Seven, Daniel H. Beach.  
19 What say ye for the State?

20          **MR. THORNTON:** Please excuse the juror from the trial  
21 of this case.

22          **MADAM CLERK:** Please have a seat back with the panel.  
23 Number Eighty-six, Stephen Hughey.  
24          **MR. THORNTON:** Please present this juror.  
25          **MADAM CLERK:** What say ye for the defendant?

1       **THE COURT:** Counsel, prior to this juror, strikes are  
2 seven for the defendant, four for the State of South  
3 Carolina. Madam Clerk, would you proceed with the selection  
4 of the jury.

5       **MADAM CLERK:** What say ye for the State?

6       **MR. THORNTON:** Please present this juror.

7       **MADAM CLERK:** What say ye for the defendant?

8       **MR. MATHEWS:** Please excuse the juror from the trial of  
9 this case.

10       **MADAM CLERK:** Please have a seat back with the panel.

11       Number Eighty-two, Vinson T. Holloway.

12       What say ye for the State?

13       **MR. THORNTON:** Please present this juror.

14       **MADAM CLERK:** What say ye for the defendant?

15       **MR. MATHEWS:** Please swear the juror.

16       **MADAM CLERK:** Please have a seat in the jury box.

17       Number Fifty-seven, Joseph W. Epple, Jr.

18       What say ye for the State?

19       **MR. THORNTON:** Please present this juror.

20       **MADAM CLERK:** What say ye for the defendant?

21       **MR. MATHEWS:** Please excuse the juror from the trial of  
22 this case.

23       **MADAM CLERK:** Please have a seat back with the panel.

24       Number Twenty-two, Sharon J. Broach.

25       What say ye for the State?

1       **MADAM CLERK:** What say ye for the defendant?  
2       **MR. MATHEWS:** Please swear the juror.  
3       **MADAM CLERK:** Please have a seat in the jury box.  
4       Number Forty-three, Anthony M. Davis.  
5       What say ye for the State?  
6       **MR. THORNTON:** Please excuse the juror from the trial  
7 of this case.  
8       **MADAM CLERK:** Please have a seat back with the panel.  
9       Number Seventy-four, Karen E. Hiott.  
10       Does the State have any strikes for cause?  
11       **MR. THORNTON:** No, ma'am, please present this juror.  
12       **MADAM CLERK:** What say ye for the defendant?  
13       **MR. MATHEWS:** Please swear the juror.  
14       **MADAM CLERK:** Please have a seat in the jury box.  
15       Number One Seventy-one, Alicia L. Williams.  
16       What say ye for the State?  
17       **MR. THORNTON:** Please present this juror.  
18       **MADAM CLERK:** What say ye for the defendant?  
19       **MR. MATHEWS:** Please excuse the juror from the trial of  
20 this case.  
21       **MADAM CLERK:** Please have a seat back with the panel.  
22       **THE COURT:** Strikes are now ten and five, counsel.  
23       **MADAM CLERK:** Number One forty-seven, Lessie F. Smalls.  
24       Does the State have any strikes for cause?  
25       **MR. THORNTON:** No, ma'am, please present the juror.

1       **MADAM CLERK:** Does the defendant have any strikes for  
2 cause?  
3       **MR. MATHEWS:** No, ma'am, please swear the juror.  
4       **MADAM CLERK:** Please have a seat in the jury box.  
5       Number One seventy-four, Quinton B. Wright.  
6       What say ye for the State?  
7       **MR. THORNTON:** Please present this juror.  
8       **MADAM CLERK:** Does defendant have any strikes for  
9 cause?  
10       **MR. MATHEWS:** No.  
11       **MADAM CLERK:** Please have a seat in the jury box.  
12       **THE COURT:** Madam Clerk will now be drawing alternate  
13 number one. Strikes are two and one for alternate number  
14 one. Please proceed.  
15       **MADAM CLERK:** Number Ten, Conaway Kisha L. Belton.  
16       What say ye for the State?  
17       **MR. THORNTON:** Please present this juror.  
18       **MADAM CLERK:** What say ye for the defendant?  
19       **MR. MATHEWS:** Please excuse the juror from the trial of  
20 this case.  
21       **MADAM CLERK:** Please have a seat back with the panel.  
22       Number Forty-six, Sallie A. Davis.  
23       What say ye for the State?  
24       **MR. THORNTON:** Please present this juror.  
25       **MADAM CLERK:** What say ye for the defendant?

1       **MR. MATHEWS:** Please swear the juror.

2       **MADAM CLERK:** Please have a seat in the jury box.

3       **THE COURT:** Ms. Davis, you'll be my alternate number

4 one. Have a seat in my jury box for me.

5       **MADAM CLERK:** Number Fifty-one, Leroy Doctor.

6       What say ye for the State?

7       **MR. THORNTON:** Please present this juror.

8       **MADAM CLERK:** What say ye for the defendant?

9       **MR. MATHEWS:** Please swear the juror.

10       **MADAM CLERK:** Please have a seat in the jury box.

11       **THE COURT:** Mr. Doctor, you'll be my alternate number

12 two. Please have a seat in the jury box.

13       Are there any matters of law pertaining to the

14 selection of the jury that need to be decided before the

15 jury is sworn, from the State of South Carolina?

16       **MR. THORNTON:** None from the State, Judge.

17       **THE COURT:** From the defendant?

18       **MR. MATHEWS:** Your Honor, if I might just have a moment

19 to talk with my client? We don't need to go out into

20 chambers.

21       **THE COURT:** Take a moment, Mr. Mathews.

22 (WHEREUPON, A BRIEF RECESS IS TAKEN BY THE COURT; AND THE

23 COURT EXITS TO AN IN CAMERA BATSON MOTION)

24       **THE COURT:** Let the record reflect that we are now in

25 chambers and outside the presence of the jury, with the

1 Solicitor's Office, along with the Clerk of Court, defendant  
2 and his attorney, law enforcement personnel, along with my  
3 law clerk and myself, are the only ones present in the jury  
4 room for the purposes of this hearing.

5 I was advised at the bench by counsel of the defendant  
6 that he wished to make a Batson Motion on the basis of race.  
7 I asked counsel to review their strikes and to stipulate to  
8 the actual makeup, and the jury is presently unsworn and  
9 seated, and then as to the racial makeup of the strikes for  
10 the State of South Carolina and the defendant, before we  
11 begin.

12 Is counsel in the position to make that stipulation at  
13 this time, Solicitor?

14 MR. THORNTON: State is ready, Judge. I have it as  
15 five African-American jurors, seven Caucasian jurors,  
16 actually seated.

17 THE COURT: The alternates are both, I believe,  
18 African-Americans?

19 MR. THORNTON: African-Americans.

20 THE COURT: So two alternates are drawn, and my notes  
21 reflect, Mr. Mathews, you agree that there are five African-  
22 Americans on the jury and seven Caucasians ---

23 MR. MATHEWS: That's accurate.

24 THE COURT: --- with two African-American alternates;  
25 you agree with that?

1       MR. MATHEWS: Yes, sir.

2       THE COURT: All right. The stipulation as to the  
3 racial makeup of the strikes by the State, Solicitor?

4       MR. THORNTON: State has four African-American strikes,  
5 one Caucasian strike, Your Honor.

6       THE COURT: You agree, Mr. Mathews?

7       MR. MATHEWS: Yes, sir

8       THE COURT: Stipulations now, Solicitor, as to the  
9 strikes by counsel for the defendant?

10       MR. THORNTON: Defendant has three African-American  
11 strikes, seven Caucasian strikes.

12       THE COURT: You agree, Mr. Mathews?

13       MR. MATHEWS: Yes, sir.

14       THE COURT: Very well. With that stipulation, I'll put  
15 on the record, as I always do, that the Equal Protection  
16 Clause of the 14th Amendment, prohibits the exercise of  
17 preemptory strikes, or challenges, on racial grounds. The  
18 use of a preemptory strike may be challenged by any party.  
19 Let the record reflect that the defendant is present and  
20 that the defendant is African-American. When a Batson  
21 motion is made on the basis of race, it requires the court  
22 faced with the allegation to, first, ask the party asserting  
23 the discrimination whether he's established a *prima facie*  
24 case for purposeful discrimination. Mr. Mathews, I'll be  
25 happy to hear from you on the first step of the Batson since



1 this is your motion.

2 MR. MATHEWS: Thank you, Your Honor. Your Honor,  
3 that's basically it. The State used its strikes to strike  
4 four African-American, one European American, and that's  
5 where we are. At that point, it certainly looks like ---

6 THE COURT: Now, Mr. Mathews, a European American, I  
7 don't believe has anything to do with race, but a country  
8 and nationality; you agree there were four African-Americans  
9 and one Caucasian that you told me were the basis of your  
10 motion was race?

11 MR. MATHEWS: Yes, that's right.

12 THE COURT: All right. And so you believe that your  
13 client is African-American, and the State exercised their  
14 strikes by striking four African-Americans and one  
15 Caucasian. You are making this motion on that ground?

16 MR. MATHEWS: Yes, sir.

17 THE COURT: Very well. The second step, Solicitor,  
18 unless you believe he's failed to establish to provide a  
19 *prima fascia* case for purposeful discrimination, and I'll be  
20 happy to hear from you if you feel so, is whether the party  
21 who exercised the strike at issue can provide a racially  
22 neutral explanation for the strike. Do you wish to be heard  
23 on the first step?

24 MR. THORNTON: No, sir, Judge. We'll move right on to  
25 Number Two.

1       **THE COURT:** Very well. Happy to hear from you, now, as  
2 to your racially neutral explanations for the strikes.

3       **MR. THORNTON:** Yes, sir. I'll go in order if that's  
4 okay with the Court, in order of being struck.

5       **THE COURT:** Yes, sir.

6       **MR. THORNTON:** Juror Number One-aught-four, an African-  
7 American male. I struck him, in addition to having negative  
8 law enforcement contacts, I was informed by Lt. Inabinet, he  
9 also has a conviction in -- a conviction for reckless  
10 driving in court, Judge, and I always try to prevent anybody  
11 who's been convicted of a crime from coming to court as a  
12 juror, because I don't know if I've prosecuted him, my  
13 office has prosecuted him, and, in addition to that, as I  
14 stated Judge, Lt. Inabinett informed me of negative law  
15 enforcement contacts in addition to the conviction.

16       With regard to Number Twenty-one, Juror Number Twenty-  
17 one is an African-American female. I struck her because she  
18 has an arrest for breach of trust and for fraudulent check.  
19 There were not convictions, but both were arrests, and both  
20 of those would be at the level of my office, Judge; and  
21 again, anybody who I think might have had a negative contact  
22 with me or my office, I'm not going to put them on a jury if  
23 I can help it.

24       With regard to the third strike, Your Honor, that was  
25 juror One thirty-six. He was an African-American male. I

1 have written down, three convictions, Judge. I'm looking to  
2 see so I can be specific. I have a conviction for -- two  
3 convictions for disorderly conduct, a DUI conviction, and  
4 another DUI arrest that was a non-conviction, and although -  
5 - if you need me to repeat the reasons, Judge, I can repeat  
6 them again, but basically, he's got convictions and arrests,  
7 and it could have been my office, definitely negative law  
8 enforcement contact.

9 If I need to go over Number Seven, who is a white male,  
10 I will. I don't know if, for purposes of a Batson, since  
11 it's a charge based on race, that I need to, but the white  
12 male, Juror Number Seven was struck for multiple  
13 convictions, as well.

14 Juror Number Forty-three, Your Honor, is an African-  
15 American male. I believe that was for arrests, Judge.  
16 I'll try to get more specific in just a second. Juror  
17 Number Forty-three has a fraudulent check arrest with no  
18 disposition. Those are the reasons that I struck them, Your  
19 Honor.

20 **THE COURT:** All right. For the record, so that since  
21 you went into it, you say "multiple convictions" ---

22 **MR. THORNTON:** I'm sorry, Judge, I'll be happy to be  
23 more specific. Juror Number Seven has a disorderly conduct  
24 conviction, breach of the peace conviction, and he also has  
25 a criminal domestic violence with no disposition, and an

1. arrest for disorderly conduct, and one conviction,  
2. apparently for unlawful carrying of a concealed weapon,  
3. which was just the last term of court, prosecuted, I believe  
4. by my office.

5.       **THE COURT:** Very well. Is that everything now,  
6. Solicitor?

7.       **MR. THORNTON:** Yes, sir. Those are the reasons I  
8. struck each juror.

9.       **THE COURT:** All right. Mr. Mathews, the burden now  
10. shifts back to you whether you, asserting discrimination,  
11. can show purposeful discrimination in the exercise of  
12. preemptory strikes by the State of South Carolina.

13.       **MR. MATHEWS:** Your Honor, since I don't have access to  
14. the rap sheets, as the Solicitor's Office does, I would ask  
15. the Court to inquire if the Solicitor's Office, as officers  
16. of the Court, whether they have seated anybody that had  
17. those same problems.

18.       **THE COURT:** Solicitor, I know you have access to the  
19. rap sheets, and, of course, Mr. Mathews knows had he so  
20. requested prior to selection of the jury, I would have  
21. provided it, and the burden's on him, not you. But I will  
22. ask whether or not is anyone seated, to your knowledge, with  
23. a rap sheet on the jury?

24.       **MR. THORNTON:** To my knowledge, no, Your Honor, and  
25. I'll be happy to double-check that in the next thirty

1 seconds, if the Court would like.

2 THE COURT: All right. I'll give you the thirty  
3 seconds. I take your word as an officer of the Court, as  
4 does Mr. Mathews.

5 THE COURT: Mr. Mathews, anything further on your  
6 Batson Motion?

7 MR. MATHEWS: As long as we're eating out of the same  
8 trough, and feeding out of it, then I'm fine. If there was  
9 -- if there isn't anybody seated.

10 THE COURT: Of course, the party asserting  
11 discrimination bears the burden of showing that the reason  
12 for the discrimination is merely pretext, and that race was  
13 the reason for the strike, normally, you would have to show  
14 me, Mr. Mathews, with the burden, by demonstrating that a  
15 similarly situated juror of another race was seated for the  
16 reasons given by the solicitor. Solicitor, do you need any  
17 additional time or are you confirming to me that that is the  
18 case?

19 MR. THORNTON: Your Honor, we're at number -- the ninth  
20 juror that was seated, with nobody on record, and Ms.  
21 Stilley is doing ten, eleven and twelve now.

22 THE COURT: All right.

23 MR. THORNTON: And for the record, Your Honor, she is  
24 significantly faster at it than I am, which is why she's  
25 doing it.

1 THE COURT: I'll take judicial notice of that.

2 MR. THORNTON: None, Judge.

3 THE COURT: Is your motion withdrawn?

4 MR. MATHEWS: My motion's withdrawn.

5 THE COURT: Very well. Thank you very much. Let's

6 return to the courtroom.

7 (WHEREUPON, THE BATSON MOTION WAS CONCLUDED AND THE  
8 COURT MOVED TO THE COURTROOM WHERE THE FOLLOWING PROCEEDINGS  
9 WERE HELD ON THE RECORD.)

10 THE COURT: Are there now any matters of law pertaining  
11 to the selection of the jury that need to be decided before  
12 the jury is sworn; from the defendant?

13 MR. MATHEWS: No, sir.

14 THE COURT: I understand you have no matters?

15 DEP. SOL. THORNTON: I have no matters with regard to  
16 selection, Your Honor. I do have one matter, though, which  
17 we discussed earlier.

18 THE COURT: Prior to the swearing of the jury?

19 DEP. SOL. THORNTON: Yes, sir, which is just a motion  
20 to change the verb tense of one of the words in the  
21 indictment.

22 THE COURT: You need the indictments?

23 DEP. SOL. THORNTON: Yes, sir. Just the one for  
24 murder, Your Honor.

25 MR. MATHEWS: And Your Honor, I've looked at that and

1 don't have any objection.

2 **THE COURT:** Let's put it on the record.

3 **DEP. SOL. THORNTON:** Your Honor, at this time the State  
4 would move, there was a scribner's error in the indictment.  
5 There is a word that is "choked" written in the indictment.  
6 It should be "choking" to make it proper, Your Honor. The  
7 State would move that it be amended at this time.

8 **THE COURT:** Any objection, Mr. Mathews?

9 **MR. MATHEWS:** No, sir.

10 **THE COURT:** So ordered, without objection.

11 **DEP. SOL. THORNTON:** I have made the notation, Your  
12 Honor.

13 **THE COURT:** Any additional matters from the State  
14 pertaining to the selection of the jury?

15 **DEP. SOL. THORNTON:** No, sir.

16 **THE COURT:** From the defendant?

17 **MR. MATHEWS:** No, sir.

18 **THE COURT:** Counsel approach.

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD  
20 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE  
21 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

22 **THE COURT:** Madam Clerk, would you please swear the  
23 jury?

24 **MADAM CLERK:** Ladies and gentlemen, would you please  
25 stand and raise your right hand?

1           WHEREUPON, THE JURY PANEL WAS DULY SWORN.

2           **THE COURT:** All right, ladies and gentlemen, they're  
3 going to take excellent care of you. I can promise you  
4 that. I need you to do a little work for me first of all.  
5 Let me tell you what I want you to do. Now, I designated  
6 the two of you on the back, you know, ma'am, you're my first  
7 alternate juror, and, sir, you're my second alternate juror.  
8 You're just as important as a member of the jury, because if  
9 for some reason a member of the jury becomes ill or for some  
10 legal reason cannot continue to serve, you'll take their  
11 place. You'll be with the jury at all times.

12           First thing I want you to do, you don't know anything  
13 about this case and I don't want you to discuss the case.  
14 Okay? I'm going to send you to your jury room. You're  
15 going to learn where it is. Mr. Beach will take good care  
16 of you, so will Mr. Polk, so will Mr. Padgett back here.  
17 They're going to do a good job of taking care of you. I  
18 want you to select among yourselves, a foreperson on the  
19 jury. Now, any of the twelve of you are eligible to be the  
20 foreperson, not my alternates, but any of the twelve of you.

21           Let me tell you the duties of the foreperson. The  
22 foreperson presides in the jury room just like the  
23 chairperson of a committee presides in a committee meeting.  
24 It is the foreperson's job to see that each and every member  
25 of my jury has a full and a fair opportunity to voice their



1 opinions in the jury room once deliberations begin. So the  
2 foreperson presides in the jury room during deliberations,  
3 just like the chairperson of a committee.

4 The foreperson's job is to write the jury's verdict,  
5 but I will give you instructions in my charge to you on the  
6 law, at the conclusion of the case, about writing the  
7 verdict. I'll prepare a verdict form for you and explain it  
8 to you, but it's the foreperson's job to write it and sign  
9 it as a foreperson. It's also the foreperson's job to be  
10 the jury's spokesperson out here in the courtroom should  
11 that need arise during the trial of the case, the foreperson  
12 speaks for the entire jury. So the foreperson presides in  
13 the jury room to see that everybody has the chance to voice  
14 their opinion, the foreperson writes the jury's verdict, the  
15 foreperson also speaks for the entire jury. Any of the  
16 twelve of you can be a foreperson. Now, I want you to go  
17 out this time to your jury room. My alternates will be with  
18 you, but they are not eligible to be the foreperson. Do not  
19 discuss the case. You can talk about the weather, you can  
20 talk about anything, but not this case. Select a  
21 foreperson, write the name on a piece of paper, knock on  
22 your jury room door, tell the bailiff you've selected a  
23 foreperson, give him the piece of paper, he'll bring it back  
24 out to me, and then I'll bring you back into the courtroom.  
25 The foreperson sits in the chair where this gentleman is

1 seated right now, that's the only reserved seat. My  
2 alternates sit where they're seated, one and two, then the  
3 foreperson sits here. So when you're coming back in and if  
4 you want to sit by somebody, line up that way. You'll come  
5 in, or the foreperson, whoever's selected, comes in first,  
6 takes his chair, and y'all come in last and sit down there.  
7 The rest of you can sit anywhere you want to. If you want to  
8 sit by somebody, line up in the jury room that way when  
9 you're coming out. Watch that back step. Slide all the way  
10 down when you're coming in there. I don't want people  
11 crawling over people because I have people fall when they  
12 have to crawl over in that box, so be careful. Slide all  
13 the way down when you're coming in and be careful on the  
14 back step and careful coming out of the jury box. Does  
15 everybody understand my instructions on the jury?

16 All right. I'm going to ask you at this time if you  
17 would please retire to your jury room. I'll be right back  
18 with you in just a moment.

19 (11:00 A.M., JANUARY 29, 2009, WHEREUPON JURY EXITS THE  
20 COURTROOM, THEREAFTER THE FOLLOWING PROCEEDINGS WERE HELD ON  
21 THE RECORD:)

22 THE COURT: All right, ladies and gentlemen, those of  
23 you who were not selected as jurors in the trial of this  
24 case -- Solicitor, I understand that completes my trial  
25 roster for this week; is that correct?

1       **MR. THORNTON:** It does, Your Honor. We moved multiple  
2 other cases, we had, I think, about five selected for trial,  
3 and we've moved every other one but this one because the  
4 jury is here.

5       **THE COURT:** Very good. You see, ladies and gentlemen,  
6 I keep telling them, without you justice can never be  
7 accomplished in the courtroom. We have been able to end  
8 every single case with the exception of the one that we've  
9 drawn the jury in, because you were ready, willing and able  
10 to serve on a jury this week in Colleton County.

11       Now, I always do this. I'm going to excuse you now for  
12 the balance of the week, but before I do, I like to hear  
13 from you. Is there anybody that's got a question before I  
14 excuse you about anything that's gone on in court. Why we  
15 do something, or if you had a problem, or if we didn't treat  
16 you correctly? If you think we can improve the way we do  
17 business. I'm always looking for a better way to try to  
18 improve how we treat our juries. Anybody got a question,  
19 problem, criticism, constructive, I promise you I have tough  
20 skin and I'm willing to listen. Anybody got anything they  
21 need to ask me or want to tell me? Is everybody just ready  
22 to get home?

23       (NO RESPONSE.)

24       **THE COURT:** I understand that. With my blessing,  
25 ladies and gentlemen, you are now exempt from jury service,

1 should you choose to claim your exemption, for three years,  
2 even if the computer selects you. So your appearance here  
3 this week exempts you for at least three years. I want to  
4 thank you on behalf of Colleton County and this Court for  
5 your patience this week. This now concludes your jury  
6 service for the week. You are now excused for the balance  
7 of the week. Thank you very much.

8 (JANUARY 28th, 2009, WHEREUPON THE REMAINING JURY PANEL  
9 EXITS THE COURTROOM; THEREAFTER THE FOLLOWING PROCEEDINGS  
10 WERE HELD ON THE RECORD:)

11 MR. MATHEWS: Your Honor, we had stipulated to a  
12 sequestration. We jointly stipulated ---

13 THE COURT: I'm going to do that in just a moment, but  
14 I wanted to give you time, because you asked for time for  
15 another matter, and I'm trying to give it to you now while  
16 the jury is working.

17 MR. MATHEWS: Your Honor, I've attempted, in good  
18 faith, to find out if there was anything we could resolve,  
19 and it appears that we can move forward.

20 THE COURT: All right. Counsel, the jury has chosen,  
21 and I have a note from them, that they have chosen Marilyn  
22 Wade, juror number One sixty-four, as the foreperson of the  
23 jury. Any objection from the State of South Carolina to  
24 making the jury's note to me a Court's exhibit?

25 DEP. SOL. THORNTON: None, Your Honor.

1       **THE COURT:** From the defendant?

2       **MR. MATHEWS:** No objection, Your Honor.

3       **THE COURT:** It will be Court's Exhibit Number One,  
4 without objection.

5       All right, now, I understand that there is a request  
6 for sequestration of witnesses; is that correct, from the  
7 defendant?

8       **MR. MATHEWS:** Yes, sir.

9       **THE COURT:** And you do not object, Solicitor?

10       **DEP. SOL. THORNTON:** I do not, Your Honor. I do have  
11 two requests: Lieutenant Inabinett is my case officer. I'd  
12 ask that he remain in the courtroom, and I have several  
13 members of the victim's family in the courtroom. One of  
14 them is someone I plan to call. I don't plan to call anyone  
15 except -- from that group, except Ms. Glover, who is here,  
16 and I would ask, as a victim, who is the only other witness  
17 I would call from the victim's family, I ask that she be  
18 allowed to remain in the courtroom.

19       **THE COURT:** Mr. Mathews, normally, we allow the  
20 defendant, the case manager, and under the victim's bill of  
21 rights, the victim is allowed to stay in the courtroom,  
22 subject to sequestration. One member of the victim's family  
23 is being called and the Solicitor has identified them.  
24 You're responsible for your witnesses, under sequestration,  
25 to advise them and to designate a place in the courthouse

1 where they can wait so that I can send my bailiff, Mr. Polk  
2 or Ms. Cobb, to where they are, and Solicitor, you are  
3 responsible for your witnesses to advise them and to also  
4 designate a place in the courthouse. Have you both agreed  
5 on a place for your witnesses?

6 **DEP. SOL. THORNTON:** Judge, my witnesses have already  
7 been put out in my office in a conference room down the  
8 hall. All of them have been instructed by me this morning  
9 on what sequestration means.

10 **THE COURT:** All right.

11 **MR. MATHEWS:** Mine are on stand-by, Your Honor, as far  
12 as I know.

13 (To gallery of people in courtroom) Is there anyone  
14 here that is under my subpoena, David Mathews' subpoena? I  
15 know -- yes, Ms. Glover is. She's under my subpoena, and so  
16 that would be the only -- your designee, your designation  
17 for Allen, and who else?

18 **MR. THORNTON:** Allen and Ms. Glover.

19 **MR. MATHEWS:** Your Honor, there are a number of people  
20 that fit the same spot, and if Ms. Glover, it appears has  
21 been selected, just so she can be in the courtroom. I know  
22 that you have brothers and sisters and other family members,  
23 you know, it seems, well ---

24 **THE COURT:** I'm advised that none of the other people  
25 in the courtroom are witnesses.

1       **MR. MATHEWS:** Just Ms. Glover, Your Honor, and I don't  
2 have any objection to anybody that's not a witness being in  
3 the courtroom, and, of course, I don't have any problem  
4 with the case officer being in here, but the particular  
5 choice seems -- it appears to be what it appears to be,  
6 which is ---

7       **THE COURT:** What does that mean, Mr. Mathews?

8       **MR. MATHEWS:** It appears that it's an attempt to wise  
9 her up, to get her to understand what the testimony is, so  
10 that she can prep her testimony. The reason for  
11 sequestration, of course, is so that witnesses are not  
12 influenced by what other witnesses say.

13       **THE COURT:** Counsel approach.

14       (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD  
15 AND THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE  
16 RECORD:)

17       **MR. MATHEWS:** Your Honor, I have just become aware of  
18 another witness I may or may not need to call.

19       **THE COURT:** Mr. Mathews, of course, I asked you for  
20 purposes of *voir dire* to give me your list of witnesses so  
21 that I could instruct the jury. If you're going to call  
22 someone who hasn't, now that the jury's been sworn -- I've  
23 been advised, because I don't to be calling a witness that  
24 I've got jurors in conflict with, or related to, which was  
25 the whole reason -- I didn't require you to provide the

1 Solicitor with that, just the Court, so that I could inquire  
2 to obtain an impartial jury for your client, but before we  
3 even get to that, let's finished what you started.

4 Mr. Mathews, you made a motion for sequestration. At  
5 the bench, I asked you to tell me, outside the presence of  
6 anyone, whether you could show prejudice to your client by  
7 my allowing the sister of the victim of this crime to remain  
8 in the courtroom, who is listed as a witness by both the  
9 State and the defendant. You've been provided, you've been  
10 orally told at the bench, by the Solicitor, each question he  
11 was going to ask this witness and what he anticipated the  
12 witness's answer to be. You've also been provided a written  
13 statement that the witness gave the Solicitor's Office.  
14 Now, having been provided that statement, and having been  
15 advised at the bench by the Solicitor, can you make any  
16 showing of prejudice to this Court that would require this  
17 Court to exclude the witness that you are objecting to  
18 remaining in the courtroom who is the sister of the victim?

19 MR. MATHEWS: Your Honor, I don't have any objection as  
20 long as I'm able to call as a rebuttal witness, if  
21 necessary, Desmond Sams' mother, who had a conversation with  
22 Ms. Glover. That's why I'm asking this other witness ---

23 THE COURT: I can't comment, nor can you ask this Court  
24 to allow you to call a rebuttal witness, because the State  
25 normally would be the one calling a reply witness. If you



1 mean you want to call a witness in your case, because you  
2 anticipate something might be in the State's case that's  
3 inconsistent; is that what you're referring to?

4 MR. MATHEWS: I don't know, she may tell the truth. If  
5 she tells the truth ---

6 THE COURT: Now, Mr. Mathews, truth is determined by  
7 those -- before you start insinuating somebody isn't telling  
8 the truth, you're just referring that there may be  
9 inconsistency in testimony?

10 MR. MATHEWS: Yes, sir.

11 THE COURT: You don't determine the truth in this  
12 courtroom.

13 MR. MATHEWS: That's correct. If Your Honor will  
14 recall the last case that Mr. Thornton tried against me and  
15 won, he had anticipated someone not telling the truth and  
16 had another witness on stand-by depending on what somebody  
17 else had said.

18 THE COURT: But that witness was provided to the Court  
19 during *voir dire*.

20 MR. MATHEWS: I just became aware, Your Honor, of the  
21 nature of this testimony.

22 THE COURT: Solicitor, do you have any objection of the  
23 defendant adding another witness? I'll have to inquire of  
24 the jury.

25 MR. THORNTON: I have no objection, Your Honor.

1       THE COURT: So you have no problem with the sister of  
2 the victim remaining in the courtroom?

3       MR. THORNTON: No, sir.

4       THE COURT: And you understand if a member of the jury  
5 is in conflict with this new witness, give me the name,  
6 then, obviously, I'll have to take steps to use an alternate  
7 juror.

8       MR. MATHEWS: Olympia Sams, Your Honor.

9       THE COURT: First name?

10      MR. MATHEWS: Olympia.

11      THE COURT: Olympia. From where?

12      MR. MATHEWS: Walterboro.

13      THE COURT: Before I bring the jury in, counsel, I want  
14 to make sure we're straight on the sequestration. You've  
15 advised all of your witnesses, Mr. Mathews?

16      MR. MATHEWS: I have announced to the Court that if  
17 anybody's here under my subpoena ---

18      THE COURT: Well, you're not going to be allowed -- I'm  
19 assuming now, that it's a new witness, you've informed them?

20      MR. MATHEWS: Ms. Sams, you'll have to leave the  
21 courtroom once we get going. You'll have to leave the  
22 courtroom.

23      THE COURT: And you have to give her a designated  
24 place, Mr. Mathews. Mr. Mathews, turn around and talk to  
25 me.

1 MR. MATHEWS: Yes, sir.

2 THE COURT: I'll let you start talking to people when I  
3 take a break.

4 MR. MATHEWS: Yes, sir.

5 THE COURT: When I'm talking to you, you address the  
6 Court.

7 MR. MATHEWS: Yes, sir.

8 THE COURT: All right. Now, you advise your witnesses  
9 and give them a place so that my bailiffs know where to go  
10 to get your witnesses when your case starts; you understand  
11 that?

12 MR. MATHEWS: Yes, sir.

13 THE COURT: Mr. Thornton, I expect you to advise your  
14 witnesses and give them a place. I will allow this witness  
15 that you have on your list who is --

16 DEP. SOL. THORNTON: Ms. Glover, Your Honor.

17 THE COURT: Ms. Glover to remain. I will now inquire  
18 about Olympia Sams, but she will be excluded from the  
19 courtroom.

20 DEP. SOL. THORNTON: Yes, sir. For the record, Judge,  
21 I've already taken care of the sequestration of my  
22 witnesses. They have already been instructed by me as to  
23 what that means. They are already seated in the conference  
24 room and in my office.

25 THE COURT: Now, Mr. Mathews, I'm going to bring the

1 jury back in just a moment. Do you need a moment to talk to  
2 any of your witnesses and explain to them sequestration,  
3 which you've requested? You've withdrawn your objection as  
4 to this witness earlier, if you could add another witness,  
5 who I need to inquire the jury about, when they come back.  
6 Do you need a moment or are you ready to go?

7 MR. MATHEWS: I need one moment.

8 THE COURT: All right. Then go do it because I'm ready  
9 to move. Got a jury waiting.

10 MR. MATHEWS: I think we're ready, Your Honor. I've  
11 instructed Ms. Sams that whenever we get started to go to my  
12 office and wait in my office, if that's -- unless there's  
13 any objection from the State.

14 THE COURT: I don't have any -- your office is not in  
15 the courthouse, though.

16 MR. MATHEWS: No, it's not.

17 THE COURT: Why would you -- Pat, do we have another  
18 room in the courthouse where his witnesses can remain?

19 MADAM CLERK: Yes, sir, because we're not having Family  
20 Court, so we have two waiting rooms downstairs.

21 THE COURT: Why can't she wait in the waiting room  
22 downstairs?

23 MR. MATHEWS: That's fine.

24 THE COURT: All right. Designate which one, Pat.

25 MADAM CLERK: You can use either one.

1 MR. MATHEWS: Yes, Defendant's waiting room.

2 THE COURT: Defendant's waiting room downstairs.

3 There's a sign that says "Defendant's waiting room", and  
4 that's where you need to be. Bill, y'all understand that?  
5 Ms. Cobb? When David needs a witness, that's where she  
6 needs to be.

7 Where is your witnesses going to be, Mr. Thornton?

8 DEP. SOL. THORNTON: Your Honor, they're in the  
9 conference room and in my office. I can have Mr. Griffith  
10 take care of our to relieve that load off the bailiffs.

11 THE COURT: All right, Mr. Griffith is going to see to  
12 it that when you need them, they are brought up here so we  
13 can move along. All right, that takes care of  
14 sequestration.

15 Anything further from the State outside the presence of  
16 the jury before I bring the jury back?

17 DEP. SOL. THORNTON: No, sir.

18 THE COURT: From the defendant?

19 MR. MATHEWS: No, sir.

20 THE COURT: Bring us the jury.

21 (11:24 A.M., JANUARY 29, 2009, WHEREUPON THE JURY  
22 ENTERS THE COURTROOM, AND THEREAFTER, THE FOLLOWING  
23 PROCEEDINGS WERE HELD ON THE RECORD:)

24 THE COURT: Congratulations, Ms. Wade, on your  
25 selection as foreperson as the jury. Ladies and gentlemen,

1 you've been sworn now. I have just been advised -- I need  
2 to ask you one additional question to determine your  
3 impartiality. I've just been advised of a possible  
4 additional witness who is Olympia Sams from Walterboro or  
5 Colleton County. She's standing up for you now in the  
6 courtroom so you can see her face. Thank you, ma'am. You  
7 may be seated.

8 Is any member of my jury panel related by blood,  
9 connected by marriage, or a close personal friend of Olympia  
10 Sams? If so, please hold your hand up for me.

11 (One juror raises hand.)

12 THE COURT: Yes, ma'am. You're related by blood to  
13 her?

14 MS. FOOTMAN: I believe I am related to Ms. Sams.

15 THE COURT: You're related how?

16 MS. FOOTMAN: Distant cousin, I believe.

17 THE COURT: A cousin. All right, give me your name,  
18 please ma'am.

19 MS. FOOTMAN: Kimberly White Footman, One sixty-nine.

20 THE COURT: Juror what?

21 MS. FOOTMAN: One sixty-nine.

22 THE COURT: Hold on one second, let me verify your  
23 number. Counsel, this is juror One sixty-nine, Kimberly  
24 White Footman, is that correct?

25 MS. FOOTMAN: Yes, sir.

1 THE COURT: And you are, you believe, a cousin of this  
2 new witness, is that right, Olympia Sams?

3 MS. FOOTMAN: Yes, sir.

4 THE COURT: You know what cousin?

5 MS. FOOTMAN: I don't know. My grandmother's side;  
6 but...

7 THE COURT: The fact that you may be related on your  
8 grandmother's side, this is a distant relative and not a  
9 first cousin, is that what you're telling me?

10 MS. FOOTMAN: Yes, sir.

11 THE COURT: I understand. The fact that you may be  
12 related to her on your grandmother's side, and some cousin,  
13 would that in any way affect your ability to give the State  
14 of South Carolina or the defendant in this case a fair and  
15 an impartial trial?

16 MS. FOOTMAN: Yes, sir.

17 THE COURT: It would?

18 MS. FOOTMAN: I believe so.

19 THE COURT: I'm going to excuse you from service in the  
20 trial of this case. You may leave the courtroom at this  
21 time.

22 (JUROR NUMBER ONE SIXTY-NINE, KIMBERLY WHITE FOOTMAN,  
23 EXITS THE COURTROOM.)

24 Alternate Number One, ma'am, if you would come down and  
25 please take a seat on the jury.

1 (ALTERNATE JUROR, NUMBER FORTY-SIX, SALLIE A. DAVIS,  
2 TAKES A SEAT ON THE JURY.)

3 Anyone else related by blood, connected by marriage, or  
4 a close personal friend of this witness, please acknowledge  
5 by raising your hand.

6 (NO RESPONSE.)

7 THE COURT: Let the record reflect, no one has raised  
8 their hands, other than the juror who I have just excused.  
9 Now, I ask again, ladies and gentlemen, knowing that Ms.  
10 Sams is now a potential witness, does anyone know of any  
11 reason whatsoever why they can't give the State of South  
12 Carolina or the defendant in this case, a fair and an  
13 impartial trial, please raise your hand?

14 (NO RESPONSE.)

15 THE COURT: Let the record reflect, no hands are  
16 raised.

17 All right, ladies and gentlemen, you have now been  
18 sworn. Before we begin this trial, I want to tell you that  
19 this trial will probably be different from what you may  
20 expect. The case we are about to try is the State of South  
21 Carolina versus Desmond J. Sams. He is the defendant seated  
22 at the defense table with his attorney, Mr. David Mathews.  
23 The defendant is charged by the pieces of paper I hold in my  
24 hand.

25 You know, this trial will probably be different from



1 what many of you expect. You know, most people do not have  
2 a chance to attend an actual court session, as each of you  
3 on the jury are doing right now. Most people may think from  
4 watching television, or going to a movie, or reading in a  
5 book, that trials, actual trials, are always full of high  
6 drama, entertaining and riveting circumstances, and intense  
7 action.

8 While all of those things, ladies and gentlemen, may be  
9 true, at times, an actual trial, unlike what you see on  
10 television or in a movie or from reading in a book, an  
11 actual trial is not for entertainment. An actual trial is a  
12 search for the truth. It is a fundamental part of our  
13 democracy, ladies and gentlemen. Searching for the truth in  
14 an effort to make sure that justice is done between the  
15 parties before the Court.

16 Searching for the truth and making sure that justice is  
17 done is often slow. It is often deliberate. It is often  
18 repetitive. The exact opposite of what many of you may have  
19 seen on television, or seen in a movie, or read in a book.

20 This courtroom, ladies and gentlemen, is a place of  
21 honor. It is dedicated to the protection and the  
22 preservation of citizen's rights through what many people  
23 have called the greatest justice system in the entire world.

24 The attorneys appearing before you, ladies and  
25 gentlemen, are advocates for the parties they represent; but

1 first and foremost, ladies and gentlemen, the attorneys are  
2 officers of this Court, and as officers of this Court, the  
3 attorneys are sworn to uphold the integrity and the fairness  
4 of our judicial system, and to help you, ladies and  
5 gentlemen, in a search for the truth.

6 You should expect the attorneys to be professional, you  
7 should expect the attorneys to be competent, to be prepared,  
8 and you should expect the attorneys to be ethical in the  
9 discharge of their duties to their clients.

10 I want you to remember now that each of you have taken  
11 an oath from the Clerk of Court of Colleton County, just  
12 like the attorneys have taken an oath, and I have taken an  
13 oath. You, also, as jurors, are expected to reach a fair  
14 and a just verdict in this case. You're expected to be  
15 professional, to be ethical and truthful, and to be  
16 reasonable in the discharge of your duties as jurors.

17 Before we even begin this trial, I want to thank each  
18 and every one of you for accepting what I believe to be a  
19 very important responsibility of jury service, and I want to  
20 thank each and every one of you for your contribution as  
21 jurors to our justice system. Without you, ladies and  
22 gentlemen of the jury, justice can never be accomplished in  
23 a courtroom, and I thank you on behalf of Colleton County  
24 and this Court for that service.

25 All right, ladies and gentlemen, let me tell you a

1 little bit about how we're going to proceed. I'm holding in  
2 my hand, Madam Foreperson, and ladies and gentlemen of the  
3 jury, including my alternate juror down there, two pieces of  
4 paper. The case we're about to try is the case of The State  
5 of South Carolina v. Desmond J. Sams, and he is the  
6 defendant seated at the defense table with his attorney, Mr.  
7 Mathews.

8 The defendant is charged by these pieces of paper I  
9 hold in my hand; you'll see there are two of them. We call  
10 them indictments. They are filed in this court. He is  
11 charged with the crime of murder and he is charged with the  
12 crime of assault and battery of a high and aggravated  
13 nature. Now, the elements of those crimes, I'm going to  
14 explain all about it to you at the conclusion of the case,  
15 in my charge to you on the law.

16 For right now, at the beginning, each of you should  
17 understand that the indictments are simply the charges by  
18 which the case is brought into this court, and the  
19 indictment is not evidence of any of the allegations that it  
20 contains.

21 Now, the defendant in this case has pled not guilty to  
22 both of these indictments. The State has the burden of  
23 proving each of the essential elements of these indictments  
24 beyond a reasonable doubt. It will be your duty, as I told  
25 you when I asked you questions to determine your

1 impartiality, to decide whether the State has met that  
2 burden.

3 As a juror, it is your solemn responsibility to decide,  
4 or determine, the guilt or the innocence of the defendant,  
5 and your verdict, ladies and gentlemen, must be based solely  
6 on the evidence as it is presented during the trial, and on  
7 the law, as I instruct it to you to be, during the trial and  
8 at the end of the trial.

9 Now, in just a minute, the Deputy or Assistant  
10 Solicitor, will make what is called an opening statement, in  
11 which he or she will explain the issues in this case, or at  
12 least what he or she contends to be the issues in this case.  
13 Following that, the attorney for the defendant will make an  
14 opening statement.

15 Now, I want to tell you right now, the attorneys have  
16 worked hard to prepare the case, but what the attorneys tell  
17 you in opening statement, or any question they ask during  
18 the trial, where they suggest facts, or in their closing  
19 argument to you at the conclusion of the case, is not  
20 evidence. What the attorneys say is not evidence. They are  
21 advocates for their respective parties.

22 You, ladies and gentlemen, must make your decision, not  
23 from -- I want you to listen carefully to the attorneys, but  
24 what they tell you is not evidence in this case, it is only,  
25 in the opening statement, what their contentions are as to

1 the issues in this case.

2 The evidence in this case will be presented to you by  
3 witnesses that will testify under oath from this witness  
4 stand, or by some exhibit like a document, a photograph, a  
5 model, which may be introduced into evidence; but you won't  
6 see an exhibit until you hear me say, as a matter of law,  
7 "It's in evidence." And once I say "It's in evidence", as  
8 to an exhibit, that means it will be available to you in  
9 your jury room during your deliberations.

10 Evidence may also take the form sometimes in a case of  
11 a stipulation, an agreement of fact, where the parties agree  
12 on a certain fact. So evidence is testimony from the  
13 witness stand, an exhibit that you will hear me say that is  
14 in evidence, like a photograph, or it may even be a  
15 stipulation. That is what evidence is for you to consider,  
16 as a jury, during the trial of this case.

17 Now, in your consideration of the evidence, you should  
18 remember that under the Constitution of the State of South  
19 Carolina, you, and you twelve jurors alone, are the sole  
20 judges of the facts in this case, and no one but you, the  
21 twelve of you, will be permitted to consider the facts from  
22 the evidence, to weigh the facts.

23 The same law that makes you the sole judges of the  
24 facts, makes me the sole judge of the law. I cannot invade  
25 your province and tell you, suggest to you, or comment to

1 you, what the facts are in this case, and you, ladies and  
2 gentlemen of the jury, should not invade my province and  
3 differ with me about what the law is. You're the sole  
4 judges of the facts, I'm the sole judge of the law.

5 Everything that I say during the course of this trial  
6 is taken down by my court reporter, Becky Hill, seated below  
7 me, every word I utter, and anyone else utters. If I make a  
8 mistake as to the law, to the detriment of either party,  
9 they can appeal the case to an Appellate Court, and if the  
10 Appellate Court agrees that I have made a mistake on the  
11 law, the Appellate Court will reverse the case and send it  
12 back for a new trial.

13 So don't you, as jurors, worry about whether I've told  
14 you the law correctly, that is somebody else's worry. Your  
15 job, as jurors, is to take the law as I give it to you, and  
16 apply it to the facts as you find them to be, based on  
17 evidence introduced during the trial of the case, that means  
18 testimony from the witness stand, an exhibit, or a  
19 stipulation.

20 After doing that, ladies and gentlemen of the jury, you  
21 will then, at the conclusion of the case, render your  
22 verdict after you've heard all of the evidence and heard my  
23 charge on the law, and the closing arguments of the  
24 attorneys, you will then render your verdict, a true and  
25 just verdict, under that oath, which each of you just took

1 from Pat Grant, Clerk of Court for Colleton County.

2 Now from time to time during the trial of this case, if  
3 it's like many others that I've tried, you may hear one of  
4 the attorneys say something like, "Your Honor, I believe we  
5 have a question of law, or matter of law, that we'd like to  
6 discuss with you", or "Your Honor, may we approach the  
7 bench?" Or I might, just as I just did, ask you to leave  
8 the courtroom while I take up a matter of law as I did  
9 earlier in this proceeding, prior to your being sworn.

10 Now the reason for this is just what I told you  
11 earlier. It's not because we're trying to hide anything,  
12 it's just because of what I've just said. You're the sole  
13 judges of the facts. I'm the sole judge of the law. I  
14 can't make any comment to you about the facts, and you  
15 shouldn't differ with me about the law.

16 So the custom in this state is when I have to rule on a  
17 matter of law, sometimes by necessity, I have to say  
18 something about the facts in ruling on whether or not a  
19 particular law applies to this case. So the custom is to  
20 excuse you from the courtroom when such discussions take  
21 place, so that you will not, as a juror, be influenced by  
22 anything that I say or do in ruling on whether a particular  
23 piece of law applies in making some comment to the attorneys  
24 about the facts. So please understand that if I ask you to  
25 leave it's so that you can keep an open mind. I can do my

1 job and you can do yours, and that you won't be influenced  
2 by anything that I might say or do in ruling on whether a  
3 particular piece of law applies to this case.

4 And again, in that connection, let me tell you that  
5 you, and you twelve jurors alone, are the sole judges of the  
6 facts in this matter, and if you should gather from anything  
7 that I might say or do during the course of this trial that  
8 I have any opinion whatsoever about the facts in this case,  
9 please erase that from your mind because the law doesn't  
10 allow me to have an opinion about the facts in this case,  
11 and you are the sole judges of the facts in this case.

12 Now, how do you do that? If you're the sole judges of  
13 the facts, how do you determine as a juror, what the true  
14 facts are? Well, ladies and gentlemen of the jury, you  
15 will, of necessity, have to pass upon the credibility, which  
16 is a big legal term simply meaning the believability of the  
17 witnesses who will testify during the trial of this case.  
18 Let me give you an example. It will be my responsibility as  
19 a judge, to rule as a matter of law as to whether certain  
20 testimony is admissible or not as evidence. But once I've  
21 allowed the testimony to be admitted into evidence, whether  
22 or not you believe the testimony is solely a matter for you,  
23 the jury to determine.

24 In passing upon the believability, or credibility, of  
25 the witnesses who will testify during the trial of this



1 case, you have the right as a jury to take into  
2 consideration the interest of any witness, the bias of any  
3 witness, the prejudice of any witness, the opportunity for  
4 the witness to have observed the matters of things about  
5 which he or she may testify. You may even take into  
6 consideration the demeanor of the witness, or the appearance  
7 of the witness, while the witness is on the witness stand,  
8 in your making a decision about the believability or  
9 credibility of the witnesses who will testify during the  
10 trial of this case.

11 And that means, Madam Foreperson, ladies and gentlemen  
12 of the jury, and this is so important, it is your duty under  
13 your sworn oath that you took from the clerk of court as  
14 jurors to pay close attention to the witnesses, to observe  
15 the witnesses, to listen to the witnesses. Don't let your  
16 thoughts wander, ladies and gentlemen, so that if you give  
17 strict attention to the witnesses, you will, ladies and  
18 gentlemen, at the conclusion of all the testimony in this  
19 case, and after the final arguments of the attorneys, and my  
20 charge on the law by the Court to you, you will, from  
21 listening and observing as a juror, be in a position to  
22 determine what the true facts are and apply the law as I  
23 give it to you at the conclusion of the case, to the facts  
24 as you find them to be based on evidence introduced during  
25 the trial of the case and thus render a true and a just

1 verdict in the case.

2 Now, ladies and gentlemen of the jury, you must not  
3 consider anything that you may have read or heard about this  
4 case outside of this courtroom, whether before or during  
5 this trial, and until I submit this case to you, and I give  
6 you instructions to start deliberating, you must not discuss  
7 this case with anyone, your fellow jurors, not even a member  
8 of your own family. And after it is submitted to you, you  
9 must discuss it only in your jury room with your fellow  
10 jurors. It is very important, ladies and gentlemen, that  
11 each of you keep an open mind and not decide the case until  
12 the entire matter has been submitted to you under my  
13 instructions at the conclusion of the case.

14 Now, I don't know if there will be anything on radio,  
15 television or in the newspaper about this case. I instruct  
16 you not to read such, watch such, or listen to such. You  
17 must decide this case solely upon evidence introduced in  
18 this courtroom, when both sides are present with the right  
19 of cross-examination.

20 It will be your added duty, Madam Foreperson, you will  
21 preside in the jury room. You will be the jury spokesperson  
22 out here in the courtroom. It will also be your duty to  
23 write the jury's verdict, but I will give you further  
24 instructions about that. Now, my law clerk has a special  
25 job with you, Madam Foreperson, that's these pieces of paper

1 I hold in my hand. He's going to be looking for you at the  
2 conclusion of this case. He's going to want your signature  
3 on these indictments for the jury, so don't leave because  
4 he's going to be looking for you to sign them.

5 I'm going to be giving you a separate verdict form, but  
6 he'll want you to sign the indictments to show that the  
7 indictments correlate to your verdict at the completion of  
8 the case. Ryan's going to be behind me, pulling on my robe,  
9 reminding me not to let the foreperson leave without the  
10 signature.

11 Now, a couple of other housekeeping matters. I brag  
12 about this courtroom because I'm really proud of it and so  
13 is Pat. She did a great job in the renovation. I can't  
14 talk about how great she is enough, but she did. She  
15 doesn't like for me to do that, I want y'all to know that.  
16 She's real modest, but I brag everywhere I go because I'm so  
17 proud of her.

18 But it is 187 years old, and although we've tried to  
19 modernize it, there are times when it is difficult to hear  
20 in here. I'm constantly reminded of it as I get older  
21 because my hearing from hunting all my life and shooting a  
22 shotgun is greatly diminished. I should have been taking  
23 better care of it. If, at any time, you can't hear in this  
24 courtroom, just raise your hand for me. I have the ability  
25 to turn it up. I can promise you I'll get it so you can

1 hear, and I want you to be able to hear at all times  
2 throughout the trial of the case.

3 Now, if an exhibit is introduced into evidence and you  
4 can't see it, whether it's used in evidence or even  
5 demonstratively, which means it won't be in your jury room,  
6 but it's used as an aid in the courtroom, so if you can't  
7 see something that I've allowed you as a judge to see, raise  
8 your hand. I want you to be able to hear and to see at all  
9 times throughout the trial of the case, and I'll be watching  
10 all thirteen of you, and if you need help on hearing and  
11 seeing, raise your hand.

12 We do not allow jurors to ask questions, normally, here  
13 in the courtroom. Now, Madam Foreperson, here is the  
14 procedure we follow on that. If, at any time, a member of  
15 the jury has a question, you will have to retire to your  
16 jury room, if you're not already there, you as the  
17 foreperson would write the question on a piece of paper, you  
18 would give it to my bailiff, he would bring it out to me. I  
19 would then rule, as a matter of law, whether or not the  
20 question can or cannot be answered, just as I would any  
21 question asked by either one of the attorneys during the  
22 trial of the case. Do you understand?

23 We do not allow cell phones or beepers in the jury room  
24 or while you're on jury duty. You're probably wondering why  
25 we're so strict about that. Most people think it's noise.

1 That is part of it. Becky has to hear, the parties have to  
2 hear, the public has to hear, you have to hear, the judge  
3 has to hear, the clerk has to hear, but in a county far from  
4 Colleton, we had a jury go out, before we banned cell phones  
5 and beepers, and they were discussing a medical issue in  
6 their jury room, and one of the jurors reached in their  
7 pocket and said, "You know, my brother's a doctor. I'll  
8 just call him and ask his opinion on the telephone."  
9 Obviously, ladies and gentlemen that's improper. You must  
10 decide the case solely upon evidence introduced during the  
11 trial of the case. So we don't allow cell phones or  
12 beepers. Please don't bring one with you. I'm required by  
13 court rule to confiscate them. I don't want anybody's cell  
14 phone or beeper. So please don't bring it and don't use it  
15 your jury room or while you're on jury duty.

16 I've tried it both ways. I ask, Madam Foreperson and  
17 ladies and gentlemen of the jury, that you do not take  
18 written notes at all. You're going to see me writing. I  
19 write all the time, make myself notes to remind myself. The  
20 reason I don't allow you to take notes, because I've tried  
21 it the other way, is because I've found that if the written  
22 note taker makes an error in the written notes, the notes  
23 can be harmful, rather than helpful, in your jury room once  
24 deliberations begin. The time-tested system is for each of  
25 you to listen, and listen carefully, during the course of

1 the trial. So I ask that you do not take written notes.  
2 Now, I will tell you, ladies and gentlemen, although we  
3 don't have video, that we are making a recording, audio, of  
4 a witness. We can actually play back an audio version only  
5 of a witness's testimony should the need arise.

6 Now, ladies and gentlemen, I do not intend that what  
7 I've just said to you should be construed by you as the  
8 charge on the law, because I'm going to give you that at the  
9 end of this case, and I'm going to explain to you the law  
10 that applies in this case, once I've heard, like you, the  
11 evidence in this case.

12 I know nothing about the evidence in the case, nor do  
13 you, and it's intended that way. So I will charge you the  
14 law applicable to this case at the conclusion of the trial.  
15 This has been merely an attempt on my part to briefly  
16 explain to you some of the procedure that we will follow in  
17 the trial, so you'll have a better understanding as to what  
18 may be happening from time to time.

19 We follow things in the courtroom in a definite order.  
20 The State has the burden of proof. The State goes first,  
21 the party with the burden of proof. So we follow things by  
22 procedure and order, and I want you to understand that we're  
23 following that procedure, hopefully so that you'll have a  
24 better idea of what's happening as the case moves forward.  
25 Nevertheless, in order to preserve everyone's rights, I'll

1 give the parties any opportunities to object to anything  
2 that I have said to the jury if they have any exceptions or  
3 objections.

4 Any exceptions or objections from the State?

5 DEP. SOL. THORNTON: No, Your Honor.

6 THE COURT: From the defendant?

7 MR. MATHEWS: No, sir.

8 THE COURT: Very well. Ladies and gentlemen, please  
9 give the attorneys your careful consideration. We will now  
10 begin the trial of this case. Solicitor?

11 MS. STILLEY: Thank you, Your Honor. May it please the  
12 court?

13 THE COURT: Yes, ma'am.

14 OPENING STATEMENT

15 BY ASST. SOL. STILLEY:

16 Good morning, ladies and gentlemen. My name is Amanda  
17 Stilley, and along with Deputy Solicitor Sean Thornton, I'm  
18 going to be prosecuting the case before you today and  
19 possibly into tomorrow.

20 We're here in the matter of the State v Desmond Sams.  
21 He's charges with two offenses that the judge has discussed  
22 with you: murder and assault and battery of a high and  
23 aggravated nature; we sometimes will refer to that as Abhan.  
24 I just want you to know that's assault and battery of a high  
25 and aggravated nature.

1 Both of these charges stem from the night of April  
2 12th, 2008, here in Colleton County, at [REDACTED]  
3 That was the house of a Lisa Michelle Strickland. Now Lisa,  
4 a friend of hers, Stephanie, the defendant, Desmond Sams,  
5 and our victim, Jake Frazier, III, had been around drinking,  
6 and about 4:00 in the morning, roughly, had a little too  
7 much to drink and he got ill. He went to the restroom.

8 Stephanie got a little concerned so she went in to  
9 check on him a little bit later and Desmond came with her.  
10 A fight broke out between those two men. During this fight,  
11 Desmond choked Jake down into the tub. Lisa got a little  
12 concerned. She went outside to try and call 9-1-1, and  
13 Desmond found out she was trying to call 9-1-1, and he came  
14 after her.

15 He choked her and then he started slapping her in the  
16 face. Finally, he let her go, though, and he went back  
17 inside where Jake was now laying on a bed in the back  
18 bedroom of this house. They started fighting again, except  
19 this time, the fight was in the bedroom and it went from the  
20 bed to the floor. Jake was laying in the floor face down,  
21 prone position, and Desmond was on top of him and had him in  
22 a choke hold, which all of you have seen before. Had his  
23 arm wrapped around his neck and was choking him. Well, this  
24 was getting a little out of hand. Stephanie begged with  
25 Desmond to let him go. While Jake could still breathe, he



1 begged with him, "Come on, man. I've got three kids. Let  
2 me go." No, he kept choking him.

3 Stephanie tried to physically get Desmond off and he  
4 hit her, too. Kept choking him. Lisa was finally able to  
5 call  
6 9-1-1, but it was too late because when Stephen Dunn, with  
7 the Colleton County Sheriff's Office, got there some 8 1/2  
8 minutes later after the call came in about Desmond choking  
9 him and wouldn't let him go, he was still choking him.  
10 Stephen Dunn walked in and said, "Man, get off him."  
11 Wouldn't do it. "Get off of him, now." He had to draw his  
12 taser. Finally, he got off of him and it was then that he  
13 finally released Jake Frazier but it was too late. Jake  
14 Frazier was unconscious. EMS arrived and tried to revive  
15 him at the scene but was unable to, so he was transported to  
16 the Colleton County Medical Center where he was later  
17 pronounced deceased.

18 Now, in order to prove to you that Desmond Sams is  
19 guilty of murder, I, and the Deputy Solicitor, have a burden  
20 beyond a reasonable doubt, I'm sure you've all heard this  
21 before, to prove to you that Desmond Sams killed Jake  
22 Frazier with malice aforethought. And I'm not going to go  
23 into malice aforethought, because like the judge has already  
24 mentioned to you, he's going to go through all of these  
25 points of law in intricate detail and tell you what that

1 means, but keep in mind that Desmond Sams killed Jake  
2 Frazier. That's not the only charge, though, we're here for  
3 today. We're also here on an Abhan charge I told you about,  
4 and in that I have to prove to you that Desmond Sams  
5 physically attacked Lisa Strickland, that he inflicted some  
6 form of violence upon her person, upon her body.

7 Now, during this trial, the judge has already told  
8 you're going to hear a bunch of different forms of evidence.  
9 You're going to hear from multiple witnesses. You're going  
10 to hear from the two girls that were there that night, Lisa,  
11 and you're going to hear from Stephanie. You're going to  
12 hear from Stephen Dunn who came in and saw him still choking  
13 the victim. You're going to hear from other law  
14 enforcement. You're going to hear from EMS that showed up  
15 and tried to revive him, and then you're going to hear from  
16 a Dr. Erin Presnell at MUSC and you're going to hear her  
17 medical findings.

18 I'm not going to remind you again to please pay close  
19 attention because there are going to be a lot of details,  
20 and I know the judge has already talked to you about that.  
21 I don't want to waste your time. But I do beg you again,  
22 after reviewing all of the evidence and these witnesses, I  
23 just ask you to return a true verdict. Thank you.

24 MR. MATHEWS: May it please the Court?

25 THE COURT: Mr. Mathews.

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1   aforethought. In fact, it may have been self-defense, was  
2   probably self-defense and that as Officer Dunn approached,  
3   in addition to seeing Mr. Sams still on top of Mr. Frazier,  
4   that Officer Dunn will have said, "Get off of him." And he  
5   said, "No, he will want to fight me." I believe that's what  
6   the evidence will be and I believe that will be the evidence  
7   that he believed him to be in reasonable fear for his  
8   safety.

9       This was not an intentional killing. It was certainly  
10   not a killing with malice aforethought. But listen  
11   carefully to all of the evidence that comes from that stand,  
12   because that's what counts. As to the Abhan, I believe that  
13   you'll find that the testimony is inconsistent to the point  
14   where I believe that you will find that it just didn't  
15   happen. But in any event, please listen carefully -- listen  
16   carefully to all of the testimony. Slow it down and look at  
17   the statements, the testimony, any exhibits you get, very  
18   closely. Obviously, this is a very important case. I  
19   believe after you've heard of all of the testimony that you  
20   will find Mr. Sams not guilty of anything.

21       **THE COURT:** Call your first witness, Solicitor.

22       **DEP. SOL. THORNTON:** The State calls Stephanie Lee  
23   Ballard to the stand.

24       **MADAM CLERK:** Ms. Ballard, please come forward and be  
25   sworn.

## Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

1       WHEREUPON, MS. STEPHANIE BALLARD was duly sworn to tell  
2 the truth, the whole truth, and nothing but the truth, and  
3 testified as follows.

4       MADAM CLERK: Please have a seat on the witness stand  
5 and state your full name for the record.

6       THE COURT: Pull that microphone over. It's going to  
7 amplify your voice. Begin by stating your full name and  
8 spell your last name for the court reporter. Speak up so  
9 the jury -- the last gentleman down there on the end can  
10 hear you.

11       MS. STRICKLAND: My name is Stephanie Lee Ballard, B-A-  
12 L-L-A-R-D.

13       THE COURT: Can you hear down there, alright?

14       MR. MATHEWS: If she could speak a little louder.

15       THE COURT: Madam Clerk, would you turn it up for me  
16 just a little bit.

17       MADAM CLERK: Sure.

18       THE COURT: Try it again for me, please, ma'am.

19       MADAM CLERK: Stephanie Lee Ballard, B-A-L-L-A-R-D.

20       THE COURT: Can you hear? (JURY NODS IN AFFIRMATION.)  
21 Your witness, counsel.

22       DEP. SOL. THORNTON: Thank you, Judge.

23                               DIRECT EXAMINATION

24       DEP. SOL. THORNTON:

25       Q     Ms. Ballard, where do you live?

## Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

- 1 A [REDACTED] Hollis Court.
- 2 Q Is that here in Colleton County?
- 3 A Walterboro.
- 4 Q Did you live in Walterboro on or about April 12th of
- 5 this year -- or excuse me, now we're in January. April 12th
- 6 of 2008?
- 7 A Same residence.
- 8 Q All right. At that time in April of 2008, did you know
- 9 someone named Jake Lamont Frazier, the third?
- 10 A Yes.
- 11 Q And how did you know Mr. Frazier?
- 12 A Him and I had a son together.
- 13 Q And did y'all have a relationship at that time?
- 14 A Yes.
- 15 Q Now on April the 12th of 2008 do you remember where you
- 16 were?
- 17 A Yeah. At Lisa Strickland's house.
- 18 Q All right. And is that at [REDACTED] [REDACTED] [REDACTED]
- 19 A Yes.
- 20 Q And is that here in Colleton County?
- 21 A Yes.
- 22 Q And on April the 12th, 2008, in the early morning
- 23 hours, who else was at Lisa Strickland's house with you?
- 24 A It was Lisa, myself, Desmond and Jake.
- 25 Q All right. When you say "Desmond", do you see

## Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

- 1 "Desmond" in the courtroom?
- 2 A Yes.
- 3 Q Can you point him out for me?
- 4 A (Deponent complies.)
- 5 Q Are you pointing to Desmond Sams, the defendant in this
- 6 case, charged with murder?
- 7 A Yes.
- 8 Q What were y'all doing at Lisa's that night or that
- 9 morning; I guess I should say early morning?
- 10 A We were drinking.
- 11 Q All right. And was Jake drinking?
- 12 A Yes.
- 13 Q Did at some point Jake have too much to drink?
- 14 A Yes.
- 15 Q Did he feel okay, or did he feel sick, or how was he
- 16 feeling?
- 17 A He had gotten sick.
- 18 Q All right. And what happened when he got sick?
- 19 A He went to the bathroom and Desmond followed him down
- 20 to the bathroom and I went down there and he was getting
- 21 sick and they started arguing.
- 22 Q Do you remember what they were arguing about?
- 23 A Myself.
- 24 Q All right. When you say "yourself", they were having
- 25 an argument about you?

## Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

1 A Yes.

2 Q All right. And do you remember specifically what the  
3 argument was?

4 A Desmond had grabbed me.

5 Q All right. And did Mr. -- did Jake say anything about  
6 that?

7 A He asked Desmond why he was feeling on me, and that's  
8 when they started arguing, and Desmond pushed him into the  
9 bathtub and was choking him.

10 Q All right. So at the start of the fight, Desmond  
11 started choking him right off the bat?

12 A He pushed him into the bathtub and he had his hands  
13 around his neck.

14 Q All right. What happened then?

15 A Lisa pulled Desmond off of Jake.

16 Q All right. What happened after that? Was there a  
17 separation? Did they leave?

18 A Yes. Lisa took Desmond into the living room and then I  
19 took Jake into the bedroom.

20 Q What happened after that?

21 A Desmond came back to the bedroom and then they started  
22 fighting again.

23 Q All right. So you and Jake were in a bedroom by  
24 yourselves?

25 A Uh-huh (affirmative). I had taken his shoes off, laid



## Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

1 him in the bed, and he was about to go to sleep.

2 Q And that's when Desmond came back in the room and they  
3 started fighting again?

4 A Yes.

5 Q And this is after, from what you testified, Desmond had  
6 already shoved him into the bathtub and was choking him?

7 A Yes.

8 MR. MATHEWS: Your Honor, I'd object to the leading.

9 THE COURT: Sustained.

10 DEP. SOL. THORNTON: I apologize, Your Honor. I  
11 thought she had already testified to that. I was  
12 clarifying.

13 Q Did you testify earlier as to what had happened in the  
14 bathroom?

15 A Yes.

16 Q All right. Would you go over that again, please?

17 A They had started arguing and Desmond pushed Jake into  
18 the bathtub, and he had his hands around his neck and was  
19 choking him, like choking down into the bathtub.

20 Q All right. And after you had testified that you took  
21 him into the bedroom, Jake into the bedroom, you had his  
22 shoes off, he was laid down, you said Desmond came back in  
23 and they started fighting again; then what happened?

24 A They just started fighting and then Lisa told Desmond  
25 that she was gonna call the cops, and then Lisa went down

## Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

1 the hallway, and Desmond went after Lisa down the hallway,  
2 and that's when he pushed her onto the couch and he was  
3 choking her.

4 Q All right. Hang on just a second. Now, you testified  
5 that Lisa said she was gonna call the cops, so he chased  
6 after her? "He" being Desmond Sams?

7 A Desmond, yes.

8 Q All right. Then what happened?

9 A I got Desmond off of Lisa and then he went back to the  
10 bedroom and they started fighting again.

11 Q All right. Now, let me get this straight. So  
12 according to what you've testified to, Desmond choked him in  
13 the bathroom, "him" being Jake.

14 A Right.

15 Q The victim in this case. They got separated and he  
16 came back into the bedroom and started fighting with him  
17 again.

18 A Right.

19 Q Then they got separated again when he went to chase  
20 after Lisa to keep her from calling 9-1-1?

21 A Right.

22 Q Then he came back in the room and started fighting him  
23 again?

24 A Right.

25 Q All right. What happened next?

## Direct Examination of Stephanie Ballard by Dep. Sol. Thornton

1 A That's when it just -- they were fighting. Desmond was  
2 on top of Jake the whole time, just choking him. Then Jake  
3 kept telling him he couldn't breathe. He'd say, "Please let  
4 me go. Let me live for my kids." Desmond said, "I love  
5 your kids, but I'm going to fucking kill you." and that's  
6 what he did.

7 Q All right. Did you ask, at any time, did you tell  
8 Desmond to stop?

9 A Uh-huh (affirmative). I hit Desmond. I pushed him. I  
10 did all that I could and he would not let him go.

11 Q And who was on top?

12 A Desmond.

13 Q And what was he doing?

14 A He was choking him, just telling, "I'm gonna kill you.  
15 You hit me. You tried to kill me. I'm gonna fucking kill  
16 you."

17 Q And I believe you had testified, he did this even after  
18 Jake asked him not to do it because Jake had three kids?

19 A Yeah.

20 Q After all this happened, what happened next? Did law  
21 enforcement, anybody, ever get there?

22 A Yes. And as soon as they told Desmond to let him go,  
23 he let him go, and I was thinking to myself, as many times  
24 that we told him to let him go, why didn't he do it then?

25 Q Was Jake moving around or getting up after he let him

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 go?

2 A Unh-unh, no.

3 Q Did you see anybody try to do CPR?

4 A I did. I tried.

5 Q And did any medical people show up?

6 A They were there. They told me to leave out of the room  
7 and then that's when they took over.

8 Q And did you ever see Jake again after that?

9 A I seen him at the hospital.

10 Q All right. And when you saw him, what was his  
11 condition?

12 A He -- they had already pronounced him dead.

13 DEP. SOL. THORNTON: Your Honor, court's indulgence for  
14 one moment.

15 Q I have no further questions at this time, Stephanie.  
16 Please answer any questions that Mr. Mathews may have.

17 **CROSS-EXAMINATION**

18 **BY MR. MATHEWS:**

19 Q Ms. Ballard, do you need a moment? Do you need to get  
20 some tissues?

21 A I'll try.

22 Q Ms. Ballard, obviously, this is very important. Have  
23 you told the jury everything that you can recall about that  
24 evening?

25 A Yes.

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q Okay. Did you at any point, what had you been drinking  
2 that evening? What all had you had to drink?  
3 A I  
4 THE COURT: Speak up. Counsel, come up to the  
5 microphone.  
6 MR. MATHEWS: Okay.  
7 Q Ms. Ballard, what all did you have to drink that night?  
8 A We had a couple of drinks of Crown and Coke.  
9 Q Okay. Did y'all also do shots of Vodka?  
10 A Yeah, with lemon.  
11 Q Lemondrops?  
12 A Lemondrops, yeah.  
13 Q Okay. And all four of y'all had had those?  
14 A Right.  
15 Q Okay. And shots of Crown or Crown and Cokes?  
16 A I drank Crown and Coke.  
17 Q Okay. Had Jake also tipped over or tipped up a bottle  
18 of Tequila?  
19 A Yes. Him and Desmond drank that together.  
20 Q And so Vodka -- were you, also, drinking Gin?  
21 A No.  
22 Q Was anyone there drinking Gin?  
23 A It was there at the house, but I'm not sure.  
24 Q Okay. And you have given a couple statements, I think,  
25 also, to law enforcement?

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 A That one statement.

2 Q Just one? You didn't do -- when was that? Was that in  
3 the morning or was it in the afternoon?

4 A It was in the morning.

5 Q Do you have a cell phone, Ms. Ballard?

6 A I do.

7 Q And did you call law enforcement at any point that  
8 evening?

9 A I didn't. I know Lisa had my phone and she called a  
10 lot of people, but I'm not sure who exactly she called.

11 Q Okay. So the only -- the only phone that was in the  
12 house was Lisa -- well, yours, but you gave it to Lisa?

13 A Right. Well, Jake had a phone, too, but I'm not sure  
14 if she mighta used his.

15 Q Okay. Did you make any -- you made no calls to law  
16 enforcement then?

17 A No.

18 Q Did you call anybody that evening?

19 A I called his sister.

20 Q Okay. Sharron Glover?

21 A Uh-huh (affirmative).

22 Q And she's sitting right there? (Indicating) That's Ms.  
23 Glover?

24 A (Deponent nods head affirmatively.)

25 Q Okay. So your testimony today was there was three

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 separate altercations between Jake and Desmond?

2 A Right.

3 Q Now, were Jake and Desmond close; do you know?

4 A I don't know.

5 Q Had Desmond been in your presence before?

6 A Three times.

7 Q Okay. Was Lisa also there any of those times?

8 A Yes.

9 Q Had Lisa and Desmond had a physical relationship at  
10 some point?

11 A I'm not sure.

12 Q Could have been?

13 A What do you mean by "physical"?

14 Q Did they have any oral sex or anything like that at any  
15 time?

16 A I wasn't there. I mean, I hadn't seen it, but I've  
17 been told.

18 Q Now when did the first instance I think you indicated,  
19 you testified that Jake called Desmond out because he  
20 accused Desmond of feeling on you?

21 A He did feel on me.

22 Q Okay. But that's what the fight was about?

23 A Right.

24 Q Okay. Explain, what did they say to each other?

25 A I can't remember exactly.

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q Okay. What's the first -- and you say the first person  
2 doing the shoving was Desmond or was Jake?

3 A It was -- Jake was coming out of the bathroom and  
4 that's when he seen it, and then they started an argument,  
5 and then Desmond pushed him into the bathtub.

6 Q Okay. So let me understand this. At one point where  
7 Jake, I think, was -- he was in the bathroom. He had thrown  
8 up in the bathroom?

9 A Right.

10 Q I think, initially, how big is the bathroom?

11 A Not very big.

12 Q And at one point, were all four of you in the bathroom?

13 A Right.

14 Q Okay. And then at some point, did just Desmond go in  
15 there and talk to Jake?

16 A Right.

17 Q Okay. Try to make him feel better or whatever?

18 A Right.

19 Q Okay. So there weren't any problems at that point?  
20 They were -- you knew them to be good friends, extremely  
21 good friends and relatives of each other?

22 A I didn't know Desmond very well, but, I don't know.

23 Q All right. Now, but, who broke -- and you say that  
24 Lisa broke up the first fight?

25 A Right.



## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q Okay. And you walked back. How did Lisa and Desmond  
2 leave together? You said they left together?

3 A She grabbed him off the bed and then took him into the  
4 living room.

5 Q Okay. I mean, was she physically able to pull him  
6 there or did she say, "Come on with me" and they went  
7 together voluntarily?

8 A She pushed him down the hallway.

9 Q Okay. So she was -- she was able to physically remove  
10 him from Jake or "Red"?

11 A Right.

12 Q Okay. And was she restraining him the whole time or  
13 were they sitting and talking? What happened when they were  
14 together in the living room?

15 A I don't know. I was in the bedroom.

16 Q Did you hear anything?

17 A No.

18 Q Okay. You were able at that point, to peacefully talk  
19 with Jake in the bedroom, take off his shoes, say  
20 everything's gonna be okay, and all that sort of stuff, in  
21 the bedroom?

22 A Right.

23 Q Okay. So if there was a bunch of stuff going on in the  
24 other room, you wouldn't have been able to do that, would  
25 you?

## Cross-Examination of Stephanie Ballard by Mr. Mathews

- 1 A (Witness shakes head.)
- 2 Q That's "no"?
- 3 A No.
- 4 Q Okay. So everything -- there's this first fight, and
- 5 then everything had settled down, correct?
- 6 A Correct.
- 7 Q All right. And then you said that Desmond walked into
- 8 the bedroom where the two of y'all were?
- 9 A Right.
- 10 Q Okay. And what happened at that point? You have to
- 11 slow that down for me. First of all, why is Desmond there?
- 12 Did he say?
- 13 A I just assumed he had just came to see Lisa; I'm not
- 14 sure.
- 15 Q No, I mean back in the bedroom where the two of y'all
- 16 were?
- 17 A Oh, I don't know.
- 18 Q Okay. He didn't say anything? He didn't come running,
- 19 clenching his fists, or anything like that?
- 20 A No.
- 21 Q But when Jake saw Desmond, Jake freaked out; is that
- 22 true?
- 23 A He got angry.
- 24 Q Okay. And at that point, Jake attacked Desmond?
- 25 A He stood up off of the bed and then Desmond hit him.

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q Okay. He stood up off of the bed. Did he say  
2 anything?

3 Q And you say at that point they were fighting. Where  
4 did the fight go at that point?

5 A It started on the bed and then they ended up on the  
6 floor.

7 Q Okay. They ended up on the floor. Did they end up on  
8 the floor -- is that, did they ever leave from the floor  
9 once they ended up on the floor?

10 A No.

11 Q Okay. So there were two fights and in the second fight  
12 they ended up on the floor, they were together, and that was  
13 the end of it?

14 A Excuse me?

15 Q Were there any other altercations, other than those  
16 two?

17 A When he left down the hallway, when he choked Lisa.

18 Q Okay. So you're saying he left Red on the floor in the  
19 bedroom?

20 A Right.

21 Q Okay. At that point, was "Red", or Jake, saying  
22 anything?

23 A No.

24 Q Was he still alive?

25 A I'm not sure.

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q You don't know? But he was still? He was still on the  
2 floor?

3 A Laying on the floor.

4 Q Okay. So whatever had been done, had been done at that  
5 point?

6 A I don't know.

7 Q This is very important because you are asking the jury  
8 to believe that he left from there and went back and had an  
9 altercation with Lisa and then came back to a still body; is  
10 that what you want the jury to believe?

11 A I don't know if he was alive or what. I just know that  
12 that's how it happened.

13 Q In fact, you indicate you recall making one statement  
14 in the morning when that happened; is that correct?

15 A Right.

16 Q All right. Now, you also indicate -- when did you call  
17 Jake's sister?

18 A I'm not sure.

19 Q Was it before the fight? Was it after the fight? Was  
20 it during the fight, or fights, or which one of the fights?

21 A It was during it, right before police got there.

22 Q Okay. At that point, were they still struggling with  
23 each other?

24 A Desmond was still on top of him.

25 Q Okay. As you were making the call, or just before it,

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 were they still struggling with each other?

2 A Desmond was yelling.

3 Q Okay.

4 A Jake was just laying there.

5 Q Jake wasn't still fighting him?

6 A No.

7 Q And you indicate that when the police arrived, when  
8 Officer Dunn arrived and told him to get off, he immediately  
9 got off?

10 A (Witness nods head.)

11 THE COURT: Just a moment, counsel. You have to say  
12 "yes" or "no", and don't nod your head.

13 Q And you're sure of that?

14 A Yes.

15 Q Okay. And you say that you left out of there and you  
16 saw Desmond attacking Lisa?

17 A He had his hands around her neck.

18 Q Okay. That's after he left the second time?

19 A Right.

20 Q Okay. Did you make a statement at 5:00 in the morning,  
21 a written statement at 5:00 in the morning, that morning,  
22 about a half an hour after EMS and all arrived?

23 A I started it at Lisa's house and then I finished it at,  
24 I think, it was the Annex Building.

25 Q Okay. So when I asked you if you made two statements,

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 you said you made one, you made a part of a statement and  
2 then you finished it in the Annex?

3 A Right.

4 Q Okay. Did you -- would it be fair to say that you  
5 started the -- you started the statement at 5:00 in the  
6 morning; is that fair?

7 A I don't remember what time it was.

8 Q Maybe if ---

9 DEP. SOL. THORNTON: I was gonna say, Judge, if he  
10 wants to show her the statement he's referring to, maybe she  
11 can identify them.

12 THE COURT: Counsel?

13 MR. MATHEWS: If they -- if Mr. Thornton ---

14 THE COURT: Counsel, I don't want anymore argument.

15 You proceed as cross-examination. If you want to ask her  
16 about the statement, give her a copy.

17 MR. MATHEWS: I was going to give her a copy of Mr.  
18 Thornton's, but I'll just make a copy, Your Honor, if we can  
19 do that.

20 DEP. SOL. THORNTON: I'll be happy to just give her my  
21 copy, Judge, rather than ---

22 MR. MATHEWS: That's all I was asking, Your Honor.

23 Okay. Let's mark that as an exhibit. Oh, have these  
24 been pre-marked?

25 DEP. SOL. THORNTON: I have a clean copy if you prefer.

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 MR. MATHEWS: I don't mind having the ---

2 THE COURT: Solicitor, y'all come on up here.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD  
4 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE  
5 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

6 THE COURT: Step back.

7 MR. MATHEWS: Okay. Could I make my objection, Your  
8 Honor, on the record for that?

9 THE COURT: At the appropriate time, but not now, Mr.  
10 Mathews. It's cross-examination. Proceed.

11 MR. MATHEWS: Thank you, Your Honor.

12 Q Ms. Ballard, I'm handing you what's been pre-marked as  
13 State's Exhibit Number Two, comprised of four pages, and ask  
14 you if you can identify that?

15 A This is mine.

16 Q Okay. That's the statement that you wrote?

17 A Yes.

18 Q And I would ask you to turn to Page Four, the fourth  
19 page of those four pages.

20 THE COURT: Step back, counsel, so the jury can see the  
21 witness. You have a copy.

22 MR. MATHEWS: Thank you, Your Honor.

23 THE COURT: Ask the question.

24 MR. MATHEWS: Okay.

25 Q Page Four, Ms. Ballard, that's the statement that you

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 wrote out or began at 5:00 in the morning?

2 A Yes.

3 Q Okay. Now go to the front page. When did you make  
4 that second part to the statement?

5 A That was the next day.

6 Q Okay. At least 12 hours later?

7 A Right.

8 Q Okay. Would you look through that and tell me where in  
9 there you indicate that Lisa was ever attacked?

10 A (Witness Complies.) I didn't.

11 Q Okay. So you made two separate statements to the  
12 police. Two separate, written statements to the police, and  
13 at no time did you indicate that Lisa was attacked; is that  
14 correct?

15 A (Witness nods head.)

16 Q Okay. And during the course of this, you called Sharon  
17 Glover on your cell phone; is that correct?

18 A Right.

19 Q Okay. After the course of time that you called there,  
20 would you indicate in the report where you told the police  
21 you had called someone other than law enforcement?

22 A I didn't.

23 Q Okay. Why did you call the -- why did you call someone  
24 other than law enforcement? Why didn't you call the police?

25 A Because we had already called the police.



## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q "We"?

2 A Lisa and myself.

3 Q You both had called?

4 A Well, she called.

5 Q Okay. You were present when that call -- when she made

6 that call?

7 A I was in the house. I wasn't around her.

8 Q Okay. All right. How many times did she call law

9 enforcement?

10 A I don't know.

11 Q You know of one?

12 A Right.

13 Q Did anybody call you to your cell phone? Do you have a

14 land line, or did Lisa have a land line?

15 A No.

16 Q Okay. So any calls that would have been made, would

17 have been made to the one cell phone that you say is there?

18 A Right.

19 Q Okay. Did anybody call to that phone during the time

20 you were there?

21 A Not that I know of.

22 Q Okay. Now isn't it true that you told law enforcement

23 the first time that you made a statement, that the reason

24 the second fight broke out is because you had tried to break

25 up the fight and that -- you said that Desmond had hit you

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 during the break; not Lisa, but you tried to break up the  
2 first fight?

3 A I don't remember.

4 Q Okay. Well, take a look at the fourth page there.

5 A (Witness Complies.)

6 Q Okay. Anywhere in that one paragraph of the first  
7 page, the first page, did you indicate that Lisa attempted  
8 to break up the first fight?

9 A No.

10 Q Okay. And in the first statement, you say that Jake  
11 got off of Desmond the first time because -- Desmond got off  
12 of Jake the first time because he had said that they were  
13 cool?

14 A Right.

15 Q Okay. So in your first statement to the police, you  
16 say that Desmond had voluntarily gotten off of Jake because  
17 Jake said, "We're cool", right?

18 A Right.

19 Q Okay. But then later when Desmond walked into the  
20 bedroom, you said that Jake became -- that Jake realized  
21 that Desmond had hit you at some point and that he freaked  
22 out and they started fighting again.

23 A I was hit several times during the whole ---

24 Q I understand. But isn't that why the second fight  
25 broke out -- if there is a second fight, isn't that why you

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 said the second fight broke out?

2 A I'm not sure.

3 Q Okay. Well, did you say, did you write there midway  
4 through there that "Jake then realized that he hit me and  
5 they started fighting again."?

6 A Yeah.

7 Q Okay. You wrote that. All right.

8 MR. MATHEWS: Your Honor, I would seek to admit this  
9 into evidence at this time.

10 THE COURT: Is there an objection?

11 DEP. SOL. THORNTON: There is, Your Honor. She  
12 specified the contents. Mr. Mathews ---

13 THE COURT: Counsel approach.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD,  
15 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE  
16 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

17 THE COURT: Proceed. The objection is sustained.

18 MR. MATHEWS: I understand, Your Honor.

19 Q Ms. Ballard, in your second statement, did you say, "My  
20 name is Stephanie Ballard, and I was at the residence of  
21 Lisa Strickland when the incident happened around 4:25 p.m.  
22 Myself, Lisa Strickland, Jake Frazier, and Desmond Sams were  
23 all sitting around the living room having some drinks. Jake  
24 stated that he did not feel well and he went to the  
25 bathroom. He was taking a while to come out and Desmond

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 went to check on him." So, initially, Desmond went to check  
2 on him because he was concerned about him; is that correct?

3 A Right.

4 Q "Desmond came back to the living room and told myself  
5 and Stephanie that Jake was vomiting. I then went back to  
6 check on Jake and Lisa and Desmond followed me in there. We  
7 all, myself, Lisa and Desmond, stayed in the bathroom with  
8 Jake to make sure he was okay. Desmond and Lisa left  
9 shortly after and I remained in the bathroom with Jake. He  
10 told me that he was okay and he would be out in a minute. I  
11 then went back to the living room, but it seemed he was  
12 taking forever, so I went back to check on him and Desmond  
13 followed me down the hallway. As Jake was coming out of the  
14 bathroom, he said to Desmond, 'You feeling on my old lady.'  
15 They exchanged words and Desmond put his hands around Jake's  
16 neck and pushed him backwards into the bathroom, and he fell  
17 into the bathtub. Lisa got Desmond off of Jake and took him  
18 to the living room." Obviously, you don't mean he carried  
19 him. They walked out together; is that correct?

20 A Right.

21 Q "I, Stephanie, then helped Jake out of the tub and took  
22 him to the bathroom where the altercation took place. I  
23 laid him on the bed and took his shoes off. He, Jake,  
24 stated that he was going to be okay and was sorry for  
25 getting drunk. I told him that he was going to be fine.

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Desmond then came into the bedroom and when Jake saw him, he  
2 flipped out." And by "he flipped out", you mean Jake  
3 flipped out?

4 A Right. He got mad.

5 Q "Jake and Desmond started fighting, which started out  
6 of -- started out of the bed." Okay. Now isn't it true,  
7 Ms. Ballard, that you indicated you don't know who threw the  
8 first punch? Didn't you make that statement?

9 A Right.

10 Q Okay. So today you said that Desmond threw the first  
11 punch, but really you don't know who threw the first punch?

12 A I mean, this was written right after everything  
13 happened. I mean, the time has gone by and then ---

14 Q So your memory has gotten better over time?

15 A Right.

16 Q Okay. This statement that you're reading from right  
17 now, that was at 4:30 p.m. on the 12th; is that correct?

18 A Right.

19 Q So that's about 12 hours after this happened, right?

20 A Right.

21 Q And you and Lisa had had a chance to talk, correct?

22 A No, we went our separate ways.

23 Q Oh, okay. So at that point, today, between then, you  
24 and Lisa have had a chance to talk; is that correct?

25 A Correct.

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 Q Okay. And in fact, after I called you at some point,  
2 did I not?

3 A Right.

4 Q And after I talked to you, you talked to Lisa?

5 A Right.

6 Q Okay. But at this point, at the time you made these  
7 statements, y'all had not had a chance to talk to each  
8 other?

9 A We talked, but I mean, it wasn't anything detailed  
10 about anything.

11 Q Okay. All right. Jake and Desmond started fighting,  
12 which started on the bed. I was trying to break them up,  
13 but Jake told me to get out of the way. Okay, in your  
14 statement, you said that Jake initially said to get out of  
15 the way?

16 A Right.

17 Q Okay. You didn't testify to that, why not?

18 A I don't know.

19 Q Okay. So at that point, clearly, Jake wanted to be  
20 involved in a fight? He told you to get out of the way. He  
21 didn't tell you to call law enforcement?

22 DEP. SOL. THORNTON: Your Honor, that's all in her  
23 conclusion as to Mr. Frazier's state of mind. She wouldn't  
24 know that, couldn't know that for any number of reasons.

25 THE COURT: Sustained. Rephrase the question for me,

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 counsel. Let me hear it.

2 Q Do you have -- were you wanting to break up the fight?

3 You tried to break up the fight?

4 A I tried.

5 THE COURT: One question at a time. I'll allow that.

6 One at a time.

7 MR. MATHEWS: Okay.

8 A I did.

9 Q And Jake wouldn't let you?

10 A I mean, I couldn't even if I tried.

11 Q Okay. All right. "They then ended up on the floor  
12 still fighting. Desmond's lip was busted." Okay, you  
13 didn't testify to that today; why not?

14 A I don't know.

15 Q Okay. Was Desmond bleeding?

16 A Well, yes.

17 Q Okay. "And he kept yelling to Jake, 'You tried to kill  
18 me.' I told Desmond several times that it was only his lip  
19 bleeding. He wasn't trying to hear me. Desmond pinned Jake  
20 to the floor, facedown. I kept trying to pull Desmond off  
21 of Jake, but he told me to get off of him. Desmond had one  
22 hand under Jake's stomach and the other wrapped around his  
23 neck. Jake kept yelling that he couldn't breathe, for  
24 Desmond to get off of him. Desmond said, 'You tried to kill  
25 me.' and would not get off of him or not let him go. I

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 straddled over Jake's head, facing Desmond, and tried to  
2 push him off of Jake. He hit me in the right jaw. Jake  
3 repeatedly told Desmond he couldn't breathe, let him go.  
4 Desmond would not. Jake said, 'I have kids, son, let me  
5 go.' Desmond said, 'I love your kids, but you tried to kill  
6 me.' And he continued to choke Jake and Jake's last words  
7 were 'Let me live for my kids.' Desmond continued to choke  
8 him. The police arrived and told Desmond to get off of him  
9 and he did." Okay, that's your testimony again today that  
10 as soon as law enforcement told him to get off, at that very  
11 second, he did so; is that correct?

12 A Correct.

13 Q Okay. "The police officer then told Lisa and myself to  
14 roll Jake over, we did, but he was unresponsive. I started  
15 to give out CPR until EMS arrived. He gurgled a few times,  
16 but he could never catch his breath. EMS arrived and made  
17 Lisa and myself leave the room and they continued to work on  
18 Jake." Now ---

19 THE COURT: Ask your question, counsel.

20 MR. MATHEWS: I was trying to, Your Honor.

21 Q Ms. Ballard, do you need a moment?

22 A (Witness shakes head.)

23 Q Ms. Ballard, when you called Sharron Glover, in fact  
24 there were two cell phones in the room weren't there? Lisa  
25 had her cell phone and you had yours, and while ---



## Cross-Examination of Stephanie Ballard by Mr. Mathews

- 1 A Lisa doesn't have a cell phone.
- 2 Q Okay. So Lisa called EMS from your phone?
- 3 A Correct.
- 4 Q Okay. And you called Sharon; and at that point, in
- 5 fact, Jake said, "Desmond said he still wants to fight me"
- 6 when he was talking to Sharon; is that true?
- 7 A I don't remember.
- 8 Q Could have been, just don't remember?
- 9 A I don't remember.
- 10 Q Okay.
- 11 MR. MATHEWS: I don't have any further questions. I
- 12 would renew my request to ---
- 13 THE COURT: I've ruled on the objection.
- 14 MR. MATHEWS: I understand, Your Honor.
- 15 THE COURT: Redirect?
- 16 DEP. SOL. THORNTON: None, Your Honor. I'd ask that
- 17 she be allowed to return to the jury room. I do want her
- 18 subject to recall, Your Honor, so I'm not excusing her at
- 19 this point.
- 20 THE COURT: Has she been instructed by you, Mr.
- 21 Thornton?
- 22 DEP. SOL. THORNTON: She has, Judge, but I will renew
- 23 that at this point if the Court would like.
- 24 THE COURT: I'll give you the moment when she steps
- 25 down to instruct her concerning conversation.

## Direct Examination of Lisa Strickland by Dep. Sol. Thornton

1        **DEP. SOL. THORNTON:** Yes, sir.

2        **THE COURT:** Ma'am, you may step down from the witness  
3 stand and you are to return to the room in which you came  
4 from. Call your next witness.

5        **DEP. SOL. THORNTON:** Lisa Strickland, Your Honor, the  
6 State calls for the next witness.

7        **MADAM CLERK:** Please come forward and raise your right  
8 hand.

9        **WHEREUPON, LISA STRICKLAND WAS DULY SWORN TO TELL THE**  
10 **TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, AND**  
11 **TESTIFIED AS FOLLOWS.**

12        **THE COURT:** State your full name for the record and  
13 spell your last name for the court reporter.

14        **MS. STRICKLAND:** My name is Lisa Michelle Strickland.  
15 My last name, S-T-R-I-C-K-L-A-N-D.

16        **THE COURT:** Your witness, counsel.

17        **MR. THORNTON:** Thank you, Judge.

18                    **DIRECT EXAMINATION**

19 **BY DEP. SOL. THORNTON:**

20 **Q**    Ms. Strickland, where do you live?

21 **A**    [REDACTED] Well, I'm staying in Cottageville for  
22 right now.

23 **Q**    Well, let me ask another question. In April -- April  
24 the 12th, I believe, of 2008, where did you live then?

25 **A**    [REDACTED] in Walterboro.

## Direct Examination of Lisa Strickland by Dep. Sol. Thornton

- 1 Q All right, is that here in Colleton County?
- 2 A Yes, sir.
- 3 Q Do you know someone named Desmond Sams?
- 4 A Yes, sir.
- 5 Q All right. Do you see him anywhere in the courtroom?
- 6 A Yes, sir.
- 7 Q Would you point him out for me?
- 8 A He's right there. (Indicating)
- 9 Q All right. The defendant charged with murder, Desmond
- 10 Sams, seated here next to his attorney, Mr. Mathews?
- 11 A Yes, sir.
- 12 Q How do you know Desmond?
- 13 A I was seeing him at the time. Well, we were kind of
- 14 talking at the time.
- 15 Q Is that in April of 2008?
- 16 A Yes, sir.
- 17 Q And on April the 12th of 2008, were you at your house
- 18 in the early morning?
- 19 A Yes, sir.
- 20 Q Was anybody there with you?
- 21 A Stephanie Ballard, Jake Frazier, which we call "Red",
- 22 and Desmond Sams.
- 23 Q All right. What were y'all doing?
- 24 A We were over there -- we were at my house. We were all
- 25 drinking, listening to the music.

## Direct Examination of Lisa Strickland by Dep. Sol. Thornton

1 Q Okay. And did anything -- did anybody get sick that  
2 night?

3 A Red, he got sick.

4 Q Okay, and by "Red", you've already ---

5 A I mean Jake -- Jake.

6 Q And what happened when Jake got sick?

7 A He was in the bathroom and we, you know, took him  
8 crackers and everything, and then Stephanie stayed in there  
9 with him, but he told us all to just go out. We all went  
10 back in the living room and Desmond went to go check on  
11 Jake, and then he came back out and Stephanie went again,  
12 and Desmond followed Stephanie back there to the bathroom.

13 Q All right. And as I'm asking you these questions, I  
14 want you to only testify to what you, yourself, saw. Okay?  
15 Not what you think or what someone else may have told you,  
16 but this is just about what you saw. So what happened after  
17 Stephanie went back to the bathroom and Desmond followed?

18 A I heard Jake saying, "Why are you feeling up on my old  
19 lady?" and I saw Desmond, like, go into the bathroom, and  
20 then I ran back there.

21 Q All right.

22 A Once I, you know, heard that they were going to start  
23 arguing.

24 Q Okay.

25 A I ran back there and I saw Desmond. He kind of, like,

## Direct Examination of Lisa Strickland by Dep. Sol. Thornton

1 choked Red down into the bathtub.

2 Q When you say "choked him down into the bathtub", can  
3 you describe what he was doing?

4 A He like, grabbed his neck, and Jake, kind of, like,  
5 fell out, like, I guess he just really lost his breath when  
6 Desmond did it because he fell into the bathtub.

7 Q All right. What happened after that? Do you need  
8 some water?

9 A (Witness shakes head.)

10 Q Okay, take your time.

11 A They just kind of split up for a minute and quit  
12 fighting, and then they went back to the bedroom and started  
13 fighting again.

14 Q All right. When you said they kind of split up, where  
15 did everybody go when they split up?

16 A Desmond and I went in my living room and Stephanie took  
17 Jake into the bedroom, that's right by the bathroom.

18 Q Okay.

19 A And he was laying on the bed.

20 Q All right. And then -- I'm sorry to interrupt you, but  
21 then what happened?

22 A Desmond went back there to Red and they started  
23 fighting again and I -- we couldn't split them up.

24 Q When you say "we couldn't split them up", who's "we"?

25 A Me and Stephanie.

## Direct Examination of Lisa Strickland by Dep. Sol. Thornton

1 Q All right. Y'all were trying to break up Desmond who  
2 had come back in the bedroom?

3 A Yes, sir.

4 Q What was Desmond doing?

5 A When he was in the bedroom?

6 Q Yeah.

7 A At that time, him and Red were kinda fighting. You  
8 know, they were fighting. They were kinda on the bed.

9 Q Okay. Then what happened?

10 A I told Desmond I was going to call the cops.

11 Q All right. What did he do, if anything?

12 A He chased me into the living room and started choking  
13 me on the loveseat that I have in my living room, and he  
14 was, like, pulling my hair at the same time. Then,  
15 Stephanie got him to stop choking me, and then he was like,  
16 "I'm sorry, I'm sorry, Shorty, you know, I'm sorry.

17 Q So you told him you were going to call the police and  
18 he chased after you and started choking you?

19 A Yes, sir.

20 Q Do you have a home phone, like a land line, I think  
21 they call it, or do you use cell phones?

22 A I believe at that time I had the land line. I can't  
23 recall. I know I was using cell phones.

24 Q You were using a cell phone, though?

25 A Yes, sir.

## Direct Examination of Lisa Strickland by Dep. Sol. Thornton

1 Q All right. Were you using your cell phone or someone  
2 else's?

3 A I had Desmond's cell phone and Red's cell phone.

4 Q Okay. Now, after you told him you were going to call  
5 the cops and he started to chase you and choke you, what  
6 happened after that?

7 A The 9-1-1, they called back, I believe.

8 Q All right. So let's step back for a second. Did you,  
9 at some point, did you call 9-1-1?

10 A Yes.

11 Q All right. And was that before or after Desmond chased  
12 you out of the room choking you?

13 A That was while he was -- I know while I was on the  
14 phone with the dispatcher at one time, his hands were around  
15 my neck.

16 Q All right. Did you hang up from 9-1-1?

17 A Yes, sir.

18 Q Why?

19 A I was scared.

20 Q All right. And who were you scared of?

21 A Desmond.

22 Q All right. Why were you scared of him?

23 A He had just got finished fighting Red and choking Red,  
24 and he choked me.

25 Q All right, I understand. Did you call 9-1-1 back?

## Direct Examination of Lisa Strickland by Dep. Sol. Thornton

- 1 A Yes, sir.
- 2 Q All right. What happened then -- or did they call you
- 3 back? I'm sorry, I don't want to misstate it.
- 4 A Oh, they -- I believe they called me back after the
- 5 first time I called them.
- 6 Q All right. Then what happened?
- 7 A I told them everything was okay.
- 8 Q All right. Why did you tell them that?
- 9 A Because I was scared.
- 10 Q All right. Who were you scared of?
- 11 A Desmond.
- 12 Q Did you call them back at some point?
- 13 A Yes, sir.
- 14 Q What happened then?
- 15 A I -- because I went back in the room one more time
- 16 after I made that first 9-1-1 call.
- 17 Q Okay. What did you see?
- 18 A Desmond was choking Red and he wouldn't get off of him.
- 19 Red was, like, "Cuz, I can't breathe."
- 20 Q Now, was this after he chased you out of the room and
- 21 was choking you?
- 22 A Yes, sir.
- 23 Q So Desmond, then, he went back to the bedroom?
- 24 A Yes, sir.
- 25 Q And what did you see?



## Direct Examination of Lisa Strickland by Dep. Sol. Thornton

1 A Desmond was on top of Red. He had Red in the corner of  
2 my room. Red was laying down and he was on top of Red and  
3 he was choking him and Red said he couldn't breathe.  
4 Desmond said, "I love you, cuz, but I'm gonna f'in kill  
5 you." We couldn't stop him. So I went and I called 9-1-1  
6 again, and I waited outside until the officer came.

7 Q And what happened then?

8 A I told him he might need to take his taser out or  
9 something, because Desmond wouldn't stop. He went back in  
10 there and he told Desmond to get off.

11 Q And did you see, at some point, them get Desmond off of  
12 Jake and stop choking him?

13 A Eventually; the first time the officer asked, he said  
14 no, but then the second time he got right up.

15 Q All right. After Desmond got off of him and stopped  
16 choking him, did Jake move around? Was Jake ---

17 A --- I ---

18 Q I'm sorry, go ahead.

19 A He couldn't breathe. He was ---

20 Q Did you see any signs ---

21 A -- lifeless.

22 Q So my question was gonna be, did you see any signs of  
23 life from Jake Frazier at that time?

24 A No.

25 Q Did EMS get there at some point?

## Cross-Examination of Lisa Strickland by Mr. Mathews

1 A Yes, sir. We were on the porch and I saw them bring  
2 him out with the tube down his throat.

3 Q Was he moving at all then?

4 A I didn't see -- I was -- I looked at him, but I really  
5 don't think he was moving. I don't see how he could have  
6 been. He wasn't breathing before the ambulance got there.

7 Q Go ahead and get yourself a tissue.

8 MR. THORNTON: Your Honor, the Court's indulgence for  
9 one moment, please.

10 Q Lisa, I don't have any further questions. Please  
11 answer any questions Mr. Mathews has for you.

12 MR. MATHEWS: May it please the Court?

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. MATHEWS:

16 Q Ms. Strickland, so your testimony is that there were  
17 three different fights or two different fights?

18 A The one with Red was in the bathroom. Red wasn't  
19 fighting him then, but Desmond choked him; and then, in the  
20 bedroom, and I told Desmond I was going to call the cops,  
21 and after he left, he went back again.

22 Q Okay. Now, you say the last time, the last time you  
23 saw him, when you said that Jake was saying, "I can't  
24 breathe, cuz", at that point, was that in the last fight?

25 A Yes, sir.

## Cross-Examination of Lisa Strickland by Mr. Mathews

- 1 Q Okay.
- 2 A Jake had said it when he was on the bed, also.
- 3 Q Okay. So he said it a couple of times?
- 4 A Yes, sir.
- 5 Q Okay. In each of the last two fights?
- 6 A Yes, sir.
- 7 Q Okay. So there's no question that in the last fight,
- 8 when you told the officer, "You might need your taser
- 9 because he's not going to get off of him." At that point,
- 10 Jake was telling him to get off of him?
- 11 A He was not telling him. Jake was not able to breathe.
- 12 I mean, he had told him right before I walked, you know, he
- 13 told him -- the last thing I heard Jake say was, "Cuz, I
- 14 can't breathe. Please get off me."
- 15 Q And that was on the last altercation?
- 16 A Yes, sir.
- 17 Q Okay. And you said that between the second and third
- 18 ones was that Desmond followed you out. Now how long had
- 19 you and Desmond been seeing each other?
- 20 A I met Desmond February 26th.
- 21 Q Okay. So y'all had seen each other over the course of
- 22 a couple of months? A few times, anyway?
- 23 A A few times.
- 24 Q How did you feel about him grabbing Stephanie's butt?
- 25 A I didn't even see him do that.

## Cross-Examination of Lisa Strickland by Mr. Mathews

1 Q Okay.

2 A So I mean, I don't know -- I mean, that's not -- we  
3 weren't, like, serious or anything.

4 Q You and Desmond weren't? Not really boyfriend and  
5 girlfriend, y'all were just seeing each other?

6 A Yes, sir.

7 Q When you called 9-1-1, at some point during that call,  
8 were you aware of whether Lisa had made -- Stephanie had  
9 made any calls during that time?

10 A I know I was trying to call on the phone to get help.  
11 I don't recall if Stephanie made any or not.

12 Q Okay. Did Stephanie have her own cell phone?

13 A I believe so. She's always had a cell phone, so.

14 Q So y'all weren't sharing a cell phone? You had yours  
15 and she had hers?

16 A I had Desmond's cell phone and Red's cell phone.

17 Q Okay. So you had two cell phones, but Lisa -- I mean,  
18 Stephanie, also, had a cell phone?

19 A I don't recall. I mean, really, I'm not -- I can't say  
20 for sure, but probably.

21 Q And your testimony is that you had three separate  
22 conversations with 9-1-1?

23 A As I recall.

24 Q And during one of the conversations ---

25 A Well, I don't know if I hung up the first time, I mean,

## Cross-Examination of Lisa Strickland by Mr. Mathews

1 when I just called them, but I do remember telling 9-1-1  
2 everything was okay; and then, the other 9-1-1 call where I  
3 told them they needed to come out there.

4 Q Okay. Now, is the first time you talked to them -- so  
5 they called you back, you say, and you told them everything  
6 was okay?

7 A As I recall, that's how it . . .

8 Q Okay. And the first time that you talked to them,  
9 obviously, if they called you back, you had to have given  
10 them your address, right, and phone number?

11 A I don't remember.

12 Q Okay. How long was it before they called you back?

13 A I don't remember that either.

14 Q Was it a couple of minutes or was it a half an hour?

15 A I don't believe it was long. Everything was happening  
16 really fast. It's hard to, you know.

17 Q And was everybody drinking a lot?

18 A Everybody was drinking. I don't know how much  
19 everybody did drink.

20 Q Were Red and Desmond pretty tight?

21 A Yes, sir.

22 Q Were they like brothers?

23 A Red was helping Desmond out because he didn't, I guess,  
24 he didn't have a place to stay and he would let him go to  
25 work with him and everything.

## Cross-Examination of Lisa Strickland by Mr. Mathews

- 1 Q Who is Sharon Glover? Do you know?
- 2 A Is that his sister, Sharron?
- 3 Q Yeah.
- 4 A I call her Sharron.
- 5 Q Pardon me?
- 6 A I call her Sharron.
- 7 Q Oh, Sharron, okay. All right. Now, when y'all left
- 8 from the bathroom, everything had calmed down that first
- 9 time; is that correct?
- 10 A Yes, sir, as I remember.
- 11 Q Okay. And y'all -- you and Desmond walked back ---
- 12 A Yeah, cause Desmond he was going to let Red lay on the
- 13 bed for a while because he had just been sick.
- 14 Q Okay. How long were you and Desmond sitting on the
- 15 couch, or wherever you were? Where were you in the living
- 16 room?
- 17 A On the blue loveseat.
- 18 Q Okay. How long were y'all there?
- 19 A I don't know. It could have been anywhere from like
- 20 three to five minutes.
- 21 Q Okay. At some point, were you aware that Stephanie was
- 22 on the phone with Ms. Glover?
- 23 A I do remember her calling Sharron.
- 24 Q She did? Okay. Was it during the same time you were
- 25 on the phone with 9-1-1?

## Cross-Examination of Lisa Strickland by Mr. Mathews

1 A No, I don't believe so. I'm not sure.

2 Q When you called 9-1-1, isn't it true that you told them  
3 that they didn't want you to call; is that true?

4 A I don't remember. I know when Desmond choked me, I  
5 just was scared. I mean, I don't really remember exactly  
6 what I told 9-1-1. All I know is I was trying to get help.

7 Q When you called 9-1-1, when you talked to them the  
8 third time, had you mentioned to them that you had called  
9 before?

10 A I don't remember.

11 Q In fact, you didn't, did you? In fact, you didn't  
12 call. You called one time?

13 A I called 9-1-1 two times. I don't know if they  
14 couldn't read it because I had to hang up or I don't know.  
15 I really don't remember exactly how it was.

16 Q Ms. Strickland, you have a prior conviction for second  
17 degree burglary, do you not?

18 A Yes, sir.

19 MR. MATHEWS: I don't have anything further, Your  
20 Honor.

21 THE COURT: Redirect?

22 MR. THORNTON: None, Your Honor.

23 THE COURT: As to this witness?

24 MR. THORNTON: Ask that she be put back into our  
25 waiting area, Judge. I'll explain to her the reasons for

## Direct Examination of Sharron Glover by Dep. Sol. Thornton

1 sequestration again.

2 **THE COURT:** Very well. Ma'am, you may step down.

3 **MS. STRICKLAND:** Thank you.

4 **THE COURT:** Call your next witness.

5 **MR. THORNTON:** The State calls Sharron Glover to the  
6 stand.

7 **MADAM CLERK:** Please come forward and be sworn. Place  
8 your left hand on the Bible and raise your right hand.

9 **WHEREUPON, SHARRON GLOVER** was duly sworn to tell the  
10 truth, the whole truth, and nothing but the truth, and  
11 testified to the following.

12 **MADAM CLERK:** Please have a seat on the witness stand  
13 and state your full name for the record.

14 **MS. GLOVER:** Sharron Glover, G-L-O-V-E-R.

15 **THE COURT:** Speak up and use that microphone so they  
16 can hear you down there, if you would. You can adjust it.  
17 Make yourself comfortable. Proceed.

18 **MR. THORNTON:** Thank you, Judge.

19 **DIRECT EXAMINATION**

20 **BY DEP. SOL. THORNTON:**

21 **Q** Ms. Glover, on April the 12th of 2008, do you recall  
22 getting a phone call in the early morning hours?

23 **A** Yes.

24 **Q** All right. Who called you?

25 **A** Stephanie Ballard.



## Direct Examination of Sharron Glover by Dep. Sol. Thornton

- 1 Q And how do you know Ms. Ballard?
- 2 A She was dating my brother at the time.
- 3 Q Who was your brother, ma'am?
- 4 A Jake Frazier.
- 5 Q All right. And is he the person we've heard about here
- 6 today that was killed?
- 7 A Yes.
- 8 Q And do you know Desmond Sams?
- 9 A Yes.
- 10 Q And can you point him out for me?
- 11 A He's right there. (Witness indicating.)
- 12 Q All right. She's pointing at the defendant in this
- 13 case; is that right?
- 14 A Yes.
- 15 Q And I don't want you to tell me anything about what
- 16 Stephanie told you, but as a result of what she told you,
- 17 did you get put on what they call "speakerphone"?
- 18 A Yes.
- 19 Q Did you say anything?
- 20 A I -- I told Desmond to let him go.
- 21 Q All right.
- 22 A To get off of Red.
- 23 Q Okay. Did he make any response to you ?
- 24 A He said "No", and I could barely -- I could barely hear
- 25 him. He wasn't audible because he was slurring his words.

## Cross-Examination of Sharron Glover by Mr. Mathews

1 Q Did you say anything else after that?

2 A I told him to get the hell off of him.

3 Q All right. And after that, did you say anything else  
4 or was the phone call ended at some point after that?

5 A Stephanie came back and said the police ---

6 Q Don't -- don't testify to anything that Stephanie said,  
7 but as a result of what you heard, did you end the phone  
8 call?

9 A Yes.

10 Q Other than that brief phone call, did you see or  
11 witness anything during this incident?

12 A No.

13 Q All right.

14 MR. THORNTON: Thank you, Your Honor. I have nothing  
15 further.

16 THE COURT: Cross-examination?

17 MR. MATHEWS: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. MATHEWS:

20 Q Ms. Glover, were Jake and Desmond close?

21 A Yes.

22 Q Were they like best friends, almost like brothers?

23 A Yes.

24 Q How long have they been? Were they since they were  
25 little kids together?

## Cross-Examination of Sharron Glover by Mr. Mathews

1 A Yes.

2 Q When you were on speakerphone at that point, did  
3 Desmond also say, "He will fight me."

4 A No.

5 Q Okay. Now, do you not remember that or you couldn't  
6 understand it or it didn't happen as far as you know?

7 A I heard him say "No."

8 Q Now, Ms. Glover, I know this is difficult, but I want  
9 you to consider whether or not, you also know Olympia Sams?

10 A Yes.

11 Q Okay. And I put you -- I want to ask you again, I want  
12 to put you on notice that I may call a witness to impeach  
13 you, or discredit you, on that statement. Are you sure that  
14 Desmond didn't say, "He will want to fight me"?

15 A I'm absolutely positive.

16 Q Okay. Did you ever discuss this matter with Olympia  
17 Sams?

18 A I don't recall discussing anything with her, as far as  
19 that.

20 Q As far as that?

21 A Uh-huh (affirmative).

22 Q How frequently do you and Ms. Sams talk?

23 A Rarely. We saw each other at the setting up.

24 Q I'm sorry?

25 A At my brother's setting up.

## Cross-Examination of Sharron Glover by Mr. Mathews

1 Q Okay. All right. And your testimony today is that you  
2 did not discuss this matter with her?

3 A Not that I recall.

4 Q Could have been?

5 A Not that I recall.

6 Q Okay. Well, there's a difference between saying, "I  
7 don't remember if it happened or I know that it did not  
8 happen." What I'm asking you is ---

9 A Well, I'm telling you that I do remember him saying no,  
10 but I don't recall talking with her in reference to what  
11 happened that night.

12 Q Okay. Well, I'm just trying to make it clear.

13 A Yes.

14 Q Okay. So you say you don't recall, not that it didn't  
15 happen, but that you don't recall it happening?

16 A I -- I don't recall it happening.

17 Q All right.

18 MR. MATHEWS: Thank you, Your Honor. I have nothing  
19 further.

20 THE COURT: Redirect?

21 MR. THORNTON: None, Your Honor. I'd ask that she be  
22 allowed to sit back and resume her seat with the rest of the  
23 victim's family, Judge.

24 MR. MATHEWS: I don't have any objections. Under the  
25 Court's prior ruling, I have no objection.

## Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1       **THE COURT:** You may step down and remain in the  
2 courtroom.  
3       Call your next witness.  
4       **MR. THORNTON:** Your Honor, may we approach?  
5       **THE COURT:** Counsel approach  
6       **(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD**  
7 **OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE**  
8 **FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)**  
9       **ASST. SOL. STILLEY:** The State calls Steve Dunn.  
10       **THE COURT:** Counsel approach.  
11       **(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD**  
12 **OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE**  
13 **FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)**  
14       **(OFFICER DUNN ENTERS THE COURTROOM.)**  
15       **MADAM CLERK:** Please come forward and be sworn.  
16       **WHEREUPON, STEVE DUNN** was duly sworn to tell the truth,  
17 the whole truth, and nothing but the truth.  
18       **MADAM CLERK:** Please have a seat on the witness stand  
19 and state your full name for the record.  
20       **THE COURT:** Adjust that microphone for me so you can  
21 use this. It's gonna amplify your voice. State your full  
22 name and spell your last name for the court reporter.  
23       **SSGT. DUNN:** Stephen A. Dunn, D-U-N-N.  
24       **THE COURT:** Your witness, counsel.  
25       **MS. STILLEY:** Thank you.

## Direct Examination of Stephen Dunn by Asst. Sol. Stilley

## 1 DIRECT EXAMINATION

2 BY ASST. SOL. STILLEY:

3 Q Officer Dunn, who do you work for?

4 A Colleton County Sheriff's Office.

5 Q And what is your title?

6 A Senior Sergeant, Shift Supervisor.

7 Q Okay. And were you in the same position on April 12th,  
8 2008?

9 A Yes, ma'am.

10 Q Were you on duty?

11 A Yes, ma'am.

12 Q And did you receive a call to a fight in progress at  
13 about 4:00 a.m., around that time?

14 A Yes, ma'am.

15 Q Where did you respond?

16 A Excuse me, I've got my incident report right here. It  
17 was [REDACTED] in Walterboro, well, a Walterboro  
18 address.

19 Q Okay. And were you alone?

20 A Yes, ma'am.

21 Q And what happened when you got there?

22 A I walked up to the porch and I was met on the porch by  
23 Lisa Strickland and led in to the residence through the  
24 front door to a bedroom on the -- as you're facing the  
25 trailer, on the right side of the trailer.

## Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1 Q Did Ms. Strickland say anything to you as you were  
2 either approaching or coming up on the porch or going to the  
3 bedroom?

4 A Something like "They're in here."

5 Q Okay. And when you got to that bedroom, what did you  
6 see?

7 A I saw two black males prone, face down on the floor in  
8 the bedroom, one on top of the other.

9 Q And were you able to see the face of the individual on  
10 top?

11 A Not at that time. They were heading into, more or  
12 less, the far wall in the bedroom and I could not identify  
13 either party at that time.

14 Q That's fine. What did you do next?

15 A I drew my taser and I had it in my hand and I said the  
16 words, "Get off of him."

17 Q And did he get off?

18 A No, he did not. The first time I told him get off of  
19 him and I gave the command again a second time and he  
20 finally released his hold the third time.

21 Q Did that individual say anything to you, other than  
22 "no"?

23 A I think the second time that I said get off of him, he  
24 said, "No, he'll want to fight."

25 Q And you had your taser out, but did not deploy it?

## Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1 A Yes, ma'am.

2 Q And when the individual on top finally got up, did you  
3 get a look at the face then?

4 A Yes, ma'am.

5 Q And do you recognize that person in the courtroom here  
6 today?

7 A Yes, ma'am. He's the defendant over there.

8 Q Are you pointing to the defendant, Desmond Sams, seated  
9 here next to David Mathews?

10 A Yes, ma'am.

11 Q And did the other individual get up?

12 A No, he did not.

13 Q What did you do next?

14 A I got Ms. Strickland and the other young lady that was  
15 there to take and pull the victim away from the wall and  
16 roll him over to his back. This was after handcuffing Mr.  
17 Sams.

18 Q Now, what did you see Mr. Sams doing that made you  
19 handcuff him?

20 A He had his arms wrapped around the neck of the victim.

21 Q Was he choking with both hands or was it a chokehold  
22 and an arm? Can you describe it?

23 A No, it was an arm lock type where he had his -  
24 basically, I could not see because he was on top of the, you  
25 know, on top of the individual, but it appeared that his



## Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1 arms were wrapped around the neck area of the victim.

2 Q And you saw this when he got up?

3 A Yes, ma'am.

4 Q And you placed -- I beg your pardon. After you placed  
5 Mr. Sams in handcuffs and they rolled -- Lisa and Stephanie  
6 rolled the victim over, what happened?

7 A I was able to get on the radio and request that my  
8 backup officers step it up and I went ahead and told  
9 dispatch to go ahead and send the medic unit in.

10 Q Why did you do that?

11 A Because it appeared that the victim, Jake Frazier, was  
12 not breathing. He had a blue cast to his skin.

13 Q And what did you do after that?

14 A I got Mr. Sams onto the porch, you know, out of the  
15 room and onto the porch, and at that time, the medic unit  
16 came up and my backup officer started arriving. And I  
17 turned, yeah, I told the medic crew where to go and I turned  
18 Mr. Sams over to one of my backup officers and told him to  
19 put him in the vehicle.

20 Q What backup officer was that?

21 A That was Deputy Eubanks.

22 MS. STILLEY: A moment's indulgence, Your Honor.

23 Q Just a couple more questions, Officer Dunn.

24 What time did you receive the call, the dispatch call?

25 A You have to bear with me. The call came in to central

## Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1 dispatch at 4:36.

2 Q Do you remember -- and that was A.M.?

3 A Yes, ma'am.

4 Q Do you remember about how long it took you to get  
5 there?

6 A To be truthful about it, I'm not sure exactly what my  
7 response time was. I had a distance to come. That is a  
8 matter of -- it is part of our Sheriff's Office Dispatch  
9 Records.

10 Q Okay.

11 MS. STILLEY: Your Honor, may I approach the witness?

12 Q Mr. Dunn, I'm gonna hand you something. Please just  
13 review it silently.

14 A (Witness Complies.)

15 Q Mr. Dunn -- Officer Dunn, I beg your pardon.

16 A Yes, ma'am.

17 Q Do you recognize what was handed to you?

18 A Yes, ma'am, I do.

19 Q Can you please tell me what that is?

20 A This is a CAD Information Report from the dispatch  
21 records, from our dispatch center.

22 Q And what is "CAD"?

23 A Computer Aided Dispatch where everything is recorded  
24 and time-stamped as far as when calls are dispatched, who  
25 they're dispatched to, and the times associated with them.

## Direct Examination of Stephen Dunn by Asst. Sol. Stilley

1 Q Could you please tell me what the first time up there  
2 is?

3 A The first time is when the call is dispatched, which  
4 was 4:38 and four seconds.

5 Q And does that remind you of the amount of time it took  
6 you to get there?

7 A No, ma'am, this does not, because this is the one for  
8 Deputy Eubanks.

9 Q I beg your pardon, Officer Dunn. Just a moment.

10 MS. STILLEY: May I approach the witness again?

11 THE COURT: You may.

12 Q I apologize, SSGT. Dunn. Does the form now remind you,  
13 Officer Dunn?

14 A Yes, ma'am, the top portion is my times.

15 Q Okay. Could you please relay to the court how long it  
16 took you to get there?

17 A Yes, ma'am, according to these times, four minutes and  
18 thirty seconds, from the time that the call was received by  
19 dispatch -- well, from the time I was actually dispatched at  
20 4:38:04 until the time I arrived at 4:46:34.

21 Q So, is that four minutes?

22 A No, that's eight minutes and thirty seconds.

23 Q Okay. Thank you. So after the dispatch call came out,  
24 you got to the house, it was eight and a half minutes?

25 A Yes, ma'am.

## Cross-Examination of Stephen Dunn by Mr. Mathews

1       **MS. STILLEY:** I have no further questions at this time.  
2 If you would please respond to any questions Mr. Mathews has  
3 for you, I would appreciate it.

4       **THE COURT:** Cross-examination?

5       **MR. MATHEWS:** Yes, sir.

6                               **CROSS-EXAMINATION**

7 **BY MR. MATHEWS:**

8       **Q** And the CAD report shows you everything related to a  
9 case, but just broken down by names; is that correct?

10      **A** It shows -- the CAD report shows the times involved as  
11 far as officers on the scene, what time, you know, basically  
12 from the time that a call comes in and it gets dispatched,  
13 you know, through the time that the officer is cleared.

14      **Q** So in a CAD report, you have a case number that any  
15 call related to that case and everybody that responded would  
16 be on the CAD Report?

17      **A** It should be.

18      **Q** So the time that a dispatch -- the time that EMS is  
19 initially called, that would be in the CAD Report?

20      **A** It would be.

21      **Q** One of them, not yours.

22      **A** With the one that's assigned to that fire rescue unit.

23      **Q** And when dispatch gets a call, when 9-1-1 gets a call,  
24 it's on the CAD report when they get the call?

25      **A** Yes, sir.

## Redirect Examination of Stephen Dunn by Asst. Sol. Stilley

1 Q And if there are more than one call, that would be on  
2 the CAD report, too?

3 A Yes, sir.

4 Q And when you arrived, you had to tell Mr. Sams three  
5 times to get off of Mr. Frazier before he did?

6 A Yes, sir.

7 Q Was it clear that he thought there was still a fight  
8 going on?

9 A The second time I ordered him off, he said no, he will  
10 want to fight.

11 MR. MATHEWS: I don't have anything further, Your  
12 Honor.

13 THE COURT: Redirect?

14 MS. STILLEY: Yes, briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY ASST. SOL. STILLEY:

17 Q Ssgt. Dunn?

18 A Yes, ma'am.

19 Q When you got into the back bedroom, did Jake Frazier  
20 have any signs of life?

21 A No, ma'am.

22 Q Did he show any signs of fighting with the defendant,  
23 Desmond Sams?

24 A No, ma'am.

25 Q No movement at all?

1

2 A No movement at all.

3 MS. STILLEY: Nothing further. Thank you, Your Honor.

4 THE COURT: Recross, limited to redirect?

5 MR. MATHEWS: No, sir.

6 THE COURT: As to this witness, Solicitor?

7 MR. THORNTON: I'd ask that this witness be excused and  
8 he can return to duty.

9 THE COURT: Any objection, Mr. Mathews?

10 MR. MATHEWS: No objection, Your Honor.

11 THE COURT: You may step down, Officer Dunn, and you  
12 are excused from the courtroom.

13 SSGT. DUNN: Thank you.

14 THE COURT: Madam Foreperson, ladies and gentlemen of  
15 the jury, I'm going to stop at this point for our lunch  
16 break. I've just received a note that your lunch has  
17 arrived. We're going to serve you your, hopefully,  
18 delicious lunch in your jury room. During the lunch break,  
19 I ask that you do not discuss the case amongst yourselves or  
20 with anybody else. You have not heard all the evidence in  
21 the case. If I've got any smokers on the jury, if you'll  
22 let the bailiff know. It can be taken during the lunch  
23 break outside of the courthouse and I'll permit you to  
24 smoke, but please don't discuss the case with anyone or with  
25 anyone else. We're going to try to start back, ladies and

1 gentlemen, because I want to try to complete the case in a  
2 timely fashion tomorrow, as I told you, keep my word. So I  
3 want to keep the trial moving. We're going to probably take  
4 around -- a shorter lunch break and I hope to start back at  
5 least by 2:00, if not before. So please when you get to  
6 your jury room, your lunch is here and they'll serve you  
7 your lunch and let's move forward so we can complete our  
8 lunch break and complete our work in a timely fashion.  
9 Thank you for your cooperation. You may retire to your jury  
10 room at this time.

11 (WEDNESDAY, JANUARY 28th, 2009, 1:10 P.M., WHEREUPON JURY  
12 EXITS THE COURTROOM FOR LUNCH; THEREAFTER THE FOLLOWING  
13 PROCEEDINGS WERE HELD ON THE RECORD:)

14 THE COURT: Anything on the record from the State of  
15 South Carolina outside the presence of the jury before we  
16 adjourn for lunch?

17 MR. THORNTON: No, sir.

18 THE COURT: From the defendant?

19 MR. MATHEWS: No, sir.

20 THE COURT: I'd like to put on the record, counsel,  
21 because there wasn't a record of the bench conference,  
22 during the cross-examination by Mr. Mathews, of the first  
23 witness, Stephanie Ballard. Mr. Mathews attempted to  
24 introduce some evidence to the objection of the State, the  
25 statement of the witness. I allowed Mr. Mathews and told

1 him I would permit him to publish the entire statement,  
2 which he did. And he was also permitted to bring out, in  
3 cross-examination, any inconsistencies that he believed  
4 existed between the testimony the witness gave today and the  
5 statement, by virtue of his cross-examination. The State  
6 objected to the introduction of the statement. I believe  
7 your grounds were cumulative, and what was the other ground,  
8 Solicitor?

9 MR. THORNTON: Your Honor, that you can't cross-examine  
10 a document. That's the whole reason of having the witness  
11 on the stand.

12 THE COURT: We discussed that at counsel table and I  
13 sustained that objection, and I wanted to make sure there  
14 was a record of our discussion on the basis that the  
15 statement could not be cross-examined, and on the basis that  
16 the statement was cumulative to the testimony, but I wanted  
17 there to be a record that I advised defense counsel that he  
18 could fully publish the statement, and of course, impeach  
19 the witness, if he so desired, from any inconsistency that  
20 he felt existed, and I just wanted a record of that bench  
21 conference.

22 Counsel, I hope that we can complete our lunch in a  
23 timely fashion. As I told the jury, it's now about 1:18,  
24 1:19, I'd like to try to do it by 2:00, if we can, but if  
25 you need more time, I understand that. I'd just like to try



1 to move in a timely fashion so we can complete the trial in  
2 a timely fashion. We'll be adjourned at this time until at  
3 least 2:00. Thank you very much.

4 (WEDNESDAY, JANUARY 28th, 2009, 1:18 P.M., WHEREUPON  
5 COURT IS ADJOURNED FOR LUNCH. THEREAFTER, THE FOLLOWING  
6 PROCEEDINGS WERE HELD ON THE RECORD AT 2:05 P.M.)

7 THE COURT: Anything on the record from the defendant  
8 before I bring in the jury?

9 MR. MATHEWS: No, sir.

10 MR. THORNTON: No, sir.

11 THE COURT: Bring us the jury, Bill.

12 (JANUARY 28th, 2009, 2:06 P.M., WHEREUPON THE JURY  
13 ENTERS THE COURTROOM, AND THEREFORE THE FOLLOWING  
14 PROCEEDINGS WERE HELD ON THE RECORD:)

15 THE COURT: All right. Madam Foreperson, ladies and  
16 gentlemen of the jury, I hope everybody had a delicious  
17 lunch. We'll now continue with the testimony in the trial  
18 of this case. Solicitor, call your next witness.

19 MR. THORNTON: Thank you, Judge. Jason Benton.

20 MADAM CLERK: Please come forward to be sworn.

21 WHEREUPON, JASON BENTON, was duly sworn to tell the  
22 truth, the whole truth, and nothing but the truth, and  
23 testified as follows.

24 MADAM CLERK: Please have a seat on the witness stand  
25 and state your full name.

## Direct Examination of Jason Benton by Dep. Sol. Thornton

1       **THE COURT:** How you doing? Make yourself comfortable.  
2 Pull that microphone over. It's going to amplify your  
3 voice. Speak into that for me and speak up for me so that  
4 the last member of the jury on the end of the row down there  
5 can hear you down there. If you'll begin by stating your  
6 full name and spelling your last name for the court  
7 reporter.

8       **MR. BENTON:** Jason Patrick Benton, B-E-N-T-O-N.

9       **THE COURT:** Your witness, Counsel.

10       **MR. THORNTON:** Thank you, Judge.

11                               **DIRECT EXAMINATION**

12       **BY DEP. SOL. THORNTON:**

13       **Q**     Mr. Benton, who do you work for?

14       **A**     Colleton County Fire Rescue.

15       **Q**     All right. Did you work for the Colleton County Fire  
16 Rescue on April the 12th of 2008?

17       **A**     Yes, sir.

18       **Q**     What are some of your duties with the Fire and Rescue  
19 Department here in Colleton County?

20       **A**     Well, I'm a firefighter and an EMT Basic.

21       **Q**     All right, sir. And did you respond on April the 12th  
22 of 2008 to any calls that day?

23       **A**     Yes, sir.

24       **Q**     All right. Did you respond to a call that I believe  
25 it's [REDACTED] [REDACTED] [REDACTED]?

## Direct Examination of Jason Benton by Dep. Sol. Thornton

1 A Yes, sir.

2 Q So you did respond to [REDACTED] [REDACTED] [REDACTED]

3 A Yes, sir.

4 Q All right. When you arrived, what did you find?

5 A I saw the deputy sheriff bringing a person out in  
6 handcuffs and my partner and I proceeded into the residence  
7 and went to the bedroom and found a patient laying on the  
8 floor, supine, and he was apnic, which is pulse less and not  
9 breathing.

10 Q All right. So would it be fair to say he had no signs  
11 of life?

12 A Yes, sir, that's what it means.

13 Q And what did you do at that point?

14 A We attempted to work a full arrest, which is we do  
15 everything to try to bring him back to life.

16 Q Is that a fancy way of saying CPR and some other stuff?

17 A Well, it's a cardiac arrest, so you would do everything  
18 that you could to try to restart the person's heart and  
19 bring them back.

20 Q And were your attempts successful to your knowledge?

21 A No, sir.

22 Q All right. Did you do anything with Mr. Frazier after  
23 that?

24 A We transported him to the ER and continued doing our  
25 resuscitation and we transferred him over to the ER.

## Direct Examination of Jason Benton by Dep. Sol. Thornton

1 Q At any time from the time you arrived until the time  
2 you transported him and dropped him off to the ER, did he  
3 have any signs of life?

4 A Not to my knowledge.

5 MR. THORNTON: I have no further questions. Please  
6 answer any questions Mr. Mathews has.

7 MR. MATHEWS: No questions, Your Honor.

8 THE COURT: As to this witness, Solicitor?

9 MR. THORNTON: Ask that he be excused so that he can go  
10 to sleep, Judge.

11 THE COURT: Just a moment. As to this witness being  
12 excused, Mr. Mathews?

13 MR. MATHEWS: No objection, Your Honor.

14 THE COURT: You may step down, Mr. Benton, and you are  
15 excused from the courtroom. You may leave at this time.  
16 Call your next witness, Solicitor.

17 MR. THORNTON: Dr. Erin Presnell.

18 MADAM CLERK: Please come forward and be sworn.

19 WHEREUPON, DR. ERIN PRESNELL was duly sworn to tell the  
20 truth, the whole truth, and nothing but the truth, and  
21 testified as follows.

22 MADAM CLERK: Please have a seat on the witness stand  
23 and state your full name for the record.

24 THE COURT: Doctor, how are you?

25 DR. PRESNELL: Good, thanks.

## Direct Examination of Dr. Presnell by Dep. Sol. Thornton

1       **THE COURT:** That's gonna amplify your voice. I need  
2 for you to pull it closer to you. Just adjust it so you can  
3 speak. You can turn toward the jury, but just speak into  
4 the microphone. If you'd begin by stating your full name  
5 and spelling your last name for the court reporter.

6       **DR. PRESNELL:** Yes, sir. My name is Susan Erin  
7 Presnell, P-R-E-S-N-E-L-L.

8       **THE COURT:** Counsel, your witness.

9       **MR. THORNTON:** Thank you, Judge.

10                               **DIRECT EXAMINATION**

11 **BY DEP. SOL. THORNTON:**

12 **Q** Dr. Presnell, although I probably gave it away by  
13 calling you Dr. Presnell, do you have any specific  
14 education?

15 **A** I'm a forensic pathologist. I work at the Medical  
16 University of South Carolina.

17 **Q** And what sort of college degrees, if any, have you  
18 gotten to have that job?

19 **A** Well, training for forensic pathology involves after  
20 high school going to college and getting a four-year degree;  
21 it doesn't matter in what. Going to medical school, which  
22 is a four-year degree, and you get your M.D. after that.  
23 Picking the specialty that you want to go into, which  
24 medical specialty like surgery or pediatrics. I chose  
25 Pathology, which at the time was a five-year training

## Direct Examination of Dr. Presnell by Dep. Sol. Thornton

1 program, and then I sub-specialized in forensic pathology,  
2 which is just a branch of pathology, which was an additional  
3 year. So I think that's about 14 years after high school.

4 Q More even than me, which is unusual, Dr. Presnell. Let  
5 me ask you a couple of questions. What are your duties at  
6 MUSC? What is it that you specifically do for them?

7 A I'm a forensic pathologist. Forensic, and most people  
8 are becoming more familiar with what a forensic pathologist  
9 does with all the stuff on TV and everything. Actually,  
10 forensic pathology, I kind of referenced this earlier, is a  
11 subspecialty of pathology. Pathology, in a broad  
12 definition, is the study of disease, so a lot of  
13 pathologists are what you call surgical pathologists that  
14 receive biopsies, like, say somebody has a skin biopsy or  
15 breast biopsy, that tissue goes to the pathologist and they  
16 look at it and they look under the microscope and they  
17 diagnose the disease. Well, forensic pathology is trained  
18 through that, but you sub specialize where you're looking at  
19 not just a tissue, but a whole body of a diseased person,  
20 and not only trying to come up if there was a disease  
21 process going on, and ultimately the cause of death, but you  
22 also interpret traumatic injuries. They're not just  
23 diseases, but traumas and what made them cause those things.

24 And, of course, the procedure that we do is called the  
25 autopsy where we do the full external exam -- internal exam

## Direct Examination of Dr. Presnell by Dep. Sol. Thornton

1 involving organs and tissues, and do a full toxicology  
2 workup.

3 Q Dr. Presnell, how many autopsies have you performed?

4 A I would have to estimate around 2,000.

5 Q And have you ever been qualified as an expert witness  
6 and testified in court before?

7 A Yes, sir.

8 Q How many times?

9 A I would have to estimate again, maybe, 50 or 60.

10 MR. THORNTON: Your Honor, at this time, I would move  
11 that Dr. Presnell be recognized as an expert in forensic  
12 pathology and allowed to give opinion testimony.

13 THE COURT: Any objection as to qualification?

14 MR. MATHEWS: No objection, Your Honor.

15 THE COURT: Ladies and gentlemen of the jury, normally,  
16 the law does not allow a witness to get on a witness stand  
17 and give opinion or conclusion testimony. An exception to  
18 that rule is for those witnesses whom we call "expert  
19 witnesses". You're about to hear the testimony of a witness  
20 who claims to have special knowledge, skill, training,  
21 experience or education in the field of pathology and  
22 forensic pathology, and who will, if qualified by the Court,  
23 and she has been found to be so qualified without objection,  
24 be permitted to give her opinion as an expert in the matters  
25 which she claims to be so skilled.

1        In determining the weight to be given to such expert  
2 opinion, you should consider the qualifications and the  
3 believability, or credibility, of the expert, the reasons  
4 given for her opinion. You are not bound by such opinions.  
5 You give it the weight, if any, to which you deem it should  
6 be entitled.

7        The witness is qualified without objection. You may  
8 proceed, counsel.

9        MR. THORNTON: Thank you, Your Honor.

10    Q    Dr. Presnell, did you perform an autopsy on April the  
11 12th of 2008?

12    A    Yes, we performed an autopsy on Mr. Jake Frazier.

13    Q    All right. And I know -- did you prepare an extensive  
14 report for that case?

15    A    Yes. Part of the autopsy protocol is that after the  
16 examination, you prepare an autopsy report.

17    Q    Is part of that report evidence of injury?

18    A    Yes, we document all the diseases and traumas, as well  
19 as injuries.

20    Q    Would you please share with the jury what you found  
21 that would come under the heading of "evidence of injury"?

22    A    All right. Well, first of all, to kind of explain some  
23 of the medical terminology, which a lot of time is self-  
24 explanatory, but abrasions, and Mr. Frazier had a number of  
25 contusions, which are bruises; abrasions, which are



## Direct Examination of Dr. Presnell by Dep. Sol. Thornton

1 scratches, where the skin is scratched off, and what we call  
2 petechiae, which are pin-point hemorrhages; like, little,  
3 tiny dot-like hemorrhages. Mr. Frazier, kind of group them  
4 together, he had most of his injuries centered around his  
5 neck area. He had an abrasion on the right side of the  
6 neck, or scratch, and an abrasion and contusion on the very  
7 right side of the neck behind the ear. He had another  
8 abrasion on the front of the neck. Three abrasions, one's  
9 got kind of a curvy, linear mark on the left side of the  
10 neck, and a bruise, or contusion, on the left, front of the  
11 neck.

12       So multiple bruises and scratches around the neck.  
13 Once we reflect the skin and look underneath, there's all  
14 the neck muscles underneath, and he had a number of bruises  
15 of the muscles that are in the neck. Along with that,  
16 remember I also referenced he had petechiae, or pin-point  
17 hemorrhages? He had a number of those around the lining of  
18 his eye and around the lining of his eyelid. Those are --  
19 these findings together, to us as forensic pathologist, are  
20 indicative of strangulation. He had a couple of other minor  
21 injuries, which include multiple abrasions, or scratches, on  
22 his knees. He had one abrasion on his abdomen, and I think  
23 he had a pin-point abrasion -- he did have a pin-point  
24 abrasion on his wrist. Those together were his main  
25 injuries.

## Direct Examination of Dr. Presnell by Dep. Sol. Thornton

1 Q Dr. Presnell, to a -- were you able then to form an  
2 opinion to a reasonable degree of medical certainty to as to  
3 what the cause of death in this case was?

4 A Yes, we listed the cause of death as asphyxiation, or  
5 lack of oxygen, due to strangulation.

6 Q Dr. Presnell, did you do a toxicology, or was a  
7 toxicology done on Mr. Frazier?

8 A Yes, we got blood from Mr. Frazier and sent it to a  
9 toxicology lab, who then processes the blood, and sends the  
10 results back to us. Mr. Frazier's blood he had a  
11 therapeutic level of methorphan, which is, like, a cough  
12 medicine. He also had a blood alcohol of .148, and just to  
13 put that in perspective, the limit for driving while under  
14 the influence is .08, so his was .148, so almost -- almost  
15 twice that.

16 Q So based on those findings, would it be fair to say he  
17 had been consuming alcohol at some point that day or that  
18 evening or that morning?

19 A Yes, he was under the influence of alcohol.

20 Q Were there any other drugs, other than the cough  
21 medicine, found in his system?

22 A He just had nicotine, which is tobacco by-product,  
23 like, from smoking cigarettes.

24 Q And one more time, Dr. Presnell, what was the cause of  
25 death in this case?

## Cross-Examination of Dr. Presnell by Mr. Mathews

1 A Asphyxiation, or lack of oxygen, due to strangulation.

2 Q I have no further questions, Dr. Presnell. Please  
3 answer any questions that Mr. Mathews may have for you.

4 MR. MATHEWS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MATHEWS:

7 Q Dr. Presnell, how was your trip?

8 A It was pretty quick.

9 Q You came from Charleston or Columbia?

10 A From Charleston.

11 Q Okay. Where did you go undergraduate?

12 A Clemson.

13 Q Go Tigers. They've got that quarterback. I don't know  
14 if you read about that, but, anyway, is there anything  
15 besides strangulation that can cause petechiae?

16 A There's a whole host of things that can cause  
17 petechiae. Again, petechiae are pin-point hemorrhages.  
18 They can be seen in natural causes of death, like heart  
19 attacks. They can be seen in live people, like, for  
20 instance, one time my husband had an upper endoscopy where  
21 they stick a tube down your throat, and he coughed and  
22 gagged so much that it caused those petechiae. Maybe it  
23 would help to understand why somebody might develop  
24 petechiae. They're basically, a rupture of the tiny  
25 vessels, capillaries and veniles, and a lot of times they'll

## Cross-Examination of Dr. Presnell by Mr. Mathews.

1 rupture because of increased pressure in those vessels, for  
2 whatever reason. Like I said, with cardiac disease, it may  
3 just be that the blood is backing up and causing the  
4 pressure to increase.

5 For instance, like my husband, he was gagging, that  
6 increased gag causes the increased pressure and can cause  
7 those vessels to rupture. And in cases of strangulation,  
8 you have to consider what the anatomy is of the vessels that  
9 go to and from the head. You have arteries which take your  
10 oxygenated blood from your heart to all your organs. You  
11 have like the carotid arteries going to the head, and that's  
12 kind of a high pressure system. Your heart's got to pump  
13 all that blood to all the parts of your body. Then you have  
14 your veins bringing all of the unoxygenated blood back to  
15 your heart so it can go to the lungs and get oxygenated.  
16 That's relatively low pressure systems, so that isn't --  
17 it's just relatively a low pressure system. So the arteries  
18 are a lot thicker than the veins are just because of the  
19 pressure difference. When there's compression around the  
20 neck, what ends up happening is that -- and a lot of times  
21 it's intermittent pressure, is that the veins will be  
22 pressed closed, but the arteries aren't pressed closed. So  
23 what's happening is that the blood can still get to the  
24 head, but it can't get out, and therefore that increases the  
25 pressure and causes these ruptures. One other thing, since

## Cross-Examination of Dr. Presnell by Mr. Mathews

1 I kind of seem to be on a roll here, that I wanted to bring  
2 up when I talked about asphyxia, or lack of oxygen, due to  
3 strangulation. Most of the strangulations aren't due to  
4 compression of the airway; it's compression of the blood  
5 vessels. So the person can still be breathing, it's just  
6 that the strangulation or the compression around the neck is  
7 not allowing the oxygenated blood to get to the brain, and  
8 that's what's causing the asphyxia, that actually, I mean,  
9 you can occlude the airway as well, but most of the cases of  
10 strangulation is the compression of the vessels, and the  
11 petechiae in this case are a result of that difference in  
12 the strength of the vessels going to and from the head.

13 Q Dr. Presnell, you mentioned that your husband had  
14 gotten petechiae from coughing or gagging, can vomiting, if  
15 you do that vigorously, can that also cause petechiae?

16 A Yes, it can, and so can seizures. There's a long list  
17 of what may cause petechiae.

18 Q Were you aware -- was it given to you in the history  
19 that was presented to you, was it given to you that the  
20 victim had, Mr. Frazier, had thrown up before this?

21 A No, I don't have that history.

22 MR. MATHEWS: I don't have anything further, Your  
23 Honor.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

## Redirect Examination of Dr. Presnell by Dep. Sol. Thornton

1 BY DEP. SOL. THORNTON:

2 Q Dr. Presnell, you testified just a minute ago on cross-  
3 examination that petechiae can be caused by several  
4 different things, vomiting, seizures and other things; is  
5 that correct?

6 A Yes.

7 Q Well, but we're not here about a hypothetical today, so  
8 in this case, with the death of Jake Frazier, what was the  
9 cause of death?

10 A Well, in this case, we're not just looking at the  
11 petechiae, we're looking at his neck injuries and all those  
12 bruises and contusions with it, plus the lack of any other  
13 cause of death. All that goes together to indicate he died  
14 from asphyxia, due to strangulation.

15 Q Thank you, Doctor.

16 MR. THORNTON: No further questions, Judge.

17 THE COURT: Re-cross, limited to redirect?

18 MR. MATHEWS: No, sir.

19 THE COURT: As to this witness, Solicitor?

20 MR. THORNTON: We ask that she be allowed to be  
21 excused.

22 THE COURT: Any objection, Mr. Mathews?

23 MR. MATHEWS: No objection.

24 THE COURT: Dr. Presnell, you may step down and you are  
25 excused from the courtroom. Watch your step on there for

1 me, please.

2 DR. FRESNELL: Thank you.

3 THE COURT: Thank you. Call your next witness,  
4 Solicitor.

5 MR. THORNTON: Court's indulgence a moment, Your Honor.

6 THE COURT: Counsel approach.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD  
8 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE  
9 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

10 THE COURT: Madam Foreperson, ladies and gentlemen of  
11 the jury, I need to take up a matter. This won't take long.  
12 I'm going to have to take a short recess. I'll be right  
13 back with you. Please don't discuss the case. I promise  
14 you I'm going to keep the train moving down the track. I'll  
15 be right back with you, just don't discuss the case and  
16 please retire to your jury room.

17 (WEDNESDAY, JANUARY 28th, 2009, 2:35 P.M., WHEREUPON  
18 JURY EXITS THE COURTROOM, THEREAFTER THE FOLLOWING  
19 PROCEEDINGS WERE HELD OFF THE RECORD:)

20 THE COURT: Counsel approach.

21 (WEDNESDAY, JANUARY 28th, 2009, 2:55 P.M., WHEREUPON  
22 THE JURY ENTERS THE COURTROOM AND THE FOLLOWING PROCEEDINGS  
23 WERE HELD ON THE RECORD.)

24 THE COURT: Madam Foreperson, ladies and gentlemen of  
25 the jury, we'll now continue with the testimony in the trial

## Direct Examination of Richard Harvey by Dep. Sol. Thornton

1 of this case. Thank you for your patience. Solicitor, you  
2 may call your next witness.

3 MR. THORNTON: Thank you, Your Honor. At this time,  
4 the State calls Richard Harvey to the stand.

5 THE COURT: If you'll come around and be sworn by the  
6 clerk, please.

7 MADAM CLERK: Place your left hand on the Bible and  
8 raise your right hand.

9 WHEREUPON, RICHARD HARVEY was sworn to tell the truth,  
10 the whole truth, and nothing but the truth, and testified as  
11 follows.)

12 THE COURT: Pull that microphone over. It's going to  
13 amplify your voice. State your full name and spell your  
14 last name for the court reporter.

15 MR. HARVEY: Richard McClellan Harvey, H-A-R-V-E-Y.

16 THE COURT: Your witness, counsel.

17 MR. THORNTON: Thank you, Judge.

18 DIRECT EXAMINATION

19 BY DEP. SOL. THORNTON:

20 Q Mr. Harvey, who do you work for, sir?

21 A Colleton County.

22 Q In what capacity?

23 A I am the coroner of Colleton County.

24 Q And were you the coroner, sir, on April the 12th of  
25 2008?



## Direct Examination of Richard Harvey by Dep. Sol. Thornton

1 A Yes, sir, I was.

2 Q Did you get called out to the Colleton Regional  
3 Hospital?

4 A Yes, sir, I did.

5 Q All right. Did you see any particular person that day?

6 A Yes, sir.

7 Q All right. Was that person Jake Lamont Frazier, the  
8 third?

9 A Yes, it was.

10 Q What was his condition when you arrived?

11 A He was deceased.

12 Q All right. And had he been pronounced officially  
13 deceased?

14 A Yes, sir.

15 Q And what did you do, if anything with his body after  
16 that?

17 A I made arrangements with the Medical University of  
18 South Carolina for a forensic autopsy to be performed.

19 Q All right. That he was pronounced in Colleton County;  
20 is that correct?

21 A Yes, he was.

22 MR. THORNTON: I have no further questions, Your Honor.  
23 Mr. Harvey, please answer any questions Mr. Mathews has.

24 THE COURT: Cross-examination?

25 MR. MATHEWS: None, Your Honor.

## Direct Examination of Richard Harvey by Dep. Sol. Thornton

1       **THE COURT:** As to this witness, Solicitor?

2       **MR. THORNTON:** Ask that Mr. Harvey be excused with the  
3 Court's permission.

4       **THE COURT:** Any objection?

5       **MR. MATHEWS:** No objection.

6       **THE COURT:** Mr. Harvey, you may step down and you are  
7 excused from the courtroom. Thank you very much.

8       Call your next witness.

9       **MR. THORNTON:** The State rests, Your Honor.

10       **THE COURT:** Are there any matters of law that I need to  
11 take up at this time?

12       **MR. MATHEWS:** Yes, sir.

13       **THE COURT:** All right. Madam Foreperson, ladies and  
14 gentlemen of the jury, you've heard testimony from the State  
15 of South Carolina, but I need to take up a couple of quick  
16 matters of law. I have to ask you to go back in the jury  
17 room real quick, but I'll be right back with you in just a  
18 minute. Thank you very much. Please do not discuss the  
19 case.

20       (WEDNESDAY, JANUARY 28th, 2009, 3:04 P.M., WHEREUPON  
21 JURY EXITS THE COURTROOM, THEREAFTER THE FOLLOWING  
22 PROCEEDINGS WERE HELD ON THE RECORD:)

23       **THE COURT:** Very well, Mr. Mathews, I'm happy to hear  
24 from you at this time.

25       **MR. MATHEWS:** Your Honor, I would ask for a directed

1 verdict of acquittal at this point. Your Honor, in the  
2 evidence taken in the light most favorable to the State, I  
3 don't believe shows the elements of murder or the Abhan in  
4 the other indictment, which I, also, Your Honor, on the  
5 other indictment, well, I think that may be a matter for the  
6 jury. I guess the jury can look at that if it gets to that  
7 point -- but anyway, I'd make that motion on the basis that  
8 the evidence in light most favorable to the State doesn't  
9 prove those two.

10 **THE COURT:** So you think -- the basis for both your  
11 motion for directed verdict, since you said you thought it  
12 might be a matter for the jury ---

13 **MR. MATHEWS:** No, no, no, I was thinking out loud. I  
14 apologize for that.

15 **THE COURT:** I want to make sure I understand your  
16 motion, Mr. Mathews. You're moving on the sufficiency of  
17 the evidence that you don't believe there's sufficient  
18 evidence to submit either one of the indictments to the  
19 jury?

20 **MR. MATHEWS:** That's correct.

21 **THE COURT:** Solicitor?

22 **MR. THORNTON:** Your Honor, the State feels that there  
23 is sufficient evidence as to each and every element as to  
24 both the murder indictment and the assault and battery of a  
25 high and aggravated nature. Unlawful killing of another

1 with malice aforethought, I think there's certainly enough  
2 evidence, based on all the testimony that the jury could  
3 find him guilty of that charge.

4 I also think, Judge, that based on the testimony of  
5 Stephanie Ballard and Lisa Strickland, that there is ample  
6 evidence, if the jury chooses to believe it, that he did  
7 strike Lisa Strickland and, of course, him being a male and  
8 Lisa Strickland, obviously, she got on the stand, being  
9 female, that in and of itself, is enough for a finding of an  
10 Abhan if the jury chooses to believe the testimony, Judge.

11 **THE COURT:** I agree, Solicitor. I believe it's a  
12 question for the jury. Mr. Mathews, your motion for  
13 directed verdict is respectfully denied. Mr. Mathews, would  
14 you and your client come around to the microphone, and I'd  
15 like for the clerk to swear your client at this time.

16 **MADAM CLERK:** Please raise your right hand.

17 **WHEREUPON, DESMOND SAMS** was duly sworn to tell the  
18 truth, the whole truth, and nothing but the truth, and  
19 testified as follows.

20 **THE COURT:** I'm going to ask you to speak into the  
21 microphone. Would you state your full name for the record,  
22 please?

23 **MR. SAMS:** Desmond Javon Sams.

24 **THE COURT:** Mr. Sams, at this time, I'm going to  
25 explain to you certain of your rights. If you do not

1 understand anything that I say, please let me know. If you  
2 want me to explain anything in further detail, you let me  
3 know; you understand?

4 **MADAM CLERK:** Yes, sir.

5 **THE COURT:** We've now reached the stage of the trial  
6 where you may present your defense. You have the right to  
7 testify in your own behalf. However, no one -- no one can  
8 make you testify. In the event you have any record for any  
9 conviction involving dishonesty or false statement or for a  
10 crime punishable by imprisonment for more than one year and  
11 this court determines as a matter of law that the probative  
12 value of admitting this evidence outweighs its prejudicial  
13 effect to you, the Solicitor would be able to introduce  
14 circumstantial evidence, the record of convictions for  
15 impeachment purposes, to attack your credibility, or your  
16 believability.

17 If you elect not to take the witness stand, I will  
18 charge the jury in my charge on the law at the conclusion of  
19 the case that they are not to give the fact that you did not  
20 testify any consideration whatsoever. And there is to be  
21 absolutely no prejudice to you because you did not testify.  
22 The decision as to whether or not you testify will be left  
23 entirely up to you. Of course, you can talk with your  
24 attorney, Mr. Mathews, but the ultimate decision as to  
25 whether or not you testify is entirely yours and no one

1 else's; do you understand what I've just told you?

2 MR. SAMS: Yes, sir, Your Honor.

3 THE COURT: Would you like a moment with him, Mr.  
4 Mathews?

5 MR. MATHEWS: Yes, sir.

6 THE COURT: Very well.

7 MR. MATHEWS: Your Honor, Mr. Sams indicates that he  
8 would like to testify. I had some, as a matter of ---

9 THE COURT: Just a moment, Mr. Mathews. Let me ask  
10 him.

11 Mr. Sams, you understand this is your decision and  
12 you're under oath?

13 MS. BALLARD: Yes, Your Honor.

14 THE COURT: Have you made a decision yourself, not  
15 anyone else's decision, but you, yourself, have you made a  
16 decision as to whether or not you wish to testify in the  
17 trial of this case?

18 MS. STRICKLAND: Yes, sir, Your Honor.

19 THE COURT: And what is your decision?

20 MR. SAMS: I would like to give my side of the story,  
21 Your Honor.

22 THE COURT: Pardon?

23 MR. SAMS: I would like to give my side of the story,  
24 Your Honor.

25 THE COURT: You want to testify?

1       **MR. SAMS:** Yes, sir.

2       **THE COURT:** Now, is that your decision?

3       **MR. SAMS:** Yes, sir, Your Honor.

4       **THE COURT:** Anyone forcing you to make that decision?

5       **MR. SAMS:** No, sir, Your Honor.

6       **THE COURT:** You've made that of your own free will and  
7 own accord?

8       **MR. SAMS:** Yes, sir, Your Honor.

9       **THE COURT:** Very well. Mr. Mathews, now, anything you  
10 want to tell me now that he tells me he wants to testify?

11       **MR. MATHEWS:** I had other witnesses I wanted to call  
12 first, but I -- I told him it was up to him and I have no  
13 strong opinions either way on that issue.

14       **THE COURT:** Very well. You may return to your seat.  
15 Is the State ready to proceed?

16       **MR. THORNTON:** The State is ready, Your Honor.

17       **THE COURT:** Is the defendant ready to proceed?

18       **MR. MATHEWS:** I want to find out, Your Honor, whether  
19 or not his mother is here.

20       **THE COURT:** You told her to stay here under subpoena,  
21 didn't you?

22       **MR. MATHEWS:** Yes, sir, and she was here. Actually, I  
23 asked her would she go get the report and she said she was  
24 going to and come right back, but she would be downstairs.

25       **THE COURT:** Have I got a bailiff that can check?

1       **MR. MATHEWS:** Ms. Mitchell, yes. I have another  
2 witness I can call first, Your Honor.

3       **THE COURT:** Hold on a second. Let's see if she's here,  
4 if that's what you want to do, and bring her up.

5       **BAILIFF COBB:** She's here.

6       **MR. MATHEWS:** She is? Okay.

7       **THE COURT:** Are you ready to proceed?

8       **MR. MATHEWS:** Yes, sir.

9       **THE COURT:** Bring us the jury, please, Bill.

10       (WEDNESDAY, JANUARY 28th, 2009, 3:10 P.M., WHEREUPON

11 THE JURY ENTERS AND THE FOLLOWING PROCEEDINGS WERE HELD ON  
12 THE RECORD.)

13       **THE COURT:** All right, Madam Foreperson, ladies and  
14 gentlemen of the jury, thank you for your patience. We'll  
15 now continue with the testimony in the trial of this case.

16       Call your first witness, Mr. Mathews.

17       **MR. MATHEWS:** I thought it was going to be Ms.  
18 Mitchell, but it's going to be Ms. Sams, Olympia Sams.

19       **THE COURT:** Mr. Mathews?

20       **MADAM CLERK:** Please come forward and be sworn. Put  
21 your left hand on the Bible and raise your right hand.

22       WHEREUPON, MS. OLYMPIA SAMS was sworn to tell the  
23 truth, the whole truth, and nothing but the truth, and  
24 testified as follows.

25       **MADAM CLERK:** Have a seat on the witness stand, right



## Direct Examination of Olympia Sams by Mr. Mathews

1 up here. Say your name for the record.

2 THE COURT: Good afternoon. Pull that microphone over  
3 to you. It's going to amplify your voice. Make yourself  
4 comfortable. Speak into the microphone so my last juror  
5 down on the end of the row can hear you. State your full  
6 name for the record and spell your last name for my court  
7 reporter.

8 MS. SAMS: Olympia Sams, S-A-M-S.

9 THE COURT: Your witness, counsel.

10 MR. MATHEWS: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. MATHEWS:

13 Q Ms. Sams, where do you live?

14 A [REDACTED] Augusta Highway in Cottageville.

15 Q Okay. I know you're nervous. Try to settle down. And  
16 that's in Colleton County?

17 A Yes.

18 Q Okay. How long have you been living in Colleton  
19 County?

20 A Practically all my life, yeah, about over 40-some  
21 years.

22 Q Okay. Is Desmond Sams, is that your son?

23 A Yes.

24 Q Did you also know Jake Frazier?

25 A Yes.

## Direct Examination of Olympia Sams by Mr. Mathews

1 Q Were Desmond and Jake friends?

2 A Yes. They were like brothers. They always hung  
3 together, and every time when Desmond wasn't living here and  
4 he came for visits, him and Red would always get together.

5 Q "Red" is Jake?

6 A Oh, excuse me, Jake, uh-huh (affirmative).

7 Q Okay. Do you also know a Sharron Glover?

8 A Yeah

9 Q That's Ms. Glover sitting there? (Indicating.)

10 A Yes.

11 Q How long have you been knowing Ms. Glover?

12 A All of our life. She's my first cousin, so ---

13 Q Okay.

14 A --- for years.

15 Q Okay. Ms. Sams, did you and -- did you and Ms. Glover  
16 discuss what happened between Desmond and Jake -- "Red"?

17 A Yes. The morning it happened, she had called my father  
18 and in return he called me and told me what happened and he  
19 gave me Sharron's number and I called her to find out what  
20 had happened.

21 Q Okay. During that time, did Ms. Glover tell you that  
22 Jake had, your son ---

23 MR. THORNTON: Objection, Your Honor, hearsay.

24 MR. MATHEWS: This is within the scope of ---

25 THE COURT: Counsel approach.

## Direct Examination of Olympia Sams by Mr. Mathews

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD  
2 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE  
3 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

4 THE COURT: Objection is sustained in part and  
5 overruled in part. You understand how to proceed now,  
6 counsel?

7 MR. MATHEWS: I do, Your Honor.

8 THE COURT: Very well. You may proceed.

9 Q Ms. Sams, did you and Ms. Glover, the only person I'm  
10 interested in, have a discussion about what happened?

11 A Yes.

12 Q In that discussion, did Ms. Glover tell you that your  
13 son had told -- said to her, where she could hear it, that  
14 Jake was fighting him?

15 A Yes, yes. That they were fighting, and you know.

16 Q And she had heard this on a call that she was involved  
17 in?

18 A Right. She told me that the phone was put to her ear,  
19 yes.

20 Q To Desmond's ear?

21 A Right.

22 Q Okay. And is there any -- and she had said that ---

23 MR. THORNTON: Hearsay.

24 THE COURT: Sustained. Counsel, move along.

25 Q Okay. It's essentially the same thing.

1       **MR. MATHEWS:** That's all I have, Your Honor.  
2       **THE COURT:** Cross-examination?  
3       **MR. THORNTON:** No questions, Your Honor. Thank you.  
4       **THE COURT:** As to this witness, Mr. Mathews?  
5       **MR. MATHEWS:** Nothing further, Your Honor.  
6       **THE COURT:** Mr. Mathews, may the witness be excused?  
7       **MR. MATHEWS:** Yes, sir.  
8       **THE COURT:** Any objection, Solicitor?  
9       **MR. THORNTON:** No objection, Your Honor.  
10       **THE COURT:** Ma'am, you may step down, and you are  
11 excused from the courtroom.  
12       **MR. MATHEWS:** And Your Honor, since she is now excused  
13 and no longer a witness, may she now be in the courtroom?  
14       **THE COURT:** She may remain in the courtroom since  
15 you've excused her and the Solicitor has no objection.  
16       Call your next witness, Mr. Mathews.  
17       **MR. MATHEWS:** (To Bailiff) Is Ms. Mitchell here?  
18 (Bailiff goes to search.)  
19       **BAILIFF:** She is not here.  
20       **MR. MATHEWS:** Your Honor, we would call Detective  
21 Inabinett at this time.  
22       **MADAM CLERK:** Please come forward and be sworn.  
23       **THE COURT:** He's already been sworn, hasn't he?  
24       **MADAM CLERK:** Has he? No, he hasn't.  
25       **THE COURT:** He hasn't. Okay.

## Direct Examination of Det. Allen Inabinett by Mr. Mathews

1       **MADAM CLERK:** Place your left hand on the Bible and  
2 raise your right.

3       **WHEREUPON, DETECTIVE INABINETT** was duly sworn to tell  
4 the truth, the whole truth, and nothing but the truth, and  
5 testified as follows:

6       **MADAM CLERK:** Please have a seat on the witness stand  
7 and state your full name for the record.

8       **THE COURT:** Make yourself comfortable, pull the  
9 microphone over for me. If you would, please, state your  
10 full name, spell your last name.

11       **MS. BALLARD:** Yes, sir. Allen, last name, I-N-A-B-I-N-  
12 E-T-T.

13       **THE COURT:** Your witness, counsel.

14       **MR. MATHEWS:** Thank you, Your Honor.

15                               **DIRECT EXAMINATION**

16       **BY MR. MATHEWS:**

17       **Q**     Detective Inabinett, you were the case officer on this  
18 case?

19       **A**     Yes, that is correct.

20       **Q**     And you are here under my subpoena, as well as the  
21 State's subpoena?

22       **A**     Correct, yes, sir.

23       **Q**     Detective Inabinett, were you present on the scene,  
24 sometime shortly after this incident occurred?

25       **A**     Yes, I was. I responded as the on-call detective.

## Direct Examination of Det. Allen Inabinett by Mr. Mathews

1 Q Okay. And in the course of that investigation, did you  
2 take measurements, look for samples, and things of that  
3 nature?

4 A Yes, I did. During the course of the crime scene, I  
5 did various measurements and took various photographs.

6 Q Did you -- did you look for and find any blood on the  
7 scene?

8 A Yes, sir. I located a location in the back bedroom,  
9 which is classified as the incident location. In corner  
10 number one, there is a portion of blood which I collected,  
11 actually the carpet sample was secured.

12 Q All right. Based on your investigation of the case,  
13 did you believe that to be Desmond Sams' blood?

14 A At the time, it was believed to be blood of the  
15 deceased victim.

16 Q Did you later determine that it was not?

17 A The sample was not sent to SLED to be analyzed, due to  
18 the -- both individuals being found in the same location  
19 where the blood sample was at. It's been secured in  
20 evidence.

21 Q Did you ever see Mr. Sams that same day?

22 A Yes, sir. I met with Mr. Sams later on in the morning  
23 of the 12th at The Annex, which is the Colleton County  
24 Sheriff's Department Annex.

25 Q Was his eyes swollen shut?

## Direct Examination of Det. Allen Inabinett by Mr. Mathews

- 1 A At least one of them was swollen.
- 2 Q And did he also have a cut on his lip?
- 3 A I can't recall.
- 4 Q Had he been bleeding?
- 5 A I'm assuming it's possible.
- 6 Q Okay. But he looked like he had been in a fight?
- 7 A Oh, yes, sir. No question he was in some type of
- 8 altercation.
- 9 Q Okay. And you say at least one of his eyes was closed
- 10 up?
- 11 A Yes, at least one. I can't recall whether it was left
- 12 or right, but at least one eye was swollen.
- 13 Q All right. Detective Inabinett, you've been here
- 14 through the entire case?
- 15 A That's correct.
- 16 Q Have you -- were there any videotaped statements taken
- 17 in this case?
- 18 A We interviewed and recorded the two young ladies, as
- 19 well as, I think, Mr. Sams, which did not give a total
- 20 interview.
- 21 Q So there are videotape statements from the -- from Ms.
- 22 Ballard and Ms. Strickland?
- 23 A Yes, sir.
- 24 Q And are those -- are those available, in evidence?
- 25 A Yes, sir. I have them present in the courtroom.

## Direct Examination of Det. Allen Inabinett by Mr. Mathews

1 MR. MATHEWS: Your Honor, may we approach?

2 THE COURT: Counsel approach.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD  
4 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE  
5 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

6 Q Detective Inabinett, you've seen the written  
7 statements, also in this case, have you not, from Ms.  
8 Strickland and Ms. Ballard, correct?

9 A Yes, I have.

10 Q Was there anything in those written statements that was  
11 inconsistent with the videotape statements that they made?

12 A To my knowledge, no. But I did not interview neither  
13 Ms. Strickland nor Ms. Ballard.

14 Q Okay. And you would agree there were significant  
15 omissions from those from what came from that stand here  
16 today?

17 MR. THORNTON: I'd object to that, Your Honor. It  
18 calls for a conclusion. That's the jury's call.

19 THE COURT: Sustained. No foundation. Proceed.  
20 Cross-examination.

21 Q Was there any reference at all in the videotape about  
22 Ms. Ballard making a phone call herself?

23 A I'm not sure. I didn't interview Ms. Ballard.

24 Q Okay. Are you familiar with what's in the videotapes?

25 A Just briefly about there was a -- a video of both



## Direct Examination of Detective Allen Inabinett by Mr. Mathews

1 individuals. I, myself, did not interview neither Ballard  
2 nor Strickland. I attempted to interview the defendant, Mr.  
3 Sams.

4 Q Okay. What I'm saying is you've seen them. You know  
5 what's in them, correct?

6 A Yes, sir, but I cannot recall verbatim any of the  
7 statements.

8 Q Well, you would agree that it's a significant factor if  
9 there was a second contact, would you not?

10 A I don't want to misquote, because I can't recall. I  
11 don't know.

12 Q What physical evidence did you send to SLED?

13 A Presently, nothing. The carpet was secured, as well as  
14 the stain on the carpet was lifted and then secured as well,  
15 but we did not send it off due to both individuals being in  
16 the exact location was Deputy Sergeant Dunn arrived on  
17 scene.

18 Q Okay. So would you agree that this is not, there's no  
19 physical evidence that we're looking at in this case, right?

20 A Just the actual carpet location, which was secured.

21 Q No, I know, but what I'm saying is this is not a case  
22 that relies on the investigation of the Sheriff's Office; is  
23 that correct? If the witnesses are telling the truth, it's  
24 one way; if they're not, then it's another, and this is not  
25 a case ---

## Direct Examination of Detective Allen Inabinett by Mr. Mathews

1       MR. THORNTON: Objection, Your Honor.

2       THE COURT: Just a moment. Yes, sir?

3       MR. THORNTON: That's a call for the jury to make.

4       THE COURT: Sustained. Rephrase the question, counsel.

5   Q    You found vomit on the floor?

6   A    In the bathroom, yes, sir.

7   Q    Okay. How big was the bathroom?

8   A    I did measurements, but I cannot quote off the top of

9   my head. I can look at some documentation to verify that,

10   the measurements, but it was small, relatively, average size

11   bathroom.

12   Q    Okay. All right. Detective Inabinett, you said that

13   the first time that you saw Mr. Sams was at The Annex?

14   A    That I can recall, yes, sir.

15   Q    You saw him at the hospital, didn't you?

16   A    I don't remember. I don't recall.

17   Q    You didn't see -- Mr. Sams was taken to the hospital

18   after this, was he not?

19   A    He was, but I didn't transport him.

20   Q    Okay. You didn't transport him, but you know that he

21   was taken to the hospital, and in fact, you saw him at the

22   hospital?

23   A    I don't remember. I saw him at The Annex and . . .

24   Q    Detective Inabinett, I hand you what's been marked as

25   Defendant's Exhibit Number One, and ask you if you can

## Direct Examination of Detective Allen Inabinett by Mr. Mathews

1 identify that?

2 A Yes, this is a picture of the defendant, Mr. Sams.

3 Q Is that what he looked like on the night that you saw  
4 him -- or the day that you saw him?

5 A That's correct.

6 Q All right.

7 MR. MATHEWS: I'd submit that into evidence at this  
8 time, Your Honor.

9 THE COURT: Any objection?

10 MR. THORNTON: No objection, Judge.

11 THE COURT: Ladies and gentlemen of the jury,  
12 Defendant's Exhibit Number One will be admitted into  
13 evidence without objection. Defendant's One in evidence.

14 (WHEREUPON, Defendant's Exhibit No. One was received  
15 into evidence.)

16 THE COURT: You may publish and proceed, Mr. Mathews.

17 MR. MATHEWS: If I could present that to the jury and  
18 then I may -- I don't know if I have any further questions  
19 or not, but while they look at this that might give me time  
20 to figure out. (Defendant's Exhibit One presented to jury.)

21 THE COURT: Anything further on the record, counsel?

22 MR. MATHEWS: No, sir.

23 THE COURT: Cross-examination?

24 MR. THORNTON: None, Judge.

25 THE COURT: Very well. You may step down, Lieutenant.

## Direct Examination of Jason Eubanks by Mr. Mathews

1 Call your next witness.  
2 MR. MATHEWS: Officer or ---  
3 THE COURT: Mr. Mathews, stay in the courtroom. You  
4 just tell me what witness you want that you have subpoenaed  
5 and I'll bring them up.  
6 MR. MATHEWS: Ms. Mitchell.  
7 THE COURT: Ms. Mitchell?  
8 BAILIFF: I'll go look downstairs.  
9 THE COURT: You got her Ms. Cobb?  
10 BAILIFF: No, sir.  
11 MR. MATHEWS: Jason Eubanks, Your Honor.  
12 THE COURT: Mr. Thornton?  
13 MR. THORNTON: Yes, Your Honor.  
14 THE COURT: Eubanks one of your witnesses?  
15 MR. THORNTON: He is, Your Honor.  
16 THE COURT: Tell him where he's located so they can  
17 pick him up.  
18 MR. THORNTON: Mr. Griffith's gone to get him right  
19 now, Judge.  
20 (MR. EUBANKS ENTERS THE COURTROOM.)  
21 MADAM CLERK: Please come forward and be sworn. Place  
22 your left hand on the Bible and raise your right.  
23 WHEREUPON, JASON EUBANKS was duly sworn to tell the  
24 truth, the whole truth, and nothing but the truth, and  
25 testified as follows.

## Direct Examination of Jason Eubanks by Mr. Mathews

1       **MADAM CLERK:** Please have a seat on the witness stand  
2 and state your full name for the record.

3       **THE COURT:** Have a seat. Pull the microphone over to  
4 you; adjust it so you can speak into it. It's going to  
5 amplify your voice so my jury can hear you. Speak so they  
6 can hear you at the end of the row. State your full name  
7 and spell your last name for the court reporter.

8       **DEPUTY EUBANKS:** My name is Deputy Jason Eubanks, last  
9 name is spelled E-U-B-A-N-K-S.

10       **THE COURT:** Got to speak a little louder, now, Mr.  
11 Eubanks. I want them to be able to hear you.

12       Your witness, counsel.

13       **MR. MATHEWS:** Thank you, Your Honor.

14                               **DIRECT EXAMINATION**

15       **BY MR. MATHEWS:**

16       **Q**     Officer Eubanks, did you -- were you involved in the  
17 transport of Mr. Sams on the morning of April the 12th,  
18 2008?

19       **A**     Yes, I was.

20       **Q**     Where did you take him from and where did you take him  
21 to?

22       **A**     Took him from the incident location to Colleton County  
23 Medical Center.

24       **Q**     You took him to the hospital?

25       **A**     Yes, sir.

## Direct Examination of Jason Eubanks by Mr. Mathews

1 Q During that time, did he make any statements to you?

2 A He made statements in the backseat of my car.

3 Q What did he say?

4 A He kept saying that it was self-defense and that the  
5 victim was trying to kill him.

6 Q Okay. And he was in fact injured and you took him to  
7 the hospital?

8 A That's right.

9 MR. MATHEWS: Nothing further, Your Honor.

10 THE COURT: Cross-examination?

11 MR. THORNTON: None, Your Honor.

12 THE COURT: As to this witness, Mr. Mathews, may he be  
13 excused?

14 MR. MATHEWS: Absolutely.

15 THE COURT: Any objection, Solicitor?

16 MR. THORNTON: No, sir.

17 THE COURT: You may step down and you are excused from  
18 the courtroom. Call your next witness, counsel.

19 MR. MATHEWS: That would be -- that would be Ms.  
20 Mitchell. I suppose we could get -- I'm worried if we  
21 call ---

22 THE COURT: Counsel, not a statement. Approach the  
23 bench. You may approach, Solicitor.

24 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD  
25 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE

## Direct Examination of Desmond Sams by Mr. Mathews

1 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

2 THE COURT: Call your next witness, counsel.

3 MR. MATHEWS: Desmond Sams, Your Honor.

4 MADAM CLERK: Please come forward and be sworn. Place  
5 your left hand on the Bible and raise your right.

6 WHEREUPON, DESMOND SAMS was duly sworn to tell the  
7 truth, the whole truth, and nothing but the truth.

8 MADAM CLERK: Please have a seat on the witness stand  
9 and state your full name for the record.

10 THE COURT: Have a seat, make yourself comfortable,  
11 pull that microphone over to you so you can use it to  
12 amplify your voice. Speak into that microphone for me so  
13 they can hear you. State your full name, spell your last  
14 name for the court reporter.

15 MR. SAMS: My name is Desmond Sams, Desmond J. Javon  
16 Sams, S-A-M-S.

17 THE COURT: Your witness, counsel.

18 MR. MATHEWS: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. MATHEWS:

21 Q Desmond, where are you from?

22 A This is my home, but I'm born in Philadelphia,  
23 Pennsylvania.

24 Q How long have you been living in Colleton County?

25 A Since I was, like, on and off since I was, like, five

## Direct Examination of Desmond Sams by Mr. Mathews

1 or six.

2 Q Five or six? Did you know Jake Frazier?

3 A Yes, sir.

4 Q Who was he to you?

5 A He was my first cousin and my best friend, my role dog,  
6 everything. We was cool like that, you know. We was cool.

7 Q Mr. Sams, Desmond, you've had a chance to hear the  
8 testimony through the course of this. Tell me about what  
9 happened the evening of April 11th, going into the morning  
10 of April the 12th. Tell the jury.

11 A Well, we was working together as well. We were  
12 cleaning Alltel buildings with his sister, Ms. Glover, and I  
13 was helping them out because he said he was about to start  
14 going to jail on the weekends for a probation violation, so  
15 I was helping him out with that. I was also renting from  
16 them because I was living up north prior to this, I was  
17 about to get married, whatever, like that, that didn't work  
18 out so I came back down here. I was paying rent to him \$50,  
19 and he in return, helping him on his job cleaning the Alltel  
20 buildings.

21 Q Desmond, I don't want to interrupt you, but I -- I --  
22 tell me about when you got to Lisa Strickland's house.

23 A Well, we got off from work. We used to work together,  
24 so we came home from work to the house, our house, his house  
25 or our house, and Lisa and Stephanie was on the porch with a



## Direct Examination of Desmond Sams by Mr. Mathews

1 gallon of Vodka and lemon drops, you know, with the lemon  
2 and the sugar and the salt. We then -- we then -- they was  
3 giving shots right there. The girls was intoxicated, so I  
4 wound up driving Stephanie green Neon. Lisa rode with me.  
5 My cousin, Red, he drove his car, and Stephanie rode with  
6 him. We stopped at BP to get some cigarettes and then we  
7 went to the place where the tragedy happened.

8 Q That was Lisa Strickland's place?

9 A Yes, sir.

10 Q Okay. And everybody had been drinking?

11 A Yes, sir.

12 Q There had been some talk about you making some pass at  
13 Stephanie. Bring us from about there, or tell what happened  
14 -- at one point, was Jake sick? Was "Red" sick?

15 A Okay. When we got to the house, the girls, they had  
16 like a half a gallon of Vodka left. They was already  
17 intoxicated when we got off from work and met them at our  
18 house, so they had the Vodka, the Tequila, it was around, a  
19 little over a quarter of a gallon of Tequila left on the  
20 table. It was a half of gallon of Crown Royal on the table,  
21 and it was a gallon of gin, Seagram's Gin. All these was  
22 open except for the Crown Royal and a little bit when we got  
23 to the house, so I flipped through the CD's. I put in a CD  
24 and we started, the girls they slipped in -- they got  
25 dressed in some shorts or whatever like that, and we started

## Direct Examination of Desmond Sams by Mr. Mathews

1 dancing. We was giving shots of different liquor and stuff  
2 like that, and partying and dancing, like making the  
3 sandwich, and so we was hanging out and having fun. And my  
4 cousin, he had grabbed the Tequila, and it was only a  
5 quarter left out of a gallon bottle, after taking another  
6 shot. We was all drinking. He killed the rest of the  
7 Tequila, and so we started dancing again, and he said he was  
8 getting sick, so he had went to the bathroom. When he had  
9 went to the bathroom, we -- the two girls, us, we remained  
10 in the living room dancing and listening to music. The two  
11 girls, they was getting more shots and stuff like that.  
12 After around three or four songs, I said, where my cousin  
13 at? I'm go check on my cousin, because everybody say we was  
14 like twins, you know, we grew up together, and we used to  
15 hang around each other and stuff. I went to the bathroom to  
16 check on my cousin. When I went to the bathroom, he was  
17 sitting on the edge of the bathtub while he was -- I  
18 immediately seen puke on the floor, so I bent down  
19 (indicating), excuse me, and I bent down like this, with my  
20 hands on my knees and I say, "Cuz, you alright?" Me and him  
21 was eye contact. Then when I say that, Stephanie Ballard,  
22 she came in, and the bathroom was small. This is a single-  
23 wide trailer. You get what I'm saying? The bathroom was  
24 small. I was leaning down in front of the commode. He was  
25 sitting on the edge of the bathtub, looked like he could

## Direct Examination of Desmond Sams by Mr. Mathews

1 have bent over and called "Earl" or whatever you want to  
2 call it, puke, or whatever you want to call it. Then I say,  
3 "You alright?" Well, Stephanie came in and she was trying  
4 to get past me, I guess, to comfort him, like this, you  
5 know, pat him on the shoulder. So she had, like, walked  
6 into me. Excuse me -- excuse me.

7 THE COURT: You need to sit down. Just tell the jury.

8 A I had my hands on my knees like I showed y'all. When  
9 she went to try to scoot past me, I had like leaned forward;  
10 you get what I'm saying? Besides head butting me and my  
11 cousin, we eye -- we -- we at eye length with each other.  
12 Besides head butting him, my hand went up like this  
13 (indicating), and I caught Ms. Ballard on the -- like, a  
14 little above her -- like maybe a hand length above her knee,  
15 with one hand to catch my balance. Now, I was off-balance  
16 like this, now, and as soon as that happened, my cousin say,  
17 "Hey, get your hand off my -- boom." And then he hit me.  
18 He hit me. And then after he hit me, I stood up, cause, you  
19 know, we were in the bathroom. After he hit me, he grabbed  
20 me around my neck. He was punching me, I went back -- I  
21 went back and I hit the back wall and then I was still  
22 trying -- trying to bend up because he caught me -- he  
23 struck me, you know, caught me on surprise. So he was still  
24 punching me and pushing me back, so I went -- I hit the back  
25 wall of the bathroom, and then I turned to my right -- I

## Direct Examination of Desmond Sams by Mr. Mathews

1 turned to my right and my back was to the entrance of the  
2 room we was in. I was still steady, you know, landing on  
3 trying to get -- I was still caught on surprise, so he was  
4 still punching me and stuff, so I wound up falling on my  
5 back. I wound up falling on my back in the room and when I  
6 fell on my back, he fell on top of me. He was punching me  
7 and stuff like this, and I still, I never even hit my  
8 cousin. You get what I'm saying? I never even wanted to  
9 fight my cousin because I, you know, I knew it wasn't like  
10 that, you know. You get what I'm saying? He was punching  
11 me and stuff like that, and he had one hand on my neck and  
12 the other hand he was trying to pull out my windpipe. I  
13 tried to push him off. I looked him in his eye. Right  
14 then, I didn't know my cousin. I was scared, so I looked  
15 him in his eye. I tried to push him off with my one hand  
16 and that's when he bit my finger. He bit my finger and I  
17 had to get -- he bit my finger; it was real deep, it swole  
18 up, and after he bit my finger, I was still -- he was still  
19 choking me with one hand and trying to pull my windpipe out  
20 with the other hand.

21 Now, at this time, I'm scared with my adrenaline  
22 flowing. I can't hardly breathe, so I punched him. With my  
23 last bit of breath, I punched him off me. When I punched  
24 him off me, I did like a superman punch. I kicked my leg up  
25 and I jerked my body. He rolled over and he was about to

## Direct Examination of Desmond Sams by Mr. Mathews

1 get up. I was about to get up. So I tried to hold him down  
2 in it and he was like "ohh, ahh, ohh", and I was, like,  
3 "Man, chill out, man. Chill out, man. What's wrong with  
4 you, man? Chill out." "Ohh, ahh" And I remember -- I  
5 remember -- the -- one of the girls they came over the  
6 speakerphone and they said, Sharron on the phone." You know  
7 what I'm saying? I was just trying to restrain him. I  
8 wasn't trying to kill him. I was just trying to restrain  
9 him till the police came. You get what I'm saying?  
10 Somebody could come break us up, cause that's my best  
11 friend. You know, we was about to open up a business, and  
12 all that, together. You know what I'm saying? Other than  
13 working for his sister, we was going to open up a women's  
14 lingerie shop, but anyway; God bless the dead.

15 So my cousin, he still was "ohh, ahh, ahh, get off, get  
16 off me." So, you know, I can't see out of one eye. I see  
17 blood. I was scared. You know what I'm saying? So Sharron  
18 and then, I heard her on the speakerphone. They ain't  
19 really had the phone to my head. They had it on  
20 speakerphone. They said, "What's going on?" I said, "Red,  
21 you know, he trip me. He trying to fight me." She was,  
22 like, "Oh, well get off him." I said, "No, cause he gonna  
23 want to fight me." She said, "Well, I'm calling the cops."  
24 And I said, "Please call the cops. Call the cops." She  
25 say, "Okay." And she hung up the phone. Next thing I know,

## Direct Examination of Desmond Sams by Mr. Mathews

1 he was "Ohh, ahh" We was fighting and I was just trying to  
2 hold him and restrain him, and the next thing you know, it  
3 was like, I don't how long it'd been, but the police, they  
4 came, and they was like, "Well, get off him." I was, like,  
5 I didn't know the policeman. My eye was swell. I didn't  
6 even see the police. I didn't know it was a police until I  
7 got up. They was like, "Well, get off him." I was, like,  
8 "Well, he gonna want to fight." You know what I'm saying  
9 cause I still thought he was, like, you know, and I just was  
10 scared, you know.

11 Q Desmond, did you intend to kill your cousin?

12 A No, sir. That was my best friend. We grew up  
13 together. We grew up together. We was living together. We  
14 was working together. We clubbed together. We did  
15 everything together. We went for twins. Girls used to say  
16 we looked like twins everywhere we went.

17 Q Why were you holding his throat, his neck? Why did you  
18 have your arm around his neck?

19 A Because I was trying to restrain him from getting up  
20 because, you know, I'm not trying to take away from him  
21 carrying it, but my cousin was known for carrying knives and  
22 stuff, and ---

23 Q I don't want to get into that.

24 MR. THORNTON: Objection, Your Honor.

25 THE COURT: Sustained.

## Cross-Examination of Desmond Sams by Dep. Sol. Thornton

1 Q Yeah, don't get into that. Don't get into that.

2 A Well -- well, I couldn't see for one thing.

3 THE COURT: Just a moment. Ask a question. Let the  
4 witness answer.

5 MR. MATHEWS: Thank you.

6 THE COURT: Proceed, counsel.

7 Q Desmond, had your cousin hit you first?

8 A Yes, sir.

9 Q Did you want to be fighting with him?

10 A No, sir.

11 Q Were you trying to protect yourself?

12 A I never hit him. One time ---

13 Q Were you trying to protect yourself?

14 A Yes, sir.

15 MR. MATHEWS: I have no further questions, Your Honor.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 BY DEP. SOL. THORNTON:

19 Q You testified earlier that you and your cousin were  
20 cool like that. Were you cool like that when you were  
21 choking him to death on the floor?

22 A I wasn't trying to choke him. I wasn't choking him  
23 hard, it didn't seem like. I was scared.

24 Q You weren't choking him? You choked him hard enough to  
25 kill him, didn't you?

## Cross-Examination of Desmond Sams by Dep. Sol. Thornton

- 1 A I don't know, sir.
- 2 Q You don't know? Was he alive when you put your arm  
3 around his throat?
- 4 A Yeah.
- 5 Q Was he alive when you took your arm off his throat?
- 6 A Yes, sir. I could swore he was breathing.
- 7 Q You could have swore he was breathing?
- 8 A I wasn't choking him like hard to try to kill him.
- 9 Q You went to the hospital that day with a swollen eye  
10 and a busted lip, right?
- 11 A Yeah, and my neck was messed up and my finger was bit.
- 12 Q Did Jake go to the hospital that night?
- 13 A I believe so.
- 14 Q Did he walk out?
- 15 A Not -- no sir.
- 16 Q Did you?
- 17 A Yes, sir.
- 18 Q So you killed him? Your twin, your cousin that you was  
19 "cool like that". I mean, there's no way around that, you  
20 killed him.
- 21 A Yes, sir.
- 22 Q Now, you heard the testimony in here. You heard all  
23 the witnesses, didn't you?
- 24 A (Deponent nods.)
- 25 Q You grabbed his girlfriend and he said something to you



## Cross-Examination of Desmond Sams by Dep. Sol. Thornton

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1 about it and you started choking him.

2 A No, sir.

3 Q Okay.

4 A He hit me and started choking me back to the room. I

5 never once attacked him. I was trying to restrain him.

6 Q You restrained him by choking him to death?

7 A I was just trying to hold him until somebody came to

8 help us out because it was . . .

9 Q Sound like he needed a lot more help than you, didn't

10 he?

11 A I was scared, sir. I was scared, sir. I couldn't

12 hardly see. I wear contacts. You get what I'm saying?

13 Q What was it that scared you? The part that his

14 lifeless body was lying underneath you not moving, was that

15 scary for you?

16 A It just happened so fast, sir. It just -- it was ---

17 Q Your testimony is it happened fast? Didn't you hear

18 the testimony of the officer that said it was 12 minutes

19 from the time he was dispatched till he got there? We know

20 you were choking him at least that long, don't we?

21 A No, sir.

22 Q Or was it 8 minutes?

23 A I couldn't tell you. I was scared.

24 Q You were scared? What was it about his lifeless, dead

25 body laying underneath you that scared you?

## Cross-Examination of Desmond Sams by Dep. Sol. Thornton

1 A He wasn't lifeless the whole time, sir. Like I said, I  
2 don't remember ---

3 Q When did he turn lifeless, if he wasn't lifeless the  
4 whole time? At what point had you killed him with your bare  
5 hands and you still were scared of him while you layed on  
6 top of him? When did he become lifeless, Desmond?

7 A I didn't, sir . . .

8 Q You were drinking that night, too, right?

9 A Yes, sir.

10 Q So you're admitting that you killed him? We know that,  
11 right?

12 A Look, when I let him go, he was still breathing.

13 Q Whoa, now, just a minute ago, you told me you didn't  
14 know if he was still breathing or not.

15 A I told -- I told -- I told you when I let my -- when I  
16 let my ---

17 Q Desmond, take a minute and get whatever story you want  
18 to tell the jury straight, and you let me know when you're  
19 ready.

20 A There's only one story.

21 Q We've heard two distinct stories today. The story that  
22 everybody else tells and the story that you're telling now.  
23 And even you can't keep yours straight. So which is it,  
24 was he breathing when you turned him loose or not?

25 A I thought -- yes, I thought he was breathing, because

## Cross-Examination of Desmond Sams by Dep. Sol. Thornton

1 right before when I -- I was like, "Help me." I told -- I  
2 told -- I told Sharron, his sister, you know, I -- that was  
3 my best friend, you know, I wouldn't -- I wasn't trying to  
4 kill my best friend. I'm not, you know, I'm not no killer.  
5 I'm not no murderer.

6 Q You just -- you just admitted you killed him, didn't  
7 you?

8 A Sir, I don't know. I just ---

9 Q So you don't know if you're a killer or not?

10 A He was still breathing, Your Honor. I mean, he was  
11 still breathing, sir. I just -- that's what happened.  
12 That's the God's honest truth what happened.

13 Q Desmond?

14 A That's the God honest truth what happened.

15 Q Desmond? Basically, your testimony is you walked in to  
16 check on your cousin. You accidentally bumped into his  
17 girlfriend because you was in a small bathroom and he came  
18 at you and you defended yourself, and that's all that  
19 happened; is that your testimony?

20 A No, she almost knocked me into him and besides head-  
21 butting him, I went in there to help my cousin. I told them  
22 to get my cousin -- when I went back there, I said, "Cuz,  
23 you alright?"

24 Q What about when you choked Lisa Strickland because she  
25 was trying to call 9-1-1?

## Cross-Examination of Desmond Sams by Dep. Sol. Thornton

1 A Sir, that never happened. Once the fight started, that  
2 was it. They saying two or three times, fights, and all  
3 this. Once the fight started, that was it. That was one  
4 time. We was men. We grew up together from five, six years  
5 old. If a fight was -- if the fight was over and it was  
6 like they said, he said it was cool, and we was like this  
7 (indicating), it wouldn't been no more than that. And I'm  
8 sure anybody that know us will tell you that.

9 Q But this fight didn't stop until he was dead, did it?

10 A Sir, I -- I didn't -- he wasn't -- like I said, you  
11 know, I was scared. I don't know what happened. We was  
12 drinking, I couldn't see, the room was dark. I don't know,  
13 man, but I looked up, it was like a wall. I seen a wall  
14 right there in the corner. It was just the element of  
15 surprise. You get what I'm saying? It just happened so  
16 fast cause, you know, but then I -- it happened fast, sir.  
17 That's the best, that's the God honest truth I can tell you.

18 Q Did -- why didn't you let him up when he was begging  
19 for his life?

20 A He was never begging for his life. Like I said, if my  
21 cousin would have said it was cool, that would have been it.

22 Q So you decided since he said it wasn't cool, you was  
23 going to choke him to death?

24 A I was trying to hold him, restrain him, until the  
25 proper, you know, somebody come break us up. I was just

## Cross-Examination of Desmond Sams by Dep. Sol. Thornton

1 trying to restrain him. I wasn't trying to kill him.

2 Q So, basically, Desmond, we got you all wrong. It was  
3 all just a mistake. You completely innocent. You went in  
4 there to check on him, he came at you, and you just  
5 restrained him?

6 A Yes, sir.

7 Q And you restrained him to the point that you choked the  
8 life out of him?

9 A Sir, I ---

10 MR. THORNTON: I have no further questions, Judge.

11 THE COURT: Redirect?

12 MR. MATHEWS: No, sir.

13 THE COURT: You may step down. Call your next witness.

14 MR. MATHEWS: Ms. Mitchell.

15 May we approach?

16 THE COURT: Counsel approach.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD  
18 OUT OF THE HEARING OF THE JURY PANEL, AND THEREAFTER, THE  
19 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

20 THE COURT: Madam Foreperson, ladies and gentlemen of  
21 the jury, I'm going to stop at this point for the day. We  
22 will conclude the trial -- I ask you to be back in your jury  
23 room before 9:30 in the morning. I'm going to try to start  
24 at 9:30. I'm going to see to it that everyone is here at  
25 9:30 in the morning, so that we can start on time, ladies

1 and gentlemen. So I ask your cooperation to be on time so  
2 we can start on time.

3 Now, over the overnight recess, please don't discuss  
4 this case with anyone, not even a member of your own family.  
5 It's important that you decide this case based on evidence  
6 introduced during the trial of the case when both sides are  
7 present with the right of cross-examination.

8 Over the overnight recess, I don't know whether  
9 there'll be anything on radio, television, or in the  
10 newspaper about this case. Please don't read such, watch  
11 such, or listen to such. You must decide the case based on  
12 evidence. I know people can be curious. When you go home,  
13 they say, "Are you on the jury? What's going on?" Just say  
14 that you're on the jury and the judge asked me not to talk  
15 about it. If a person persists in wanting to talk to you  
16 after you tell them that you can't discuss it, you get their  
17 name and you give it to me, and I'll handle that problem for  
18 you, ladies and gentlemen. I promise you that person won't  
19 bother you anymore.

20 Now, I hope each of you have a pleasant evening. Don't  
21 come to the courtroom or to this jury box. The bailiff's  
22 will give you instructions when you leave. Report to your  
23 jury room and be here before 9:30 in the morning. Any  
24 questions?

25 (No response.)

1       **THE COURT:** We will conclude the trial tomorrow. Thank  
2 you for your patience and cooperation. You're now excused  
3 for the balance of today. Everyone else remain seated while  
4 the jury is leaving.

5       (WEDNESDAY, JANUARY 28th, 2009, 3:54 P.M., WHEREUPON  
6 **JURY EXITS THE COURTROOM FOR THE EVENING; THEREAFTER, THE**  
7 **FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)**

8       **THE COURT:** Let the record reflect that Mr. Mathews  
9 came to the bench and told me that he had subpoenaed a  
10 witness who apparently asked to go get some files, or some  
11 information, for him. She was to return. This witness has  
12 not returned to the courthouse. Mr. Mathews has requested  
13 that I extend this trial to allow him to call that witness  
14 tomorrow.

15       **MR. MATHEWS:** Yes, sir. I have one other point, Your  
16 Honor.

17       **THE COURT:** Mr. Mathews, has what I just stated  
18 correct?

19       **MR. MATHEWS:** Yes, sir.

20       **THE COURT:** Take a seat. I'll call on you when the  
21 time comes. I will allow him to call the witness tomorrow  
22 and extend the trial over until 9:30 a.m. tomorrow morning.  
23 Is there anything else on the record from the State of South  
24 Carolina, outside the presence of the jury before we adjourn  
25 for the evening?

1       **MR. THORNTON:** There is one other matter on the record,  
2 Judge, which is very brief. That is, I have located, I have  
3 asked Detective Inabinett to grab the tapes. He's got them  
4 with him. I will allow Mr. Mathews to use my office, right  
5 now, if he wishes. I won't even be in there to view them.  
6 I'll just rely on what he tells me is on them. We've got a  
7 VCR and a TV right in the office, or he can take the tape  
8 with him if he prefers, Judge. I don't have a problem with  
9 that.

10       **THE COURT:** I understand that. You're going to provide  
11 him with the tapes and allow him since he's still in this  
12 case, to review the tapes, is that what you're telling me?

13       **MR. THORNTON:** It is, Your Honor. And I'll make sure  
14 the witnesses are available if he needs to stick them on the  
15 stand to cross them about if there's an inconsistency.

16       **THE COURT:** Let the record also reflect before I hear  
17 from Mr. Mathews, that counsel came to the bench during  
18 cross-examination, or during direct examination, because I  
19 believe if I recall correctly, Mr. Mathews called Lt.  
20 Inabinett to the stand and asked him whether there were  
21 video statements. Lt. Inabinett responded he had and Mr.  
22 Mathews then approached the bench and said he hadn't seen  
23 them. Solicitor said he hadn't seen them either and was not  
24 aware there were videos, although Mr. Mathews had been given  
25 written statements. Mr. Mathews then asked the witness



1 whether there was any difference between the written and the  
2 video and the witness said he did not think so, but he was  
3 not present and hadn't reviewed it to tell him that.

4 The Solicitor has now brought the video statements to  
5 the courtroom, so that Mr. Mathews can review them during  
6 the break in the trial.

7 Have I accurately stated what occurred at the bench  
8 concerning the videos, as far as the State is concerned?

9 MR. THORNTON: You have, Your Honor.

10 MR. MATHEWS: Insofar as the defendant is concerned?

11 MR. MATHEWS: Yes, sir.

12 THE COURT: All right. Now, anything else on the  
13 record from the State before I turn to the defendant?

14 MR. THORNTON: Judge, only that I would ask that I  
15 would let the court know that I looked back in my file and I  
16 actually just -- so that Mr. Mathews and the Court knows,  
17 because I did tell Mr. Mathews I was not aware of any  
18 videotape statements, from the evidence locker what I got  
19 was one CD of autopsy photos, which I told Mr. Mathews  
20 about; one CD of crime scene photos, again, that I told Mr.  
21 Mathews about; and a 9-1-1 tape, or recording of the 9-1-1  
22 call, and I had told him he could use it. That's all that  
23 we have listed. Apparently it was an oversight, Your Honor,  
24 which I apologize to the Court for. It certainly was not  
25 intentional. But I had no record of the videotape

1 statements. I think, Your Honor, they were made in  
2 conjunction when the written statements were done, at least  
3 that's what's been relayed to me, Your Honor.

4 **THE COURT:** Very well. All right, Mr. Mathews, is  
5 there anything on the record from the defendant outside the  
6 presence of the jury?

7 **MR. MATHEWS:** Yes, sir. Your Honor, this obviously is  
8 a murder case. I had asked for a continuance the last term  
9 of court because I did not believe that I had all of the  
10 evidence in the State's possession. I withdrew that after  
11 being assured by the Sheriff's office and the Solicitor's  
12 Office, that I had everything there was.

13 At trial, I find out about these tapes, asking a  
14 question in full confidence that Detective Inabinett is  
15 going to tell me that there are no videotapes, because I  
16 know you don't ask a question if you don't know the answer.  
17 I was surprised by that testimony.

18 I was also surprised to receive a written statement  
19 from Sharron Glover, which I did not have prior to today.  
20 Your Honor, I would ask for a mistrial. This is a very  
21 serious case. How do you prepare a case? If you've got a  
22 visual evidence where somebody -- the tics on their face,  
23 the way they're talking, the way they're acting, you get a  
24 better idea whether they're lying or not. If there's video  
25 evidence, it can drastically affect the way you prepare a

1 case. I did have the written statements. I got some vague  
2 testimony that they were not dissimilar, and maybe they're  
3 not, but I ---

4 **THE COURT:** I understand the motion, Mr. Mathews.  
5 Solicitor, I'm going to require you to view the video  
6 tonight, along with Mr. Mathews. I'll hear arguments on the  
7 motion for mistrial after I hear from y'all as to whether  
8 there's any discrepancy between the written statement  
9 provided to defense counsel and the video, and I'll hear  
10 that in the morning.

11 I expect both of you now to hand up any requests to  
12 charge. Does the State have any?

13 **MR. THORNTON:** None from the State, Judge. Your normal  
14 ---

15 **THE COURT:** Does the defendant have any requests to  
16 charge?

17 **MR. MATHEWS:** I do. We also have one other witness,  
18 Your Honor, but the ---

19 **THE COURT:** You, also, have what?

20 **MR. MATHEWS:** One other witness, Ms. Mitchell.

21 **THE COURT:** I understand that, but I've got to work on  
22 the charge tonight, Mr. Mathews. Let's stay on point. Do  
23 you have any requests to charge?

24 **MR. MATHEWS:** Yes, sir.

25 **THE COURT:** Hand them up to my law clerk, please.

1       **MR. MATHEWS:** These are just from the book.

2       **THE COURT:** Solicitor, let the record reflect that he  
3 doesn't have copies for you.

4       **MR. THORNTON:** Judge, I'll leave that to your  
5 discretion. The State will ---

6       **THE COURT:** Well, I can tell you the three requests are  
7 voluntary, involuntary, and self-defense.

8       **MR. THORNTON:** Well, then I would object to one of  
9 them, Judge.

10       **THE COURT:** Which one is that?

11       **MR. THORNTON:** Involuntary. I don't think there's any  
12 evidence that you could get an involuntary manslaughter  
13 charge, but of course, he still has one witness left, Judge.

14       **THE COURT:** I can't rule on that at this point.

15       **MR. THORNTON:** Yes, sir.

16       **THE COURT:** I'm not asking for argument on it, I just  
17 wanted to -- I'll be glad to make the copies. Hand them to  
18 the clerk and let the Solicitor have them.

19       Pat, would you make a copy of those so the Solicitor  
20 has a copy?

21       Anything else on the record from the defendant before  
22 we adjourn for the evening?

23       **MR. MATHEWS:** No, sir.

24       **THE COURT:** All right. Here's what I'm going to ask  
25 you to do. I told the jury to be back at 9:30. I expect

1 you to be here no later than 9:00. I expect you both to  
2 review the video tonight, not only the defendant, but  
3 counsel for the State. I will hear arguments on the request  
4 for a mistrial in the morning after you've reviewed the  
5 written statements provided to defendant and the video and  
6 I've heard arguments in the morning. I have, now, all of  
7 your requests to charge, so I'll be working on the charge.  
8 I understand, Mr. Mathews, that if your witness, who you  
9 subpoenaed, is here in the morning at 9:30, that you have an  
10 additional witness. I understand that that would be your  
11 last witness?

12 **MR. MATHEWS:** It would, and I don't think, actually, as  
13 to involuntary manslaughter, I don't think it would change  
14 the -- I don't think it would substantially change it.

15 **THE COURT:** I'm not asking for argument on that yet,  
16 because I haven't heard all the testimony. I think it would  
17 be premature for me to rule on it.

18 Yes, sir, Solicitor?

19 **MR. THORNTON:** With the Court's permission, Your Honor,  
20 may Ms. Stilley remain and review the tapes?

21 **THE COURT:** I know that you have to leave. It's after  
22 4:00, now, and Ms. Stilley can do the work that I've  
23 requested be done by the State.

24 **MR. THORNTON:** And I'll be back in the morning, well in  
25 advance, Judge. I'll review the tape prior ---

1       **THE COURT:** 9:00 in the morning. This Court now stands  
2 adjourned. Thank you very much.

3       (WHEREUPON, COURT WAS RECESSED FOR THE EVENING OF  
4 WEDNESDAY, JANUARY 28TH, 2009, 4:15 P.M. THE NEXT MORNING,  
5 THURSDAY, JANUARY 29th, 2009, 9:20 A.M., THE FOLLOWING  
6 PROCEEDINGS WERE HELD ON THE RECORD BEFORE THE JURY CAME  
7 IN.)

8       **THE COURT:** All right counsel. Is the State ready to  
9 proceed?

10       **MR. THORNTON:** State's ready, Judge.

11       **THE COURT:** Is the defendant ready to proceed?

12       **MR. MATHEWS:** Your Honor, I have a motion I would like  
13 to put on the record for a mistrial.

14       **THE COURT:** All right.

15       **MR. MATHEWS:** I received tapes yesterday, and through  
16 no fault -- I could ascertain no fault in the Solicitor's  
17 Office, but I just got these. I've viewed them, have been  
18 provided copies, I've viewed them and feel that were I  
19 allowed -- if this were mistried, I would handle the  
20 witnesses differently and I believe there are -- made some  
21 serious inconsistent statements, in my opinion, on this that  
22 would have affected the way I would have handled the  
23 witnesses on cross, the first time around, and so, upon that  
24 basis, I would ask for a mistrial.

25       **THE COURT:** Thank you, sir. Mr. Thornton, happy to

1 hear from the State.

2 I think we need to make a record Mr. Mathews, before  
3 Mr. Thornton speaks. I should have said this, because I've  
4 discussed this matter in chambers with counsel. What we're  
5 talking about is, and I put it on the record yesterday, that  
6 during the defense case, the defendant called Lt. Allen  
7 Inabinett as a witness.

8 During direct examination of Lt. Inabinett, the  
9 defendant's counsel asked him whether or not there were any  
10 video interviews of the witnesses, Lisa Strickland and  
11 Stephanie Ballard, who had previously testified for the  
12 State and then cross-examined by the defendant in this  
13 trial.

14 Lt. Inabinett stated that there were, to the surprise  
15 of defense counsel and to the Solicitor. The Solicitor was  
16 not aware of the video in use, written statements had been  
17 provided to defense counsel of both of these witnesses,  
18 Strickland and Ballard. When we adjourned last night, I  
19 directed counsel for the State and the defendant to review  
20 the tapes. I see now, since Mr. Mathews has on counsel  
21 table, his copies of the tapes, which were made available to  
22 him. He's reviewed them overnight. He renews his motion  
23 for a mistrial, on the basis he feels he's been prejudiced  
24 by not having the tapes originally at the time he cross-  
25 examined these witnesses during the State's case.

1        Having said that, I now ask to hear from the Solicitor  
2 so the record is complete.

3        MR. THORNTON: Thank you, Your Honor. Also for the  
4 record, Judge, we stipulate that Mr. Mathews has filed all  
5 appropriate Brady and Rule 5 Motions on this case. Your  
6 Honor, I do not believe that Mr. Mathews has been shown any  
7 prejudice to his client in this case. The witnesses are  
8 still available. I have checked this morning, they are  
9 already in the conference room. They are ready to go and  
10 ready to be put back on the stand. The two witnesses being  
11 Lisa Strickland and Stephanie Ballard. He is able to still  
12 cross-examine them in front of the jury, point out any  
13 inconsistencies that he thinks are material between what was  
14 videotaped and what was testified to on the stand, or what  
15 was in the written statement.

16        For the Court's knowledge, Your Honor, what these are  
17 is when the detective, Detective Stephens, I believe, was  
18 interviewing both of them verbally, it was shortly after the  
19 incident took place. I think it was somewhere around 5:30  
20 in the morning on April the 12th, and a determination was  
21 made, I believe, was that they both had not slept, they were  
22 intoxicated, they were sent home and brought back about  
23 4:30, and finished it and did written statements and wrote  
24 them  
25 out ---



1       **THE COURT:** After they slept?

2       **MR. THORNTON:** After they slept.

3       **THE COURT:** Which is the reason why you have a  
4 beginning of a video interview and then ended with a written  
5 statement, and you provided the written statements to  
6 defense counsel?

7       **MR. THORNTON:** I did, Your Honor. Mr. Mathews actually  
8 saw the videotapes before I did. He got them last night and  
9 I was not able to come back and review them until this  
10 morning. I wanted to make sure he got his copy first, Judge,  
11 which did occur. I don't think he's been prejudiced, Judge.  
12 The witnesses are here, and for the Court's information, I  
13 did not tell them anything about what they were being called  
14 back for. All I told them was they were subject to being re  
15 -- that they might have to get back on the stand and be  
16 subject to cross-examination. I didn't tell them about  
17 what. So they have no idea from me about what could happen  
18 if this motion is denied and if we go forward with the case.  
19 I've done everything I know to do, Your Honor, to try to  
20 cure this problem, and I do not believe the defendant has  
21 been prejudiced.

22       For the record, Judge, I would oppose the motion for  
23 mistrial on that basis.

24       **THE COURT:** I think I have to find, for purposes of  
25 your motion, Mr. Mathews, that there is some manifest

1. injustice here that requires the Court to grant a mistrial.  
2. I recognize that, sometimes, even though there's a good  
3. faith on both parts, that mistakes are made in discovery.

4. I'm sure the Solicitor candidly admits that he has  
5. conceded you have a standing Rule 5 and Brady Motion.  
6. Certainly, I would want you to have the benefit of having  
7. whatever you believe will benefit your client at the time.

8. However, I am fortunate enough, number one, that we're  
9. still in your case, and I can require the Solicitor to bring  
10. the witnesses back to this courtroom, and allow you to  
11. cross-examine them, and confront with whatever information  
12. you feel was on the tapes, that you should have brought out  
13. during your earlier cross-examination. In other words, I'm  
14. not requiring you to call them, I'll put them back on the  
15. stand as State's witnesses and allow you to lead them and  
16. cross-examine them.

17. For that reason, I do not believe that what has  
18. occurred here results in the type of injustice necessary,  
19. nor has any showing been made to me of that injustice, other  
20. than the fact that you've reviewed the tapes and would like  
21. to have had them earlier in your cross-examination, because  
22. you might have handled the witness differently.

23. But I'm going to give you, which is extraordinary in a  
24. criminal case, a second bite at the apple in the cross-  
25. examination, which I think cures any problem that may have

1 occurred from what was obviously nothing intentional but a  
2 mistake. The State was not aware of the video, nor was  
3 defense counsel. The State gave you the written statements,  
4 so you had those. You believe that there may be some  
5 information on the video, in which I will allow you to  
6 explore with this jury so that you protect the interest of  
7 your client, which has now been provided to you. In fact,  
8 you have the videos in your possession at this time.

9 I deny your motion for a mistrial on that basis,  
10 because I don't think there's a sufficient showing to grant  
11 a mistrial, and Solicitor, I'm going to require you in  
12 whatever order Mr. Mathews wants, we'll bring these  
13 witnesses back and they'll be subject to cross-examination.

14 After cross, I will give you a redirect and then  
15 give him a recross, but they'll be subject to cross by Mr.  
16 Mathews, and he'll be able to bring out whatever he wants to  
17 bring out from the review of the tapes last night; do you  
18 understand?

19 MR. THORNTON: Yes, sir.

20 THE COURT: You understand my ruling, Mr. Mathews?

21 MR. MATHEWS: Yes, sir.

22 THE COURT: Now, you had an additional witness, Mr.  
23 Mathews, who disappeared on you yesterday.

24 MR. MATHEWS: I had talked to her, Your Honor, talked  
25 to her this morning. She says that she didn't remember

1 anything until she had been -- she couldn't tell from the  
2 records anything she had been told by somebody else what had  
3 happened, and as a result, I don't see -- I think it would  
4 just confuse things to call her at this point. She -- I  
5 showed her the CAD records. She said, "Well, there isn't  
6 everything always in the CAD records. We make decisions on  
7 how to do it. Detective Inabinett told me that I had  
8 received another call." So I wouldn't be able to tell you  
9 for sure, unless I listened to the tape, and it's a long and  
10 murky, it's a 10 minute long tape. It's murky. I think it  
11 would just confuse things, and in light of what she told me  
12 this morning, I have released her from her subpoena and  
13 don't intend to call her.

14 **THE COURT:** And that witness's name?

15 **MR. MATHEWS:** Ms. Rebecca Mitchell.

16 **THE COURT:** All right. So with the additional  
17 witnesses that I'm going to put back up by the State, does  
18 that -- are there any additional witnesses to be called by  
19 the defendant?

20 **MR. MATHEWS:** One of the things that -- just on the  
21 other tape, one of the things that I'd also like to do here,  
22 is to take, also, Desmond Sams, it shows him beat up. It  
23 shows him having some difficulty talking. You know, I'd  
24 like to show that to the jury so they can see it. I also  
25 understand they have a picture already of the jail ---

1           **THE COURT:** You've already put a picture in evidence as  
2 Defendant's Exhibit Number One, which shows the physical  
3 condition of your client, so for what other purpose do you  
4 believe -- and you've certainly brought out to this jury,  
5 through cross-examination and through direct witnesses, the  
6 degree of drinking that was involved by the parties who were  
7 present at the house on the night of the incident in  
8 question. So tell me why you think you need to put in --  
9 and your client has testified and told the jury completely  
10 his side of this situation; so why is it that you feel that  
11 this video is necessary to go into evidence, when your  
12 client has been on the witness stand, subject to cross-  
13 examination, and a video cannot be cross-examined?

14           **MR. MATHEWS:** Your Honor, it's just because credibility  
15 is a key issue in this case, and everything that shows  
16 somebody why they're telling or not telling the truth is  
17 important, and that would be the only reason, Your Honor.

18           **THE COURT:** And credibility as to what issue?

19           **MR. MATHEWS:** Well, in that case ---

20           **THE COURT:** I think if you're talking about his  
21 physical condition, I think the picture you've put in speaks  
22 to that without the video, and if you're talking about the  
23 drinking, obviously you've had cumulative testimony as to  
24 that. Counsel approach.

25           **(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD**

1 OUT OF THE HEARING OF OTHERS, AND THEREAFTER, THE FOLLOWING  
2 PROCEEDINGS WERE HELD ON THE RECORD:)

3 THE COURT: Is the State ready to proceed?

4 MR. THORNTON: The State's ready, Judge.

5 THE COURT: Is defendant ready to proceed?

6 MR. MATHEWS: Yes, sir.

7 THE COURT: Let the record reflect, that I have met  
8 with counsel at the bench concerning Mr. Mathews' request to  
9 now put in a video statement of the defendant, which was  
10 provided to Mr. Mathews. Mr. Mathews wants to put in the  
11 video statement to bolster his client's testimony concerning  
12 his physical condition, which is already the subject of  
13 Defendant's Exhibit Number One. He also wants to put it in  
14 to show his physical movements in the video, which has been  
15 the discussion of some testimony concerning the level of  
16 intoxication.

17 I'm going to reserve my ruling on that until I've  
18 heard, now, that Mr. Mathews has reviewed these two  
19 videotapes of the lay witnesses, Ms. Strickland and Ballard,  
20 and decide whether or not I feel that any portion of this  
21 tape should be admitted.

22 The Solicitor thinks it's improper bolstering of the  
23 witness. The Solicitor has pointed me to two rules,  
24 801(D)(1) and 801(D)(1)(B) and that he thinks that this is  
25 the improper bolstering, without cross-examination, of the

1 witness who has testified, and Mr. Mathews, in his  
2 conference with me at the bench, admits that his purpose  
3 in calling this video is to bolster his client's testimony,  
4 which he thinks is at issue in this case.

5 I'll reserve ruling on that until I've heard this other  
6 cross-examination to decide whether or not I think it  
7 should be admitted in the trial of this case.

8 All right, Bill, we got all the jury?

9 BAILIFF POLK: Yes, sir.

10 THE COURT: Bring them on in.

11 (THURSDAY, JANUARY 29, 2009, 9:45 A.M., WHEREUPON THE  
12 JURY ENTERS THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE  
13 HELD ON THE RECORD.)

14 THE COURT: All right, ladies and gentlemen of the  
15 jury, Madam Foreperson, top of the morning to you. We've  
16 been working out here for a good while, so I don't want  
17 you to think we're suddenly starting late. We've actually  
18 been working long before you got here. The reason we do  
19 that a lot of times is to try to shorten the time your  
20 presence might be required; so I thank you for your patience  
21 this morning.

22 We are now going to continue with testimony in the  
23 trial of this case. Just by way of explanation, the first  
24 witness that is going to be called and maybe another  
25 witness, is going to be recalled. This witness testified

1 earlier in the trial of this case, and is being recalled to  
2 the witness stand by the State of South Carolina and will be  
3 subject to cross-examination by the defendant, and then  
4 redirect, and possibly recross by the defendant, and  
5 redirect by the State, and I wanted you to understand that.

6 Which witness are we calling first?

7 **MR. MATHEWS:** Stephanie Ballard, Your Honor.

8 **THE COURT:** Stephanie Ballard has already been sworn.  
9 I'll tell her.

10 (STEPHANIE BALLARD ENTERS THE COURTROOM.)

11 **MADAM CLERK:** Please come forward.

12 **THE COURT:** Ms. Ballard, if you'll come right around  
13 and have a seat on the witness stand for me. Good morning  
14 to you. Watch those steps. Pull that microphone around.  
15 Now, Ms. Ballard, I remind you first of all -- tap it for  
16 me. (Witness Complies.) There you go, it's on. I remind  
17 you that you're under oath in the trial of this case. You  
18 were previously sworn. Do you understand?

19 **MS. BALLARD:** Yes.

20 **THE COURT:** All right. I want you to speak up now so  
21 my people on the end of the row can hear you, and I'm going  
22 to allow you to move forward at this time.

23 Mr. Mathews, subject to my ruling, this is cross-  
24 examination of this witness, ladies and gentlemen of the  
25 jury.



## Cross-Examination of Stephanie Ballard by Mr. Mathews

**CROSS-EXAMINATION**

**BY MR. MATHEWS:**

**Q** Ms. Ballard, you testified previously, under oath, that the fight between Red and Desie, between Jake and Desmond Sams, began in the bathroom at Lisa Strickland's residence is that correct?

**A** Yes.

**Q** And you testified that before law enforcement was called, that at that point, Jake had not been talking for some time; is that correct?

**A** Yes.

**Q** And you gave a videotaped statement at the CID, Criminal Investigation Division, at the Sheriff's office in the afternoon of April the 12th, 2008; is that correct?

**A** Yes.

**Q** Isn't it true that at that point, you indicated that there was no fight in the bathroom?

**A** He pushed him into -- into the bathtub. I would consider that a fight.

**Q** Your testimony is that you did not say that the fight did not begin in the bathroom; that's your testimony here, right now?

**A** It started in the bathroom.

**Q** It's your testimony -- I'm not asking you at this point what happened, I'm asking you what you said happened.

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 A That's what I said.

2 Q That's what you said? Okay. And isn't it true that in  
3 a phone call that you made from the CID, from the Criminal  
4 Investigation Division that afternoon, that on a phone call  
5 you told a friend that you were talking to Jake just five  
6 minutes before the police arrived.

7 A I never talked on the phone.

8 Q You never said that on April the 12th, the afternoon of  
9 April the 12th at the Criminal Investigation Division?

10 A No.

11 MR. MATHEWS: Okay. Your Honor, I would ask to  
12 introduce Ms. Ballard's tape at this time.

13 THE COURT: Solicitor?

14 MR. THORNTON: Your Honor, I'd like to have one moment  
15 with Mr. Mathews.

16 [SOTTO VOICE DISCUSSION BETWEEN DEP. SOL. THORNTON AND  
17 MR. MATHEWS.]

18 Q Could that have been -- how many times were you at CID  
19 that day? One time or two?

20 A Twice.

21 Q Okay. In the morning then, let me rephrase that. In  
22 the morning, did you have that telephone conversation or did  
23 you say that?

24 A I don't remember.

25 Q Okay. All right. And in the morning, you did not

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 testify, you did not say at that time that the fight did not  
2 begin in the bathroom?

3 A I don't think so.

4 MR. MATHEWS: I'd ask to introduce the tape at this  
5 time, Your Honor.

6 THE COURT: Solicitor, any objection?

7 MR. THORNTON: State -- I don't think I can object,  
8 Judge. No objection.

9 THE COURT: All right. Now, do we have the ability to  
10 show it on the screen?

11 MR. MATHEWS: I tried to work with this last -- I'm not  
12 sure, Your Honor.

13 THE COURT: Vicki, I need someone who can ---

14 MADAM CLERK: Let me see if I can write Deborah.

15 THE COURT: All right. I want to make sure the jury  
16 can see it if we're going to show it -- are we going to show  
17 it on this screen? Just a moment, counsel. Let me make  
18 sure while I've got the jury in here. Are we going to try  
19 to show it on this screen or are we going to show it on this  
20 unit?

21 MR. THORNTON: Your Honor, that one does not have a VCR  
22 hooked up to it.

23 THE COURT: Okay, so it's got to be this one. Ladies  
24 and gentlemen, let me do this for you, because it might take  
25 us a minute and they'll take better care of you back there

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 while I'm getting the technology worked out. If you'd  
2 retire to your jury room, I'll be with you in just a moment  
3 while I get the technology working.

4 (9:51 A.M., THURSDAY, JANUARY 29, 2009, WHEREUPON JURY  
5 EXITS THE COURTROOM WHILE TECHNICAL ISSUES WERE WORKED OUT.)

6 (10:19 A.M., THURSDAY, JANUARY 29, 2009, WHEREUPON THE  
7 JURY ENTERS THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE  
8 HELD ON THE RECORD:)

9 THE COURT: All right. Madam Foreman, and ladies and  
10 gentlemen of the jury, I apologize for the delay.  
11 Unfortunately, our new system, the video works, the audio  
12 has what we believe to have a wiring problem, so we have  
13 video and not audio. So we are having to use a backup  
14 system which require that we bring equipment to the  
15 courtroom and that's the reason for the delay. We apologize  
16 for that.

17 All right, Mr. Mathews, I understand you are moving to  
18 admit the videotape of this witness, Stephanie Ballard,  
19 without objection.

20 MR. THORNTON: Without objection, Judge.

21 THE COURT: All right. Now, although the tape is not  
22 marked yet, Madam Court Reporter, it will be given to you  
23 after it's shown to the jury. It's admitted as Defendant's  
24 Exhibit Number Two, without objection, in the trial of this  
25 case.

## Cross-Examination of Stephanie Ballard by Mr. Mathews

1 (Defendant's Exhibit Number Two was received into  
2 evidence.)

3 Mr. Mathews, let me step down so I can view with the  
4 jury and then you may publish it.

5 Ladies and gentlemen, if any member of my jury,  
6 everyone else has viewed the tape. I have not seen it yet,  
7 nor have you. If you can't hear or see, let me know. You  
8 see we've tried to put an extra microphone, we've turned it  
9 up as high as we can. We're having to use backup equipment.  
10 I want to make sure you can see and hear. Let me know.

11 Mr. Mathews, you may proceed.

12 MR. MATHEWS: Thank you, Your Honor.

13 CROSS-EXAMINATION CONTINUES

14 BY MR. MATHEWS:

15 (VIDEOTAPE STATEMENT OF STEPHANIE BALLARD COMMENCES AT  
16 10:22 A.M. AND ENDS AT 10:48 A.M.)

17 THE COURT: Any additional cross-examination of this  
18 witness?

19 MR. MATHEWS: No, sir.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY DEP. SOL. THORNTON:

23 MR. THORNTON: Stephanie, after this, we see you step  
24 out of the room. I assume that's what we saw on the video  
25 since I was behind it, but after you stepped out of the

Redirect Examination of Stephanie Ballard by Dep. Sol.  
Thornton

1 room, did you leave the Sheriff's Department?

2 A I believe so.

3 Q All right. Did you come back at some point later in  
4 the day and fill out a written statement that Mr. Mathews  
5 read into the record yesterday?

6 A Yes.

7 Q At the time this statement, the video taping was going  
8 on, how long had you been up?

9 A More than a day.

10 Q And had you been consuming alcohol?

11 A Yes.

12 Q Did you consume any alcohol after you left?

13 A No.

14 Q Did you get any sleep?

15 A No.

16 Q All right. And did you sleep at all in between the  
17 time that you were videotaped until when you came back later  
18 in the day and filled out your written statement?

19 A No, not until three days after that.

20 Q All right. Had you had anything to drink, though?

21 A No.

22 Q All right. Thank you.

23 MR. THORNTON: I have nothing further.

24 THE COURT: Re-cross, limited to redirect.

25 MR. MATHEWS: Yes, sir.

Further Recross-Examination of Stephanie Ballard by Mr.  
Mathews

**FURTHER RECROSS-EXAMINATION**

1  
2 **BY MR. MATHEWS:**

3 **Q** At the end of your interview, Officer Stephens,  
4 Detective Stephens said "I'm going to need for you to  
5 rewrite this report, this statement", is that right?

6 **A** Yes.

7 **Q** Okay. And you took the statement home or you filled it  
8 out there at the Sheriff's Office?

9 **A** I went back to the Sheriff's Office.

10 **Q** So you took the statement home and then came back?

11 **A** No.

12 **Q** Okay.

13 **MR. MATHEWS:** No further questions, Your Honor.

14 **THE COURT:** As to this witness, now?

15 **MR. THORNTON:** Your Honor, I'd ask that she be excused  
16 and I don't plan on recalling her for anything. She's asked  
17 that she be allowed to remain in the courtroom.

18 **THE COURT:** Any objection from counsel for the  
19 defendant?

20 **MR. MATHEWS:** No, sir.

21 **THE COURT:** Very well, ma'am. You may step down and  
22 you may remain in the courtroom. Mr. Mathews?

23 **MR. MATHEWS:** Lisa Strickland.

24 **THE COURT:** Lisa Strickland. Ladies and gentlemen,  
25 this witness previously testified, called during the State's

## Cross-Examination of Lisa Strickland by Mr. Mathews

1 case is being recalled to the stand, still under oath and  
2 subject to cross-examination.

3 (LISA STRICKLAND ENTERS THE COURTROOM.)

4 MADAM CLERK: Please come forward.

5 THE COURT: Watch your step right there, Ms.  
6 Strickland.

7 MS. STRICKLAND: Thank you.

8 THE COURT: Make yourself comfortable. Adjust that  
9 microphone for me. I'll remind you, you're still under  
10 oath. Speak into the microphone. Very well, ladies and  
11 gentlemen, this witness has been previously sworn in the  
12 trial of this case, Mr. Mathews, cross-examination.

13 CROSS-EXAMINATION

14 BY MR. MATHEWS:

15 Q Ms. Strickland, you testified under oath about what had  
16 happened in this case. Did you, in fact, on that day, also  
17 say, "I'm gonna call my brother, who's a cop", rather than  
18 "I'm gonna call the police"?

19 A I don't recall.

20 Q It could have been, you just don't remember.

21 A I don't remember.

22 Q And isn't it true that Jake threatened to kill Desmond  
23 that night?

24 A I don't recall Jake saying that.

25 Q Okay. Did you give an interview at the Criminal



## Cross-Examination of Lisa Strickland by Mr. Mathews

1 Investigation Division in Walterboro on April the 12th?

2 A At the Annex?

3 Q Right.

4 A Yes, sir. I wrote a statement.

5 Q Did you also give a verbal statement telling them what

6 happened?

7 A I believe so.

8 Q Okay. In that statement, isn't it true that you said

9 Jake had threatened to kill Desmond?

10 A I don't remember.

11 Q Isn't it also true that you told Officer Stephens that

12 day that you really didn't remember much, that you had

13 patches of memory, but you don't really remember much about

14 what happened?

15 A I remember what happened. It's -- everything happened

16 so fast that it's hard to remember every detail.

17 MR. MATHEWS: Your Honor, I seek to admit the tape into

18 evidence.

19 THE COURT: Pardon?

20 MR. MATHEWS: I'd seek to admit the interview at this

21 time, Your Honor.

22 THE COURT: Any objection?

23 MR. THORNTON: None, Judge.

24 THE COURT: All right. First of all, take out the last

25 one and have the court reporter mark it. Do you have it?

## Cross-Examination of Lisa Strickland by Mr. Mathews

1 MR. THORNTON: They're both on the same tape, Judge.

2 THE COURT: Okay. So it's going to be one exhibit?

3 MR. THORNTON: Yes, sir.

4 THE COURT: All right. This exhibit will also be -- it  
5 will be Defendant's Exhibit Number Two? And it will be the  
6 video without objection, of both the last witness and Ms.  
7 Strickland; is that correct?

8 MR. MATHEWS: Yes, sir.

9 (Defendant's Exhibit Number Two, of Witness Lisa  
10 Strickland video testimony, previously received into  
11 evidence.)

12 THE COURT: All right. Now, Mr. Mathews, when you're  
13 playing this, try not to walk in front of the jury so much.  
14 If you have a problem, you let me know, and I'll get Mr.  
15 Thornton to come so you don't keep walking around the  
16 courtroom. Now, stand in one position and I'll tell you  
17 when to start it.

18 Ms. Strickland, if you can't see the monitor, this is  
19 going to begin in a minute, you let me know.

20 Ladies and gentlemen, if you can't hear or see the  
21 monitor, please let me know. Give me a moment, Mr. Mathews.

22 Proceed. Defendant's Number Two in evidence, without  
23 objection.

24 (VIDEOTAPE COMMENCES AT 10:52 A.M. AND ENDS AT 11:00 A.M.)

25 THE COURT: Is that everything now?

## Redirect Examination of Lisa Strickland by Dep. Sol. Thornton

1 MR. MATHEWS: Yes, sir.

2 THE COURT: Any further cross-examination of this  
3 witness?

4 MR. MATHEWS: No, sir.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. THORNTON

8 Q Ms. Strickland, at some point after this videotape was  
9 done, did you come back to The Annex and fill out, write out  
10 a written statement?

11 A I -- I believe so. We came back to The Annex that next  
12 day.

13 Q All right. Did you sign a written statement at that  
14 time?

15 A Yes, sir.

16 Q And is that the one that Mr. Mathews was questioning  
17 you about yesterday?

18 A Yes, sir.

19 Q All right.

20 MR. THORNTON: I have nothing further, Judge.

21 THE COURT: Recross, limited to redirect?

22 MR. MATHEWS: None.

23 THE COURT: As to this witness?

24 MR. THORNTON: Ask that she be excused, Judge. I don't  
25 know if she wished to remain in the courtroom or not. If

1 she does, I'd ask that she be allowed to.

2 MS. STRICKLAND: I'd like to remain.

3 THE COURT: Any objection?

4 MR. MATHEWS: No, sir.

5 THE COURT: Very well, ma'am. You may step down and  
6 you remain in the courtroom.

7 MS. STRICKLAND: Thank you.

8 THE COURT: Call your next witness, Mr. Mathews.

9 MR. MATHEWS: That would be the defense case and I have  
10 a matter of law.

11 THE COURT: Very well. Madam Foreperson, and ladies  
12 and gentlemen of the jury, I have to take up a quick matter  
13 of law. I'll be back with you just as soon as I possibly  
14 can. Please do not discuss the case. I'll be back with you  
15 in just a moment. You may return to the jury room at this  
16 time.

17 (11:10 A.M., THURSDAY, JANUARY 29, 2009, WHEREUPON JURY  
18 EXITS THE COURTROOM, THEREAFTER, THE FOLLOWING PROCEEDINGS  
19 WERE HELD ON THE RECORD:)

20 THE COURT: Yes, sir, Mr. Mathews, I have a number of  
21 things that I think we need to put on the record, but I'll  
22 be happy to hear from you on a new matter of law.

23 MR. MATHEWS: Thank you, Your Honor. I would again  
24 move for a directed verdict of acquittal. There is no  
25 indication here, I don't think, in a light taken most

1 favorable to the State, of any intention to kill, possibly  
2 involuntary manslaughter, possibly voluntary manslaughter,  
3 but I don't think there's evidence from which the jury can  
4 conclude there was a murder in this case, and I'd ask for a  
5 directed verdict of acquittal on that charge.

6 **THE COURT:** Very well. Mr. Thornton?

7 **MR. THORNTON:** Your Honor, for the same reasons as  
8 stated before, the State would ask the Court to please deny  
9 that motion. They -- if for nothing else, Judge, two of the  
10 witnesses both testified, including on the videotape, that  
11 Mr. Mathews has made such great deal about its evidentiary  
12 value, that the defendant told the victim he was going to  
13 kill him. I think that the jury is free to infer his intent  
14 from that statement alone.

15 **THE COURT:** Mr. Mathews, your motion for directed  
16 verdict is respectfully denied. I believe it's an issue for  
17 the jury. I want the record, now, to reflect that I have,  
18 with the jury, reviewed the entire video statements that Mr.  
19 Mathews made as a subject of his motion for mistrial, and I  
20 do not believe from my reviewing the videotapes that there  
21 is any reason to grant a mistrial in this case. I've ruled  
22 on that earlier, but I want to say that now that I've  
23 actually looked at every bit of the videotape.

24 Mr. Mathews, my recollection is that yesterday you read  
25 the entire written statements, or at least the portions you

1 felt were relevant to this case, to the jury during your  
2 cross-examination of the witnesses, Ballard and Strickland;  
3 isn't that true?

4 **MR. MATHEWS:** Yes, sir.

5 **THE COURT:** So even though the statements are not in  
6 evidence, which was objected to, and I sustained it, I think  
7 it would be appropriate, Solicitor, to make them a Court's  
8 exhibit, so that any Appellate Court could review the  
9 videotape and the written statements; any objections?

10 **MR. THORNTON:** No objection, Judge.

11 **THE COURT:** All right. I want you to provide me with  
12 copies as a Court's exhibit. Do you have them? We'll make  
13 them up here if they need to be made.

14 **MR. MATHEWS:** I think they're still up there, Your  
15 Honor. They should be.

16 **THE COURT:** One of them is. Are both of them?

17 **COURT REPORTER:** I need Lisa Mitchell's. I'm not sure  
18 if the defense has it or the State.

19 **THE COURT:** Mr. Mathews, go take a seat.

20 **MR. MATHEWS:** Oh, okay. I'm sorry.

21 **THE COURT:** You have a tendency to want to get up and  
22 walk around and leave the courtroom and move around, but you  
23 are gonna learn that you are gonna take a seat like  
24 everybody else. Do you have a copy of both statements, Mr.  
25 Mathews?

1       **MR. MATHEWS:** I have had, but I don't know that I do  
2 now.

3       **THE COURT:** The court reporter has which statement?

4       **COURT REPORTER:** Michelle Strickland; we need Ballard.

5       **THE COURT:** All right. We have Ms. Strickland's  
6 statement which was marked as what? It's not in evidence in  
7 this case.

8       **COURT REPORTER:** It's exhibit one.

9       **THE COURT:** By who?

10       **COURT REPORTER:** It was for the State, but it hasn't  
11 been introduced.

12       **THE COURT:** She's got a pre-marked sticker on Ms.  
13 Strickland's State's Exhibit Number One, but we don't have  
14 the written statement of Ms. Ballard. Do you have a copy?

15       **MR. THORNTON:** I do, Your Honor. The problem is that  
16 some of the copies that we have, one of them has pencil on  
17 it and it didn't copy well. I'm going to show Mr. Mathews  
18 my copy, which has some highlighting marks on it, but that's  
19 all. If that's satisfactory with him, I'll let that be the  
20 Court's exhibit.

21       **MR. MATHEWS:** If we can substitute later, I don't think  
22 it would take but a minute to make copies. We could just  
23 ask Ms. Syfrett to make a copy that would probably be the  
24 best way to go.

25       **THE COURT:** Ms. Syfrett, would you make a copy for me,

1 please?

2 MR. THORNTON: Your Honor, before she does that, I've  
3 been handed, or I'm being handed, the original, which I will  
4 give to the Court, because I have copies of the statements.  
5 I'll just give the Court the original.

6 THE COURT: Talk it over with Mr. Mathews and make sure  
7 he's satisfied with the originals, now.

8 MR. THORNTON: I'll tear the back copy off. I will  
9 give the Court the white copy, which is a clear copy, Judge.

10 MR. MATHEWS: Your Honor, I note on here that there are  
11 different colors of ink on this. It looks like it has been  
12 done two different times. Again, I'm seeing this for the  
13 first time right now, although, it wouldn't matter, the  
14 original can be a copy. I mean, the original can be made an  
15 exhibit, that's fine.

16 THE COURT: It's an exact duplicate of what you were  
17 provided, is it not, regardless of what color ink it was in?

18 MR. MATHEWS: Your Honor, what color ink shows that  
19 they were written at separate times, so it's not the same  
20 thing.

21 THE COURT: That's your argument. It could be that a  
22 pen ran out while they were writing it at the same time, Mr.  
23 Mathews, so that doesn't conclusively show anything. What  
24 I'm asking you is, does it contain the same information you  
25 were provided prior to trial insofar as the written



1 statement is concerned, so we can make it a court's exhibit?

2 MR. MATHEWS: Yes.

3 THE COURT: Very well. If you will hand it to the  
4 clerk, she'll hand it to the court reporter. Which one do  
5 you want back? You want the yellow copy?

6 MR. THORNTON: I just need, and there's only just the  
7 top page, has a yellow copy on it.

8 THE COURT: Give Mr. Thornton back that. And then, do  
9 you want the yellow or the white?

10 MR. THORNTON: Just the yellow, Judge.

11 THE COURT: Give the court reporter the white and give  
12 Mr. Thornton back the yellow.

13 MR. THORNTON: Thank you, Your Honor.

14 THE COURT: How many pages total?

15 MR. THORNTON: Should be four pages total, Your Honor.

16 THE COURT: All right. Mr. Mathews, I'm marking as  
17 Court's exhibit -- this will be number two, Becky?

18 COURT REPORTER: Stephanie Ballard, number two.

19 THE COURT: This will be Court's exhibit Number Two,  
20 the original statements of Ms. Strickland and Ms. Ballard,  
21 the written statements, so that the Appellate Court can  
22 review it. I have, also, in light of the fact that the  
23 defendant has rested, I need to inquire whether the State  
24 intends to call any reply testimony.

25 MR. THORNTON: No, sir.

1       **THE COURT:** All right. Now that I've reviewed the  
2 video with the jury in the box, I decline your invitation,  
3 Mr. Mathews, to introduce the video statement of the  
4 defendant into evidence in the trial of this case. I think  
5 it improperly bolsters testimony and I see no basis for  
6 doing so on the basis you're asking for, which was to show  
7 his condition, in light of the fact that you've introduced  
8 the picture, which the video would show, so I decline to do  
9 it.

10       I think you have given me all of your requests to  
11 charge.

12       **MR. MATHEWS:** I think so, Your Honor. I would like to  
13 talk with Mr. Sams about whether or not we would request a  
14 charge on voluntary manslaughter. That's the one thing  
15 where ---

16       **THE COURT:** I intend to charge voluntary manslaughter.

17       **MR. MATHEWS:** Whether or not I request it, Your Honor?

18       On involuntary manslaughter, I was discussing the  
19 possibility of not doing that, at a great risk. I mean,  
20 obviously, there's a great risk, but ---

21       **THE COURT:** Mr. Mathews, I'm asking you if I have all  
22 of your requests to charge. If you want time to talk to  
23 your client, I'll give you that, but there's no need in you  
24 telling me what you intend to discuss with your client.  
25 Take a seat, Mr. Mathews. Take a seat. You have a tendency

1 to stand up. Take a seat.

2 MR. MATHEWS: Okay.

3 THE COURT: When I call on you, I'll let you stand up  
4 and speak. Is there any other matter concerning the  
5 requests to charge?

6 MR. MATHEWS: Just to the exhibits, not a request to  
7 charge.

8 THE COURT: All right. Any other requests to charge  
9 from the State?

10 MR. THORNTON: No, sir, Judge. At the appropriate  
11 time, I'd like to be heard on the charge of involuntary  
12 manslaughter.

13 THE COURT: I'll be glad to hear argument on it. All  
14 right, Mr. Mathews, now, before -- I'm on requests to charge  
15 right now. You've requested involuntary manslaughter. It  
16 is my intention to charge murder, voluntary manslaughter,  
17 and self-defense. Are you withdrawing your request to  
18 charge for involuntary or not? I'll be glad to hear  
19 argument on it.

20 MR. MATHEWS: Thank you, Your Honor. Your Honor,  
21 involuntary manslaughter is the unintentional killing of  
22 somebody with criminal negligence. I think that the  
23 evidence very clearly shows that the defendant did not  
24 intend to kill Mr. Frazier. I don't think there's any --  
25 there were, perhaps, some statements when the officer came

1 in and said -- Officer Dunn came in and said that what he  
2 said, "I can't let him up or he will want to fight me." I  
3 think the evidence was that -- that this statement was  
4 repeated by Ms. -- also repeated to Ms. Glover. She denied  
5 it, but -- or said she couldn't say whether she said it or  
6 not, but Ms. Sams said that she said that when she was  
7 listening in on this, that Desmond had said that he would  
8 want to fight me. So it's clear that he believed that he  
9 was in danger, that may have been criminally negligent.  
10 Maybe he -- maybe he wasn't really in danger, but he  
11 certainly believed that he was, and that should give rise to  
12 involuntary manslaughter, and that's why I'm requesting that  
13 charge, Your Honor.

14 **THE COURT:** Very well. Take a seat.

15 Mr. Thornton, happy to hear from you.

16 **MR. THORNTON:** Your Honor, the State would object to  
17 that instruction, if for no other reason, Judge, there are,  
18 basically -- although Mr. Mathews, I think, has done a good  
19 job of pointing out some inconsistencies in witness  
20 testimony, there's two basic stories. The story from  
21 everybody, but Mr. Sams, is that there was a fight that Mr.  
22 Sams started by grabbing the rearend of Mr. Frazier's  
23 girlfriend, that he then attacked Mr. Frazier and choked him  
24 to death.

25 Mr. Sams got on the stand yesterday and claimed that he

1 did nothing wrong, that he accidentally bumped into his  
2 cousin. His cousin, Mr. Frazier, the victim, then attacked  
3 him, and he acted in self-defense. So the only possible  
4 charges from the State's perspective, Judge, are murder, if  
5 he had malice aforethought, but intended to kill him;  
6 manslaughter, because it's a heat of passion during an  
7 argument and fight; or self-defense, and he walks. There's  
8 no criminal negligence shown. His story is he didn't do  
9 anything wrong; it was all self-defense. So the State would  
10 object to any charge on involuntary defense law, Your Honor.

11 **THE COURT:** Very well. Involuntary manslaughter is the  
12 unintentional killing of another person, without malice,  
13 while engaged in an unlawful activity that does not  
14 naturally intend to cause death or great bodily harm; or it  
15 is the unintentional killing of another, without malice,  
16 while engaged in a lawful activity, with reckless disregard  
17 for the safety of others.

18 Unintentional doesn't only mean, and we sometimes get  
19 this confused in our law, it does not mean whether or not  
20 you had the intent to kill. It also means that you did not  
21 intend for anyone to be seriously injured, and because of  
22 that definition and what I've heard in this case, I think  
23 it's absolutely appropriate, Mr. Mathews, to grant your  
24 request to charge self-defense, which would exonerate the  
25 defendant of any criminal responsibility, based on your

1 defense. I decline your invitation to charge involuntary  
2 manslaughter. It is my intention to charge voluntary  
3 manslaughter and murder.

4 Now, are there any other matters before I bring the  
5 jury back -- Vicky, because it's 11:20, and I'm going to  
6 give them some time to argue -- my charge is going to take a  
7 little while. We're probably not going to get this to the  
8 jury before about, I would estimate, 12:45 or 1:00. So I  
9 think it would be a good idea, now, to go ahead and take a  
10 lunch order from the jury, so that they have their lunch  
11 here around 1:00 to 1:15, and they can eat lunch at the time  
12 they, hopefully, if I'm estimating correctly, begin their  
13 deliberations. Will you go ahead and do that for me?

14 **MADAM CLERK:** Yes, sir.

15 **THE COURT:** All right. Mr. Mathews, I understand that  
16 you have another matter which you wish to place on the  
17 record outside the presence of the jury; is that correct?

18 **MR. MATHEWS:** Yes, sir.

19 **THE COURT:** All right.

20 **MR. MATHEWS:** Your Honor, all I wanted was to have this  
21 Desmond Sams' videotape also marked as a court's exhibit,  
22 that's all.

23 **THE COURT:** Is there anything -- again, I asked you  
24 this earlier, and you told me what you intended to show. Is  
25 there anything that the Court needs to review in that tape,

1 different from what you've told me during your argument in  
2 the trial of this case?

3 **MR. MATHEWS:** What I told the Court in chambers and ---

4 **THE COURT:** Well, I put it on the record, because  
5 what's in chambers isn't on the record. You've told me  
6 about it on the record that it shows his physical condition,  
7 which I told you was already done by Defendant's Exhibit  
8 Number One, and the way he moved, is what you told me on the  
9 record. Is there anything else you want to invite my  
10 attention to in my ruling on declining to allow you to  
11 introduce it into evidence?

12 **MR. MATHEWS:** Yes, sir. One of the -- one of the --  
13 in the rule that Mr. Thornton quoted at sidebar, one of the  
14 things in there says that you can use the prior consistent  
15 statement if you're trying to prove that somebody is  
16 inconsistent with something previous to that, in addition to  
17 his appearance, and I don't want to be just limited to one  
18 picture, if I've got other evidence available.

19 I understand the Court's ruling. I don't want to get  
20 tossed in jail, so I'm not going to argue it anymore, but  
21 it's what I said, it's his demeanor, it's how he looks, he  
22 has a difficult time talking because he's got a bloody lip,  
23 his eye is obviously swollen shut, but you can see that in  
24 the picture, but you can see it more, notice it more, and  
25 appreciate it more in this, and that's -- in addition to the

1 element of it is a prior statement consistent with what he  
2 testified to in trial, in addition to that. So those would  
3 be the reasons, Your Honor. I believe the Court has all the  
4 information the Court needs to rule, but I just wanted this  
5 as an exhibit.

6 **THE COURT:** Yeah, and I need -- I'm asking if I need to  
7 review it any further, but you've told me what you believe  
8 that I would be looking at if I reviewed it, is that  
9 correct?

10 **MR. MATHEWS:** If the Court would like to review it, if  
11 it makes any ---

12 **THE COURT:** That's not what I'm asking. I'm asking do  
13 you feel you missed anything that I need to look at, other  
14 than what you've told me, to make a ruling?

15 **MR. MATHEWS:** Your Honor, I think it would be helpful  
16 for the Court to look at it.

17 **THE COURT:** All right. Set it in the thing and I'll  
18 take a look at it during this break. How long is it?

19 **MR. MATHEWS:** About five minutes, Your Honor.

20 **THE COURT:** Becky, do you have that exhibit.

21 **MR. MATHEWS:** I guess this needs to be marked, too.  
22 That's the two girls.

23 **THE COURT:** You got a marker on that, now? That's  
24 number two, Defendant's Exhibit Number Two.

25 **COURT REPORTER:** Yes, sir.



1       **THE COURT:** All right. Put this in, let me look at it,  
2 David.

3       **MR. MATHEWS:** His statement's right here. I guess we  
4 can mark that as three.

5       **THE COURT:** No, not yet. Put it in, let me look at it.

6       (THE COURT REVIEWS VIDEOTAPE OF DESMOND SAMS.)

7       **MR. MATHEWS:** Your Honor. I think that's all. The  
8 significant part of it, seeing that reminds me of something,  
9 an additional ground for admitting that, Your Honor.

10 Detective Inabinett testified that he did not talk to Mr.  
11 Sams at the hospital. I believe that was his testimony; and  
12 this would show that Detective Inabinett admitted, in that  
13 conversation, that he did talk to Mr. Sams at the hospital,  
14 so that would be an additional reason, Your Honor.

15       **THE COURT:** Very well. Thank you very much for giving  
16 me the opportunity to review the tape. I'd be happy to hear  
17 from you, now, Solicitor.

18       **MR. THORNTON:** With regard to the admission of the  
19 tape, Judge, I apologize about, I probably didn't make this  
20 argument clear earlier, but under the Rule that I  
21 referenced, I believe it's 801(B)(1)(B), Judge, but I  
22 reference that ---

23       **THE COURT:** It's difficult; it's 801(D)(1)(B).

24       **MR. THORNTON:** Yes, Your Honor. Your Honor, Mr.  
25 Mathews is correct that the use under that Rule is with a

1 prior consistent statement, it's a two-part test, as I  
2 understand it, under the Rule, Judge. The first is ---

3 **THE COURT:** No, it's "or" not "and".

4 **MR. THORNTON:** Well, there's a dual, something dual  
5 that you have to do, Your Honor, which is this ---

6 **THE COURT:** Consistent with the declarant's testimony  
7 and is offered to rebut and express, or imply, the charge  
8 against the declarant of recent fabrication or improper  
9 influence or motive.

10 **MR. THORNTON:** Yes, sir. And there's an additional  
11 component in a case -- the cases that reference that which  
12 say that it has to be the prior consistent statement, has to  
13 be made prior to the allegation of fabrication.

14 **THE COURT:** The actual rule says that, provided the  
15 statement must have been made before the alleged  
16 fabrication, or before the alleged improper influence, or  
17 motive, arose.

18 **MR. THORNTON:** The State stipulates that I accused him  
19 on the stand of fabrication, but I'm accusing him of a  
20 fabrication from the time that he killed the victim until  
21 now. This statement that he made at the police department  
22 would be after that, not prior to it. You can't use a prior  
23 consistent statement, unless the consistent statement was  
24 made prior to my allegation of fabrication. I didn't say  
25 that he just fabricated this story yesterday. My contention

1 is that the entire story is a fabrication, Judge. It's just  
2 not proper to allow it for that purpose. It amounts to  
3 improper bolstering and it's cumulative, Judge.

4       **THE COURT:** All right. Let the record reflect that  
5 I've reviewed the tape now, and I'd like to say that my  
6 review of the tape really does not show with the detail that  
7 Mr. Mathews has already been able to demonstrate to the  
8 jury, the extent of injuries to his client, like Defendant's  
9 Exhibit Number One. So, I certainly see no basis to admit  
10 the tape on the basis of showing the injuries, because I  
11 think they're clearly shown in the photograph, which is  
12 Defendant's Exhibit Number One.

13       I also do not believe the tape is admissible to bolster  
14 his client's testimony. The jury got the chance to see his  
15 client testify. He was cross-examined, and he got the  
16 opportunity to do that. There is not any additional  
17 information on the tape. In fact, I'm concerned about  
18 prejudice to the defendant admitting, because he exercises  
19 his constitutional right to have an attorney, and I,  
20 frankly, am worried about the fact that he chooses not to  
21 talk, and exercise his constitutional right, and in some way  
22 hurting him, if it were published to the jury. So I decline  
23 to admit the tape. I do not believe that the tape provides  
24 a sufficient basis to be admitted into evidence in the trial  
25 of this case, and I've reviewed the tape. I will mark the

1 tape if you'll take it out for me please, Solicitor.

2 Take a seat, Mr. Mathews.

3 Hand it to the court reporter. Mr. Mathews, you and I  
4 are going to have a meeting of the minds. That is, when you  
5 have witnesses, I'll get them for you from downstairs once  
6 you place them. You don't have to walk out of this  
7 courtroom when you feel like it.

8 Now, you walk around this courtroom blocking the jury's  
9 view, or the witness's view, of evidence. You need to learn  
10 to stay in your seat. When I call on you, I'll give you the  
11 chance to stand and speak, but this idea that you suddenly  
12 can leave the courtroom and block the jury or witness is not  
13 going to be tolerated by the Court, from either side; do you  
14 understand that?

15 MR. MATHEWS: I do.

16 THE COURT: Good. Then I hope you'll comply to that  
17 ruling because I will enforce it.

18 All right. You have it now? It will be Court's  
19 Exhibit Number Three, so that there's a record of what's on  
20 the tape, insofar as the statement of the defendant.

21 COURT REPORTER: Your Honor, there will be four.

22 THE COURT: Four? I have a jury note ---

23 COURT REPORTER: The videotape of the two witnesses,  
24 Ballard and Mitchell, is three.

25 THE COURT: Well, what's Court's Exhibit Number Two?

1       **COURT REPORTER:** That was --- I'm sorry, I wrote that  
2 down wrong. My mistake, I'm sorry.

3       **THE COURT:** There will be three Court's exhibits. The  
4 note from the jury, the videotape of Ballard and Strickland,  
5 which Mr. Mathews put into evidence, and now, Number Three,  
6 will be the video statement of the defendant, which is the  
7 Court's Exhibit. Is that right? One, two and three?

8       **COURT REPORTER:** Yes, sir.

9       **THE COURT:** Now, how long do you need to argue? It's  
10 quarter to twelve, and I think my charge is going to  
11 probably last, I'm charging self-defense, I'm charging  
12 murder, I'm charging involuntary manslaughter. I tell you  
13 something neither one of you asked for that, Mr. Mathews, I  
14 particularly ask this question to you. I'm going to charge  
15 multiple charges for you and you didn't ask for that, but,  
16 and that means that they have to decide them separately,  
17 regardless of how they feel about either indictment. It's  
18 that each case and each indictment is to be to write a  
19 separate verdict; and I want to show you the verdict form.  
20 What about voluntary intoxicification? It's been raised quite  
21 a bit in this trial, and ---

22       **MR. MATHEWS:** No, sir, I don't want that.

23       **THE COURT:** Solicitor?

24       **MR. THORNTON:** The State would request a charge of  
25 voluntary intoxicification, due to the number of witnesses. I

1 think that everybody on both cross and direct, from both  
2 sides, has admitted there was an extreme amount of alcohol  
3 consumed.

4       **THE COURT:** Mr. Mathews, I'll be happy to hear from you  
5 on that. Shouldn't the jury be told in light of the  
6 evidence in this case, the status of voluntary  
7 intoxication, as to whether that constitutes an excuse to  
8 criminal conduct?

9       **MR. MATHEWS:** May I stand, Your Honor, and address the  
10 Court?

11       **THE COURT:** When I call on you, I always want you to  
12 stand and address the Court.

13       **MR. MATHEWS:** Your Honor, I think the voluntary  
14 intoxication in this case, certainly it wouldn't be, as I  
15 understand the law on voluntary intoxication. I don't  
16 think it would be helpful to my client, that's why I didn't  
17 ask for it. Mr. Thornton didn't ask for it, initially, and  
18 now is, after it having been pointed out; but, in any event,  
19 I don't think it helps, other than to just look at the  
20 overall circumstances.

21       Certainly, the defendant's voluntary intoxication -- a  
22 charge on that doesn't help my client at all in terms of if  
23 there was a charge that said it makes it more reasonable to  
24 expect that my client was under attack, because of the  
25 intoxication of the victim. Now, if we could have that

1 under the charge, I would love it, but in terms of voluntary  
2 intoxicification, in the general sense, it is not used -- you  
3 can't use that to diminish criminal intent. I'm afraid that  
4 the jury would get the wrong impression, that I was saying  
5 that everybody was drinking, meant that Mr. Sams was excused  
6 from any criminal intent because of his intoxication. I  
7 wouldn't intend that at all, and I'm worried that if a  
8 voluntary intoxicification charge were given to the jury, the  
9 jury might think that I was arguing because he was drunk,  
10 his specific intent would be diminished, and that's not how  
11 I understand it. I think it would be confusing.

12 I think it would be very harmful to my client if the  
13 jury were given that. I think, certainly, alcohol is a  
14 factor, but I think it's more a factor in terms of the  
15 victim and the reasonableness of my client -- the ability of  
16 the witnesses to remember.

17 Now, if there's a charge that talks about the  
18 intoxicification of the witnesses and their bearing, their  
19 ability to recall and tell the truth, then certainly that;  
20 but as far as it goes with intent, I think it would be very  
21 harmful to my client, and I would strenuously object to it.

22 **THE COURT:** All right. Mr. Mathews, well of course,  
23 it's your duty, if you had a charge on the intoxicification of  
24 witnesses, which I've never seen before, to have submitted  
25 it, which you did not do. The Court intends to charge

1 voluntary intoxication because I'm going to charge  
2 criminal intent, and I need to tell them when I charge  
3 criminal intent whether or not voluntary intoxication is  
4 an excuse for criminal intent or not, so I intend to charge  
5 it, and your objection is noted for the record.

6       It's my intention to charge the following things so you  
7 can prepare your argument, and tell me how long that you  
8 think you'll need. I will charge multiple charges,  
9 presumption of innocence, reasonable doubt, duties of the  
10 trial judge and jury, credibility of witnesses, expert  
11 witnesses, direct and circumstantial evidence, criminal  
12 intent, voluntary intoxication, murder, voluntary  
13 manslaughter, assault and battery of a high and aggravated  
14 nature, and self-defense. Now, how long do you need to  
15 argue? Can you do it within thirty minutes, counsel?

16       **MR. MATHEWS:** I would likely to say so, probably, but I  
17 certainly don't want to be called down in the middle of my  
18 argument.

19       **THE COURT:** Well, I'm not going to call you down. I'm  
20 going to give you as much time as you need. I'm trying to  
21 plan it so the jury doesn't eat cold food, that's the only  
22 reason I'm trying to plan it.

23       **MR. MATHEWS:** Perhaps it would be prudent to let them  
24 eat first, Your Honor.

25       **THE COURT:** Perhaps it would do what?



1       **MR. MATHEWS:** Be prudent, Your Honor. If there's some  
2 concern over time, I think probably the best thing,  
3 obviously, to this Court -- this is obviously the Court's  
4 courtroom, but if time is a factor, I certainly don't want  
5 either Mr. Thornton or me to be -- to be thinking about  
6 lunch or ---

7       **THE COURT:** Mr. Mathews, I'm not asking about you and  
8 Mr. Thornton. I understand y'all will get lunch, and time  
9 is only a factor to try to accommodate the jury, if I can,  
10 that's the reason we have planning sessions in this  
11 courtroom. How long do you think you need to argue? I'm  
12 asking you?

13       **MR. MATHEWS:** Forty minutes.

14       **THE COURT:** Very well. I'll give you thirty, and I'm  
15 not trying to stop you, but if you think you can do it --  
16 Mr. Thornton, can you do it in twenty or thirty?

17       **MR. THORNTON:** I can do it in fifteen, Judge.

18       **THE COURT:** All right. Now, counsel, I ask you to  
19 approach the bench and let me show you this verdict form and  
20 tell me if either one of you have any objections to the  
21 verdict form I've prepared.

22       **(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD;**  
23 **THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE**  
24 **RECORD:)**

25       **THE COURT:** Any problem with it from the State?

1       MR. THORNTON: No, sir.

2       THE COURT: Any problem from the defendant? With the  
3 verdict form?

4       MR. MATHEWS: No, sir.

5       THE COURT: Thank you, very much. All right. Let the  
6 record reflect that both counsel have reviewed the verdict  
7 form in this case and both have advised me at the bench that  
8 they have no objection to the verdict form. Counsel for the  
9 defendant feels he needs at least 20 minutes, I'm giving him  
10 30 minutes for argument. The order of argument -- just a  
11 moment, Mr. Mathews. Solicitor, what's the State's position  
12 on the order of argument?

13       MR. THORNTON: Your Honor, the State's position is  
14 defendant has introduced evidence, we would ask to have  
15 final argument to the jury.

16       THE COURT: Mr. Mathews, as to the order of argument,  
17 be happy to hear from you.

18       MR. MATHEWS: No objection as to the order of argument.

19       THE COURT: All right. Anything else from the State  
20 before I bring the jury?

21       MR. THORNTON: No, sir.

22       THE COURT: Anything else from the defendant before I  
23 bring the jury?

24       MR. MATHEWS: Your Honor, yes, sir. May I stand? Just  
25 that I had asked for forty minutes, not twenty.

1       **THE COURT:** I'm sorry, I heard twenty. I apologize. I  
2 actually heard you say twenty. I misunderstood you. Okay.  
3 You want forty minutes, Mr. Mathews? I'll give you forty  
4 minutes.

5       **MR. MATHEWS:** I may not use it, Your Honor.

6       **THE COURT:** I understand, but I want to make sure you  
7 got all the time you ask for. Solicitor, you also have  
8 forty minutes. The State will have closing argument, with  
9 the burden of proof; defendant has put up the testimony, so  
10 the defendant will argue first and the State second, unless  
11 you agree otherwise.

12       Any objection to the order of argument from the State?

13       **MR. THORNTON:** None, Your Honor.

14       **THE COURT:** From the defendant?

15       **MR. MATHEWS:** No, sir.

16       **THE COURT:** Very well. All right, now, when we bring  
17 the jury in, Mr. Mathews, you'll get first argument,  
18 followed by the State. I'm going to ask that no one -- I  
19 remind you to remain in the courtroom, of course, but while  
20 the lawyers argue to the jury and my charge on the law, I  
21 ask that you refrain from going in and out of the courtroom,  
22 so if you need to leave the courtroom, I'd ask you to do it  
23 at this time, because there will not be a break, unless we  
24 really run long.

25       Each side's going to have forty minutes, if they choose

1 to use it, and my charge is probably going to take about  
2 thirty, so it could be as long as an hour and a half before  
3 we take a break, so if anybody needs to take one, I'd ask  
4 you to leave the courtroom at this time before I bring the  
5 jury in.

6 (A BRIEF RECESS WAS HELD BY THE COURT AT 11:55 A.M.;  
7 WHEREUPON, THE COURT RESUMED AT 12:00 P.M., AND THE  
8 FOLLOWING WAS HELD ON THE RECORD AT 12:00 P.M.)

9 THE COURT: Let the record reflect that I've just given  
10 counsel, and the defendant, a break so that we can proceed  
11 in this matter. Bill, if you would bring us the jury,  
12 please.

13 (12:00 P.M., THURSDAY, JANUARY 29, 2009, JURY ENTERS  
14 THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE  
15 RECORD.)

16 THE COURT: Ladies and gentlemen of the jury, you've  
17 now heard the evidence from the defendant in this case. Is  
18 there any reply testimony from the State of South Carolina?

19 MR. THORNTON: None, Your Honor.

20 THE COURT: All right, ladies and gentlemen, you've  
21 heard all the evidence in this case. You will now hear the  
22 closing arguments of the attorneys, followed by my charge to  
23 you on the law. I ask that you give the attorneys your  
24 careful consideration.

25 Mr. Mathews?

1           **MR. MATHEWS:** Thank you, Your Honor.

2                           **CLOSING ARGUMENT**

3   **BY MR. MATHEWS:**

4           Good afternoon, Madam Foreman, ladies and gentlemen of  
5 the jury. You've now had a chance to see all of the  
6 evidence in this case. We are here today, as the Court had  
7 mentioned earlier, to determine justice. But justice as it  
8 is decided in American jurisprudence is that the State has  
9 to prove, beyond a reasonable doubt, the charges that they  
10 brought. That's very important. It's up to you. The Court  
11 has told you at the beginning of this trial, that whatever  
12 the judge thinks, whatever your -- your opinion is the only  
13 one that counts. What I think, what Mr. Thornton, what Ms.  
14 Stilley thinks, is not important, and you base that on what  
15 was presented from this stand and any exhibits that you may  
16 have. It would be about impossible for anyone to prove  
17 their innocence in a case, in most cases it would, that's  
18 why the State has to prove their case beyond a reasonable  
19 doubt.

20           Now, you will be given an opportunity to decide between  
21 three separate charges in this case. You'll be given the  
22 opportunity to decide whether Desmond Sams is guilty of  
23 murder. Murder is the unlawful intentional killing of  
24 someone with malice aforethought. There's some other  
25 things, but the most important thing is intentional killing,

1 with malice aforethought. Ladies and gentlemen, nothing  
2 from that stand supports that. There may have been a couple  
3 of statements about "I'm going to kill you" from both sides,  
4 but this was -- this was a fight that broke up.

5 Mr. Sams was defending himself. Desmond was defending  
6 himself from somebody that he loved, from his cousin. Now,  
7 I'm sure the State will get up here and stomp around and  
8 talk about a long time of choking somebody or whatever, but  
9 what was the testimony that came from the stand regarding  
10 intent?

11 From Sergeant Dunn, who was the first on the scene,  
12 what did he say when he arrived? What did he see? "Get  
13 up." "I can't. He will want to fight me." Mr. Sams  
14 believed he was defending himself.

15 Now, we've heard inconsistent statements, and, my word,  
16 I think the State will probably tell you there are two  
17 stories in this case. There are Mr. Sams, and everyone  
18 else's; but you know, there were plenty of stories out  
19 there.

20 Ms. Strickland came out and told you that she was  
21 choked, and even though there were three statements and a  
22 video statement from Ms. Ballard, plus her statement on the  
23 phone, none of those stories say anything about Lisa  
24 Strickland being choked, that's ridiculous. It didn't  
25 happen. Mr. Sams testified it didn't happen. Nobody other

1 than Ms. Strickland, who testified in her tape, that you  
2 would not have seen had I not introduced it, that Ms.  
3 Strickland's memory was patchy. "I was in and out. In and  
4 out of the house? In and out of consciousness? I don't  
5 know what happened. She was drunk. They had all been  
6 drinking.

7 Now, the Judge will give you a charge on voluntary  
8 intoxicification. The most important thing to come from that  
9 stand is that everybody was drinking, and as that related to  
10 their ability to remember what happened, and the appearances  
11 given to Mr. Sams, those are important things.

12 The pathologist testified here that, in her opinion,  
13 the cause of death was strangulation, and based partly on  
14 petechiae, which is a burst blood vessel in the eyes. She  
15 also said, of course, that throwing up could cause that, and  
16 she was not told in her history that Mr. Frazier had thrown  
17 up. But that's an issue as to the cause of death; but on  
18 balance, it certainly, it appears that the State may well  
19 have proved that. That's obviously your decision to make.  
20 But certainly there were things that were missed. And  
21 that's just one of the things that were missed.

22 The two stories, not two stories, several stories, four  
23 stories, and see, that's why it's so important, the burden  
24 of proof is so important. If you have a reasonable doubt,  
25 because these stories are so different, you don't have to

1 make a decision that anybody was lying, although it looks  
2 like somebody was.

3       They didn't remember -- and it could be, for example,  
4 somebody said there were people that suffered genuine losses  
5 here. Everybody suffered genuine losses here. This was a  
6 tragic, tragic accident. This was a situation where two  
7 guys were fighting over the perception, which Mr. Sams  
8 testified was wrong, but the perception that he had made a  
9 pass at his cousin's girlfriend.

10       There was testimony, and again, I -- I'm reluctant to  
11 talk too much about Ms. Strickland's testimony, because it  
12 was all over the place. It was several different stories,  
13 things that could not have made any sense at all. But the  
14 one thing that she did testify that it was abundantly true,  
15 is that everybody was drunk.

16       So what are you going to remember when you see all of  
17 that? Perceptions of time, how long things take, all those  
18 things. What did Ms. Ballard say, on the stand, and not  
19 when she testified initially, not in her two statements, and  
20 not in her -- in her testimony, not in those did she testify  
21 to this, but on the video. She's on the phone before the  
22 police got there, and what did she say? She didn't talk  
23 about the things that Jake said, "Man, nobody hits on my old  
24 lady." When did you hear that for the very first time?  
25 When she's on a phone call with somebody else. When



1 nobody's watching.

2       So what's the truth? What's the truth? Maybe there  
3 was a misunderstanding, I don't know. Mr. Sams said that he  
4 did not intend to grab Stephanie's behind, and then, we hear  
5 about a fight that broke out where? We've got a statement  
6 that says it broke out in the bedroom. We've got a  
7 statement, and the testimony, very clear testimony from the  
8 stand, that this fight began in the bathroom, and it was  
9 very detailed: grabbed him by the throat, pushed him down  
10 into the bathtub.

11       But you know what? Just hours after the incident, very  
12 clearly, and even though Ms. Ballard was also obviously  
13 intoxicated, her memory and her statements were very clear.  
14 She wasn't slurring when she said this. She was asked by  
15 Detective Stephens, asked, "Did this begin in the bathroom?"  
16 and she didn't say, "It could have. The argument maybe  
17 did." She said, "No, in the bedroom." You can't be less  
18 consistent than that. Where did it begin? It did not begin  
19 in the bathroom. Clear testimony here, from the stand.  
20 That's not true. That's not true. It didn't happen that  
21 way.

22       Ms. Ballard testified that there were three fights,  
23 three. Now, if you want to believe that, then obviously,  
24 the second fight wasn't caused by this offensive touching,  
25 if you believe that. Everything was cool, was settled down,

1 got them separated. "Lisa went out with Desmond out into  
2 the living room. I went with Jake into the bedroom." If  
3 that's what happened, then that was done.

4 She testified from the stand that Desmond had walked  
5 into the bedroom and Jake lost it. So you want to look at  
6 the offensive touching? Even if there was an offensive  
7 touching, even if Desmond did grab Stephanie's behind, and  
8 which she testified he did not do intentionally, but even if  
9 he did, that wasn't why they fought. He -- we don't know  
10 why. She didn't say why. Walked into the bedroom after  
11 Jake had been, "Red" had been in bed, and Jake freaked out  
12 when he saw Desmond.

13 Now, if there were two fights at that point, and you  
14 thought -- he thought he was done, and he was attacked  
15 again, wouldn't you hold onto somebody for dear life that  
16 once you thought something was over, it popped up again?  
17 Wouldn't it be reasonable to expect exactly what he said to  
18 Officer Dunn when he came in, "I can't let him up. He will  
19 want to fight me." This was with an officer there.

20 He believed for all he was worth, that this guy, his  
21 cousin whom he loved, was going to hurt him if he let up.  
22 He was just defending himself. He was trying to defend  
23 himself. He did not want to hurt his cousin. He did not  
24 want to hurt his best friend, somebody he called a brother.  
25 And you can hear about "Oh, he grabbed him for ten minutes.

1 Oh, some love there." You can hear about that, but when  
2 push came to shove, as it were in this particular case, what  
3 did -- what did Ms. Ballard say in that phone call when  
4 nobody was watching? Not five minutes -- not five minutes  
5 before the cops got there, I was talking to "Red", not five  
6 minutes before. This isn't ten or twelve minutes or  
7 something like that. Not five minutes and then, boom, it  
8 was over. This was clearly, not an intentional killing.  
9 Clearly, not an intentional killing. Malice aforethought,  
10 no malice aforethought.

11 The difference between murder and voluntary  
12 manslaughter: voluntary manslaughter is the intentional  
13 killing of someone, without malice aforethought, with an  
14 adequate provocation in a sudden heat of passion. Well, you  
15 know, I think, clearly, one part is correct. There wasn't  
16 premeditation, you would need that for murder. I mean, it  
17 doesn't have to take a long time, but you would need that.  
18 Clearly -- clearly, it's not murder. Voluntary  
19 manslaughter, though, it still has to be an intentional  
20 killing, even if there wasn't premeditation, it has to be  
21 intentional.

22 And you can talk about circumstances. I mean,  
23 obviously, if you're shooting at somebody and you shoot them  
24 in the leg and you don't intend to kill them, and they end  
25 up dying, well, you know, okay, that's murder. But if

1 you're holding somebody in a defensive position, holding  
2 onto them -- there are statements back and forth again.

3 I'm reluctant to use Ms. Strickland because her  
4 testimony is so unbelievable. She also has a conviction for  
5 burglary, but her testimony is all over the place, but one  
6 thing she did say in there, too, is that Jake had threatened  
7 to kill Desmond, too. And when she thought she wasn't being  
8 listened to, and when she was on the phone, and you'll have  
9 the tape, I believe, I believe you will, you'll see where  
10 when she's on the phone, she says, "Nobody messes with my  
11 old lady, you son of a 'gun'." So there wasn't any  
12 intention to kill, none. And all the screaming and all the  
13 stomping around, and all the hot words at this point won't  
14 change that.

15 There are a room full of people that are sorry that  
16 Jake Frazier is dead, including his best friend and brother,  
17 Desmond Sams. Abhan didn't happen. This isn't an  
18 intentional killing. Mr. Sams -- Mr. Sams isn't guilty of  
19 anything.

20 **THE COURT:** Mr. Thornton?

21 **MR. THORNTON:** May it please the Court?

22 **CLOSING ARGUMENT**

23 **BY DEP. SOL. THORNTON:**

24 (STANDS IN FRONT OF JURY WITHOUT SAYING ANYTHING FOR A  
25 PERIOD OF TIME.)

1           That was one minute. One minute. Mr. Mathews is  
2 right. Time is kind of a weird concept. It's hard  
3 sometimes to understand what time means. Time in one  
4 context may be different from another.

5           I just got up there and stood and looked at you for one  
6 minute. We know, undisputed, that Desmond Sams was choking  
7 the life out of Jake Frazier. The third time that he was  
8 choking him for at least eight minutes. It was way beyond  
9 that because he had him down the entire time. Nobody, even  
10 Desmond Sams, has disputed that.

11          From the time law enforcement was dispatched, until  
12 they got there, was over eight minutes -- eight minutes; and  
13 what Mr. Mathews said is a defensive position, that Mr. Sams  
14 was in a defensive position. I don't know how much more  
15 offensive you can get than to have somebody pinned face down  
16 with your arms wrapped around their throat, for well in  
17 excess of eight minutes, and that's just one time. Even if  
18 you disbelieve everything else, there's no doubt everybody  
19 there was intoxicated, and the Judge is going to charge you  
20 on what voluntary intoxicification is, if that can be used as  
21 a defense or not. Okay?

22          Everybody there was drinking. You've seen testimony on  
23 the stand. You've seen statements that were given. You've  
24 seen phone calls that were recorded. You've seen everything  
25 that there is to see, and it's your job to decide what

1 happened. But what is it that's not in dispute? Everybody,  
2 including Desmond Sams, agrees that he choked Jake Frazier.  
3 You heard testimony from a pathologist, a forensic  
4 pathologist, the only expert in the case, and what did she  
5 testify to? That this was death caused by strangulation.

6 Now, Mr. Mathews made a big deal about, well, vomiting  
7 can also cause the petechiae. Was that the only thing she  
8 looked at? Because I'm fully certain that vomiting doesn't  
9 cause abrasions to the neck. It doesn't cause contusions  
10 and bruising to the neck. It doesn't cause damage to neck  
11 muscles. But I'm a little bit confused of what the story is  
12 by the defense in this case. Is it that he didn't do it?  
13 Is it that it's not strangulation? Did he die of a severe  
14 case of vomiting? Is it self-defense? What is it?

15 There's no doubt that Desmond Sams choked the life out  
16 of Jake Frazier, even Desmond Sams admitted that he choked  
17 him, and he wasn't sure if he was breathing or not when he  
18 got off of him. Even if you believe that Stephanie Ballard  
19 had a watch on, timing, and she said, "Five minutes before  
20 he was talking to me." What was it? Do you remember,  
21 because you're going to have the tape. You can watch it.  
22 What was it that she said that Jake was saying? "Baby, get  
23 him off me." The man pleaded for his life, over and over  
24 again, and it fell on deaf ears. It fell on the deaf ears  
25 of Desmond Sams.

1        You heard from Jake's sister. What did she say?  
2        "Desmond, get off of him." "No." Stephanie Ballard tried  
3        to pull him off. Lisa Strickland tried to pull him off.  
4        Even if you doubt that there is some confusion in the  
5        bathroom and the bedroom, and I understand that, all I ask  
6        you to do is keep in mind what was going on. This was not a  
7        few hours later when those videotapes were made. It was  
8        within an hour. Later on that day, they came back and sat  
9        down, and they wrote out statements for the police at The  
10       Annex.

11       Even if you think there's some credence that there's a  
12       problem with their written statement, and you're going to go  
13       by what they testified to on videotape, and what they  
14       testified to on the stand, what does everything agree?  
15       There was a fight. Desmond Sams had Jake Frazier pinned to  
16       the floor, face down, with his arms wrapped around his neck.  
17       Nobody disputes that.

18       Dr. Presnell got up and told you that is what caused  
19       his death. Murder, ladies and gentlemen, is the intentional  
20       killing of another with malice aforethought. That's the  
21       fancy definition. What does that mean? Everybody gets lost  
22       in this premeditation issue. Premeditation can be that  
23       fast. You don't have to lie in wait for anybody, it can be  
24       instantaneous. I'm gonna f'in kill you. How many people  
25       said that he said that? I'm gonna kill you. Mr. Mathews

1 said, ah, but on the videotape, Lisa Strickland said that  
2 Jake said it as well. There's one big problem with that.  
3 Jake's the only one that was murdered. Desmond Sams is  
4 sitting right here. He said, "I'm going to kill you." He  
5 wrapped his arms around his throat and choked the life out  
6 of him. That's the best way to restrain somebody is to pin  
7 them on the floor?

8 Here's the other problem with that. Why didn't he just  
9 leave? Why didn't Desmond Sams just go? He came into the  
10 bathroom, the fight started. He came into the bedroom, the  
11 fight started. Remember what Lisa Strickland testified to,  
12 she went to call 9-1-1, he chased her, choked her, punched  
13 her, then came back, the fight started.

14 Why didn't he just leave? If he was as scared as he  
15 claims he was, why didn't he just go? The Judge is going to  
16 talk to you about what malice aforethought is. It's  
17 basically an evil intent, but please, if I tell you anything  
18 that disagrees with what the Judge says, you have to go by  
19 what the Judge says that the law of South Carolina is.

20 But you can look at intent when you're trying to judge  
21 -- I'm sorry, you can look at an inference of somebody's  
22 actions when you're trying to judge malice. Was he acting  
23 with malice? Well, is it malicious to pin somebody to the  
24 ground and choke them to death? That's for you to decide.  
25 If you find that he didn't have malice, he is still guilty



1 of voluntary manslaughter.

2       The only way, ladies and gentlemen, that you could find  
3 him not guilty is if you believed his story of self-defense.  
4 If you disbelieve everything every other witness says, and  
5 only believe him and believe that he did nothing wrong,  
6 walked into the bathroom, accidentally bumped his cousin.  
7 His cousin went crazy and attacked him, and all he did was  
8 just try to restrain him, and that's all he did, even then,  
9 there's a problem, even then. Why? Because he could have  
10 just left. He could have walked away, and he didn't. He  
11 continued to choke him. He continued to pin him to the  
12 floor until he killed him. Even if you believe everything  
13 he tells you, self-defense would not be appropriate. There  
14 are only two true verdicts in this case, ladies and  
15 gentlemen. He's either guilty of murder or he's guilty of  
16 manslaughter, because there's no dispute that he choked Jake  
17 Frazier to death, April the 12th of 2008, right here in  
18 Colleton County. Thank you.

19                               **JURY CHARGE**

20       All right, Ladies and gentlemen of the jury panel, it's  
21 now my duty to charge you the law on this case. The State  
22 of South Carolina has charged the defendant, as I told you  
23 at the outset of this trial, and the defendant is Desmond  
24 Sams, with one count of murder in Indictment Number 2008-GS-  
25 15-0370, and one count of Assault and Battery of a high and

1 aggravated nature, in Indictment Number 2008-GS-15-0371.

2 I remind you, first of all, that the fact that the  
3 defendant was arrested, the fact that the defendant was  
4 charged, the fact that the defendant was indicted in this  
5 case is not evidence in this case, nor does it create any  
6 presumption or inference of guilt. These documents, these  
7 indictments, I hold in my hand are simply the formal written  
8 instruments which contain the charges made against the  
9 defendant. They are the formal documents by which the case  
10 is brought into this court.

11 The indictments for murder and assault and battery of a  
12 high and aggravated nature, each charge a separate and a  
13 distinct offense. You must, as a jury, decide each of the  
14 indictments separately on the evidence and the law  
15 applicable to it, as I charge it to you to be, uninfluenced  
16 by your decision as to any other indictment. The defendant  
17 may be convicted or acquitted on any or all of the charged  
18 offenses. And you will be asked by me, and I have prepared  
19 for you, a separate written verdict form, which I will go  
20 over with you in just a moment, Madam Foreperson, on these  
21 indictments, but you'll be asked to write a separate verdict  
22 of guilty or not guilty on each of the indictments.

23 The defendant has pled not guilty to these indictments,  
24 and that plea of not guilty puts the burden on the State to  
25 prove the defendant guilty beyond a reasonable doubt. A

1 person charged with committing a criminal offense in South  
2 Carolina is never required to prove himself innocent.

3 I charge you, ladies and gentlemen of the jury, as an  
4 important rule of law, that the defendant in a criminal  
5 trial, no matter what the seriousness of the charge may be,  
6 will always be presumed to be innocent of the crime for  
7 which the indictment was issued, unless guilt has been  
8 proven by evidence, satisfying you of that guilt beyond a  
9 reasonable doubt.

10 The presumption of innocence does not end, ladies and  
11 gentlemen, when you begin your deliberations. But it  
12 accompanies the defendant throughout the entire trial, until  
13 you, as the jury, reach a verdict of guilt based on evidence  
14 satisfying you of that guilt beyond a reasonable doubt.

15 The presumption of innocence is not just a mere legal  
16 theory. It's not just a legal phrase. It is a substantial  
17 right to which every defendant is entitled, unless you, the  
18 jury, are satisfied from the evidence of the defendant's  
19 guilt beyond a reasonable doubt.

20 What is a "reasonable doubt" in the law? A reasonable  
21 doubt is the kind of doubt that would cause a reasonable  
22 person to hesitate to act. The State has the burden of  
23 proving the defendant guilty beyond a reasonable doubt.  
24 Some of you may have served as jurors in a civil case, where  
25 in a civil case, unlike a criminal case, you were told that

1 it is only necessary to prove that a fact is more likely  
2 true than not true, such as, we call that by the greater  
3 weight, or preponderance of the evidence in a civil case.

4 In a criminal case, ladies and gentlemen of the jury,  
5 the State's proof must be more than that. It must be beyond  
6 a reasonable doubt. Proof beyond a reasonable doubt is  
7 proof that leaves you firmly convinced of the defendant's  
8 guilt. There are very few things in this world that we know  
9 with absolute certainty, and in criminal cases, the law does  
10 not require proof that overcomes every possible doubt. If,  
11 based on your consideration of the evidence, you are firmly  
12 convinced that the defendant is guilty of the crime charged,  
13 you must find the defendant guilty. On the other hand, if  
14 you think there's a real possibility that the defendant is  
15 not guilty, you must give the defendant the benefit of the  
16 doubt and find the defendant not guilty.

17 I remind you, ladies and gentlemen, that during this  
18 trial, you and I have had certain duties to perform. As a  
19 trial judge, it's been my responsibility to preside over the  
20 trial of the case, and I also have the duty to rule on the  
21 admissibility of evidence offered during the trial.

22 You are, as a jury, to consider only the competent  
23 evidence before you. If there was any testimony ordered  
24 stricken from the record in this case during this trial, you  
25 should disregard that testimony. You are to consider only

1 the testimony which has been presented from the witness  
2 stand, any exhibits which have been made a part of the  
3 record in this case or if any stipulations or agreements of  
4 counsel, as I told you when I explained evidence to you at  
5 the beginning of the trial.

6 I, also, as the presiding judge have the additional  
7 duty to charge you the law that applies to this case. As  
8 the presiding judge, I am the sole judge of the law, and it  
9 is your duty as jurors to accept and apply the law exactly  
10 as I now state it to you. If you have any ideas as to what  
11 you think the law is or what the law ought to be, and it  
12 doesn't agree with what I'm now telling you what the law is,  
13 you, as a juror, must abandon any of your preconceived  
14 ideas, because you are sworn in that oath which each of you  
15 took, to accept and apply the law exactly as I state it to  
16 you.

17 In every case tried in this Courtroom before a jury,  
18 the jury becomes the sole and exclusive judges of the facts  
19 in the case. A trial judge, such as myself, cannot  
20 intimate, state, comment on, or make any statement  
21 whatsoever, to a trial jury, such as yourself, about the  
22 facts in a case. Since you, the jury, are the sole judge of  
23 the facts of this case, you are not to infer from what I  
24 have said during the progress of this trial, in ruling upon  
25 the admissibility of evidence, or otherwise, or anything

1 that I now say during this instruction to you on the law,  
2 that I have any opinion, whatsoever, about the facts in this  
3 case. The law does not allow me to have an opinion about  
4 the facts in this case. This is a matter, ladies and  
5 gentlemen of the jury, the facts are solely for you, the  
6 jury to determine.

7 As jurors, then, you remember that it is your duty  
8 under your oath, to determine the effect, the value, weight  
9 and truth of the evidence presented during the trial of this  
10 case.

11 Ladies and gentlemen, there are two types of evidence  
12 that are generally presented during a trial, and like many  
13 things in the law, ladies and gentlemen of the jury, we have  
14 names for those types of evidence. We call the two types of  
15 evidence, direct evidence and circumstantial evidence.

16 Direct evidence is the testimony of a person who claims  
17 to have actual knowledge of a fact, such as an eyewitness.  
18 It is evidence which immediately establishes the main fact  
19 to be proved. Circumstantial evidence, as contrasted with  
20 direct evidence, is proof of a chain of facts and  
21 circumstances indicating the existence of a fact.  
22 Circumstantial evidence is evidence which establishes  
23 collateral facts, from which the main fact may or may not be  
24 inferred. Circumstantial evidence is based on inference and  
25 not on personal knowledge or personal observation.

1       The law makes absolutely no distinction between a  
2 weight or value to be given to either direct or  
3 circumstantial evidence, nor is a greater degree of  
4 certainty required of circumstantial evidence than of direct  
5 evidence. You should weigh all of the evidence in this  
6 case, and after weighing all of the evidence, if you are not  
7 convinced of the guilt of the defendant beyond a reasonable  
8 doubt, you must find the defendant not guilty.

9       On the other hand, after hearing all of the evidence in  
10 this case, both direct and circumstantial, if you are  
11 convinced of the guilt of the defendant, beyond a reasonable  
12 doubt, you must find the defendant guilty.

13       Necessarily, ladies and gentlemen, as I told you at the  
14 outset, you must determine the credibility of the witnesses  
15 that have testified in this case. Credibility simply means  
16 believability. It, therefore, becomes your duty as jurors  
17 to analyze and to evaluate the evidence and determine which  
18 evidence convinces you of its truth.

19       In determining the believability of witnesses who have  
20 testified in this case, you may believe one witness over  
21 several witnesses, or several witnesses over one. You may  
22 believe a part of a testimony of a witness, and reject the  
23 remaining part of the testimony of that same witness. You  
24 may believe the testimony of a witness in its entirety or  
25 you may reject that witness's testimony in its entirety.

1        You may consider whether any witness has exhibited to  
2 you any interest, any bias, any prejudice, or other motives  
3 in this case. You may also consider the appearance or the  
4 manner of the witness while on the witness stand. We call  
5 that the demeanor of the witness while the witness is on the  
6 witness stand in judging the credibility, or the  
7 believability, of the witnesses who have testified during  
8 the trial of this case.

9        Now as I told you during the trial of this case,  
10 ordinarily, witnesses are not permitted to get on this  
11 witness stand and say, "My opinion is so-and-so. My  
12 conclusion is so-and-so." The rules of evidence do not  
13 permit witnesses to testify to opinions or conclusions. An  
14 exception to this rule exists for those witnesses that we  
15 call "expert witnesses". A witness, who by education,  
16 training, experience, has become, or claims to have become,  
17 an expert in some art, science, profession or calling. They  
18 state an opinion as to material matters in which the witness  
19 claims to be an expert, and they'll also state the reasons  
20 for his or her opinion if qualified as an expert by the  
21 Court.

22        You should consider any expert opinion received in  
23 evidence in this case, and just like any other evidence in  
24 this case, you give it the weight you think it deserves. If  
25 you decide that the opinion of an expert witness is not



1 based on sufficient education or experience, or if you  
2 should conclude, as a jury, that the reasons given in  
3 support of the opinion are not sound, or that the opinion is  
4 outweighed by other evidence, you may disregard the expert  
5 opinion entirely.

6 An expert witness's opinion is to be given no greater  
7 weight than that of other witnesses, simply because the  
8 witness is an expert.

9 I charge you ladies and gentlemen, that voluntary  
10 intoxicification is not an excuse for, or a defense to a  
11 crime, regardless of whether the crime is one involving  
12 general or specific intent, and I'm going to talk to you  
13 about that in just one second. This rule extends to the  
14 voluntary ingestion of alcohol or drugs.

15 A person who voluntarily ingests alcohol or drugs, and  
16 thereby becomes intoxicated, is no less responsible for his  
17 or her acts while in such condition. If one voluntarily  
18 drinks intoxicating alcohol and becomes intoxicated to  
19 whatever degree, and if, while in that condition, commits an  
20 act which would be a crime, if it had been committed by a  
21 sober person, the fact that intoxicification would not relieve  
22 the intoxicated person from criminal responsibility.

23 Now, having told you that, in order to explain to you  
24 what I meant by general or specific intent, in order to  
25 establish criminal liability, criminal intent is required.

1 For example, the mental state required to be proven by the  
2 State for a particular crime, just by example, purpose, or  
3 intent, or malice, or recklessness, or even in some cases,  
4 criminal negligence. Those are examples of criminal intent.  
5 Criminal intent must be proven by the State beyond a  
6 reasonable doubt.

7 Criminal intent is always a matter that must be  
8 determined by the jury from the circumstances surrounding  
9 the situation. There is no way, ladies and gentlemen, to  
10 prove intent to a mathematical certainty. There is no way  
11 medical science can dissect a person's brain and determine  
12 what that person had in mind, so the law says, ladies and  
13 gentlemen, that criminal intent may be inferred from the  
14 circumstances shown to have existed. This, ladies and  
15 gentlemen, is how you as a jury make a determination of  
16 whether or not any element in any crime requiring intent was  
17 present.

18 It is not necessary to establish intent by direct  
19 evidence, but intent may be established by inference in the  
20 same way as any other fact, by taking into consideration the  
21 acts of the parties, and all the facts and circumstances  
22 based on evidence introduced during the trial of the case.

23 Criminal intent is a mental state, a conscious  
24 wrongdoing. It is up to you, as a jury, to determine what  
25 the defendant intended to do, based on the circumstances

1 shown to have existed, from evidence introduced during the  
2 trial of the case.

3 Criminal intent can arise from action or a failure to  
4 act. It may arise from negligence, recklessness, or an  
5 indifference to duty, or to consequences considered by the  
6 law to be the equivalent of criminal intent.

7 Now, I charge you, ladies and gentlemen, in this case,  
8 the defendant is charged with the offense of murder. For  
9 the offense of murder, the State must prove, beyond a  
10 reasonable doubt, that the defendant killed another person  
11 with malice aforethought.

12 What is malice? Malice is hatred, ill-will, or  
13 hostility towards another person. It is the intentional  
14 doing of a wrongful act without just cause or excuse, and  
15 with an intent to inflict an injury or under circumstances  
16 the law infers an evil intent. Malice aforethought does not  
17 require that malice exist for an particular time before the  
18 act is committed, but malice must exist in the mind of the  
19 defendant just before and at the time of the act being  
20 committed. There must, therefore, be a combination of the  
21 previous evil intent and the act.

22 Malice aforethought may be expressed or inferred.  
23 Those terms "expressed" and "inferred" do not mean different  
24 kinds of malice, but merely the manner in which malice may  
25 be shown to exist. That is, either by direct evidence or by

1 inference, from the facts and circumstances, based on  
2 evidence introduced during the trial of the case.

3 Express malice is shown when a person speaks words  
4 which express hatred or ill-will for another, or when the  
5 person, beforehand, prepared to do the act, which was later  
6 accomplished. For example, lying in wait for a person, or  
7 any other act or preparation going to show that the deed was  
8 in the defendant's mind, would be express malice. Malice  
9 may be inferred from conduct showing a total disregard for  
10 human life. Inferred malice may also arise when the deed is  
11 done with a deadly weapon.

12 A deadly weapon is any article, instrument or  
13 substance, which is likely to cause death or great bodily  
14 harm, whether an instrument has been used as a deadly weapon  
15 depends on the facts and circumstances of each case, based  
16 on evidence introduced during the trial of the case.

17 If you find, ladies and gentlemen of the jury, that the  
18 State has failed to prove beyond a reasonable doubt that the  
19 defendant committed murder, you may consider whether the  
20 State has proven, beyond a reasonable doubt, that the  
21 defendant committed voluntary manslaughter. To prove  
22 voluntary manslaughter, the State must prove beyond a  
23 reasonable doubt, that the defendant took the life of  
24 another in the sudden heat of passion, based on sufficient  
25 legal provocation.

1       Both heat of passion and sufficient legal provocation  
2 must be present at the time of the killing to constitute  
3 voluntary manslaughter. Sudden heat of passion may, for a  
4 time, affect a person's self-control and temporarily disturb  
5 a person's reason. The sudden heat of passion must be the  
6 type that would make an ordinary person unable to coolly  
7 reflect on his actions, and would produce an uncontrollable  
8 impulse to do violence.

9       Sufficient legal provocation must be the type that  
10 would make a person of ordinary reason and caution become  
11 enraged and to lose control temporarily. The provocation  
12 needed for voluntary manslaughter must come from some act  
13 of, or related to, the victim.

14       Words alone, however vulgar or insulting, are not  
15 enough to be legal provocation. Where death is caused by  
16 the use of a deadly weapon, the words must be accompanied by  
17 some overt, threatening act which could have produced the  
18 heat of passion.

19       The exercise of a legal right, no matter how offensive  
20 it is to another, is never sufficient legal provocation for  
21 voluntary manslaughter. If the heat of passion has cooled,  
22 or if there was enough time between the provocation, if any,  
23 and the killing for the passion of a reasonable person to  
24 cool, the killing would not be voluntary manslaughter.

25       In deciding whether a reasonable person would have had

1 enough time to cool off, you should consider all the  
2 circumstances surrounding the killing, based on evidence  
3 introduced the trial of the case. You may consider the  
4 nature of the provocation, if any. The defendant's mental  
5 and physical state, and the circumstances and relationships  
6 between the parties, based on evidenced introduced during  
7 the trial of the case.

8 I charge you, ladies and gentlemen, that the defendant  
9 is also charged in this case with the offense of assault and  
10 battery of a high and aggravated nature. Assault and  
11 battery of a high and aggravated nature is the unlawful act  
12 of violent injury to the person of another, accompanied by  
13 circumstances of aggravation. An assault occurs when a  
14 person unlawfully attempts or offers to commit a violent  
15 injury upon another person, and had the present ability to  
16 complete the attempted injury.

17 An assault is the intentional creation of a reasonable  
18 fear of immediate bodily harm. It is not necessary that the  
19 attempted injury or harm actually take place for an assault.  
20 For example, if I walk up to you and when we are within  
21 arm's length of each other, I draw back to hit you, that is  
22 an assault.

23 A battery is the unlawful touching of another person by  
24 a person who has committed the assault. An unlawful  
25 touching can be caused by a part of the accused body or by

1 any object the accused puts in motion. A battery is the  
2 completion of the assault by using or applying force to  
3 another person, however slight, in a rude, angry or  
4 resentful manner without legal justification for doing so.  
5 Using my earlier example, if I carry through the assault by  
6 hitting you, then that is a battery.

7 The State must prove for the offense of assault and  
8 battery of a high and aggravated nature, they must also  
9 prove beyond a reasonable doubt, circumstances of  
10 aggravation. Circumstances of aggravation include the use  
11 of a deadly weapon, the intent to commit a felony, the  
12 infliction of serious bodily injury, a great disparity  
13 between the ages or physical conditions of the parties, a  
14 difference in the genders of the parties, the taking of  
15 indecent liberties or familiarities with a female through  
16 the use of force, the purposeful infliction of shame and  
17 disgrace, and the resistance of lawful authorities. These  
18 are only example of circumstances of aggravation. The State  
19 must prove a circumstance of aggravation based on evidence  
20 introduced during the trial of the case, beyond a reasonable  
21 doubt.

22 The defendant has raised the defense in this case of  
23 self-defense. Self-defense, ladies and gentlemen, is a  
24 complete defense, and if it is established, you must find  
25 the defendant not guilty. The State has the burden of

1 disproving self-defense by proof beyond a reasonable doubt.  
2 If you have a reasonable doubt of the defendant's guilty  
3 after considering all of the evidence, including the  
4 evidence of self-defense, then you must find the defendant  
5 not guilty.

6 On the other hand, if you have no reasonable doubt of  
7 the defendant's guilt after considering all of the evidence,  
8 including the evidence of self-defense, then you must find  
9 the defendant guilty.

10 The following elements are required by law to establish  
11 self-defense. First, the defendant must be without fault in  
12 bringing on the difficulty. Second, the defendant must have  
13 actually believed he was in imminent danger of losing his  
14 life or sustaining serious bodily injury, or he actually was  
15 in such imminent danger.

16 Third, if his defense is based upon his belief of  
17 imminent danger, a reasonably prudent person of ordinary  
18 firmness and courage would have entertained the same belief.  
19 If the defendant actually was in imminent danger based on  
20 your interpretation of the evidence, circumstances were such  
21 that would warrant a man of ordinary prudence, firmness and  
22 courage to strike the fatal blow in order to save himself  
23 from serious bodily harm or losing his own life.

24 Fourth, the defendant had no other probable means of  
25 avoiding the danger or losing his own life or sustaining



1 serious bodily injury, other than to act as he did in this  
2 particular instance. Those are the four elements of self-  
3 defense.

4       The First element, the defendant must be without fault  
5 in bringing on the difficulty. If the defendant's conduct  
6 was the type which was reasonably calculated to, and did,  
7 provoke a deadly assault, the defendant would be at fault in  
8 bringing on the difficulty, and would not be entitled to an  
9 acquittal, based on self-defense.

10       The Second element of self-defense is that the  
11 defendant was actually in imminent danger of death or  
12 serious bodily injury, or that the defendant actually  
13 believed that he was in imminent danger of death or serious  
14 bodily injury. If the defendant was actually in imminent  
15 danger, it must be shown that the circumstances would have  
16 warranted a person of ordinary firmness and ordinary courage  
17 to strike the fatal blow, to prevent death or serious bodily  
18 injury.

19       If the defendant believed he was in imminent danger of  
20 death or serious bodily injury, it must be shown that a  
21 reasonably prudent person of ordinary firmness and courage  
22 would have had the same belief.

23       In deciding whether the defendant actually was in  
24 imminent danger, or believed he was in imminent danger of  
25 death or serious bodily injury, you as a jury should

1 consider all of the facts and circumstances surrounding the  
2 crime, including the physical condition and the  
3 characteristics of the defendant and the victim, based on  
4 evidence introduced during the trial of the case.

5 The defendant does not have to show that he was  
6 actually in danger. It is enough that the defendant  
7 believed he was in imminent danger and a reasonably prudent  
8 person of ordinary firmness and courage would have had the  
9 same belief. The defendant has the right to act on  
10 appearances, even though defendant's beliefs may have been  
11 mistaken.

12 It is for you, ladies and gentlemen of the jury, to  
13 decide whether the defendant's fear of immediate danger, or  
14 death, or serious bodily injury was reasonable and would  
15 have been felt by an ordinary person in the same situation.

16 The relative size, ages, and weights of the defendant,  
17 if based on evidence during the trial of the case, and the  
18 victim, if based on evidence during the trial of the case,  
19 may be considered in deciding the apparent or actual need  
20 for force in self-defense and the amount of force needed.

21 The final element of self-defense is that the defendant  
22 had no other probable way to avoid the danger of death or  
23 serious bodily injury than to act as the defendant did in  
24 this particular instance.

25 Madam Foreperson, I told you that I had prepared a

1 verdict form for you. Pay absolutely no attention, ladies  
2 and gentlemen of the jury, to the order in which we wrote  
3 the forms of verdict. We obviously had to write one before  
4 the other in order to prepare the verdict form, so the order  
5 has no significance, whatsoever.

6 I have put on the verdict form the title of the case.  
7 It says at the top, State of South Carolina, County of  
8 Colleton, Court of General Sessions, means criminal court,  
9 has the indictment numbers below it, and then it says State  
10 of South Carolina v. Desmond Javon Sams, and I wrote the  
11 word "verdict", all of which is in the caption at the top.

12 Then I have number one, which is the first question.  
13 Under number one, I have the following words typed for you:  
14 We, the jury, by unanimous consent, find the defendant,  
15 Desmond Javon Sams, in Indictment Number 2008-GS-15-0370,  
16 and the first form of verdict under question one is guilty  
17 of murder. If that be your form of verdict, Madam  
18 Foreperson, you would check on the line beside that form of  
19 verdict. Under the words, We, the jury, by unanimous  
20 consent, find the defendant, Desmond Javon Sams, in  
21 Indictment Number 2008-GS-15-0370, the second form of  
22 verdict is: not guilty of murder. If that be your form  
23 of verdict, Madam Foreperson, you would check on the line  
24 beside that form of verdict. You cannot find both forms of  
25 verdict as to question one. You must find one or the other,

1 guilty or not guilty.

2 And then I wrote you some instructions under one. If  
3 you find the defendant not guilty of murder, you would move  
4 on to number two, question number two on your verdict form.  
5 If you find the defendant guilty of murder, you would skip  
6 number two and move to number three.

7 Number two on your verdict form assumes you have found  
8 the defendant not guilty of murder. Question number two on  
9 your verdict form says, "We, the jury, by unanimous consent,  
10 find the defendant, Desmond Javon Sams, Indictment number  
11 2008-GS--15-0370, and the first form of verdict under  
12 question two is: guilty of voluntary manslaughter. If that  
13 be your form of verdict, you would check on the line beside  
14 that form of verdict for the jury, Madam Foreperson.

15 Under question number two, we, the jury, by unanimous  
16 consent find the defendant, Desmond Sams, in Indictment  
17 Number 2008-GS-15-0370, the second form of verdict is: not  
18 guilty of voluntary manslaughter. If that be your form of  
19 verdict under Question Number Two, you would check on the  
20 line beside not guilty. If you go to question two, you must  
21 find one form of verdict or the other, either guilty or not  
22 guilty, if you go to question two, which assumes that you  
23 found the defendant not guilty of murder in question one,  
24 because voluntary manslaughter, ladies and gentlemen, the  
25 reason the indictment number is the same and I hesitated,

1 it's a lesser included offense in the indictment for murder.  
2 That's why the indictment number's the same.

3 Now, you would then continue, regardless of what you  
4 did in one and two, to complete question three. Question  
5 three says, "We, the jury, by unanimous consent, find the  
6 defendant, Desmond Sams, in Indictment number 2008-GS-15-  
7 0371, first form of verdict under Question three is: guilty  
8 of ABHAN. If that be your form of verdict, you would check  
9 on the line beside that form of verdict. Under Number  
10 three, we, the jury, by unanimous consent, find the  
11 defendant, Desmond Sams, in Indictment number 2008-GS-15-  
12 0371, second form of verdict is: not guilty of ABHAN. If  
13 that be your form of verdict, you would check on the line  
14 beside that form of verdict. You must find one form of  
15 verdict as to question three, either guilty or not guilty of  
16 the offense of Abhan.

17 When you have filled out questions one, two and three  
18 on the second page of the verdict form, Madam Foreperson.  
19 There's a line for you to sign your name as foreperson,  
20 after you've checked the appropriate blanks. I have put  
21 instructions on the side. I've already dated for you and  
22 put Walterboro. I've got January the 29th. I put, "Please  
23 indicate your findings by checking the appropriate line and  
24 certify the finding by the foreperson' signature. Please  
25 knock on the door and inform the bailiff when you've reached

1 a verdict."

2 Now, ladies and gentlemen, your verdict in this case  
3 must be unanimous. That is, it must be the verdict of each  
4 and everyone of you; all 12 of you must agree on a verdict.

5 Now, Madam foreperson, as I told you, you will be using  
6 this in your jury room, but please don't leave the courtroom  
7 today once the jury has completed its deliberations without  
8 my law clerk bringing you these indictments, where you will  
9 take your signature from here and write it also on the  
10 indictments, and also the appropriate verdict that you have  
11 found on the indictments to make it consistent with your  
12 verdict form. My law clerk will be giving you instructions  
13 about that.

14 Now, Madam Foreperson, and ladies and gentlemen of the  
15 jury, I have now charged you on the law in order to help  
16 guide you to a fair and a just result in this case.

17 You are the judges of the facts in this case, and based  
18 on your determination of the facts in this case from the  
19 evidence introduced, and the law as I have explained it to  
20 you, you will soon begin your deliberations in your jury  
21 room. You've been selected, ladies and gentlemen, as  
22 fair and impartial jurors. You are sworn to fairly and  
23 impartially try and determine the facts of this case and  
24 when you comply with that oath to be fair and impartial, no  
25 one can criticize your verdict.

1        You are to decide this case, ladies and gentlemen,  
2 based solely on the evidence that's been introduced during  
3 the trial of this case, that means the testimony you have  
4 heard from the sworn witnesses who have testified before  
5 you, along with the exhibits, which may have been introduced  
6 into evidence and any stipulations, if any were introduced  
7 into the record, and nothing else. You must decide the  
8 issue in this proceeding without any bias, without any  
9 prejudice towards either party in this case.

10        You cannot allow yourself, ladies and gentlemen, to be  
11 governed by public opinion, or prejudice for or against any  
12 person, or by any other arbitrary factor not in evidence in  
13 the trial of this case. Both the defendant and the State of  
14 South Carolina have the right to expect that each of you on  
15 the jury will carefully and impartially consider all the  
16 evidence in this case, and that you will follow the law as I  
17 have instructed it to you in reaching your verdict in this  
18 case.

19        Now, ladies and gentlemen, I've explained the verdict  
20 forms to you and told you that your verdict must be  
21 unanimous. When you have reached a verdict, as I put on  
22 your verdict form, if you will knock on the jury room door  
23 and tell the bailiff that you've reached a verdict, when  
24 you've completed the verdict form, we will then bring you  
25 back into the courtroom in order to publish your verdict.

1       At this time, I'm going to ask you to retire to your  
2 jury room. It may be necessary for me to bring you back  
3 for some brief additional instructions, so I don't want you  
4 to begin your deliberations just yet. When it is time for  
5 you to begin your deliberation, I will send the verdict form  
6 in to you by the bailiff and tell the bailiff to instruct  
7 you that you may now commence your deliberations, along with  
8 the exhibits which have been introduced into evidence during  
9 the trial of the case.

10       Now, ladies and gentlemen, I recognize that there has  
11 been a tape in evidence in this case. If you need to see  
12 that, we have the ability for you to watch it and we will  
13 set that up for you here in the courtroom, if the jury  
14 chooses to do so, you understand?

15       All right. Please do not begin your deliberations  
16 until I instruct you to do so. Please bear with me. I'll be  
17 back with you in just a moment, or give you instructions  
18 through the bailiff. Will my alternate juror remain in the  
19 courtroom? You may retire to your jury room at this time.  
20 (1:00 P.M., JANUARY 29th, 2009, WHEREUPON JURY EXITS THE  
21 COURTROOM, THEREAFTER THE FOLLOWING PROCEEDINGS WERE HELD ON  
22 THE RECORD:)

23       THE COURT: All right. So no one became ill, or for  
24 some reason could not continue to serve, so this concludes  
25 your service in the trial of this case. On behalf of



1 Colleton County and this Court, I want to thank you for your  
2 service. I can tell you this concludes your jury service for  
3 the week, so I'm going to be excusing you for the balance of  
4 the week. But I always give my jury an opportunity to let  
5 me know if we need to improve on anything or if you have any  
6 questions about anything that happened in Court this week.  
7 Do you have any questions or suggestions for me?

8 MALE JUROR: No, sir.

9 THE COURT: Did we treat you okay?

10 MALE JUROR: Yes, sir.

11 THE COURT: Good. Has it been an educational  
12 experience for you?

13 MALE JUROR: Real education for me.

14 THE COURT: Well, thank you, sir. I hope it has been.  
15 I think jury service is something we all ought to fulfill.  
16 It's an honor to have a country which allows you to have a  
17 trial by jury. With that, sir, I thank you for your  
18 service. I can't allow you to go back to the jury room, now,  
19 but you're excused with my blessing. We'll be sending you a  
20 check in the mail, which is not enough for your service, at  
21 the address that you gave us. You're excused for the  
22 balance of the week and you may leave the courtroom at this  
23 time. Thank you, sir.

24 Any exceptions or additions to the charge from the  
25 State of South Carolina?

1       **MR. THORNTON:** None, Your Honor.

2       **THE COURT:** Any exceptions or additions to the charge  
3 from the defendant?

4       **MR. MATHEWS:** Yes, sir. In addition to the, again, I'm  
5 renewing my request for involuntary -- I understand the  
6 Court's rule. Also, I'm not sure whether the Court charged  
7 a criminal conviction, as an impeachful thing going to  
8 character. I don't know. I may have missed that.

9       **THE COURT:** One moment. I'm not sure that I did. Hold  
10 on one minute. I don't believe I did. Was it brought out  
11 during the trial of this case? I know that there -- was  
12 there a record for the defendant?

13       **MR. MATHEWS:** No, sir, for Lisa Strickland, had a  
14 burglary conviction.

15       **THE COURT:** You are correct. And you would request  
16 that, Mr. Mathews?

17       **MR. MATHEWS:** Yes, sir.

18       **THE COURT:** All right. You agree, Solicitor, it was an  
19 issue in the trial of this case?

20       **MR. THORNTON:** I do, Your Honor. And I also agree that  
21 I do not believe that you mentioned it.

22       **THE COURT:** I don't think I charged it. I think Mr.  
23 Mathews is correct. I'm looking to see because I have my  
24 charge in front of me, but I don't believe I did. I took  
25 out -- because there was no statement of the defendant in

1 this case, introduced in the trial of this case, although,  
2 the defendant testified. Counsel approach.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD  
4 AND THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE  
5 RECORD:)

6 THE COURT: Mr. Mathews, I understand, now, that you've  
7 taken exception to my charge for the omission of a charge on  
8 the criminal record of a witness; that you wish to withdraw  
9 it?

10 MR. MATHEWS: I had. I explained that to my client,  
11 and in consultation with my client, he's not running my  
12 case, Your Honor, but it is his life, and he wishes the jury  
13 to be brought back. It's hard for me to argue with that.

14 THE COURT: Any objection, Solicitor?

15 MR. THORNTON: No, sir.

16 THE COURT: Very well. Any objection to the charge,  
17 which I've given you a copy of, Mr. Mathews?

18 MR. MATHEWS: No, sir.

19 THE COURT: Any objection to the charge, Solicitor?

20 MR. THORNTON: No, sir.

21 THE COURT: Bring the jury back, please.

22 (1:11 P.M., THURSDAY, JANUARY 29, 2009, WHEREUPON THE  
23 JURY ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS  
24 WERE HELD ON THE RECORD.)

25 THE COURT: Madam Foreperson, ladies and gentlemen of

1 the jury, we follow this procedure so that if I realize  
2 something that I might have omitted in my charge, then I can  
3 conclude that for you.

4 I charged you, ladies and gentlemen, that a person who  
5 has a past criminal record, is competent to testify during  
6 the trial. The past record does not affect the ability of  
7 that witness to testify. The past record, criminal record,  
8 may be considered by you, if at all, in determining the  
9 witness's believability or credibility. Remember, ladies  
10 and gentlemen of the jury, you and you alone are the sole  
11 judges of the facts in this case, and the believability of  
12 any and all the witnesses in this case. Thank you. I'll  
13 ask you, now, to return to your jury room, and bear with me  
14 one more moment and I'll give you further instructions. Do  
15 not begin your deliberations quite yet.

16 (1:13 P.M., JANUARY 29, 2009, WHEREUPON JURY EXITS THE  
17 COURTROOM, THEREAFTER THE FOLLOWING PROCEEDINGS WERE HELD ON  
18 THE RECORD:)

19 THE COURT: Any exceptions or additions to the  
20 supplemental charge from the State?

21 MR. THORNTON: None, Your Honor.

22 THE COURT: From the defendant?

23 MR. MATHEWS: No, Your Honor.

24 THE COURT: Let the record reflect, Mr. Mathews, to the  
25 extent that I need to make sure your client's rights are

1 protected, you've renewed your motion for charging  
2 involuntary manslaughter, which I respectfully deny. I  
3 granted your motion to charge the credibility of the  
4 witnesses after prior criminal convictions.

5 All right, counsel, one other housekeeping matter.  
6 Becky, please announce for us if you would, to me, so that  
7 we have the numbers straight. I called counsel up to the  
8 bench when the jury was coming in, prior to closing  
9 argument, because my court reporter wanted to make sure she  
10 had the numbers of the exhibits straight. We now have how  
11 many court exhibits? Tell us what each one is.

12 COURT REPORTER: We have four, Your Honor.

13 THE COURT: Four Court's exhibits. Exhibit one is the  
14 note selecting the foreperson of the jury. Exhibit two is -  
15 --

16 COURT REPORTER: It is Lisa Strickland's written  
17 statement.

18 THE COURT: Court Exhibit Number Two is Lisa Michelle  
19 Strickland's written statement. Court's Exhibit Number  
20 three?

21 COURT REPORTER: Is the written statement of Stephanie  
22 Ballard.

23 THE COURT: Written statement of Stephanie Ballard.

24 COURT REPORTER: And Court Exhibit Number Four is the  
25 videotape of Desmond Sams.

1           **THE COURT:** And Court's Exhibit Number Four is the  
2 videotape of Desmond Sams. Do you understand, Solicitor,  
3 because I might have stated that differently earlier?

4           **MR. THORNTON:** I do, Your Honor.

5           **THE COURT:** Mr. Mathews, you understand the numbering?

6           **MR. MATHEWS:** Yes, sir.

7           **THE COURT:** All right. I want to make sure the  
8 record's clear on that. Counsel, I ask you to come forward  
9 and certify on the record that you're satisfied the court  
10 reporter has all the exhibits that have been entered into  
11 evidence, not the Court's exhibits, and that you have no  
12 objection to the bailiff taking the exhibits that have been  
13 entered into evidence, as well as the verdict form, into the  
14 jury and the bailiff informing the jury they may now  
15 commence their deliberations. Please, come forward.

16           **MR. THORNTON:** Yes, sir.

17           **MR. MATHEWS:** Yes, sir.

18           **THE COURT:** Is the State satisfied that the court  
19 reporter has all the exhibits?

20           **MR. THORNTON:** State is satisfied, Judge. There are  
21 two exhibits: a videotape and a picture of the booking  
22 photo, basically, of the defendant. I believe those were  
23 the only exhibits, Your Honor.

24           **THE COURT:** And they're both defense exhibits?

25           **MR. THORNTON:** They are.

1       **THE COURT:** Is the defendant so satisfied?

2       **MR. MATHEWS:** Yes, sir.

3       **THE COURT:** Does the State have any objections to the  
4 bailiff taking the two exhibits and the verdict form, and  
5 the bailiff informing the jury that they may now commence  
6 their deliberations?

7       **MR. THORNTON:** No objection.

8       **THE COURT:** Does the defendant have any such  
9 objections?

10       **MR. MATHEWS:** No, sir.

11       **THE COURT:** Mr. Bailiff, who's going to take it in for  
12 me? Bill, if you'll get -- Becky, hand him both exhibits.  
13 If they want to see -- counsel, is there anything else?  
14 They can't see the video without coming back into the  
15 courtroom, and I've told them that. You both agreed to  
16 that. I just want to make sure is there anything else on  
17 that video that isn't in evidence? Any other case or  
18 anything?

19       **MR. MATHEWS:** No, sir. I only looked through to the  
20 end of Lisa's and maybe for a minute past that.

21       **THE COURT:** You run it past some things, but that was  
22 up to you. You published what you wanted to publish. I  
23 understand that. What I'm worried about is that they can  
24 operate the machinery, so I'm going to get them to bring it  
25 back if they want to see it. So let them know -- you both

1 agree to let the bailiff tell them if they want to view the  
2 video, they need to come back in so we can operate it for  
3 them. Do you agree, Solicitor?

4 MR. THORNTON: Yes, sir.

5 THE COURT: Do you agree, Mr. Mathews?

6 MR. MATHEWS: Yes, sir.

7 THE COURT: All right. Give them the verdict form,  
8 give them the exhibits. Tell them they may now commence  
9 their deliberations. If they want to see the video, just to  
10 knock on the door and let you know and we'll bring them back  
11 into the courtroom so we can operate the equipment. All  
12 right.

13 All right, counsel, we are at ease, now, while we await  
14 the jury's verdict. Counsel approach the bench.

15 (WHEREUPON, AT 1:18 P.M., BAILIFF POLK TOOK THE  
16 EXHIBITS AND VERDICT FORM INTO THE JURY FOR DELIBERATION;  
17 THEREAFTER, A BENCH CONFERENCE WAS HELD OFF THE RECORD;  
18 THEN, THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

19 THE COURT: Solicitor, I earlier asked the question of  
20 whether or not what's been marked as Defendant's Exhibit  
21 Number Two had anything other than the video statement of  
22 the witnesses who have testified in the trial of this case,  
23 that being witnesses Lisa Strickland and Stephanie Ballard,  
24 and you wanted to respond to that question.

25 MR. THORNTON: Yes, sir. I wanted to tell the Court,



1 for the record, Your Honor, that was Mr. Mathews' copy that  
2 was prepared for him by Lt. Inabinett. I've asked Lt.  
3 Inabinett to make sure there was nothing else on that tape.  
4 He has assured me that was a blank tape he used, so the only  
5 information on that tape is the information already shown to  
6 the jury and in evidence.

7 THE COURT: And you're satisfied that is correct, Mr.  
8 Mathews?

9 MR. MATHEWS: Yes, sir.

10 THE COURT: All right. Both of you have told me you're  
11 in agreement that if the jury wants to view that, that you  
12 will allow the bailiff to tell them to come back in the  
13 courtroom, which I think is the proper way to do it, because  
14 we've had, obviously, so the record will show, we have a  
15 brand new Panasonic flat screen ability in the courtroom for  
16 the jury to see video and the audio will not work on it  
17 today. So we took at least at 25 to 40 minute recess in the  
18 trial this morning to try to get it to work. We never could  
19 get the audio to work. We're right back with our 12-inch  
20 television, that we've used since I've been on the bench  
21 because it was our backup, so if the jury needs to see the  
22 exhibit, they'll have to come back to the courtroom, by  
23 agreement of counsel, so we can make sure the equipment is  
24 functioning properly.

25 All right. We're at ease now while we await the jury's

1 verdict.

2 (WHEREUPON, COURT WAS RECESSED FROM THE TRIAL OF THE  
3 CASE; AT WHICH TIME, THEREAFTER, AT 2:50 P.M., THE FOLLOWING  
4 PROCEEDINGS WERE HELD ON THE RECORD:)

5 THE COURT: All right, counsel. I've received a note  
6 from the jury, which I have read to counsel in chambers,  
7 both Solicitor and defense counsel. They both agree there  
8 are a number of questions on the note, which I'll make a  
9 Court's exhibit.

10 They both agree that with the exception of two  
11 questions that are asked, the answer is you must decide the  
12 case based on the evidence presented. The two questions  
13 that they both agree can be answered are, the first one:  
14 Can the jury hear Stephanie's videotape interview at the  
15 police station? And, of course, the answer to that is we've  
16 told them if they want to hear it, it is in evidence and  
17 counsel discussed, I understand that question to be the  
18 interview, because there's more on the tape than just the  
19 interview. There's a telephone call and then Mr. Mathews  
20 ran forward, fairly long segments on fast forward, where it  
21 appears that the person is just sitting, waiting on Officers  
22 to come back to talk to her, without any audio. Although,  
23 there, I think, there's even a second telephone call on  
24 there and they asked for just the interview. I'll inquire  
25 to make sure that's correct, because Mr. Mathews says, and I

1 certainly agree with him, if they want to hear more than the  
2 interview, we'll publish more than the interview.

3 The other question was, that can be answered: What is  
4 the legal term for voluntary manslaughter again? Can we  
5 get a print copy? Counsel has agreed that I will recharge  
6 voluntary manslaughter, as I charged it before, orally, and  
7 I will then ask them if that is sufficient, and if they want  
8 anymore, if they ask for a print copy, I will give them a  
9 print copy of voluntary manslaughter only by agreement of  
10 counsel.

11 Have I accurately stated what occurred in chambers,  
12 insofar as the Solicitor is concerned?

13 MR. THORNTON: You have, Your Honor.

14 THE COURT: Insofar as the defendant is concerned?

15 MR. MATHEWS: Yes, sir.

16 THE COURT: Now, there are other questions on here?  
17 Your Honor, can we see a picture of Jake after being beaten?  
18 Where is the record of 9-1-1 calls? Can we hear them?  
19 What time did Jake and Desmond get off work? Who actually  
20 called the police? What was Desmond's blood alcohol level?  
21 What is the time difference between the start fight and the  
22 first 9-1-1 call? What was the height and weight of Jake?  
23 All of which counsel have all agreed the answer is you must  
24 decide this case based on the evidence presented?

25 Have I accurately stated as to the other questions,

1 Solicitor?

2 MR. THORNTON: You have, Your Honor.

3 THE COURT: Mr. Mathews?

4 MR. MATHEWS: Yes, sir.

5 THE COURT: Very well. We will now make this Court's  
6 Exhibit Number Five, I believe. Mark it for me and hand it  
7 back to me. (COURT REPORTER MARKS NOTE OF QUESTIONS FROM  
8 JURY AS EXHIBIT FIVE AND HANDS BACK TO JUDGE.)

9 THE COURT: All right, before I bring the jury in, turn  
10 the television around, cue it to -- or they have the tape?

11 MR. THORNTON: They have the tape, Your Honor.

12 THE COURT: Bill, go get me the tape so y'all can cue  
13 it to make sure it's up for the right spot and be ready.

14 (3:01 P.M., THURSDAY, JANUARY 29, 2009, THE JURY ENTERS  
15 THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE  
16 RECORD.)

17 THE COURT: Madam Foreperson, ladies and gentlemen of  
18 the jury, I received your note. First of all, let me tell  
19 you it's not necessary that you put people's names that are  
20 asking the questions. I appreciate your thoroughness, but  
21 if you could just write the question out for the jury. Let  
22 me go through, first of all, the first questions.

23 Can the jury hear Stephanie's videotape interview at  
24 the police station? Now, I asked the bailiff to bring the  
25 tape back into the courtroom, and we've cued it to the

1 interview with the officer. Is that what the jury wants or  
2 do you want more of the tape than just the interview with  
3 the officer?

4 **MADAM FOREPERSON:** They want the cell phone and the  
5 officer.

6 **THE COURT:** Cell phone and the officer, All right. In  
7 that case, then, counsel, I'd ask you to come forward  
8 together, recue the tape to include that as well.

9 **(WHEREUPON, ATTORNEY FOR THE STATE AND ATTORNEY FOR**  
10 **DEFENDANT COME FORWARD TO COMPLY WITH JUDGE'S INSTRUCTIONS.)**

11 **THE COURT:** While they are doing that, ladies and  
12 gentlemen of the jury, let me go forward so we can utilize  
13 our time effectively. You asked me other questions: could  
14 the jury see a picture of Jake after being beaten? Where is  
15 the record of 9-1-1 calls? Can we hear them? What time  
16 did Jake and Desmond get off work? Who actually called the  
17 police? What was Desmond's blood alcohol level? What is  
18 the time difference between the start fight and the first  
19 9-1-1 call? What was the height and weight of Jake? The  
20 answer to each one of those questions is you must decide  
21 this case based on the evidence presented during the trial  
22 of the case.

23 Now, you also asked me, what is the legal term for  
24 voluntary manslaughter? Can we get a print copy? My answer  
25 to that is I am happy to recharge you the offense of

1 voluntary manslaughter. After I recharge it, if you would  
2 like more such as a copy of my voluntary manslaughter  
3 charge, I'd be happy to provide that to you? Does that  
4 answer your question?

5 (JURY NODS IN AGREEMENT.)

6 THE COURT: Counsel, have you cued the tape?

7 MR. THORNTON: Yes, sir.

8 MR. MATHEWS: Yes, sir.

9 THE COURT: All right. We will now the tape as you  
10 requested of -- I believe this is tape of Stephanie Ballard;  
11 is that correct, counsel?

12 MR. THORNTON: That's correct, Judge.

13 MR. MATHEWS: Yes, sir.

14 THE COURT: Let me know if you can't hear or see.

15 (VIDEOTAPE BEGINS.)

16 THE COURT: The Foreperson of the jury, counsel, is  
17 indicating they want you to run it forward now, to the  
18 interview; is that correct?

19 MADAM FOREPERSON: Yes, sir.

20 THE COURT: Counsel, would you please come forward and  
21 agree that it's forwarded to the interview before we publish  
22 to the jury.

23 (VIDEOTAPE RESUMES)

24 THE COURT: All right. Ms. Stilley, you and Mr.  
25 Haselden are excused from the courtroom.

1 MS. STILLEY: Thank you, Your Honor.

2 THE COURT: Ladies and gentlemen of the jury panel, now  
3 to answer your other question that you had and I'll ask you,  
4 Madam Foreperson, before you go back, for the jury, if we've  
5 answered everything that I can answer. The question was,  
6 what is the legal term for voluntary manslaughter again?  
7 Can we get a print copy? If you find, ladies and gentlemen,  
8 that the State has proved beyond a reasonable doubt that the  
9 defendant committed murder, you may consider whether the  
10 State has proven beyond a reasonable doubt that the  
11 defendant committed voluntary manslaughter. To prove  
12 voluntary manslaughter, the State must prove beyond a  
13 reasonable doubt, that the defendant took the life of  
14 another in the sudden heat of passion, based on sufficient  
15 legal provocation.

16 Both heat of passion and sufficient legal provocation  
17 must be present at the time of the killing to constitute  
18 voluntary manslaughter. Sudden heat of passion may, for a  
19 time, affect a person's self-control and temporarily disturb  
20 a person's reason. The sudden heat of passion must be the  
21 type that would make an ordinary person unable to coolly  
22 reflect on his actions, and would produce an uncontrollable  
23 impulse to do violence.

24 Sufficient legal provocation must be the type that  
25 would make a person of ordinary reason and caution become

1 enraged and to lose control temporarily. The provocation  
2 needed for voluntary manslaughter must come from some act  
3 of, or related to, the victim. Words alone, however vulgar  
4 or insulting, are not enough to be legal provocation. Where  
5 death is caused by the use of a deadly weapon, the words  
6 must be accompanied by some overt, threatening act which  
7 could have produced the heat of passion.

8       The exercise of a legal right, no matter how offensive  
9 it is to another, is never sufficient legal provocation for  
10 voluntary manslaughter. If the heat of passion had cooled,  
11 or if there was enough time between the provocation, if any,  
12 and the killing, for the passion of a reasonable person to  
13 cool, the killing would not be voluntary manslaughter.

14       In deciding whether a reasonable person would have had  
15 enough time to cool off, you should consider all the  
16 circumstances surrounding the killing, based on evidence  
17 introduced the trial of the case. You may consider the  
18 nature of the provocation, if any. The defendant's mental  
19 and physical state, and the circumstances and relationships  
20 between the parties, based on evidenced introduced during  
21 the trial of the case.

22       Now, I ask you, Madam Foreperson, have I answered the  
23 jury's question concerning voluntary manslaughter, or would  
24 you like additional instructions or a print copy?

25       **MADAM FOREPERSON:** That's fine.



1       **THE COURT:** That's sufficient? Very well. I think,  
2 now, I've addressed each one of your questions that are in  
3 your two-page notes. I'll ask you now, if you would, if you  
4 would retire back to your jury room. Now, I'm going to keep  
5 the tape in here this time, obviously, it's available to you  
6 and you've seen it, but I'll keep it out here unless you'd  
7 like to take it with you. It will be here available for you  
8 should you need it. You may retire to your jury room now to  
9 continue your deliberations.

10       (3:30 P.M., JANUARY 29, 2009, WHEREUPON JURY EXITS THE  
11 COURTROOM, THEREAFTER THE FOLLOWING PROCEEDINGS WERE HELD ON  
12 THE RECORD:

13       **THE COURT:** Any exceptions or additions to the charge  
14 from the State of South Carolina, as to the answering of the  
15 questions?

16       **MR. THORNTON:** No, sir.

17       **THE COURT:** From the defendant?

18       **MR. MATHEWS:** No, sir.

19       **THE COURT:** Very well. I'm handing the court reporter,  
20 which is now marked as Court's Exhibit Five, the questions  
21 asked by the jury. We will be at ease while we await the  
22 jury's verdict.

23       I see that I have Mr. Beach with pneumonia. I have Mr.  
24 Bennett and Mr. Harvin here, so I'd like to try to get a  
25 little work, at least for these lawyers, done. I do not see

1 the young lady from the attorney General's Office. Oh, she  
2 is here. Ms. Crum's here. I'd like to try to get her work  
3 done as well. Bearing in mind, we're still in the trial of  
4 a case, so we might be stopping.

5 I promised Mr. Lemacks -- Mr. Lemacks, are you down  
6 there under the table? Apparently not. Is he outside the  
7 courtroom. Please let him in.

8 MR. THORNTON: Your Honor, Mr. Lemacks waited on you,  
9 he said as long as he could, and he had to leave.

10 MR. LEMACKS: Your Honor, I'm not sure why the Deputy  
11 Solicitor ordered me from the courtroom, Your Honor. I've  
12 been waiting downstairs patiently on the Solicitor.

13 THE COURT: Well, it's amazing, your own staff said  
14 they didn't know where you were. That's not true, Jay. I'm  
15 just messing with you. I always look down there and when I  
16 can't find you, I always ask about you, though. You know  
17 your friends are looking after you.

18 MR. LEMACKS: Wherever I am, I'm working, Judge.

19 THE COURT: I understand that. All right. So everyone  
20 knows the order, Ms. Crum, I know you've come all the way  
21 from Columbia, and I understand you have at least one more  
22 plea and some arraignments; is that right?

23 MS. CRUM: Your Honor, I actually have seven pleas that  
24 I have left.

25 THE COURT: Well, I don't know if we've got -- are the

1 lawyers the same?

2 MR. MATHEWS: No, there's Mr. Beach and Mr. Harvin, and  
3 the rest are pro se, Your Honor.

4 THE COURT: Well, how many do you have, Sean?

5 MR. THORNTON: Judge, I've got five or six that are  
6 T.K.'s that are laid out here. I don't have anything else.  
7 My bond reduction motion, Ms. Joyner, has, after I stated my  
8 position about no changing circumstances, she has decided  
9 not to pursue her motion, Your Honor, so that's been  
10 withdrawn.

11 THE COURT: All right. Here's my order then. Mr.  
12 Lemacks did not get any probation at the last week, week  
13 before last court, for reasons known to Mr. Lemacks, so I  
14 promised him, I'd start with him, and Mr. Mathews said  
15 uncle. He said Mr. Beach had to be here in order to  
16 complete it. So I'm going to complete probation, and then  
17 I'll try to take as many matters as I can. Bear in mind it  
18 is already twenty-five to four, and I've already worked  
19 these people until after dark, twice, this week. I'll try  
20 to do as much as I can.

21 (THE COURT BEGINS PLEAS, PROBATION AND PAROLE MATTERS.)

22 AT 4:45 P.M., BAILIFF INFORMS JUDGE THAT THE JURY HAS  
23 REACHED A VERDICT.)

24 THE COURT: All right. Solicitor, I understand that  
25 the jury has reached a verdict. Anything from the State

1 before we publish the verdict?

2 MR. THORNTON: Nothing from the State, Judge.

3 THE COURT: From the defendant?

4 MR. MATHEWS: No, sir.

5 THE COURT: All right. Ladies and gentlemen, I realize  
6 we have people that have been here and been patient  
7 throughout the trial. I certainly enforce this rule: I  
8 don't know what the verdict is, but whatever the verdict is,  
9 you have to control your emotions. I do not allow any  
10 outbursts. If you don't feel like you can control your  
11 emotions, regardless of what the verdict is, you need to  
12 leave this courtroom now, because my bailiffs are instructed  
13 to remove you and I'll enforce that power by my contempt  
14 power. Does everyone understand that? If you remain, I  
15 expect you to remain quiet when the verdict is published.  
16 Very well. Bring us the jury.

17 (4:55 P.M., THURSDAY, JANUARY 29, 2009, THE JURY ENTERS  
18 THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE  
19 RECORD.)

20 THE COURT: You may publish the verdict.

21 MADAM CLERK: State of South Carolina v. Desmond J.  
22 Sam, 2008-GS-15-0370, 2008-GS-15-0371, charged with murder  
23 and assault and battery. We, the jury, by unanimous consent  
24 find the defendant, Desmond Sams, in Indictment Number 2008-  
25 GS-15-370, not guilty of murder.

1       We, the jury, by unanimous consent, find the defendant,  
2 Desmond Sams, in Indictment Number 2008-GS-15-0370, guilty  
3 of voluntary manslaughter.

4       We, the jury, by unanimous consent, find the defendant,  
5 Desmond Sams, in Indictment Number 2008-GS-15-0371, not  
6 guilty of assault and battery of a high and aggravated  
7 nature, signed by the Foreperson, January 29th, 2009,  
8 Marilyn Wade.

9       Ladies and gentlemen of the jury, if this is your  
10 verdict, please raise your right hand.

11       **THE COURT:** Let the record reflect, twelve hands were  
12 raised. Anything further from the jury from the defendant  
13 before I excuse the jury?

14       **MR. MATHEWS:** No, sir, Your Honor.

15       **THE COURT:** From the State?

16       **MR. THORNTON:** No, sir, Judge.

17       **THE COURT:** Now, Madam Foreperson, and ladies and  
18 gentlemen of the jury, I want to thank you for your service,  
19 on behalf of Colleton County and this court. I told you  
20 when I qualified you this week, that without you, justice  
21 can never be accomplished in a courtroom, and I thank you  
22 for that service. Now, let me give you some instructions.  
23 If you want to discuss your verdict, you can. If you don't,  
24 you tell the person that asked you about it, you don't want  
25 to discuss it. If that person persists, you let me know.

1 You do not have to discuss anything about your verdict  
2 unless you decide to do so.

3 Sentencing in this case is going to take place right  
4 now. So if you would like to stay for sentencing, I'd be  
5 happy for you to stay for sentencing, if you'd like to do  
6 so. If you do not want to stay for sentencing, that is  
7 entirely up to you. Now, does everyone understand that?

8 We'll be mailing you a check for your service. It's  
9 not much. We're paying a whopping \$20 a day. We recognize  
10 that this past summer that didn't pay for gas hardly, but at  
11 least now the price of fuel is down some. We'll be mailing  
12 you a check for your jury service at the address you  
13 provided us; you understand?

14 With my thanks, you are now excused to either remain in  
15 the jury box, if you would like to do so, or you may sit out  
16 in the courtroom with my bailiffs if you would like to do  
17 so, or you may leave the courtroom at this time. Whatever  
18 you decide, but your service on the jury is now concluded  
19 for the balance of the week, so you may do as you desire.  
20 Thank you.

21 (WHEREUPON, THE COURT IS OFF THE RECORD FOR A BRIEF  
22 TIME TO ALLOW JURORS TO LEAVE OR STAY OR BE RESEATED IN THE  
23 COURTROOM. THEAFTER, AT 5:00 P.M., THE FOLLOWING SENTENCING  
24 WAS HELD ON THE RECORD.)

25 THE COURT: Solicitor, you, defendant and defense

1 counsel, come around for sentencing. First of all, I'd like  
2 to do this. Before sentencing, I'm going to ask Mr. Mathews  
3 if he has any post-verdict motions, but because we -- I'd  
4 like to mark my printed copy -- even though there's a record  
5 of it, this is what the jury received with y'all consent, as  
6 Court's Exhibit Number Six. Without objection, Solicitor?

7 MR. THORNTON: Without objection, Judge.

8 THE COURT: Without objection, Mr. Mathews?

9 MR. MATHEWS: No objection.

10 THE COURT: Court's Exhibit Number Six, without  
11 objection. Mr. Mathews, I'll be happy to hear from you now,  
12 as to any post-verdict motions.

13 MR. MATHEWS: Your Honor, I would make the standard  
14 post-trial motions.

15 THE COURT: Mr. Mathews, you have to tell me what you  
16 believe the standard post-trial motions -- in light of your  
17 motion for directed verdict. I assume it's on the same  
18 grounds?

19 MR. MATHEWS: It would be, Your Honor.

20 THE COURT: On the basis that you felt that there was  
21 insufficient evidence to submit the case to the jury?

22 MR. MATHEWS: Yes, sir.

23 THE COURT: And for the reasons I articulated at the  
24 close of the State's case, I, respectfully, deny your motion  
25 for directed verdict. Get your client to come around beside

1 you. All right.

2 Solicitor, tell me when you've got your sheet ready. I  
3 know you're working on it.

4 MR. THORNTON: Your Honor, may I approach?

5 THE COURT: You may.

6 MR. THORNTON: I've shown the sentencing sheet to Mr.  
7 Mathews, Judge. He's indicated to me, to his knowledge, it  
8 is accurate. Your Honor, I apologize. I failed to do what  
9 I normally do at the top of that, which is to put the  
10 minimum and maximum. It's up to 30 years in prison, Your  
11 Honor.

12 THE COURT: There is no mandatory minimum. You agree,  
13 Mr. Mathews? It's zero to thirty, and it can be suspended.

14 MR. MATHEWS: That's my understanding.

15 MR. THORNTON: Yes, sir, and as I've checked, it is  
16 violent and most serious.

17 THE COURT: Violent and most serious. Now, Solicitor,  
18 I'll be happy to hear from you, or if a member of the family  
19 wishes to address the Court. I'll give you a minute to ask.  
20 I'm going to hear from Mr. Mathews in mitigation before I  
21 hear from them. Before I do, I want to make sure if you can  
22 find out if anybody wants to address the Court for  
23 sentencing purposes.

24 MR. THORNTON: Yes, sir.

25 THE COURT: Obviously, I'm familiar from listening to



1 all the testimony in this case, and the jury obviously took  
2 four hours in deliberation and they carefully and  
3 painstakingly went through the evidence. They reviewed it a  
4 second time. I completely understand their verdict, and I  
5 understand the facts, as presented in the evidence of this  
6 case, but I'd like to hear from you in mitigation as to your  
7 client.

8 MR. MATHEWS: Thank you, Your Honor. As Your Honor  
9 knows, from Mr. Sams' testimony, he's 31 years old. He was  
10 born in Philadelphia. He's lived in the Lowcountry since he  
11 was 6 years old. He has a commercial driver's license and  
12 drives a truck. He's not married and has no children. His  
13 mother, Olympia, is here with him today, as she has been  
14 this week, except when she was sequestered.

15 As the Court also knows from the testimony, the  
16 defendant and the victim were best friends and were like  
17 brothers. This is a tragedy for everybody. There's not  
18 anybody in here that wishes things had not worked out  
19 differently than they did. Everybody was drinking a lot.  
20 Mr. Sams has a couple magistrate level things, but no prior  
21 general session's record. No serious record.

22 Your Honor, he's been in jail since this happened,  
23 since April the 12th, 2008, eight months, and just ask the  
24 Court to show whatever mercy could be shown in this case.  
25 He's been in jail a substantial period of time. There's

1 nothing anyone can do to bring back Mr. Frazier.

2       **THE COURT:** Mr. Sams, is there anything you'd like to  
3 tell the Court prior to sentencing?

4       **MR. SAMS:** Sir, I just feel I was defending myself,  
5 that's -- that's all I can say. I'm sorry for Sharrondale,  
6 Mark --

7       **THE COURT:** Turn around and face me. Don't talk to  
8 someone else. You're talking to the Court.

9       **MR. SAMS:** I'm sorry for the victim family. It was  
10 like my brothers and sisters, too. They know that. I hope  
11 they do, due to the evidence, they saw -- they know in their  
12 heart that I didn't mean to kill him. I hope they can be at  
13 rest with that. And I pray to God, God bless the dead, for  
14 my cousin. He always my cousin, he always be my best  
15 friend.

16       **THE COURT:** Mr. Mathews, anything further from the  
17 defendant before I hear from the State?

18       **MR. MATHEWS:** Ms. Sams, his mother, would like to say a  
19 word.

20       **THE COURT:** Ms. Sams, if you'd come up to the  
21 microphone for me and give me your full name, please ma'am.

22       **MRS. SAMS:** Olympia Sams.

23       **THE COURT:** Ms. Sams?

24       **MRS. SAMS:** Yes, this is my son and I would just say  
25 that I've known him since he was born and that really I

1 believe he did not mean to kill Red, his cousin, my cousin,  
2 and I hope that you take into consideration, you know, we're  
3 all family. We may never, you know, fully recover from  
4 this, but we are sorry that it happened, and we extend that  
5 to Jake's sister's family, and the father, also. Thank you.

6 **THE COURT:** Very well. All right, Solicitor?

7 **MR. THORNTON:** Thank you, Your Honor. May it please  
8 the Court? Your Honor, we've heard a lot about the fact  
9 that everybody was drinking that day, but only one person  
10 lost their life, and that was the victim in this case, Jake  
11 Frazier. I've spoken with the victim's family, his sister,  
12 his brother, and they ask that I relay their wishes to the  
13 Court, they don't wish to speak any further, Judge, once I'm  
14 done.

15 Your Honor, I told them in the beginning, Judge, that I  
16 was not going to get up here and ask for the maximum  
17 sentence in this case of 30 years, however, I do think a  
18 substantial prison sentence is appropriate.

19 **THE COURT:** What do you mean by "substantial"?

20 **MR. THORNTON:** Your Honor, the State's asking for a  
21 sentence of 20 years in this case. There is a man that lost  
22 his life. It was done with Desmond Sams' bare hands. He  
23 choked him to death, Your Honor, over the course of, as we  
24 know, many, many minutes, and all he would have had to do  
25 was turn him loose and walk away, and he didn't do it.

1           Mr. Mathews is absolutely right. He has no prior  
2 general session's appearances. He has several magistrate  
3 level offenses; however, two of them do concern the  
4 Solicitor's Office, Your Honor. He has two prior criminal  
5 domestic violence convictions, a first and a second, so  
6 violence is not something that is new to Mr. Sams. This is  
7 his third offense involving some type of assault, Your  
8 Honor, that we have. We have a 1998 conviction for Criminal  
9 domestic violence and a 2003 conviction for criminal  
10 domestic violence.

11           **THE COURT:** I need to explain, since the jury's  
12 present, why the Solicitor ruled on that ruling, and so does  
13 Mr. Mathews, and the reason that was not brought to the  
14 jury's attention, and the reason for that was it didn't  
15 carry more than one year, and that was the rule, and one of  
16 them was 10 years old, which would have been an even greater  
17 burden, but it wasn't brought it. I want the jury to  
18 understand that.

19           Normally, a record could be brought out for credibility  
20 purposes if it's punishable by more than a year, and it  
21 involved dishonesty or false statement, and that was not the  
22 case here. That's the reason. So you're bringing that to  
23 my attention for the first time in trial, because it was  
24 criminal domestic violence?

25           **MR. THORNTON:** That is correct, Your Honor. This is

1 not Mr. Sams first time at the rodeo, Judge, and the State  
2 feels like a substantial prison sentence, as I said, of 20  
3 years would be appropriate in this case. The victims have  
4 nothing further. Thank you, Your Honor.

5 **THE COURT:** Mr. Mathews, anything in reply?

6 **MR. MATHEWS:** Yes, sir, Your Honor. Your Honor, I  
7 understand this is not -- this is akin to, and I understand  
8 that the law didn't permit this charge, but this would be  
9 like an involuntary manslaughter case, in the sense that if  
10 he acted recklessly, just ask the Court to consider if it  
11 were involuntary manslaughter, he would get five years, a  
12 max of five years and ---

13 **THE COURT:** And as you know, Mr. Mathews, which the  
14 jury does not know, I declined to charge involuntary  
15 manslaughter in this case because I did not think the  
16 evidence supported a charge of involuntary manslaughter.  
17 He's either not guilty, by virtue of self-defense, or it was  
18 either murder, or voluntary manslaughter, based on the  
19 evidence presented in the Court's view, but that would be a  
20 matter that can be reviewed by the Appellate Court, but that  
21 does not mean that I should sentence in accordance with  
22 something that I declined to charge during the trial of the  
23 case.

24 **MR. MATHEWS:** I understand, Your Honor. It seems like  
25 based on his lack of a serious record, Your Honor, and the

1 circumstances of this case, that that would be -- I would  
2 ask the Court to please consider that.

3       **THE COURT:** Solicitor, is there any reason -- it's my  
4 intention to give him a split sentence. Is there any reason  
5 why there should be any contact once he completes his active  
6 sentence, with the family?

7       **MR. THORNTON:** No, Your Honor, there isn't.

8       **MR. MATHEWS:** I don't think so, Your Honor. I don't  
9 think there's any reason.

10       **THE COURT:** Mr. Sams, as you know, I carefully went  
11 over and I can tell the jury worked hard. They found you  
12 not guilty of assault and battery of a high and aggravated  
13 nature. They found you not guilty of murder. They found  
14 you guilty of voluntary manslaughter. I believe there was  
15 sufficient evidence to support that verdict. I take into  
16 consideration that the maximum sentence is 30 years. I take  
17 into consideration -- which I do not believe you should  
18 receive, whether the Solicitor feels so or not. I take into  
19 consideration, however, that you do have two prior offenses  
20 for criminal domestic violence. I do believe that, as your  
21 mother stated to me, prior to drinking, that it was your  
22 intent to harm a person that you tell me was your friend,  
23 but your actions, which I believe were exactly what the  
24 reason for -- I think it was a sudden heat of passion and a  
25 fight, and I think you felt like you had been provoked in a

1 fight, which is what the jury concluded, that there was  
2 legal provocation and a sudden heat of passion, which is why  
3 you were convicted of voluntary manslaughter.

4 The Solicitor is asking me for a straight sentence of  
5 20 years. I'm going to split the sentence, because I want  
6 you supervised, meaning after you've served your active  
7 time, that you'll be on probation, and I'm going to make a  
8 condition of probation that there be no contact by you with  
9 the victim's family, direct or indirect. That means, you're  
10 to have absolutely no contact with them; do you understand  
11 that, sir?

12 MR. SAMS: Yes, sir.

13 THE COURT: That means you can't contact them, nor can  
14 you have anybody else contact them. On Indictment 2008-GS-  
15 15-0370, the State v. Desmond Sams, the sentence of this  
16 Court is defendant is committed to the State Department of  
17 Corrections for a term of 24 years, provided that upon the  
18 service of 18 years, the balance is suspended and you be  
19 placed on probation for a period of 5 years.

20 Special condition of probation, no contact with the  
21 victim's family, direct or indirect. Defendant will be  
22 given credit for any time that he's already served, pursuant  
23 to South Carolina Code Section 24-13-40, that is to be  
24 calculated and applied by the State Department of  
25 Corrections. Because you have appointed counsel, it

1 required \$500 to be paid to the Clerk of Court of Colleton  
2 County during your probationary period. Good luck to you,  
3 sir.

4 **MR. THORNTON:** Thank you, Judge.

5 **THE COURT:** Thank you. Ladies and gentlemen of the  
6 jury, this concludes the sentencing in the trial of this  
7 case. I want to thank you for your service on behalf of  
8 Colleton County and this court. Thank you very much.  
9 You're now excused from the courtroom, with my blessing, for  
10 the balance of the week, and you're exempt from jury service  
11 for three years.

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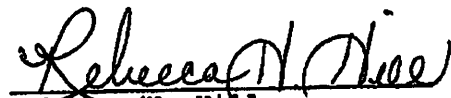
STATE OF SOUTH CAROLINA )  
COUNTY OF COLLETON )

## CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the trial of the captioned case, in the Court of General Sessions for Colleton County, South Carolina, on the 28<sup>th</sup> and 29<sup>th</sup> day of January 2009.

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

June 10, 2009

  
Rebecca H. Hill,  
Official Court Reporter

WITNESSES

Allen Inabinet/CCSO *Harlingen*

ARREST WARRANT NUMBER

h014558

April 13, 2008

ACTION OF GRAND JURY

*True Bill*  
*Jacqueline Callender*

Foreperson of Grand Jury  
Date: *10/9/08*

...DICT

*Guilty of Voluntary*  
*Manslaughter*  
*Marilys Wade*

Foreperson of Petit Jury  
Date:

INDICT

DOCKET NO. 2008-GS-15-0370

The State of South Carolina  
County of Colleton

COURT OF GENERAL SESSIONS

October, Term 2008

THE STATE

vs.

Desmond J. Sams

Indictment for  
Murder / Murder

SC Code: 16-03-0010; 16-03-0020  
CDR Code: 0116

COLLETON COUNTY  
GENERAL SESSIONS COURT  
2008 OCT -9 PM 4:55

*Desmond J. Sams*

WITNESSES

Allen Inabinett *Stallings*

DOCKET NO. 2008-GS-15-0371

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

October, Term 2008

ARREST WARRANT NUMBER

H014559

April 13, 2008

ACTION OF GRAND JURY

*True Bill*  
*Jacqueline Callender*

THE STATE

vs.

Desmond J. Sams

Person of Grand Jury  
Date: *10/9/08*

VERDICT

*Not Guilty*  
*Marly Wade*  
Foreperson of Petit Jury  
Date:

INDICT

Indictment for

Assault / Assault and battery of a high and aggravated nature

SC Code: 00-00-0000  
CDR Code: 0013

COLLETON COUNTY  
GENERAL SESSIONS COURT  
2008 OCT -9 PM 4:55

*Desmond J. Sams*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Colleton )

## INDICTMENT

2008-OS-15-0371

At a Court of General Sessions, convened on October 9, 2008, the Grand Jurors of Colleton County present upon their oath:

**Assault / Assault and battery of a high and aggravated nature**

That in Colleton County, South Carolina, on or about April 12, 2008, the Defendant, Desmond J. Sams, did commit an assault and battery constituting an unlawful act of violent injury to the victim, Lisa Strickland, accompanied by circumstances of aggravation, to wit: hit the victim with his fist; all in violation of the Common Law of South Carolina and Section 17-25-30 (C/L) of the Code of Laws of South Carolina (1976, as amended).

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



---

Isaac M. Stone  
Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF  
STATEColleton

VS.

Desmond Javon Sams

AKA:

Race:

Sex:

Age:

DOB:

SS#:

City, State, Zip:

Cottageville SC 29435

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

Voluntary ManslaughterIn violation of § 16-003-50 of the S.C. Code of Laws, bearing CDR Code # 0217☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1<sup>st</sup> or Lawd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, \_\_\_\_\_ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

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 24 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 18 days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for 3 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.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| §14-1-206 (Assessments 107.5%)         | \$      |           |
| §14-1-211(A)(1) (Conv. Surcharge)      | \$100   | \$ 100.00 |
| §14-1-211(A)(2) (DUI Surcharge)        | \$100   | \$        |
| §56-5-2995 (DUI Assessment)            | \$12    | \$        |
| §35.13 (Public Def/Prob)               | \$500   | \$ 500.00 |
| §73.3, 1B TP (Law Enforce. Funding)    | \$25    | \$ 25.00  |
| §33.7, 1B TP (Drug Court Surcharge)    | \$100   | \$        |
| §50-21-114(BUI Breath Test Fee)        | \$50    | \$        |
| §56-5-2942(J) (Vehicle Assessment)     | \$40/ea | \$        |
| 3% to County (if paid in installments) | \$      | \$ 18.90  |
| §90.11 TP (SCCJA Surcharge)            | \$5     | \$ 5.00   |
| TOTAL                                  |         | \$ 648.90 |

Patricia C. Grant  
Clerk of Court/Deputy Clerk

Court Reporter:

Rebecca HillINDICTMENT/CASE#: 2008 -GS- 15-370AW#: H014558Date of Offense: 9/12/08S.C. Code §: 16-13-10CDR Code #: 0116

## SENTENCE SHEET

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☒☒ CERTIFIED TRUE COPIES OF RECORDS

Attend Voc. Rehab. of \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_  
CLERK OF COURT, GENERAL SESSIONS COURT  
COLLETON COUNTY, SOUTH CAROLINA  
DATE: 1-29-09Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_

Beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: NO CONTACT WITHVICTIM'S FAMILY DIRECT  
OR INDIRECT☒ Appointed PD or appointed other counsel, §35.13 TP☒ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 019122Sentence Date: January 29, 2009

## FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF ColletonDesmond J. Sams #332938

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

15-CP-15-444

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Turberville Corr. Inst.
2. Name and location of Court which imposed sentence Colleton County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2008-GS-15-0370
  - (b) 2008-GS-15-0371
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) Jan-29-09 18 yr 5 yr probation
  - (b) N/A

- (c) N/A
6. Check whether a finding of guilty was made: After trial
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. South Carolina Supreme Court
- iii. Colleton County GS.
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. Affirmed
- iii. ~~Quashed~~
- (c) the date of each such result:
- i. Feb. 8 - 2011 - Filed May 4 - 2011
- ii. Heard Oct 2, 2013 - Filed Sept - 24, 2014
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Feb. 8 - 2011 - Filed May 4 - 2011
- ii. Heard Oct 2, 2013 - Filed Sept - 24, 2014
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) (5) amendment violation  
 (b) (6) amendment violation  
 (c) (14) amendment violation

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

- (a) Grand Jury violation  
 (b) ~~ineffective~~ ineffective counsel violation  
 (c) Due process violation Brady violation

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

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

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

(a) the specific nature thereof:

- i. N/A  
 ii. N/A  
 iii. N/A  
 iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A  
 ii. N/A  
 iii. N/A  
 iv. N/A

(c) the disposition thereof:

- i. N/A  
 ii. N/A  
 iii. N/A



iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) N/A

(c) N/A

17. Were you represented by an attorney at any time during the course of:

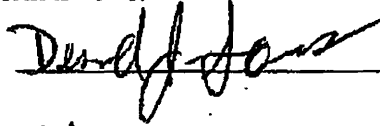
- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. David Mathews 40 Klein St. Walterboro, S.C. 29488
- ii. Joseph L. Savitz, III po. Box 11589 Columbia S.C. 29211
- iii. N/A
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. ~~Appeal~~ Appeal
- iii. N/A
19. State clearly the relief you seek in filing this application:
- Reversed, plea to lesser offense time served
20. Are you now under sentence from any other court that you have not challenged?
- N/A

STATE OF SOUTH CAROLINA )

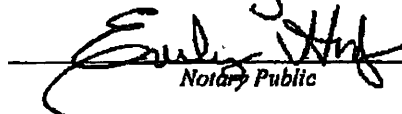
County of Colleton County )

## VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 28th  
day of January, 2015

 (L.S.)  
Notary Public

My Commission Expires: 4-27-2016

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

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

  
Applicant

SWORN or affirmed to and subscribed before me this  
28<sup>th</sup> day of January, 2015

  
Notary Public

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Desmond J. Sams, #332938,

2015-CP-15-444

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on March 27, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment. The Applicant was indicted by the October 2008 term of the Charleston County Grand Jury for murder (2008-GS-15-0370) and assault and battery of a high and aggravated nature (ABHAN) (2008-GS-15-0371). David Matthews, Esquire, represented him. The Applicant proceeded to a jury trial pursuant to which he was found guilty of the lesser included offense of voluntary manslaughter. The jury also acquitted the Applicant of ABHAN. On January 29, 2009, the Honorable Perry M. Buckner sentenced the Applicant to confinement for twenty four (24) years suspended upon the service of eighteen (18) years with five (5) years' probation.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Sams, Op. No. 2011-UP-205 (S.C. Ct. App. filed May 4, 2011). Joseph L. Savitz, Esquire, represented the Applicant on appeal. The Applicant then filed a petition for a writ of certiorari in the Supreme

Court, and the petition was granted on October 17, 2012. On February 4, 2014, the Supreme Court affirmed the decision of the Court of Appeals in Opinion No. 27447. The Remittitur was issued on November 7, 2014.

## II.

In his application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "(5) amendment violation"
  - a. "Grand jury violation"
2. "(6) amendment violation"
  - a. "Ineffective counsel violation"
3. "(14) amendment violation"
  - a. "Due process violation Brady violation"

For the purpose of this Return, the Respondent incorporates the Clerk of Court's records, the South Carolina Department of Corrections' records, the trial transcript and the South Carolina Supreme Court and Court of Appeals opinions. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## III.

The Respondent construes the Applicant's first, and part of his third, claims as allegations of due process violations. In the event Applicant alleges independent claims of due process violations, he fails to set forth with specificity any facts supporting his claim that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965). "It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to

relief.” (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965)).

Since Applicant has failed to make even a *prima facie* showing, Respondent would submit this allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC, for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. In the alternative, Respondent would submit Applicant should be required to provide a more definite statement pursuant to Rule 12(e), SCRPC, because this allegation is so vague and ambiguous Respondent cannot reasonably be required to frame a response.

#### IV.

In part of his third claim, the Applicant also alleges a Brady/ Rule 5 violation; however, the Applicant fails to state with any specificity the nature of the violation he claims. This claim is too vague for the Respondent to respond and should be summarily dismissed. The Applicant is required to set forth with specificity the grounds upon which his application is based in accordance with S.C. Code Ann. § 17-27-50. The Respondent moves for summary dismissal pursuant to South Carolina Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

#### V.

Respondent construes Applicant's second allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).



STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS

2015-CP-15-0444

DESMOND J. SAMS, #332938,  
Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,  
Respondent.

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

**James K. Falk, Esq.**  
**Falk Law Firm, LLC**  
**PO Box 1058**  
**Charleston, SC 29402**

DATED this 30<sup>th</sup> day of October, 2015.

  
Elizabeth McLellan, Legal Assistant  
For Respondent

1           In the Court of Common Pleas for the  
2           State of South Carolina, County of Colleton

3

4                                   Case No.: 2015CP1511444

5   Desmond J. Sams,

6                   Plaintiff(s),

7   vs.                                   Transcript of Record

8   State of South Carolina,

9                   Defendant(s).

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15                                   October 10, 2017

16                   Beaufort, South Carolina

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21   BEFORE:

22                   The Honorable Thomas Russo

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1 PROCEEDINGS

2 THE COURT: All right.

3 MR. NEELY: Thank, Your Honor. The next case on  
4 the docket is the case of Desmond J. Sams versus the  
5 State of South Carolina; 2015CP1500444. The applicant  
6 was indicted by the October 2008 term by the Colleton  
7 County grand jury for murder and assault and battery of  
8 a high and aggravated nature. Mr. David Mathews  
9 represented him at trial.

10 At trial the applicant was found guilty of a  
11 lesser included offense of voluntary manslaughter and  
12 acquitted of the ABHAN charge. That was on January  
13 29th, 2009. The Honorable Perry Buckner sentenced  
14 applicant to 24 years suspended upon the service of 18  
15 years with five years' probation to follow. The notice  
16 of appeal was perfected on the applicant's behalf. The  
17 South Carolina Court of Appeals affirmed the  
18 applicant's conviction and sentence.

19 Joseph Savitz represented applicant on appeal.  
20 Applicant then filed a writ of certiorari with the  
21 Supreme Court of South Carolina. The petition was  
22 granted on October 17th, 2012. On February 4th, 2014  
23 the Supreme Court affirmed the decision of the Court of  
24 Appeals and intermitter was issued on November 7th,  
25 2014.

## CALLING OF THE CASE

1           THE COURT: All right. And I know that I did it  
2 earlier today, but Mr. Falk, have you informed Mr. Sams  
3 about what relief this Court can grant?

4           MR. FALK: Yes, Your Honor.

5           THE COURT: Okay. I'll be happy to hear from you.

6           MR. FALK: If I can just characterize, he has  
7 raised a Fourteenth Amendment Brady violation. Whether  
8 or not that's Fourteenth Amendment, but he raised Brady  
9 violations in his application for relief. And there  
10 were also ineffective assistance of appellate counsel  
11 issues that we would like to raise, in addition to  
12 ineffective assistance of trial counsel.

13           He had two separate appellate counsels at the  
14 office of appellate defense. Joseph savitz represented  
15 him on the direct appeal from the trial. And then I  
16 believe he left appellate defense and I believe Susan  
17 Hackett represented him on a petition for cert for the  
18 South Carolina Supreme Court. We really find no fault  
19 with Susan Hackett's representation, but we have  
20 serious concerns about Joseph Savitz.

21           THE COURT: Okay.

22           MR. FALK: So, he is the only witness for the  
23 appellate defense. You know what I'm saying, he's the  
24 -- and he will be testifying by telephone. But I  
25 think, in order to get a sense of where I think the

## CALLING OF THE CASE

1 problems are in his appellate representation, I really  
2 need to sort of let the Court know that the trial was  
3 like. So, we are going to call Mr. Mathews first.

4 THE COURT: All right. Mr. Mathews, sir, if you  
5 would please come around and be sworn for your  
6 testimony in this matter.

7 Thereupon,

8 DAVID MATHEWS

9 was called as a witness, having been first duly sworn,  
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FALK:

13 Q All right. Mr. Mathews, this is our last one.

14 A I hope so.

15 Q Now, you represented Mr. Sams?

16 A I did.

17 Q And is that -- Were you the only person that --

18 A I was the sole trial counsel.

19 Q Yeah, sole trial counsel. That's what I meant to  
20 say. So he didn't have any people before that, you were  
21 from the beginning --

22 A I was, yes.

23 Q And about how long were you involved in this case?  
24 How long did this case take to get to trial?

25 A Oh, let's see. Well, I said I was the only one

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 involved in it. I probably was. Let me check again because  
2 it started -- in started 2008, I started working in the  
3 Public Defender's Office in 2007. Let me make sure that I  
4 was the only one.

5 (Pause.)

6 A Yes, I was the only one. And I think that it  
7 started -- the offense date was April 12th, 2008, or the  
8 alleged offense, the incident date. I got the case, I met  
9 with him, Mr. Sams, first at the jail on April the 23rd,  
10 2008. So, and then the trial was -- well, you've got that.

11 Q So, the trial was last week in January of 2009?

12 A That's probably right.

13 Q Do you recall -- was it on the trial docket  
14 earlier?

15 A It could have been, I don't know.

16 Q Because, what I have here was what -- what I have  
17 in my hands, which looks to be a request for a continuous  
18 that was filed on January 5th, 2009. Can I show that to  
19 you? Would that --

20 A Yeah. Sure. I mean, I probably have a copy in  
21 here. But, like I said, I'm -- when I go to trial, it's all  
22 in a notebook and is easy to get ahold of. Yeah, uh-huh.  
23 (Indicating affirmatively).

24 Q And I'm going to show --

25 A Do you want this back?



## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 Q I'll come up and retrieve it in a second.

2 A Okay, that's fine.

3 Q And I'm going to show you a letter, can you look  
4 at it and see if that looks like a letter that you sent?

5 A Okay. All right.

6 Q And what's --

7 A This looks like my scribble, and that looks like  
8 my -- that looks like something that I would have typed.

9 Q And what's the date of the letter?

10 A December 31st, 2008.

11 Q And, so, now, do you recall sending that letter?

12 A I don't specifically recall, but it wouldn't  
13 surprise me. It looks like -- it looks like the kind of  
14 thing that I would type. It looks like I probably did type  
15 it. It doesn't have any initials on it. So probably I  
16 actually typed this as opposed to having somebody else do  
17 it.

18 Q So, that letter -- and just for the record, what  
19 are you -- what are you asking for in that letter? Are you  
20 --

21 A My letter of December, 31st, 2008: Sean Thornton,  
22 Deputy Solicitor, Post Office Box 620, Walterboro, South  
23 Carolina, 29408, reference State versus Desmond Sams,  
24 indictment, blah, blah, blah, 370, 371. Dear Mr. Thornton:  
25 Enclosed please find a form order request for discovery in

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 the above-reference case. I know that the Solicitor's  
2 Office has a long open file policy.

3 Q Hold on.

4 A Too fast?

5 Q Yes, sir. Not for me to hear, but I'm sure --

6 A Oh, sorry about that.

7 Q -- Mona's taking it down.

8 A I know the Solicitor's Office has long had an open  
9 file policy, however, I only today received an incident  
10 report in this case and haven't received any video taped  
11 statements or any SLED results to date.

12 Q And so, that was December 31st, 2008?

13 A Right.

14 Q And you had filed a motion for a continuance on  
15 January 5th?

16 A That's correct.

17 Q So, is it safe to say that you didn't -- possibly  
18 didn't think that you had all of the discovery in January  
19 of --

20 A I was certain that I didn't. I didn't even have  
21 an incident report.

22 Q Okay.

23 A And we -- and just as some background, when  
24 Randolph was the solicitor here, as he was for years, and  
25 his daddy before that and his daddy before that, they used

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 to -- Randolph used to just send a letter out saying, you  
2 have, please present this to the law enforcement and tell  
3 them to give them anything you got, and we used to just go  
4 to law enforcement and get what they had. Shortly,  
5 thereafter, Sean or Duffy or somebody changed the policy so  
6 that we had to go through the Solicitor's Office. And we  
7 couldn't get things -- law enforcement -- I sometimes try to  
8 be tricky and use a Freedom of Information Act request,  
9 sometimes I'd get something, sometimes I wouldn't. But in  
10 the end I just -- I started doing it the way -- through the  
11 formal way and make a Rule 5 and Brady demand and send it to  
12 the Solicitor's Office and they would comply, usually. They  
13 didn't in this case.

14 Q But then this case got on a trial docket for the  
15 end of January 2009?

16 A That's probably -- I would not have moved for a  
17 continuance if not, I guess.

18 Q Yeah. All right. Basically, just to get a sense  
19 of this case, basically, there was an altercation between  
20 two men who may have been over served, I guess, that's the  
21 polite term, and there was an altercation about a female?

22 A I think -- yes, I think that's a fair summary.

23 Q Just to get a sense of what the case was about.

24 A Right, that's probably about right.

25 Q Okay. And there were two witnesses in this case,

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 a Ms. Ballard and a Ms. Strickland, do you recall that?

2 A I remember that there were two women in the house.

3 Q Yeah. And they both testified at the trial?

4 A That's correct.

5 Q And it looks like from this transcript that this  
6 was a two-day trial? I mean --

7 A That's probably right.

8 Q Okay. The record will show that they were the  
9 first two witnesses that testified.

10 A That's probably right.

11 Q Okay. And after they had testified, then some  
12 other witnesses and then the State rested and then you  
13 called Mr. Inabinet to the stand?

14 A I did. I forgot who it was I was waiting on, but  
15 I had another witness that I was waiting on that wasn't  
16 there yet, and I was really just looking to fill time. And  
17 so I put the case detective on the stand, and I was asking  
18 questions, like I said, trying to give my witness time to  
19 show up. And I asked him -- you know, at this point I  
20 thought that I had all the discovery that there was to have.  
21 These two witnesses had testified, and I asked Detective  
22 Inabinet, did -- how come -- how come there were --  
23 something to the effect, and the record will show, but how  
24 come you didn't take videotapes of these two witnesses. And  
25 he said, We did. And I, of course -- I didn't have any

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 videos. And when I found out that there were videotapes  
2 that I had not seen of the interviews of these two witnesses  
3 that I hadn't been provided, I asked for a mistrial.

4 Q Let me just stop you right there, if I could.

5 A Okay.

6 Q At that time, so the state had rested, you called  
7 Inabinet as your witness, and just -- do you know where Mr.  
8 Inabinet is now?

9 A Yeah, he's -- he's -- I don't know exactly, and I  
10 don't want to -- I only know what I read in the paper, but  
11 he's no longer with the Sheriff's Office.

12 Q I mean, I read something in the paper about an  
13 Inabinet who has gotten in trouble and --

14 MR. NEELY: Your Honor, I don't understand if this  
15 is a question and how it's relevant to his testimony.

16 THE COURT: I don't know that it has any  
17 relevance. I mean, I haven't heard -- Is there any  
18 relevance to what Officer Inabinet is doing nowadays?

19 MR. FALK: Your Honor, Officer Inabinet is doing  
20 Federal time for violations while in office.

21 THE COURT: Well, I mean, he's going to be judged  
22 on what occurs -- what he -- what happened in this  
23 case.

24 MR. FALK: All right, I'll come back around then.

25 THE COURT: Okay.

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 BY MR. FALK:

2 Q So, Mr. Inabinet testified that there were video  
3 statements.

4 A Right.

5 Q And he also testified that there was a statement  
6 from a Mrs. Glover; is that correct?

7 A I think that sounds correct.

8 Q I can point you --

9 A I mean, if it's in there, it's in there.

10 Q Yeah, I mean, I could point you to the record on  
11 page 196, around line 18. You are telling the court at that  
12 time: I just found out that there was a written statement  
13 by Ms. Glover.

14 A Okay. That sounds right.

15 Q And let me --

16 A Okay. I was so -- yeah. I was also surprised to  
17 receive -- I'm quoting, I'm reading from page 196, this is a  
18 transcript, page 196, beginning at line 18. I was also  
19 surprised to see a written statement from Sharon Glover,  
20 which I did not have prior to today. Your Honor, I would  
21 have for a mistrial. This is a very serious case. How do  
22 you prepare a case if you got a visual evidence where  
23 somebody -- the tics on their face and the way they're  
24 talking and the way they're acting, you get a better idea  
25 whether they're lying or not. If there's video evidence it

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 can drastically affect the way you prepare a case. I did  
2 have the written statements and I got some vague testimony  
3 that were not dissimilar and maybe they're not, but I --  
4 anyway, that was my motion.

5 Q Okay. So then, at this point, Glover has already  
6 testified, the other two witnesses, Ballard and Strickland,  
7 have already testified, the State has rested, you are now  
8 getting discovery info?

9 A And I'm now getting discovery, right.

10 Q Okay. And if I could show you, I think I showed  
11 you this earlier --

12 A Uh-huh. (Indicating affirmatively.)

13 Q -- that -- does that look like a standard form  
14 that statements are prepared on?

15 A This is a -- what you've handed me says: 14th  
16 Circuit Solicitor's Office, voluntary statement. I don't  
17 see these much anymore, but during the time I did.

18 Q And what is the date on that?

19 A June 6th, 2008.

20 Q So that's six months --

21 A A six or a eight or a two. I can't tell. I think  
22 it's a two. It's June 2nd, 2008.

23 Q And does -- it would -- is it safe to say that it  
24 would appear that the statement was actually written by  
25 somebody else acted as a scribe on that as to --

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1           A     Yeah, this looks like TK's handwriting.

2           Q     And TK is?

3           A     TK Alexander, former Solicitor's Office attorney,  
4 he's retired now.

5           Q     And this is then a statement that was at the  
6 Solicitor's office about a witness, and it was Ms. Glover --  
7 and what was Ms. Glover's significance in this case?

8           A     Well, it -- I mean, just read -- would you like me  
9 to read the statement? I mean, she's a witness.

10          Q     She's an actual witness to the incident of the  
11 fight between the two men?

12          A     It says: I am the sister and employer of J. Fred  
13 Frazier, III, and on April the 12th, 2008, at about 4:25  
14 a.m. Stephanie Ballard called me on my cell phone, told me  
15 that she couldn't get Desmond off of Red, that he wouldn't  
16 turn him loose. They were arguing and fighting.

17                   I got her to put the phone on speakers and  
18 yelled for Desmond to get off of Red. He said, no. I told  
19 him to get the hell off him. I was sitting -- I was getting  
20 dressed, and as I went down the steps, about halfway,  
21 Stephanie and the police were there. At the bottom of the  
22 steps she screamed, He's not breathing. I hung up, and my  
23 brother and I rode to the -- with my husband to the house on  
24 Glenn Street.

25          Q     Would it have been helpful to have that statement



## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 prior to your cross examination of Ms. Glover?

2 A Yes.

3 Q So, then, you also mentioned about the video  
4 statements. And Ballard and Strickland had already  
5 testified, and now you're given the video statements.

6 A Right.

7 Q And you moved for a mistrial?

8 A Right.

9 Q The mistrial obviously wasn't granted?

10 A Also right.

11 Q What remedy was given?

12 A I was given a few hours to look at the tape. I  
13 don't remember if we picked it up the next day or in few  
14 hours, but I was given the tapes, and I had a chance to look  
15 at them. Let's --

16 Q They actually -- then you got a chance to call  
17 them the next day?

18 A Yeah, I could call the witness, but I -- it's -- I  
19 was really pretty irritated with this. I mean, you --  
20 you -- you know, if it's somewhat different, it can change  
21 the way you shape a case, but it wouldn't necessarily mean  
22 you wouldn't want to call the witness that's already  
23 testified because they may just confirm a lot of what was  
24 already said and reenforce it. And the little points you  
25 might have been able to make on cross if you'd had them, is

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 lost, if they're just reconfirming, you know, if it's  
2 90 percent the same and 10 percent difference, that can make  
3 a big difference if you're doing it one time. If you're  
4 doing it two times, you may be just affirming what they  
5 already said, and that's not hopeful.

6 Q Do you have the transcript up there?

7 A I do.

8 Q Could you just look at line -- and this is sort of  
9 another point. But if you could look at page 168, line --  
10 around line 17, and that's in response to a question that  
11 you asked Mr -- Detective Inabinet?

12 A Okay. 168, line -- what line?

13 Q 17.

14 A Okay.

15 Q So, there were no blood samples sent off to SLED  
16 for identification?

17 A It says: At the time, when it was believed to be  
18 blood of the deceased victim, did you later determine it was  
19 not? Answer: The sample was not sent to SLED to be  
20 analyzed due to the -- both individuals being found in the  
21 same location where the blood sample was at. It's been  
22 secured in evidence. Did you ever -- yeah, this is -- yeah,  
23 this is me, in questioning Detective Inabinet: Did you ever  
24 see Mr. Sams that day? Yes, sir, I met with Mr. Sams later  
25 in the morning on the 12th of -- 12th, at the annex, which

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 is Colleton County Sheriff's Department Annex. It says:  
2 Was his eyes swollen shut? I'm sure I would have -- it can  
3 possibly be mischaracterized, but I think I would have said  
4 "were". At least one of them was swollen. Did he also have  
5 a cut on his lip? I don't recall. Had he been bleeding? I  
6 assume, it's possible. Where do you want me to go? How  
7 far?

8 Q That's good. And then if you could -- so just to  
9 reiterate the point that there was evidence that was not  
10 sent off to SLED to get processed.

11 A Right.

12 Q And then, if -- in fact, if you look at line 171,  
13 page 171, line 12, I think you'll find that there was actual  
14 -- there was no physical evidence sent off to SLED.

15 A Yeah. What physical evidence did you send to  
16 SLED? Presently, nothing. The carpet was secured, as well  
17 as the stain on the carpet was lifted and then secured as  
18 well, but we did not send it off due to both individuals  
19 being in the exact same location until deputy -- sheriff --  
20 Sergeant Dunn arrived on the scene.

21 Q There was one other piece of evidence that you  
22 got. Did you not get a video of a statement or -- of an  
23 interview of Mr. Sams?

24 A It says -- Detective Inabinet says on page 169,  
25 beginning at line 16: Have you -- were there any video

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 statements taken in this case? Answer: We interviewed and  
2 recorded the two young ladies as well as, I think, Mr. Sams,  
3 which did not give a total interview.

4 Q But, again, you're preparing for trial and you  
5 don't have this interview?

6 A Correct.

7 Q Then you moved for a mistrial?

8 A Uh-huh. (Indicating affirmatively.)

9 Q And you were allowed to cross-examine Strickland  
10 and Bell as though it was on direct?

11 A Right.

12 Q But still it's your position that it's less  
13 effective?

14 A Well, sure. I mean, like I said, you -- if you  
15 call a witness, you're -- whether you are legally required  
16 to vouch for them, I think the jury thinks you are. And so,  
17 I don't want to call somebody that I want to, you know,  
18 damage on cross examination and vouch for.

19 Q And the video, you wanted -- I can point you to  
20 it. But later on in the trial, in the transcript, it shows  
21 that you wanted to introduce the video basically to show the  
22 -- the beating that Mr. Sams had suffered?

23 A Right.

24 Q And the court did not admit that?

25 A I -- I --

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 Q I'll --

2 A I'll take your word for it, I'm sure it's in here.

3 Q Yeah, if you look at -- if you go out to 237, line  
4 -- page 237, line 4, Judge Buckner will explain why he  
5 didn't want to admit the video, one of which he said it was  
6 cumulative of a photograph that you put in -- that you did  
7 put in showing us?

8 A Yeah. And I don't --

9 Q So by not having --

10 A -- I didn't like it.

11 Q -- is it fair --

12 A It doesn't matter whether I liked it or not.

13 Q Is it fair to say by not having the video -- so at  
14 that time the only evidence you had, sort of contemporaneous  
15 evidence of the beating that Mr. Sams suffered, was the  
16 photograph.

17 A Right.

18 Q Had you had the video, you would have had the  
19 choice of which one to put in?

20 A Right.

21 Q And because Judge Buckner apparently wasn't going  
22 to let you put in two?

23 A Right.

24 Q Because he said that -- one of his reasons for --  
25 was that it was cumulative of the photograph that you

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 admitted, that you entered?

2 A Right. I didn't like that, but you don't always  
3 get what you want.

4 Q So now, you objected to not being able to put in  
5 the video.

6 A I think so.

7 Q And you objected and you asked for a mistrial  
8 because of these other discovery problems?

9 A Right.

10 Q Okay. So, it's your understanding that you  
11 preserved those objections?

12 A I thought I had.

13 Q Yeah. Okay. Let's move on to the charge real  
14 quickly. You had asked for a charge on involuntary  
15 manslaughter?

16 A Did I?

17 Q Yes.

18 A Okay. Good. I'm glad.

19 Q Look at page 228, line 20.

20 A Okay. Whether or not I -- whether I -- or not I  
21 requested -- okay. I intended -- The Court: I intend to  
22 charge voluntary manslaughter. Whether or not I request it,  
23 Your Honor, on involuntary manslaughter, I was discussing  
24 the possibility of not doing that at a great risk. I mean,  
25 obviously, there's a great risk for Mr. Mathews -- I'm

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 asking you if you have all of the requests -- of your  
2 requests to charge. Do you want time to talk to your  
3 client, I'll give you that, but there's no need for you  
4 telling me what you intend to discuss. Take a seat. You  
5 have a tendency to stand up. Take a seat.

6 Q And so, on page 229, when you get down to line 20  
7 is when you're making your argument for involuntary  
8 manslaughter?

9 A Which page?

10 Q 229, line 20.

11 A Okay, yeah. Thank you, Your Honor. Your Honor,  
12 involuntary manslaughter is the unintentional killing of  
13 somebody with criminal negligence. I think the evidence  
14 very clearly show the defendant did not intend to kill  
15 Mr. Frazier. I don't think there's any -- there was perhaps  
16 some statements, the officers came in and said, Officer Dunn  
17 came in and said what he said; I can't let him up or he will  
18 want to fight me. I think the evidence was that this  
19 statement was repeated by Ms. -- also repeated to  
20 Ms. Glover. She denied it, but -- or said she couldn't say  
21 whatever she said or not. But Mr. Sams said she had said  
22 that, and she was listening in on this, Ms. -- that Desmond  
23 had said that he would want to fight me. So it's clear he  
24 believed that he was in danger, that it may have been  
25 criminally negligent. Maybe --

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1 Q Okay.

2 A -- he wasn't really in danger, but he certainly  
3 believed he was and that should give rise to involuntary  
4 manslaughter, and that's why I am requesting that charge.

5 Q And so your definition -- your basis for the  
6 request for involuntary manslaughter, it was the  
7 unintentional killing of somebody with criminal negligence,  
8 is that what you said?

9 A Right.

10 Q Now, in the opinion by the court, by the Supreme  
11 Court, from the writ of the cert from the appellate court  
12 the Supreme Court says that, involuntary manslaughter is  
13 defined as the killing of another without malice and intent  
14 -- and intentionally while one is engaged in either the  
15 commission of some unlawful act not amounting to a felony  
16 and not naturally intending to cause death or do bodily  
17 harm, or, the doing of an unlawful act with reckless  
18 disregard of the safety of others.

19 A Okay.

20 Q Which of those two theories were you asking for?

21 A Um --

22 Q Do you want to look at the -- do you want to look  
23 at the language again for the --

24 A You know, I just -- I mean, I said, I argued it.

25 As far as -- I don't know, you know. It was -- I don't



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1 think he intended to kill him, and I argued that. He was --  
2 he thought he was defending himself, and so, you know, I'm  
3 not -- I'm not putting it together right, but that's -- he  
4 didn't mean to kill him and he probably was negligent in  
5 continuing to strangle him after a while.

6 Q Because in the Supreme Court opinion, it said that  
7 the issue of whether or not Mr. Sams -- that Mr. Sams'  
8 actions were not of the type naturally intending to cause  
9 great bodily harm or death on that prong of the -- excuse  
10 me -- on that definition of involuntary manslaughter, that  
11 was not preserved. It was not preserved at the trial court  
12 level. It was not preserved at the appellate court level.

13 A If I didn't preserve it properly, then I should  
14 have.

15 Q Okay. Did Mr. Sams ever ask you about trying to  
16 subpoena a witness, Ms. Mitchell? Wasn't she on your list?  
17 Was she the one that you were looking for?

18 A I don't remember.

19 Q Did you call all of the witnesses that were on  
20 your witness list?

21 A Probably, I don't know.

22 Q You were waiting for a witness though. What  
23 witness was that?

24 A I can go back in the transcript -- well, I can --  
25 well, let me see. Where is my beginning of the calling

## DIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 Inabinet?

2 Q I'll get back to that later --

3 A Yeah, I'm -- I'm --

4 Q Okay.

5 MR. FALK: I believe that those are all the  
6 questions I have for Mr. Mathews at this time.

7 THE COURT: All right.

8 MR. NEELY: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. NEELY:

11 Q The Supreme Court and the Court of Appeals both  
12 held that your assertion that the court should have given an  
13 instruction for involuntary manslaughter was objected to  
14 properly for the record for one of the definitions.

15 A Okay.

16 Q I guess I'm asking you if that's correct, but it's  
17 just --

18 A I don't know.

19 Q Okay. -- the opinion. And even though it's not  
20 your preference, certainly, and that's why you asked for a  
21 mistrial, the judge did allow you to call the witnesses and  
22 cross-examine them on their video statements; is that  
23 correct?

24 A Yeah, I mean, I -- I think Desmond got a raw deal  
25 on that, but, yeah, I was allowed some additional time.

## CROSS EXAMINATION OF DAVID MATHEWS BY MR. NEELY

1 Q You were allowed to call the witnesses again and  
2 cross-examine them on the new material?

3 A I was allowed to do that.

4 Q And you, according to the transcript, received to  
5 the video the day of -- the day that this came out that  
6 there was extra -- alternate -- evidence that had not been  
7 presented to you and then the trial began again the next  
8 morning so you had that night to look at the material.

9 A Okay, that sounds right.

10 Q And Judge Buckner did consider -- Buckner --

11 A Judge Buckner.

12 Q Did --

13 A This is the Judge Buckner and David Matthews' day.  
14 That's what we're doing today.

15 Q He did consider your arguments and he ruled that  
16 the video contained nothing that the statement didn't  
17 contain and the picture that you entered into evidence to  
18 show your client's physical condition. The video would only  
19 be bolstering evidence for those two pieces of evidence that  
20 were already in evidence.

21 A I mean, it's -- it's a matter of how you present  
22 things. I mean, I understand Judge Buckner's ruling. I  
23 don't agree with it, but, of course, I don't really get a  
24 vote. And, you know, I -- I wanted to present the video  
25 because I thought it showed more graphically how he moved

## CROSS EXAMINATION OF DAVID MATHEWS BY MR. NEELY

1 and everything. I thought it did a better job presenting  
2 his position than the picture did, and I presented the  
3 picture because that's all that I had at the time. The  
4 video -- Judge Buckner made a finding that it was not  
5 better, but I thought that it was.

6 Q And ultimately, this case -- the prosecution was  
7 trying to get a murder conviction, correct?

8 A Yes.

9 Q And ultimately the jury came back with a voluntary  
10 manslaughter conviction?

11 A Yes.

12 Q And you were trying to show the fight, I imagine,  
13 to argue for self defense and for voluntary manslaughter?

14 A I mean, and -- yeah, involuntary -- voluntary,  
15 involuntary, one of the things, because when the police  
16 walked in he was still -- thought he was defending himself.  
17 I thought it was something more than just voluntary. I  
18 mean, it's not -- because I don't -- voluntary, you know,  
19 you're trying to kill somebody.

20 Q You mean more than involuntary?

21 A More -- not -- involuntary better than voluntary  
22 because involuntary, he wasn't trying to kill him. He  
23 thought he was defending himself. You know, voluntary is an  
24 intentional killing without malice or with an -- without  
25 premeditation with an adequate provocation. And, you know,

## CROSS EXAMINATION OF DAVID MATHEWS BY MR. NEELY

1 it's -- certainly it's better than murder, although by the  
2 sentence not -- you know, I just -- anyway, I don't -- I  
3 was upset at Detective Inabinet later. I asked him, you  
4 know, whether the Solicitor's office knew about these  
5 videos.

6 MR. NEELY: I'm going to object. I don't think  
7 that's in answer to the question. I think it's also  
8 hearsay.

9 A Okay. What were you asking me?

10 Q I was asking you, the reason you tried to provide  
11 it is to show that there was adequate provocation; is that  
12 correct?

13 A Or to show that he was -- or to show self-defense.  
14 I mean, you know, you can go a couple of different ways  
15 until you see how things -- sometimes you want to be rich  
16 and sometimes you want to be fluid. You know, you want to  
17 see where things break as far as that goes. I mean, if he  
18 was -- if he was reasonably defending himself, then it was  
19 self defense. If it looked like he was unreasonably  
20 defending himself, you know, I can see -- it's -- when the  
21 police came in, he probably was not in danger anymore, but  
22 by his statements he still -- it appeared that he still  
23 thought he was. That's not reasonable, but that doesn't  
24 mean he didn't believe it.

25 Q And I think the Supreme Court stated it best when

## CROSS EXAMINATION OF DAVID MATHEWS BY MR. NEELY

1 they characterized that as an imperfect self-defense claim.

2 A Okay.

3 Q Would you agree with that assessment?

4 A Except that, you know, imperfect in this  
5 particular point, you know, I've had some difficulty with  
6 involuntary manslaughter over the years. In fact, one of  
7 the times that I -- I haven't been found ineffective a lot,  
8 but one of the times I was in Rene Russell's case here in  
9 Beaufort County. Coconut Willie. And I didn't ask for a  
10 charge on involuntary, and the circuit court said I should  
11 have. So I asked this time. I mean, I don't necessarily  
12 fully -- I didn't understand it then. I don't know that I  
13 understand it now completely.

14 But, you know, to the extent that -- to the  
15 extent that he unreasonably thought he was defending  
16 himself, it was negligence -- he was negligently -- killed  
17 somebody, then I thought -- I thought maybe I should have  
18 gotten an involuntary manslaughter charge. The court of  
19 appeals apparently didn't agree either, and again, my vote  
20 doesn't count.

21 Q And certainly, that's the definition the Supreme  
22 Court affirmed the court of appeal's conviction on, is that  
23 it was criminally -- it was criminally negligent, is what --  
24 basically you argued that he did not intend to kill him, but  
25 he's criminally negligent in causing his death. So that's

## CROSS EXAMINATION OF DAVID MATHEWS BY MR. NEELY

1 what you intended to argue at trial and that's what the  
2 Supreme Court affirmed the court of appeals affirmation on  
3 as well, correct?

4 A Okay.

5 Q And, I mean, correct me if I'm wrong here, but it  
6 was uncontroverted that the defendant in this case was  
7 choking the decedent for over ten minutes.

8 A I don't know, about ten minutes. I don't know the  
9 time frame. I know that -- I know that Sean went to a great  
10 effect and just stood there and waited that time to pass.  
11 It didn't work very well. I can tell it didn't work very  
12 well, but I don't -- I don't know the time frame, but it was  
13 long. I mean, I don't know, ten minutes, maybe, I guess  
14 whatever -- whatever the record says, but it was -- you  
15 know, it was more than was necessary.

16 Q And that -- and that's what the case came down to.  
17 When the officer entered the room and told him to let go of  
18 the man's neck and -- until the third time and tasing him is  
19 when he let go of him.

20 A Because he still thought -- he still thought the  
21 guy was going to fight him. I mean, that's what the police  
22 said, he will fight. I mean, so it might be unreasonable,  
23 but he believed that he was in danger.

24 Q And --

25 A We're not trying the case now, but --

## CROSS EXAMINATION OF DAVID MATHEWS BY MR. NEELY

1           Q     I just want to understand. But if it was  
2 unreasonable, then it's not involuntary --

3           A     I don't know. Whatever the record says on that.  
4 I argued what I argued. I hate that I didn't have all of  
5 the information that I needed to best prepare for that  
6 trial. That's what troubled me about that. And it troubled  
7 me that -- Allen Inabinet at least told me they knew that  
8 those videos were out there and they didn't give them to me.  
9 And, of course, Allen has got his problems. But, you know,  
10 they got videos and they don't give them to me and, you  
11 know, it affects the way you prepare for trial. That's all.  
12 I got them eventually.

13          Q     You got them eventually and then you were able to  
14 recross those witnesses, correct?

15          A     Recross or call them directly, but it's not the  
16 same.

17                   MR. NEELY: Thank you, Your Honor. That's all the  
18 questions that I have.

19                   THE COURT: Redirect?

20                               REDIRECT EXAMINATION

21 BY MR. FALK:

22          Q     If you could look at page 89 of the transcript?

23          A     Okay.

24          Q     Line six?

25          A     Okay.



## REDIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 Q You were calling for a witness, Ms. Mitchell?

2 A Okay.

3 Q Does that help remind you what -- she was --

4 A Okay. What line do you see it? I mean, when I'm  
5 looking at line four, it just says --

6 Q No, line six.

7 A Line six. It says three times.

8 Q Yeah, and then the bailiff says, I'll go look  
9 downstairs.

10 MR. NEELY: What page number again?

11 MR. FALK: Eighty-nine.

12 Hold on. I think that's from the.

13 THE COURT: You've got an appellate transcript and  
14 you've got a trial transcript.

15 MR. FALK: Yes, Your Honor, I apologize for that.

16

17 May I approach?

18 THE COURT: Yes.

19 BY MR. FALK:

20 Q Okay. So it's -- on my transcript it's 174.

21 A All right, 174.

22 Q The first line on that the page is: Call your  
23 next witness.

24 A Uh-huh.

25 Q Go to line six.

## REDIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1           A     Right.

2           Q     You ask for Ms. Mitchell?

3           A     Right. Uh-huh. (Indicating affirmatively.)

4           Q     And then if you read farther down, she doesn't get  
5 called. They can't find her.

6           A     Uh-huh, right.

7           Q     Now, does that remind you why you wanted to call  
8 Ms. Mitchell?

9           A     No.

10          Q     Did you know if she was under subpoena?

11          A     I don't know. I mean, I can -- do you want me to  
12 look through my file?

13          Q     That's all right.

14          A     I mean, I'm really bad at finding things quickly  
15 unless I have it in a notebook.

16               MR. FALK: No, that's fine. I have nothing  
17 further for Mr. Mathews.

18               MR. NEELY: No recross, Your Honor.

19               THE COURT: All right. Thank you, sir. Any  
20 objection to Mr. Mathews being excused?

21               MR. FALK: You're welcome to leave.

22               MR. NEELY: Not from the State, Your Honor.

23               THE COURT: Mr. Mathews, thank you very much,  
24 sir.

25               THE WITNESS: Thank you, Your Honor.

## REDIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 Good luck.

2 THE COURT: All right. We're going to try to do  
3 this phone thing now?

4 Yes.

5 THE COURT: All right. Do I have to dial a number  
6 out?

7 (Off-the-record discussion held.)

8 MR. FALK: Mr. Savitz? All right. I think we're  
9 going to try and do this here, I've got you. I'm going  
10 to put you on speaker phone.

11 THE WITNESS: Okay, cool.

12 MR. FALK: All right. Mr. Savitz, can you hear  
13 me?

14 MR. SAVITZ: Yes, I can.

15 MR. FALK: Can you -- can the court reporter hear  
16 Mr. Savitz?

17 COURT REPORTER: I can.

18 MR. FALK: Mr. Savitz.

19 MR. SAVITZ: Yes.

20 MR. FALK: You recall representing Desmond Sams on  
21 appeal, do you not?

22 MR. NEELY: Your Honor, he has to be sworn first.

23 THE COURT: Hold on. Mr. Savitz? Mr. Savitz?

24 THE WITNESS: Yes.

25 THE COURT: Mr. Savitz, can you hear me?

## REDIRECT EXAMINATION OF DAVID MATHEWS BY MR. FALK

1 THE WITNESS: Yeah, barely.

2 THE COURT: This is Judge Russo. Before you  
3 answer these questions let me get Madam Clerk to place  
4 you under oath, okay?

5 THE WITNESS: Oh, okay. Yeah, that'll be fine.

6 THE COURT: All right. Thank you, sir.

7 THE WITNESS: Thank you.

8 Thereupon,

9 JOSEPH L. SAVITZ, III

10 was called as a witness, having been first duly sworn,  
11 was examined and testified as follows:

12 THE CLERK: Please state your name for us.

13 THE WITNESS: My name is Joseph L. Savitz.

14 S-A-V-I-T-Z, III.

15 DIRECT EXAMINATION

16 BY MR. FALK:

17 Q All right. Mr. Savitz, I have in my hand a brief  
18 that you signed in the case of the State versus Desmond  
19 Sams. It was an appeal from a Colleton County case.

20 A Right.

21 Q Do you recall anything about Mr. Sams?

22 A You know, I recall the name. Which is, seems -- I  
23 mean, I've been gone from appellate defense almost seven  
24 years now, and this would have been one of the -- I wrote  
25 the brief in the case and then I left appellate defense. I

DIRECT EXAMINATION OF JOSEPH L. SAVITZ, III BY MR.  
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1 wasn't around when the Court of Appeals decided and when the  
2 Supreme Court, I guess, considered the cert petition.

3                   So I don't remember writing the brief. I  
4 remember the name. Since I've talked to you, I guess it was  
5 on maybe Friday, I've looked at the opinion, unpublished  
6 opinions that the Court of Appeals issued in the case, and,  
7 you know, I kind of know what's going on from that, but as  
8 far as like, you know, writing -- remembering writing the  
9 brief and stuff, during this time -- I don't remember what  
10 year this was. But this was kind of toward the end of the  
11 time I was at appellate defense, we were just cranking  
12 briefs out. So, you know, not to remember this particular  
13 case is not that unusual.

14           Q     This case was -- the brief was signed on  
15 February 10, 2010.

16           A     Okay.

17           Q     Is that the same time frame that you're thinking  
18 about?

19           A     Yeah. Yeah, I left -- I left appellate defense  
20 probably -- I left at the end of 2010, but, you know, I  
21 burned up some annual leave during that time, so it was just  
22 a few months after this brief was written that I left  
23 appellate defense.

24           Q     Okay. How do you go about choosing the issues  
25 that you're going to raise on appeal?

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FALK

1           A     What we do is, is we get a copy of the transcript  
2     of the trial, of course, from the court reporter, and we  
3     read the -- read through the transcript and try to spot, you  
4     know, issues that are preserved, and, you know, pick out the  
5     \ones we think are winners, and then, just brief those and  
6     file the brief with the court.

7           Q     Did you get the copy of your brief that I sent  
8     you?

9           A     No, I did not.

10          Q     Okay.

11          A     The only thing I have seen in connection with this  
12     case was the unpublished opinion that came out.

13          Q     Okay.

14          A     I know what -- I know what that opinion says about  
15     my brief, if that helps.

16          Q     All right. Well, the issue that you raised in  
17     your brief was that: Trial judge committed reversible error  
18     by refusing to instruct the jury on involuntary  
19     manslaughter --

20          A     Right, right.

21          Q     -- where the evidence below supported a finding  
22     that appellate had unintentionally killed the victim while  
23     acting in self-defense.

24          A     Yes.

25          Q     So that was the issue that you raised?

DIRECT EXAMINATION OF JOSEPH L. SAVITZ, III BY MR.  
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1           A     That's a good issue.

2           Q     Okay.  If there were others -- would it have  
3     distracted from your brief to raise other issues?

4           A     No.  No, I mean, if there were other -- if there  
5     were other issues, winning issues that I could have raised  
6     that I didn't raise, no.  I mean, you know -- we lost and  
7     the Court of Appeals, you know, wrote in the opinion that I  
8     should have written longer briefs.  Can't argue with that.  
9     So, no, it wouldn't have hurt, it would have been -- I mean,  
10    there's never a reason to waive a winning issue.  I mean,  
11    that's always ineffective.

12          Q     Well, in this case there was testimony -- just to  
13    help remind you, there was testimony here that the State  
14    started their trial on one day and they called three  
15    witnesses.

16          A     Uh-huh.  (Indicating affirmatively.)

17          Q     And then they rested and then the defense called  
18    the investigating officer on the case, Mr. Inabinet or  
19    Inspector Inabinet.

20          A     Uh-huh.  (Indicating affirmatively.)

21          Q     And during that testimony it became -- it became  
22    revealed to defense counsel that the State had, whether it's  
23    SLED or whomever at the State or the Solicitor's office,  
24    but, anyways, they had video statements, video recording of  
25    statements made by two of the State witnesses, and they also

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FALK

1 had a written statement by another of the State's witnesses,  
2 and there was never disclosed to defense counsel --

3 A Okay.

4 Q -- until after these people had testified.

5 A All right.

6 Q Defense counsel asked for a mistrial.

7 A Okay.

8 Q Would that -- and which the Judge denied. Would  
9 that have been an issue to have raised on appeal?

10 A I mean, you know, it depends. It depends on what  
11 the content of the interviews and stuff that weren't  
12 disclosed were. And were they disclose -- see, I don't  
13 remember this at all, so -- were they disclosed during the  
14 trial, during the defense presentation of the evidence or  
15 were they disclosed after the trial?

16 Q The videos were made -- the videos were made --  
17 were given to -- after the witnesses had -- after the  
18 witnesses had testified and after the defense counsel had  
19 cross-examined them --

20 A Yeah.

21 Q -- then he got the videos and then the next day he  
22 recalled the witnesses.

23 A Okay. So, he had a chance to review them and  
24 impeach them on it?

25 Q Yes.



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1           A     Okay. And, you know, I -- I don't remember this  
2 issue at all. If -- like, if that is -- if that's an error,  
3 you know, then I certainly missed it. You know, my concern  
4 with the case was the issue I raised.

5           Q     Sure.

6           A     And, you know, anything else I may have missed,  
7 then I just missed it. But, as far as the issue I raised  
8 goes, I mean, you know, the Court of Appeals -- I  
9 represented Chapman, Cedrick Chapman, I think they cited to  
10 the Chapman case, and I handled a bunch of the Burros  
11 Chapman. I handled all those cases so I knew the law on the  
12 issue that I raised. You know, the Court of Appeals I think  
13 decided that issue incorrectly. But they said, hey, you  
14 should have written -- you know, I should have written a  
15 longer brief. I agree that I should have written a longer  
16 brief because if I had written a longer brief and explained  
17 myself better, maybe there's a chance that Mr. Sams would  
18 have gotten a reversal through either the Court of Appeals  
19 or the Supreme Court. But as far as any other issues that,  
20 you know, that I may have missed. If I missed a winning  
21 issue, then I missed it. I didn't abandon any issues of  
22 this case for strategic reasons.

23          Q     Okay. Along with some -- another discovery,  
24 another piece of discovery that should have been disclosed  
25 to defense counsel prior to trial was a video of the

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1 defendant himself with the statement that he gave to the  
2 police.

3 A Right.

4 Q And we heard testimony that defense counsel would  
5 have liked to have been able to introduce that in evidence  
6 to show the beating that the defendant received.

7 A Right.

8 Q And one of the reasons why it was not admitted  
9 into evidence was because defense counsel had a photograph.

10 A Okay.

11 Q Defense counsel testified that he'd much rather  
12 have the video because it shows more than a photograph  
13 would.

14 A Okay.

15 Q All right. Now, did you read the opinion by the  
16 court -- by the Supreme Court?

17 A No. The only thing I read was the Court of  
18 Appeals' opinion.

19 Q The Supreme Court said that, involuntary-- they  
20 used the State versus Wharton definition of involuntary --  
21 -- well, I guess that's yours. Let me make sure they used  
22 the same one.

23 A Right.

24 Q Well, they actually used Tucker, which is 478  
25 Southeast 2nd at 268, that involuntary -- that there are two

DIRECT EXAMINATION OF JOSEPH L. SAVITZ, III BY MR.  
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1 prongs of involuntary manslaughter, that being the  
2 intentional --

3 A That's right.

4 Q -- unintentional killing without malice but while  
5 engaging in unlawful activity not tending -- not actually  
6 intending to cause death or great bodily harm --

7 A Right.

8 Q -- and the unintentional killing of another  
9 without malice while engaged in a lawful activity with  
10 reckless disregard for their safety.

11 A Right.

12 Q The Supreme Court said that you could not -- and  
13 actually the Court of Appeals said that you could not  
14 articulate which one of those prongs you were arguing in  
15 your brief.

16 A Well, I mean, I cited the Chapman case which has  
17 almost identical facts, I think, and I assumed -- and maybe  
18 incorrectly -- that the court -- listen, I should have  
19 written a longer brief, okay. They put a footnote in there  
20 that said I should have written a longer brief. The Supreme  
21 Court maybe said something about the length of the brief. I  
22 should have written a longer brief. There are a lot of  
23 reasons why I didn't, but it's my responsibility, when you  
24 get right down it to. I should have written a brief that  
25 was long enough to explain to the Court why Mr. Sams was

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1 entitled to a new trial, because I believed under the facts  
2 of the case that he was entitled to a new trial. And so, if  
3 I didn't explain that adequately, then I was ineffective.

4 MR. FALK: Thank you, I have no further questions.

5 THE WITNESS: Okay.

6 THE COURT: Mr. Neely.

7 MR. NEELY: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. NEELY:

10 Q Hey, Mr. Savitz. This is Russ? Neely with the  
11 attorney general's office.

12 A Hey, how you doing?

13 Q Doing well, how are you doing today?

14 A I'm doing good, enjoying the retired life.

15 Q Glad to hear that.

16 A Laughter.

17 Q Now, you say that you have not read the Supreme  
18 Court opinion; is that correct?

19 A No. No, I -- the only thing I've seen, like I  
20 say, I remember the guy's name, and it was one of the last  
21 cases I worked on. I looked at the opinion just the other  
22 day that the Court of Appeals issued and that is really all  
23 I know about the case or remember about the case.

24 Q Okay. And you are aware that even though the  
25 Court of Appeals criticized, I believe the word the used,

## CROSS EXAMINATION OF JOSEPH SAVITZ III BY MR. NEELY

1    scant -- so the scantness of your brief --

2           A     Uh-huh. (Indicating affirmatively.) Yeah.

3           Q     -- they still reviewed the issue in full and  
4    expanded upon it to make sure that it was completely  
5    covered --

6           A     Yes.

7           Q     Correct?

8           A     Yes, they reviewed the issue. I don't think they  
9    were right. I think that they got it wrong, but, yes, they  
10   --

11          Q     That's certainly not your call, is that correct?

12          A     I'm saying if I -- they said I should have written  
13   a longer brief. And based on the opinion that they issued  
14   in this case, I should have written a longer brief. Because  
15   I believe that, you know, carelessly acting in self defense  
16   is involuntary manslaughter, and I think that's what the  
17   Chapman case says, and so I can't --

18          Q     And you -- sorry, let me stop you real quick --

19          A     -- I wasn't able to convey that to -- go ahead.

20          Q     And you're not aware -- I guess, since you didn't  
21   read the Supreme Court opinion, you're not aware of the  
22   analysis the Supreme Court did compare to Chapman?

23          A     I haven't read it, so -- no. I left appellate  
24   defense before this case was ever argued. The next time I  
25   heard of this case was just the other day. I don't know

## CROSS EXAMINATION OF JOSEPH SAVITZ III BY MR. NEELY

1    what happened to it once it -- you know, once I left  
2    appellate defense.

3           Q     And is it fair to say that if you think you have  
4    one really strong issue, that will be the issue you brief  
5    and that you won't brief every potential objection or issue  
6    preserved?

7           A     I mean, you know, it depends. You know, it  
8    depends -- I mean, I wouldn't waive a good issue just  
9    because I think I have an issue that's unbeatable. Because  
10   that -- you can't tell. You can't tell. Sometimes the  
11   court is more interested in -- I've won on lesser issues  
12   than the issue that I thought would be just the one that  
13   would, you know, they'd see it and go, wow, and by the time  
14   it got to the court -- they didn't really care about that  
15   issue, but they cared about something secondary that was  
16   argued. So, I mean, that's just -- you know, I mean, that's  
17   hard. If there's a winning issue, an issue that would have  
18   won that I didn't raise, I was ineffective, I guess is what  
19   I'm trying to say.

20          Q     But when you review the transcript, you pull any  
21   and all issues you believe are winning issues and put in  
22   your brief; is that correct?

23          A     That's correct.

24          Q     So, when you read the transcript the only winning  
25   issue that you saw in this case was the involuntary

## CROSS EXAMINATION OF JOSEPH SAVITZ III BY MR. NEELY

1 manslaughter issue, right?

2 A That is correct.

3 MR. NEELY: I believe those all the questions that  
4 I have, Your Honor.

5 THE COURT: Anything further?

6 MR. FALK: Not for Mr. Savitz.

7 THE COURT: Mr. Savitz, thank you very much for  
8 participating by way of phone, sir, we appreciate that.

9 THE WITNESS: Thank you for letting me participate  
10 by phone.

11 THE COURT: Absolutely, sir. You have a great  
12 day.

13 THE WITNESS: And y'all have a good afternoon.  
14 Thank you.

15 THE COURT: Thank you.

16 MR. FALK: Your Honor, I'm not sure --

17 (Off-the-record discussion held.)

18 MR. FALK: I'm not if the record includes  
19 Mr. Savitz's brief, but if it doesn't, I will --

20 THE COURT: I have it.

21 MR. NEELY: I believe Your Honor should have all  
22 the briefs and opinions.

23 THE COURT: Is it captioned as "Final Brief of  
24 Appellate".

25 MR. FALK: In the Court of Appeals.

## CROSS EXAMINATION OF JOSEPH SAVITZ III BY MR. NEELY

1 THE COURT: In the Court of Appeals, yeah.

2 MR. FALK: Yeah, okay.

3 THE COURT: Yeah. Then, I've got --

4 MR. FALK: Then, you got all -- you've got the  
5 decision by the Court of Appeals and the decision  
6 denying cert.

7 THE COURT: Now, I've got the decision by the  
8 Supreme Court. Let me see if I've got the decision by  
9 the Court of Appeals. Yes, the Court of Appeals'  
10 opinion is attached to the Supreme Court opinion.

11 MR. FAULK: 2011, unpublished, 205.

12 THE COURT: Yes.

13 MR. FALK: Okay. Your Honor, at this time, I'd  
14 like to call Mr. Sams.

15 THE COURT: All right. Mr. Sams, you may bring  
16 with you any items you'd like to, and if you'd come  
17 around and be sworn, sir.

18 THE DEFENDANT: Yes, sir, yes, sir.

19 Thereupon,

20 DESMOND J. SAMS

21 was called as a witness, having been first duly sworn,  
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. FALK:

25 Q Could you state your name for the record?



## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 A Desmond Jerome Sams.

2 Q Could you go ahead and spell that.

3 A D-E-S-M-O-N-D.

4 Q I can barely hear you. Can the court reporter  
5 hear you?

6 (Off-the-record discussion held.)

7 A Desmond Sams. D-E-S-M-O-N-D. And Sams, S-A-M-S.

8 Q Mr. Sams, in your application for PCR relief,  
9 you've alleged ineffective assistance of trial counsel and  
10 you allege that there were Brady violations. And we've  
11 already discussed the fact that you were in the second day  
12 of trial before your lawyer was able to use the  
13 statements -- able to use the video statements of  
14 Ms. Strickler and Ms. Ballard. And it was the second day of  
15 trial before your lawyer was made aware of the fact that  
16 there was a video statement of you and that there was a  
17 statement by Ms. Gibson. Are there other specific discovery  
18 issues that you believe were not turned over?

19 A Yes, sir, several. That was -- I would like to  
20 start off with evidence that I never received from my Rule 5  
21 that could have been more likely beneficial to me for my due  
22 process log -- excuse me -- that was beneficial to me for my  
23 due process log. In a capital murder case you need  
24 everything the State has to prepare a proper defense. I  
25 never received that, right. Detective Inabinet, he was --

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 he had a lot of evidence that, you know, that he had sitting  
2 at the Solicitor's desk during my first day of trial that we  
3 never even heard of.

4 And, you know, I feel that violated my  
5 constitutional right of due process and that we would have  
6 had a better -- excuse me. We would have had a better way  
7 to defend my case. Because it wasn't -- it was like, you  
8 know, it wasn't like Dr. Mathews -- Mr. Mathews said  
9 earlier, it was either one way or another way, you know, and  
10 for me not knowing -- and witnesses not knowing probably  
11 about a month, maybe a couple of occasions, you get what I'm  
12 saying, the evidence, the blood samples.

13 The only person bleeding at that time was me.  
14 Mr. Inabinet was at the hospital that night watching me with  
15 the nurses and he told me that my -- you know, my friend was  
16 dead, my cousin was dead, and I was like, no. And I went  
17 into shock right then. And the witnesses in the video tape  
18 statements say that.

19 Lisa Ballard -- Stephanie Ballard said that.  
20 She said Detective Inabinet he told Sams that his friend was  
21 killed, he broke down, and said, no, ain't no way. I didn't  
22 even know he was dead, you know what I'm saying. So all of  
23 this would have been beneficial to my involuntary  
24 manslaughter claim if the evidence was presented -- excuse  
25 me -- if the evidence would have been presented in time for

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 us to prepare. You get what I'm saying?

2 Q I get what you're saying. And there was a -- and  
3 you made a statement that was also video recorded; is that  
4 correct, or you had a conversation with the police that was  
5 also video recorded?

6 A It was a conversation of Detective Inabinet, he  
7 came that morning and asked me to go to the annex station  
8 with him to give a statement. I had requested to see a  
9 lawyer, but the statement, I could barely talk because my  
10 windpipe was almost ripped out of my mouth, I mean, my  
11 throat.

12 Q But there was a video of that --

13 A Yes, sir.

14 Q -- was there not?

15 A Yes, sir.

16 Q And is that the video that we were talking about  
17 earlier?

18 A Yes, sir.

19 Q And what was your physical condition at that time?

20 A Well, my eyes was closed, my nose was broke --  
21 busted, broke, my lips was busted. When I tried to push him  
22 off, my hand was bitten to the bone right here, and my whole  
23 neck was scratched up, and my windpipe, he tried to rip my  
24 windpipe out, all that was swollen so I couldn't really  
25 talk. You know what I'm saying? It hurt me to kind of

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 talk, you know, and all this was on the videotape, you know,  
2 so if this was submitted into evidence and we had time to  
3 prepare, you know, that would have proved my self defense.  
4 I just -- really, it was an accident, and I was trying to  
5 restrain him, but I used too much force because my  
6 adrenaline was going, I used excessive force but that would  
7 have entitled me to a charge of involuntary manslaughter,  
8 using too much force in a fight. You know, I wasn't trying  
9 to kill him. I was trying to defend myself, and, you know,  
10 it was an accident. It was an accident. Me and him was  
11 friends, you know, we were raised up together, you know, I  
12 -- I drive a truck, my last job was Holly Hill. I'm a truck  
13 driver, you know. I drive Holly Hill Trucking. You know, I  
14 was making a thousand dollars a week, after taxes, seven or  
15 800.

16 Q Let me ask you another question.

17 A You know, I don't want to kill nobody.

18 Q He had asked you about Ms. Mitchell. There was a  
19 witness that was called that was not present?

20 A Ms. Mitchell. We never -- I never even got any  
21 information in my rule discovery motion five on who she was.  
22 The first time I heard her name was when they -- my lawyer,  
23 Mr. Mathews, called her on the stand, but she never showed.  
24 So I wrote him to see if he ever subpoenaed her on how her  
25 testimony was beneficial to my defense. And I still, to

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 this day we don't know. He didn't even know. So who is  
2 this Ms. Mitchell that was supposed to have been  
3 representing me or a witness for me. You get what I'm  
4 saying? I don't want to step on anybody's toes. Please,  
5 help me out. I want my life back. I had about ten years,  
6 man, you know, good time. You know?

7 Yeah, so we don't know who Ms. Mitchell was.  
8 So my thing is, you know, that's -- I read somewhere like a  
9 failure to subpoena. If he subpoenaed her or not. I don't  
10 know if he said whether he subpoenaed her or not. But, you  
11 know, she was supposed to have been beneficial to my  
12 defense.

13 Q Did you have any conversation with Mr. Savitz  
14 prior to writing the appellate brief?

15 A Maybe a couple, and I wrote him this letter right  
16 here, and I'd like to introduce.

17 Q Why don't you just read what the letter says?  
18 What was the date of the letter?

19 A It came back to me on the 13th of November, 2009.  
20 But I believe writing it before -- as soon as -- before  
21 October 12th when he did the initial brief and it says --  
22 he's writing me back in this letter. He says: Dear,  
23 Mr. Sams, I am a law clerk with the Division of appeal  
24 defense. Mr. Savitz asked me to respond to your letter  
25 dated September 10th, 2009. In your letter, you identified

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 several legal issues that you wanted Mr. Savitz to raise.  
2 Mr. Savitz filed the initial brief on October the 12th,  
3 2009. The record on appeal is due to be filed on  
4 December 28th, 2009, followed by the final brief on  
5 January 18th, 2010.

6 Q So did you have any conversation with Mr. Savitz?

7 A Yes. Yes, sir.

8 Q What issues -- did you suggest any issues?

9 A Yes, sir.

10 Q What issues?

11 A Just like on the --

12 Q Talk about the --

13 A -- the mistrial. You know, I tried to get them to  
14 put the mistrial in there.

15 Q And the mistrial was the -- excuse me. And the  
16 mistrial was regarding the discovery problems, the missing  
17 evidence?

18 A Yes, sir.

19 Q Okay. So, you think that you asked him to address  
20 that issue?

21 A Yes, sir.

22 MR. FAULK: No further questions.

23 MR. NEELY: No, no cross, Your Honor.

24 THE COURT: Thank you, Mr. Sams. You may step  
25 down, sir.

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 MR. FAULK: Your Honor, that's our case.

2 THE COURT: Anything further from the state?

3 MR. NEELY: Do you want to argue or --

4 MR. FALK: Well, I mean, I'm resting.

5 THE COURT: But I mean, any witnesses --

6 MR. NEELY: I don't have any witnesses to call,

7 Your Honor.

8 THE COURT: Okay. I'll be happy to hear from you,

9 Mr. Faulk.

10 MR. FALK: Your Honor, I think there are two  
11 problems with this case. One is, it's very troubling  
12 the discovery problems with this case. The fact that  
13 you're in the second day of trial when counsel is made  
14 aware of the fact that there was video recordings of  
15 witnesses that he didn't -- he had not had an  
16 opportunity to see before he prepped the witnesses for  
17 the first time. There was a statement from Ms. Gibson  
18 that he didn't have -- and, again, that's a witness who  
19 had testified and was cross-examined.

20 I mean, I know in Federal court Jencks kind of  
21 information where the practice in Federal court is that  
22 the witness can testify. The defense counsel doesn't  
23 necessarily get statements in advance, but the  
24 witnesses testify, and then they get an opportunity to  
25 review the statements before they get cross examined.

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 But in this case, my -- trial counsel did not have that  
2 ability to fashion the cross-examination that he  
3 wanted. He did not have the ability to prove the  
4 points in the case in the manner that he wanted.

5 He wanted to put in photograph -- excuse me. He  
6 wanted to put in the video that the prosecution had,  
7 whether it was Inabinet, or whether it was SLED or  
8 Colleton County Sheriff's Office, that information was  
9 sitting around there. He wanted to --

10 THE COURT: Can I ask, because I obviously haven't  
11 read this transcript, but was there ever any  
12 explanation given to the Judge Buckner as to why the  
13 State never turned over these videotaped statements?

14 MR. FALK: There was some extensive conversations  
15 in chambers and maybe, you know, the real answer --

16 THE COURT: Nothing on the record?

17 MR. FALK: Nothing on the record. But as a point,  
18 the solicitor in the case acknowledged that Mr. -- and  
19 I'm just -- I was going to show it to you. I guess  
20 it's about page 201 or so. Just, if you look at page  
21 202, lines three to four -- lines three to five, it  
22 shows that -- I mean, the solicitor acknowledges that  
23 Mr. Mathews did everything that he was supposed to do.  
24 He made -- he filed all the Brady requests.

25 And -- or at least there was testimony about the



## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 letter that he wrote on -- almost on the eve of trial  
2 in December, saying, hey, we're going to trial and I  
3 still don't have any statements. I don't know what the  
4 explanation was, but as a result, and I think there's  
5 pretty clear testimony that Mr. Mathews was hampered in  
6 the way he was going to prepare the evidence because of  
7 the way -- I don't want to assign any motives, but at  
8 the end of the day is, he was hampered by the way he  
9 was able to prosecute his case because he was not given  
10 the information that he was entitled to have and my  
11 client was entitled to have, protected under Supreme  
12 Court Rule 5 of the South Carolina Rules of Procedure,  
13 South Carolina Constitution, the United States  
14 Constitution.

15 So, I mean, there was a problem with this case.  
16 And I don't -- and I think trial counsel did what he  
17 was supposed to do, he filed -- he asked for a  
18 mistrial. The mistrial was denied; another remedy was  
19 provided. But I think you have to appreciate that that  
20 is possibly an issue that maybe somebody else should  
21 look at. And so, you've got this discovery problem and  
22 then it's compounded by a one-page brief on the issues.  
23 And so, whether or not there's a discovery problem  
24 here, it was never protected because it was never  
25 briefed at the appellate court level.

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1           So, I mean, Susan Hackett couldn't fix it when she  
2           filed cert in the Supreme Court because the issue is  
3           lost. And so you've got what I think -- it certainly  
4           would be my opinion that those are bona fide issues  
5           that should have been raised, whether or not the  
6           mistrial should have been granted, whether or not there  
7           should have been some sanction for -- like I said, for  
8           the Brady violations. And Mr. Sams files a one-page  
9           brief. Granted, he probably knows more about the law  
10          of involuntary manslaughter than I do, but the Supreme  
11          Court said that he had not protected the issue of  
12          whether or not we were looking for involuntary  
13          manslaughter under the first or the second prong,  
14          whether it's Tucker or whatever the other cases -- not  
15          prong. I guess it's, you know, two paths for  
16          involuntary manslaughter.

17                 And so the issue wasn't preserved because it  
18                 wasn't -- now, that is something that falls back on  
19                 Mr. Mathews, because I think Mr. Mathews acknowledged  
20                 that he was a little fuzzy on involuntary manslaughter  
21                 precisely how it's stated, and the Supreme Court said  
22                 that Mr. Mathews didn't preserve the issue and Supreme  
23                 Court said that Mr. Savitz didn't preserve the issue.  
24                 So I think even on the issue that he did go forward  
25                 with, he could have done a better job. He certainly

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1       acknowledged on the phone that he could have done a  
2       better job, and I think he acknowledges that a one-page  
3       brief is probably not appropriate.

4       I think there was ineffective assistance of trial  
5       counsel there as far as protecting that issue of -- as  
6       to the theory of involuntary manslaughter that he was  
7       seeking, and I think there's clearly a Brady violation  
8       here, which my client has set forth in his PCR  
9       application, and I think there's ineffective assistance  
10      of appellate counsel in that he -- I mean, he said that  
11      there's no strategic reason to let a good -- not put  
12      forth a good issue. I mean, granted, you know, we all  
13      know that if you send up a laundry list of several  
14      issues for the appellate court, you're probably not  
15      going to get any relief.

16       Everyone will tell you to focus on, you know, a  
17      few. But certainly, if you have two good issues, you  
18      know, two of them which -- and so I believe that  
19      there's ineffective assistance of trial counsel and I  
20      believe there's ineffective assistance of appellate  
21      counsel.

22      THE COURT: Okay. Mr. Neely.

23      MR. NEELY: Let me just start off by saying, I  
24      think Mr. Falk incorrectly characterized one of the  
25      issues. The Supreme Court held that Mr. Matthews'

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 objection and his seeking of an involuntary  
2 manslaughter instruction was preserved for review on  
3 one of the two potential prongs. There's two ways you  
4 can argue for involuntary manslaughter, and the Supreme  
5 Court held that the appellate court incorrectly  
6 reviewed and affirmed on both prongs, but the court  
7 held that there was -- there was no evidence beyond  
8 Franks -- not Franks -- Sams' assertion that he didn't  
9 intend to kill the victim. Beyond his assertion, that  
10 was the only evidence that would tend to hold the first  
11 prong up, that he didn't intend to kill him.

12 And the Supreme Court held, as all the case law  
13 also holds it, a Defendant's assertion alone is not  
14 enough to get an involuntary manslaughter instruction.  
15 You can't just assert that I didn't intend to kill  
16 somebody and that was enough for involuntary  
17 manslaughter. It's not enough. There must be evidence  
18 showing that there is a lack of intent. And in this  
19 case the Court of Appeals and the Supreme Court both  
20 held that that was not the case, and, in fact, that was  
21 not Mr. Matthews' argument at trial level.

22 And Mr. Mathews argued that he was -- that  
23 Mr. Sams was criminally negligent in that he didn't  
24 intend to kill him, and he should have known, as  
25 Mr. Mathews testified, a reasonable person would know

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1       that their actions could kill somebody, but he was  
2       unreasonable and then his unreasonable criminal  
3       negligence is how somebody ended up dead. The Supreme  
4       Court held that that objection was preserved, and the  
5       Court of Appeals held that it was preserved as well.

6               And both the Court of Appeals and the Supreme  
7       Court both affirmed this trial over that objection  
8       because they -- the Supreme Court held and I believe  
9       that they laid it out very frankly. And this is  
10       quoting from the Supreme Court's opinion: Even if Sams  
11       initially intended only to restrain Frazier, at some  
12       point, when he maintained a choke hold on him for well  
13       over ten minutes past the point when the victim had  
14       stated he could not breathe and then became limp, Sams'  
15       prolonged continued hold on the victim's neck until an  
16       officer had to repeatedly order Sams to release his  
17       hold was intentional and the type of conduct that is  
18       highly likely to result in serious injury or death.  
19       And that's what we have here.

20              We have two witnesses who called law enforcement  
21       and said, please, help, Sams is choking this man to  
22       death. And the CAD report shows that it was eight and  
23       a half minutes from that phone call until law  
24       enforcement arrived, and that phone call was only made  
25       after the two females in the house attempted to get

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1        Mr. Sams off the victim. And then once the police  
2        arrived there was even more time from which after law  
3        enforcement opened the door and had to repeatedly order  
4        Sams off, and he did not respond to those orders to let  
5        go until he was tased and physically removed. And so  
6        that's where the 12 minutes comes from. We have the  
7        eight and a half minutes where we know he's being --  
8        he's choking him and the witnesses' testimony was  
9        consistent that the choking didn't stop.

10       In this case -- and I certainly understand  
11       Mr. Mathews being upset about receiving statements mid  
12       trial. I think any defense attorney absolutely would  
13       be. But in this case -- and I don't think that there  
14       was a winnable issue, as Mr. Savitz has put it to be  
15       briefed. I mean, the standard for a mistrial, as Your  
16       Honor well knows, but I'll put it on the record, you  
17       know, in State V Beckam, it's 334 SC 302: The granting  
18       of a motion for a mistrial is an extreme measure and  
19       should be taken only when the incident is so grievous  
20       that the prejudicial effect can be removed in no other  
21       way.

22       And I -- I absolutely think Judge Buckner took  
23       seriously the motion for a mistrial and determined that  
24       the prejudicial effect could be removed by calling the  
25       witnesses again and giving counsel an attempt to

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 cross-examine those witnesses on the statements that  
2 they gave and the statements that counsel had time to  
3 review. And, again, I understand Mr. Matthews'  
4 assertion that he wanted those before trial, but I  
5 think that the Court was absolutely correct whenever it  
6 denied the motion for a mistrial and attempted to  
7 remove the prejudicial effect as best as it could. And  
8 I think it -- in a large part it did by having -- by  
9 giving counsel a second bite at an apple for a second  
10 cross examination.

11 THE COURT: Well, what if you're wrong?

12 MR. NEELY: What if I'm wrong?

13 THE COURT: In other words, whether I agree with  
14 you or not, or whether, obviously, Judge Buckner would  
15 agree with you because he's the one who ruled, but  
16 whenever I preside over a trial -- and we'll use this  
17 case as the example. Judge Buckner felt like it would  
18 be enough to give him overnight to look at the  
19 statement and to review the video. And that's the  
20 thing that concerns me a little bit that there's  
21 nothing in this record that would indicate why that  
22 evidence wasn't disclosed.

23 MR. NEELY: And I will note that Solicitor  
24 Thornton in the record says that the Solicitor's office  
25 never received --

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 THE COURT: They didn't get it.

2 MR. NEELY: Yeah.

3 THE COURT: I picked up on that because he said  
4 something about that Mr. Mathews actually saw the video  
5 before he did.

6 MR. NEELY: Correct.

7 THE COURT: But what I'm saying is, and we've  
8 dealt with this in other cases we've heard today and  
9 you've been the one that brought it up. Judge, we  
10 can't speculate. It's not appropriate for us to  
11 speculate. Well, you're speculating now that that --  
12 that Judge Buckner was correct in his ruling and that  
13 that was really not an issue that the Court of Appeals  
14 would have given a lot of weight to, so what if we're  
15 wrong. But we won't know that because it wasn't  
16 preserved, because it wasn't argued by Mr. Savitz.

17 Now, he said in his testimony -- what he said was  
18 he may have missed something, but that he didn't --  
19 that there was nothing he didn't intentionally argue  
20 because he felt like he wanted to put all of his eggs  
21 into one basket. So he said he could have missed  
22 something, but he doesn't recall any issue that he just  
23 intentionally set aside because he wanted to put all  
24 his eggs in one basket. So that's a concern that I've  
25 got here. I think Mr. Mathews did everything in his



## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 power to preserve this.

2 I have some concern for why Savitz would ignore  
3 that issue. Because the Court of Appeals might have  
4 seen that differently than me, you or Judge Buckner saw  
5 it. I don't know. I'm trying not to speculate either.

6 MR. NEELY: I understand. I think that one of the  
7 things Mr. Savitz mentioned on his phone call when  
8 Mr. Falk was giving him the facts, he said, well, what  
9 happened then, was he given a chance to impeach them  
10 based on the statements. And, you know, Mr. Falk said,  
11 well, yes, they were called back, and he was given a  
12 chance to impeach them, which significantly reduces any  
13 prejudicial value in my -- I would argue. And I think  
14 that --

15 THE COURT: Well, there's a real -- there's a big  
16 difference in a written statement and a live witness  
17 testifying to what's in that written statement, a big  
18 difference.

19 MR. NEELY: I certainly, agree, but in this case  
20 --

21 THE COURT: And that's what he was deprived of.

22 MR. NEELY: That's correct. But, again, it goes  
23 to the prejudicial effect.

24 THE COURT: Right.

25 MR. NEELY: And in this case, the video -- the

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 video statements and the statements that they gave  
2 along with the written statement that weren't and  
3 should have been given to Mr. Mathews didn't contradict  
4 their statements they gave at trial. They continued to  
5 assert that he continually choked out the victim, and  
6 that's what this case comes down to is, did he or did  
7 he not continually choke the victim out for an  
8 unreasonable length of time.

9 THE COURT: But then there's -- but then there's  
10 also the issue that they never gave him the videotaped  
11 statement of his own client's statement, which, you  
12 know they say -- what's the old saying that a picture  
13 is a worth a thousand words, and Mr. Mathews had a  
14 picture, but then you can take that statement further  
15 and say that a video is worth a lot more than a  
16 picture. And he wanted to put in that video and was  
17 denied the right to put that video in. So, I mean,  
18 that seems to be an issue that possibly was overlooked  
19 or disregarded.

20 MR. NEELY: And I understand that, and I think  
21 that Mr. Matthews' testimony, and the reason that he  
22 wanted to put the video into evidence was to show the  
23 fight that took place.

24 THE COURT: Right.

25 MR. NEELY: And at that point in time Mr. Mathews

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1        was fighting a murder conviction, and Mr. Mathews won  
2        that fight, and the supreme -- and the jury bought his  
3        argument that there was sufficient provocation from  
4        which they determined that Mr. Sams -- it was a  
5        voluntary manslaughter conviction, not a murder  
6        conviction, but as the Supreme Court held --

7                THE COURT: But he lost the battle on involuntary  
8        and self defense.

9                MR. NEELY: That's -- I agree, and I think that  
10       the Supreme Court's reasoning is exactly what the jury  
11       found; that he might have -- he might have been  
12       justified in responding with aggression, he might have  
13       been justified in restraining the victim, but there is  
14       no justification for that -- for an over eight and a  
15       half minute long choke hold while people are trying to  
16       pull you off the victim and when the officer gets  
17       there, you still won't let go of the victim. And  
18       that's unreasonable -- unreasonable to the jury, and  
19       it was unreasonable to the Supreme Court, and it was  
20       unreasonable to the Court of Appeals. And that's what  
21       this case comes down to, this -- is that action which  
22       was never contradicted by the witnesses, no video  
23       statements ever contradicted it, and Sams' personal  
24       defense, his testimony is only that, I didn't know that  
25       he was dead. I thought he was still breathing at the

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1           end when they made me let go of him. There was no  
2           denial of the time length that he was choking him, and  
3           that's what this case comes down to, is it's just  
4           unreasonable. And, again, the Supreme Court, the Court  
5           of Appeals, and the jury all found that.

6           THE COURT: We're not retrying the case -- we're  
7           retrying the case. We're trying to decide whether or  
8           not either trial counsel or appellate counsel fell  
9           below the standard.

10          MR. NEELY: But the prejudicial prong for a PCR --

11          THE COURT: Right.

12          MR. NEELY: -- it goes -- it must be that there's  
13          a reasonable probability the result of the trial would  
14          have been different, but for a deficiency.

15          THE COURT: Right.

16          MR. NEELY: And so I think that even if -- and I'm  
17          arguing there's no deficiency, and I don't believe  
18          there is any deficiency here. But I'm arguing that  
19          even if you believe there's a deficiency, there's no  
20          prejudice where you have overwhelming evidence of the  
21          actions committed of voluntary manslaughter.

22                 I think -- I think that if they had come down with  
23          a murder conviction, I would be having a much harder  
24          time arguing there was no prejudice from some of these  
25          actions because the fight -- like the evidence -- the

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1 video not coming in to show evidence of a fight, that  
2 would go to a voluntary manslaughter conviction, but it  
3 doesn't go to the involuntary manslaughter conviction.

4 And so I think that -- first, I argue there's no  
5 -- there's no deficiency. But second off, even if  
6 there is deficiency, you don't have prejudice.

7 THE COURT: On the involuntary manslaughter  
8 charge, a person can be found guilty of involuntary  
9 manslaughter if there's the killing of another and it's  
10 done -- the two things. The one is if it's done while  
11 in the process of doing a lawful, a lawful act, but  
12 being reckless. Okay. Self-defense, if proven, would  
13 be a lawful act. Holding him too long until the point  
14 that the person is dying could be the recklessness  
15 involved there.

16 MR. NEELY: The Supreme Court disagrees in their  
17 opinion. That's what I would argue. I --

18 THE COURT: I'm going to let him -- and I'm going  
19 to hear from y'all, but I'm going to take this under  
20 advisement so that I can read what was presented and  
21 what was written, because it is a complex issue and it  
22 causes me great concern and apparently it caused the  
23 two courts above a great concern that Mr. Savitz  
24 submitted a one-page argument on an issue this complex  
25 and this detailed. So I don't know. We'll have to

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1           look into it and read it. I've heard about it being  
2           one page and I've got a copy of it. The copy I have is  
3           more than one page, but I think there may be --

4           MR. NEELY: I think they're saying the argument is  
5           one page, which is a little bit different but --

6           THE COURT: Right. Yeah, yeah. Okay, yeah. But  
7           anyway --

8           MR. NEELY: Thank you, Your Honor.

9           THE COURT: Yes, sir. Okay.

10          MR. FALK: I think that you can't lose sight of  
11          the fact that there may have been discovery abuse in  
12          this case. It's certainly not Mr. Matthews'  
13          responsibility to prove why he didn't get this stuff.  
14          I do know that Ms. Gibson's statement was taken on a  
15          Solicitor's form sheet that they usually file it on,  
16          and it was taken by somebody who was the assistant  
17          solicitor, and why that -- so it's not like, well, it  
18          was at the police department and we -- you know, maybe  
19          they lost it. Part of what we're complaining about was  
20          in the Solicitor's possession. Presumably a solicitor  
21          took the statement, that was Ms. Gibson's statement.  
22          So, I mean, I have concerns about the discovery  
23          problems in this case, and the result of it was, is  
24          that somebody else was really controlling how  
25          Mr. Mathews was going to represent my client here today

## DIRECT EXAMINATION OF DESMOND J. SAMS BY MR. FALK

1       because he didn't have these videos at the beginning.  
2       And there may have been more -- there may have been  
3       additional information had you had more time to look at  
4       them to show that -- you know, we're saying that this  
5       choking lasted ten minutes based partially on that  
6       lady's telephone call and then partially on when the  
7       paramedics show up. I'm just -- I'm concerned about  
8       the discovery abuse and I'm concerned about the short  
9       and the voluntarily waiving what I think is an issue  
10      that I believe the Court of Appeals, and certainly  
11      Judge Beatty on the Supreme Court is going to be  
12      concerned about if they think that solicitors are  
13      having people try cases when they don't have all of the  
14      discovery.

15               THE COURT: Well, I'm going to take this under  
16      advisement, give me an opportunity so that I can read  
17      these. And I'll have a decision for you maybe by the  
18      end of the week, but, surely, within the next several  
19      days. Okay?

20               MR. NEELY: Thank, Your Honor.

21               MR. FALK: Thank you.

22               (Whereupon, the proceeding was concluded.)

23

24

25

## CERTIFICATE PAGE

1 CERTIFICATE

2

3 STATE OF SOUTH CAROLINA:

4 COUNTY OF BEAUFORT:

5 I, MONA L. MANLEY, Court Reporter, certify that I was  
6 authorized to and did stenographically report the foregoing  
7 proceedings and that the transcript is a true and complete  
8 record of my stenographic notes.

9 DATED this 11th day of January, 2019.

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*Mona L. Manley /s/*

MONA L. MANLEY

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

(850) 893-6662

mmanley@scccourts.org



|                         |   |                               |
|-------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA | ) | COURT OF COMMON PLEAS         |
| COUNTY OF COLLETON      | ) | FOR THE 14th JUDICIAL CIRCUIT |
| Desmond J Sams 332928   | ) |                               |
| Applicant               | ) | 2015-CP-15-0444               |
| Vs.                     | ) | Order Granting                |
| State of South Carolina | ) | Post-Conviction Relief        |
| Respondent,             | ) |                               |

FILED  
COLLETON COUNTY  
COMMON PLEAS  
2015 APR 16 PM 3:15

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment. The Applicant was indicted by the October 2008 term of the Colleton County Grand Jury for murder (2008-GS-15-0370) and assault and battery of a high and aggravated nature (ABHAN) (2008-GS-15-0371).

#### PROCEDURAL HISTORY

The Applicant proceeded to a jury trial and was represented by David Mathews, Esq. of the Colleton County Public Defenders' office. In its indictment, the State alleged that Applicant murdered the victim Jake Frazier by means of choking. See S.C. Code Ann. § 16-3-10 (2003) (defining "murder" as "the killing of any person with malice aforethought, either express or implied."). The Colleton County jury found Applicant guilty of the lesser included offense of voluntary manslaughter. The jury also acquitted the Applicant of ABHAN. On January 29, 2009, the Honorable Perry M. Buckner sentenced the Applicant to confinement for twenty four (24) years suspended upon the service of eighteen (18) years with five (5) years' probation.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Sams, Op. No. 2011-UP-205 (S.C. Ct. App. filed May 4, 2011). Joseph L. Savitz, Esquire, on behalf of the Office for Appellate Defense, represented the Applicant on appeal before the South Carolina Court of

Appeals. The Applicant then filed a petition for a writ of certiorari in the Supreme Court, and the petition was granted on October 17, 2012. Applicant was represented by Tristan Shaffer Esq., Appellate Defender, before the South Carolina Supreme Court. On February 4, 2014, the Supreme Court affirmed the decision of the Court of Appeals in Opinion No. 27447. The Remittitur was issued on November 7, 2014.

On March 27, 2015, Applicant filed a timely application for Post-Conviction Relief with the Colleton County Circuit Court Clerk. In his application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "(5) amendment violation"
  - a. "Grand jury violation"
2. "(6) amendment violation"
  - a. "Ineffective counsel violation"
3. "(14) amendment violation"
  - a. "Due process violation Brady violation"

On October 30, 2015 J. Rutledge Johnson, Esq. filed a Return on behalf of the State of South Carolina, through which it asserted that Applicant's Post-Conviction Relief Application raised no genuine issues of material fact and therefore sought a summary dismissal of Applicant's claims. In the alternative, the State sought an evidentiary hearing to resolve all factual issues that could not be conclusively refuted by the record.

An evidentiary hearing in this matter was held on October 10, 2017, in the Beaufort County Courthouse before the Honorable Thomas A. Russo. James K. Falk, Esq. was appointed to represent Applicant in this matter and was present at the hearing. Ruston Neely, Esq. represented the State of South Carolina at the hearing. Prior to the commencement of the evidentiary hearing Applicant's counsel advised the court that Applicant was amending his post-conviction relief application to include a claim of ineffective assistance of appellate counsel. Present and testifying

at the hearing as witnesses were Applicant and Applicant's trial counsel, David Mathews, Esq. At the time of the hearing Joseph L. Savitz was no longer employed by the Office of Appellate Defense and Susan Barber Hackett was available to testify via telephone conference on behalf of that office.

**FACTUAL SUMMARY OF UNDERLYING GENERAL SESSIONS CASE**

The victim, Jake Frazier, and Applicant were first cousins and friends. During the course of a night of heavy drinking, Mr. Frazier accused Applicant of inappropriately touching Mr. Frazier's girlfriend. A fight then ensued in which Mr. Frazier hit Applicant and then grabbed Applicant around his neck. Applicant responded and eventually got Mr. Frazier into a choke hold from which Mr. Frazier ultimately died.

The police were called when the fight broke out. When police arrived, Jake was face down on the floor and Applicant was positioned on top of him also facing downward. Applicant was still trying to restrain Mr. Frazier when the police ordered Applicant to release his hold. Applicant responded by saying, "No, he'll want to fight." Upon a second request by the officer, Petitioner complied and released his hold on Mr. Frazier but Mr. Frazier had already died due to asphyxia.

The case went to trial on January 28, 2009. The first two witnesses that the State called were Stephanie Ballard and Lisa Strickland to testify as fact witnesses. Both of these witnesses were present at the time of the altercation that led to Mr. Frazier's death. The State then rested at approximately 3 p.m. on the first day of trial after calling seven witnesses. The Court denied trial counsel's motion for a directed verdict. Defense counsel then called Detective Allen Inabinett as its second witness. Detective Inabinett testified that he was the case officer on the case and was present at the scene sometime shortly after the incident occurred. Defense counsel then asked whether any video statements were taken in the case, to which Detective Inabinett testified that

video statements were taken from both Ms. Ballard and Ms. Strickland. (TT p. 169 l. 16-24). Defense counsel was unaware of the existence of these video tapes and moved for a mistrial. (T.T. p. 194 l. 16 – p. 197 l. 12).

The trial court denied defense counsel's motion for mistrial ordering instead that the State provide defense counsel copies of the two videos. The trial court allowed defense counsel to review the two videos overnight and then recall Stephanie Ballard and Lisa Strickland as witnesses the next day. Trial counsel renewed his motion for a mistrial asserting that the Court's accommodation was an ineffective remedy. (T.T. p. 200 l. 12 – 240).

Having heard the testimony of the witnesses and arguments of counsel the Court makes the following findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. During the charge conference, trial counsel requested that the trial judge charge the jury on involuntary manslaughter. On behalf of this charge, trial counsel stated:

Your Honor involuntary manslaughter is the unintentional killing of somebody with criminal negligence. I think that the evidence very clearly shows that the defendant did not intend to kill Mr. Frazier. I don't think there's any there were, perhaps, some statements when the officer came in and said -- Officer Dunn came in and said that what he said, "I can't let him up or he will want to fight me." think the evidence was that -- that this statement was repeated by Ms. -- also repeated to Ms. Glover. She denied it, but -- or said she couldn't say whether she said it or not, but Ms. Sams said that she said that when she was listening in on this, that Desmond had said that he would want to fight me. So it's clear that he believed that he was in danger that may have been criminally negligent. Maybe he -- maybe he wasn't really in danger, but he certainly believed that he was, and that should give rise to involuntary manslaughter, and that's why I'm requesting that charge, Your Honor. (TT p. 229 l. 20 – 230 l. 13).

2. The trial Court declined to charge on involuntary manslaughter and instead charged the

jury on self-defense, voluntary manslaughter, <sup>and</sup> murder. . .

3. In his brief to the South Carolina Court of Appeals, Applicant's counsel Joseph L. Savitz stated the only issue on appeal as follows: *Trial judge committed reversible error by refusing to instruct the jury on involuntary manslaughter, where the evidence below supported a factual finding that appellant had unintentionally killed victim while acting in self-defense.*

4. Although the issue was preserved for appellate review, Mr. Savitz's brief did not address whether the trial Court erred in not granting trial counsel's motion for mistrial following the State's failure to provide trial counsel with advance copies of Stephanie Ballard's and Lisa Strickland's video interviews.

5. The brief which Joseph Savitz III filed in the Court of Appeals on Applicant's behalf consisted of only six pages, of which only one page (and comprising just two paragraphs) was devoted to attorney Savitz's argument.

6. The Court of Appeals held that the trial court did not err in its charge to the jury. The Court went on to state that Applicant's appellate brief does not articulate which definition of involuntary manslaughter he believes applies to the facts of his case. In footnote 2 of its opinion, the Court of Appeals noted that: *[w]e are disturbed by the brevity of the legal argument in Sam's appellate brief, which consists of less than a page.*

7. The South Carolina Supreme Court granted certiorari and affirmed the Court of Appeals' decision.

### CONCLUSIONS OF LAW

Applicant is constitutionally entitled to effective assistance of both trial counsel and appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). In order to be effective, appellate counsel must give assistance of such quality as to make the appellate proceedings fair. Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 ( 1990). In deciding a claim of ineffective assistance of counsel, the focus is on the fundamental fairness of the proceeding whose result is being challenged. Strickland v. Washington, 466 U.S. 668, 685, 696, 104 S.Ct. 2052, 2063, 2069, 80 L.Ed.2d 674, 692, 699 (1984). The burden of proof is upon petitioner to show that counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms. Petitioner must then prove that he or she was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 . (1999).

Nominal representation on an appeal - like nominal representation at trial - does not suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all. - Evitts v. Lucey, 469 U.S. 387, 396. Raising meritorious issues on appeal in only a conclusory fashion and without setting forth the issue with particularity amounts to ineffective assistance of appellate counsel. See Patrick v. State, 349 S.C. 203, 562 S.E.2d 609 (2002) (finding ineffective assistance of appellate counsel where counsel devoted three short paragraphs to a meritorious issue; did not give useful analysis; and only cited one case.).

In preparing his brief for the Court of Appeals, appellate counsel's performance was objectively unreasonable for two reasons. First, counsel failed to raise a meritorious issue regarding the trial court's handling of the delayed discovery disclosure. Second, counsel's treatment of the one issue raised on appeal was disturbingly brief.

#### **Ineffective presentation of lesser-included offense issue**

Voluntary and involuntary manslaughter are both lesser-included offenses of murder. State v. Williams, 399 S.C. 281, 731 S.E.2d 338 (Cl. App. 2012). In South Carolina, involuntary manslaughter is defined as: (1) the intentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009).

Counsel's entire argument on this one and only issue consisted of just two paragraphs. The first paragraph consisted of a restatement of the South Carolina's two definitions for involuntary manslaughter as set forth in State v. Wharton, *supra*. The second and final paragraph of the argument consisted of two conclusory sentences accompanied by a four-case string cite. However counsel failed to elaborate how the four decisions in the string cite, namely State v. Light, 378 S.C. 641, 664 S.E.2d 465; State v. Meekler, 379 S.C. 12, 664 S.E.2d 447 (2008); State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003), and State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999) applied to the facts in Applicant's case.

Additionally, Appellate Counsel failed to elaborate whether Applicant's actions fit under the first or the second definition of involuntary manslaughter. Counsel provided the Court of

Appeals with no guidance as to whether Applicant's actions in responding to Mr. Frazier's initial assault should be considered what the Court in Wharton, *supra* described as *an unlawful activity not naturally tending to cause death or great bodily harm*; or, a *lawful activity with reckless disregard for the safety of others*. Appellate counsel's unreasonably brief treatment of this issue was tantamount to his having not raised the issue at all. Had the Court of Appeals had the benefit of competent advocacy by appellate counsel, there is a reasonable probability that the Court of Appeals would have reversed Applicant's conviction and remanded his case for a new trial.

#### Failure to raise meritorious issue

Rule 5(a) (C), SCRCrimP provides that *[u]pon request of the defendant the prosecution shall permit the defendant to inspect and copy...documents, photographs... which are material to the preparation of his defense*. Video recordings of interviews given by the two eyewitnesses to the incident were clearly material to trial counsel's preparation of his defense. The State's failure to disclose this recordings prior to trial was a violation of Rule 5, SCRCrimP. See Earley v. State, 418 S.C. 255, 792 S.E.2d 226 (S.C. 2016); (finding that evidence one week before trial the defendant posted "See ya" the victim's social networking website was relevant to the crime charged and its probative value was apparent to the state and should have been disclosed). State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009) (finding that letter written by defendant to ex-wife regarding his altercation with ex-girlfriend, stating he knew his "story" was "full of lies," was relevant in burglary prosecution, and should have been disclosed by State in response to defendant's motion).

Whether or not the trial court should have granted a mistrial following the state's failure to



provide the witnesses prior statements was a meritorious <sup>defense</sup> that appellate counsel should have raised on appeal. The video statements provided evidence of prior inconsistent statements given by Stephanie Ballard. (T.T. p. 211 l. 3 - p. 212 l. 9); as well as prior inconsistent statements given by Lisa Strickland. (T.T. p. 218 l. 15 - p. l. 16). At the evidentiary hearing, trial counsel testified that his ability to impeach the credibility <sup>of</sup> these witnesses during his original cross examination was prejudiced by the State's failure to provide these statements prior to trial. The court finds that the impact of trial counsel's ultimate impeachment of these two witnesses was greatly diminished by the trial court's ruling in this case. Again, had the Court of Appeals had the opportunity to consider the appropriateness of the trial court's actions in denying the motion for mistrial, there is a reasonable probability that the Court of Appeals would have reversed Applicant's conviction and remanded his case for a new trial.

#### Appropriate Remedy

The appropriate relief in instances of ineffective assistance of appellate counsel is to grant Applicant a new trial. See Ezell v. State, 345 S.C. 312, 548 S.E.2d 852, \_\_\_ (2001) (granting a new trial where appellate counsel failed to include critical audio exhibit in Record on Appeal); Patrick v. State, 349 S.C. 203 (\_\_\_ 2002); Simkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (granting a new trial where appellate counsel failed to raise meritorious issue on appeal), overruled on other grounds by State v. Stokes, 381 S.C. 390, 673 S.E.2d 434 (\_\_\_ 2009).

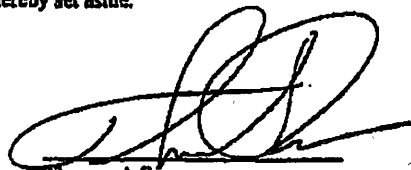
WHEREFORE, I find Applicant has carried his burden of proof on ineffective assistance of appellate counsel.

THEREFORE, Applicant's application for Post-Conviction Relief is granted and Applicant's

convictions for murder (2008-GS-15-0370) is hereby set aside.

IT IS SO ORDERED!

April 4, 2018

A handwritten signature in black ink, appearing to read 'T. Russo', written over a horizontal line.

Thomas A Russo  
Presiding Judge  
14<sup>th</sup> Circuit Common Pleas

STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS  
) FOURTEENTH JUDICIAL CIRCUIT  
)

Desmond J. Sams, #332938,

) Case no. 2015-CP-15-444  
)

) Applicant,  
)

) v.  
)

) RULE 59(E) MOTION TO AMEND  
) AND MOTION TO RECONSIDER  
)

State of South Carolina,

) Respondent.  
)  
)

COLLETON COUNTY  
PROBATE COURT  
MAY -2 PM 4:29

Respondent requests that this Court reconsider the Order Granting Post-Conviction Relief in the above-captioned case or, alternatively, address the State's arguments in an amended order:

**I. Motion to Amend**

**Overwhelming Evidence**

Respondent submits this Court failed to address the State's argument that Applicant's application should be denied because the evidence against Applicant was overwhelming and, therefore, Applicant was not prejudiced in its order.

The facts of the case are simple. A dispute occurred between Applicant and the victim while they were drinking at Lisa Strickland's (Strickland) residence. Strickland was a friend of Applicant and the victim. Stephanie Ballard (Ballard) was also present. During the struggle, Applicant put the victim in a headlock. The victim repeatedly stated he could not breathe and begged Applicant to release him. Applicant refused to release him. Strickland and Ballard attempted and failed to break Applicant's chokehold on the victim. After trying to separate Applicant from the victim, Strickland called 911 multiple times. Around 4:36 a.m., Strickland made the last call to 911. Colleton County Sheriff's department arrived at 4:38 a.m. Applicant

was still choking the victim when law enforcement arrived. Law enforcement ordered Applicant to release the victim, Applicant would not comply with law enforcement's commands to release the victim until the third time the officer ordered him to let the victim go and drew his taser gun. In its opinion on this case, the Supreme Court found Applicant had no self-defense claim because the Applicant's self-defense argument was "tantamount to imperfect self-defense." State v. Sams, 410 S.C. 303, 315, 764 S.E.2d 511, 517 (2014). The fact that Applicant choked the victim for a prolonged period of time and caused his death is not in dispute. According to the Supreme Court, Applicant had no self-defense claim and he was also convicted of the lesser-included offense of voluntary manslaughter. Therefore, there is overwhelming evidence of Applicant's guilt. There is no dispute that Applicant caused the death of the victim. The Supreme Court upheld the trial court's decision that involuntary manslaughter was not applicable to Applicant's case and found Applicant did not have an argument for self-defense. Therefore, Applicant was not prejudiced by Appellate Counsel's failure to raise the mistrial issue or by the trial judge's denial of Counsel's request for a mistrial because there was overwhelming evidence of guilt against Applicant. Applicant cannot prove prejudice where the evidence against her was overwhelming. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008).

Accordingly, Respondent requests this Court address this argument in its order.

Impeachment potential

Respondent contends the testimony and record do not support the order's finding that "the impact of trial counsel's ultimate impeachment of these two witnesses was greatly diminished by the trial court's ruling in this case." The trial court did deny Counsel's request for a mistrial. However, the trial court gave Counsel the opportunity to review the discovered video tapes and recall the witnesses to have a second cross-examination so that trial counsel could

impeach them with the statements made on video. Therefore, Counsel had a full opportunity to impeach the witnesses based on their video statements. Counsel's testimony at the hearing was that impeaching a witness during a second cross-examination 'just isn't the same' as being able to impeach a witness on a first cross-examination. Respondent contends Counsel's testimony and the fact that Counsel had a full opportunity to impeach the witnesses based on their video statements does not result in a greatly diminished impeachment, as found by this Court's order.

Further, this Court failed to address Respondent's argument that the video statements provided no substantive information not already contained in the written statements. Counsel had the written statements from the witnesses on which to impeach them on his first-cross-examination and was able to find only trivial differences between the video and written statements during his second cross-examination. The entire second cross-examination of Ballard was merely two pages of transcript. Tr. 211-212.

The only impeachment material Counsel found in Ballard's video statement, as compared to her written statement, was she said the fight began in the bathroom in the video statement and not in her written statement. Where the fight began is completely irrelevant to Applicant's innocence or guilt, and trivial impeachment evidence at best.

There were only two differences in Strickland's video statement that Counsel pointed out. Tr. 218-219. In Strickland's video statement she recalled saying she was going to 'call her brother who is a cop' and not 'I'm gonna call the police.' Tr. 218. The difference in the statements is insignificant and has no impeachment value. The second difference was Strickland's failure to include her statement that the victim stated during the fight that he was going to kill Applicant. Tr. 218-219. This was part and parcel of Applicant's imperfect self-defense claim. The jury found Applicant guilty of voluntary manslaughter. Strickland's video-

statement and Counsel's impeachment of her on that statement is an argument for voluntary manslaughter, which Applicant received. Therefore, Applicant was not prejudiced by its initial lack of inclusion because he received the benefit of it at trial and in verdict.

Accordingly, Respondent requests this Court address these arguments in its order.

## **II. Motion to Reconsider**

Respondent contends the arguments laid out in Respondent's Motion to Amend are also arguments that show Applicant's application should be denied. Based on the above arguments, Respondent requests this Court reconsider its decision to grant Applicant's application and deny Applicant's application for Post-Conviction Relief.

**III. Conclusion**

WHEREFORE, having made its motion to amend, the State requests that this Court amend its Order Granting Post-Conviction Relief or, in the alternative, reconsider the State's arguments and deny Applicant's application for Post-Conviction Relief.

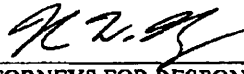
Respectfully submitted,

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By: 

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April 27, 2018

STATE OF SOUTH CAROLINA )

COUNTY OF COLLETON )

IN THE COURT OF COMMON PLEAS

2015-CP-15-0444

DESMOND JAVON SAMS, #332938 )

Applicant, )

vs )

STATE OF SOUTH CAROLINA, )

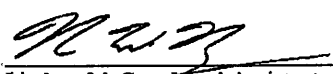
Respondent. )

AFFIDAVIT OF SERVICE BY MAIL

COLLETON COUNTY  
PROBATE COURT  
2018 MAY -2 PM 4:39

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Rule 59(E) Motion to Amend and Motion to Reconsider in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire  
Falk Law Firm, LLC  
Post Office Box 1058  
Charleston, South Carolina 29402

DATED this 27<sup>th</sup> day of April, 2018.
  
 For: Lindsey McCoy, Legal Assistant



STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Desmond J. Sams,

Applicant,

vs.

State of South Carolina,

Respondent.

Case No. 2015-CP-15-00444

**AMENDED ORDER  
DENYING POST-CONVICTION  
RELIEF**

2018  
AUG 17 AM 11:49  
PATRICIA C. GRANT  
COLLETON COUNTY  
COMMON PLEAS

THIS MATTER comes before the Court via an Application for Post-Conviction Relief (PCR) filed by Mr. Desmond J. Sams. Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's Orders of Commitment.

This Court convened an evidentiary hearing during the PCR term of court for October 2017 in the Fourteenth Judicial Circuit. Applicant was present at the hearing and was represented by Mr. James K. Falk, Esquire. Mr. Ruston Neely, Esquire, of the South Carolina Attorney General's Office represented Respondent. For the reasons set forth below, Mr. Sams' Application for Post-Conviction Relief is hereby DENIED.

#### **PROCEDURAL HISTORY**

Applicant was indicted by the October 2008 term of the Colleton County Grand Jury for Murder, 2008-GS-15-0370, and Assault and Battery of a High and Aggravated Nature (ABHAN), 2008-GS-15-0371.

Applicant proceeded to a jury trial and was represented by David Mathews, Esquire, of the Colleton County Public Defender's Office ("trial counsel"). In its indictment, the State alleged that Applicant murdered the victim, Jake Frazier, by means of choking. See S.C. Code Ann. § 16-3-

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SC Court of Appeals

10 (2003) (defining "murder" as the "killing of any person with malice aforethought, either express or implied."). The jury found Applicant guilty of the lesser-included offense of voluntary manslaughter. The jury also acquitted Applicant of ABHAN. On January 29, 2009, the Honorable Perry M. Buckner sentenced Applicant to confinement for twenty-four (24) years suspended upon the service of eighteen (18) years followed by five (5) years of probation.

A Notice of Appeal was filed on Applicant's behalf and an appeal perfected. Joseph L. Savitz, Esquire, of the Office for Appellate Defense ("appellate counsel") represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Sams, No. 2011-UP-205, 2011 WL 11734316 (S.C. Ct. App. May 4, 2011). Applicant then filed a petition for writ of certiorari in the Supreme Court of South Carolina, which was granted on October 17, 2012. Applicant was represented by Tristan Shaffer, Esquire. On February 4, 2014, the Supreme Court affirmed the decision of the Court of Appeals. State v. Sams, 410 S.C. 303, 764 S.E.2d 511 (2014). The Remittitur was issued on November 7, 2014.

On March 27, 2015, Applicant filed a timely application for Post-Conviction Relief with the Colleton County Clerk of Court. In his application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "(5) amendment violation"
  - a. "Grand jury violation"
2. "(6) amendment violation"
  - a. "Ineffective counsel violation"
3. "(14) amendment violation"
  - a. "Due process violation Brady violation"

On October 20, 2015, J. Rutledge Johnson, Esquire, filed a Return on behalf of the State, through which it asserted that Applicant's PCR Application raised no genuine issues of material fact and therefore sought a summary dismissal of Applicant's claims. In the alternative, the State sought

an evidentiary hearing to resolve all factual issues that could not be conclusively refuted by the record.

An evidentiary hearing in this matter was held on October 10, 2017, in the Beaufort County Courthouse before the Honorable Thomas A. Russo. James K. Falk, Esquire, was appointed to represent Applicant in this matter. Prior to the commencement of the hearing, Applicant's counsel advised the Court that Applicant was amending his PCR Application to include a claim of ineffective assistance of appellate counsel. Present and testifying at the hearing were Applicant and Applicant's trial counsel. At the time of the hearing, appellate counsel was no longer employed by the Office of Appellate Defense, but was able to testify via telephone.

#### **THE UNDERLYING GENERAL SESSIONS CASE**

During the early morning hours of April 12, 2008, Applicant and his girlfriend, Lisa Strickland, were drinking at Strickland's residence in Walterboro along with Jake Frazier (victim) and Frazier's girlfriend, Stephanie Ballard. At some point, Frazier accused Applicant of inappropriately touching Ballard, and a fight ensued. During the struggle, Applicant put Frazier into a choke hold while lying on top of him. According to Strickland and Ballard, Frazier repeatedly stated that he could not breathe and asked Applicant to let him go. Applicant refused to release Frazier, and allegedly struck Ballard several times when she tried to separate the two men. Around 4:36 a.m., Strickland made the last of several calls to 911 to report the fight and request assistance.

Law enforcement was dispatched at 4:38 a.m. When they arrived on scene around 4:46 a.m., Frazier was face down on the floor and Applicant was on top of him, also facing downward. Applicant was still trying to restrain Frazier when law enforcement ordered Applicant to release his hold. Applicant did not respond. Again, law enforcement instructed Applicant to get off of

Frazier; this time, Applicant responded by saying, "No, he'll want to fight." Upon a third request by the officer, Applicant complied and released his hold on Frazier, but Frazier remained unresponsive on the floor. The responding officer observed Frazier was not breathing and had a blue cast to his skin. Frazier was later declared deceased.

The case went to trial on January 28, 2009. Dr. Susan Erin Presnell, a forensic pathologist who performed the autopsy on Frazier, testified that she determined the cause of death to be "asphyxiation, or lack of oxygen, due to strangulation." Tr. p. 148, l. 4-5. The State also called Stephanie Ballard and Lisa Strickland to testify as fact witnesses. The State rested after calling seven witnesses.

Trial counsel called Detective Allen Inabinett as its second witness. Detective Inabinett testified that he was the case officer and was present at the scene sometime shortly after the incident occurred. Trial counsel then asked whether any video statements were taken in the case, to which Detective Inabinett replied that video statements were taken from both Ballard and Strickland. Tr. p. 169, l. 16-25. Trial counsel immediately requested to approach the bench for a bench conference, where both he and Deputy Solicitor Sean Thorton claimed they had never seen the videos and were not aware of their existence. Tr. p. 194, l. 16 – p. 195, l. 11. Despite this, testimony continued until after the jury was dismissed for the day, whereupon trial counsel moved for a mistrial. Tr. p. 196, l. 7 – p. 197, l. 3. The trial court withheld ruling on the motion, instead ordering trial counsel and the State to review the videotaped statements overnight for any discrepancies between the written statements and the video. Tr. p. 197, l. 4-10. The next morning, trial counsel renewed his motion for a mistrial, arguing that he would have prepared for the case differently and would have taken a different approach on cross examination with Ballard and Strickland had he known about their videotaped statements prior to trial. Tr. p. 200, l. 15-24. The

trial court ultimately denied that motion for a mistrial, opting instead to require the State to re-call Ballard and Strickland so that the defense could re-cross-examine them. Tr. p. 203, l. 24 – p. 205, l. 18.

At the conclusion of all the evidence, the trial judge charged the jury on murder, voluntary manslaughter, ABHAN, and self-defense. The jury acquitted Applicant of murder and ABHAN, but found him guilty of voluntary manslaughter.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having heard the testimony of the witnesses and arguments of counsel, this Court makes the following findings of fact and conclusions of law:

#### **A. Ineffective Assistance of Appellate Counsel**

Applicant raises two issues with regard to appellate counsel's scant brief to the Court of Appeals.<sup>1</sup> First, Applicant argues appellate counsel failed to properly preserve the argument that the first definition of involuntary manslaughter (unlawful activity not naturally tending to cause death or great bodily harm) should have been charged. Second, Applicant argues appellate counsel failed to raise the issue of the trial court's denial of his motion for a mistrial.

Applicant is constitutionally entitled to effective assistance of both trial counsel and appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "Nominal representation on appeal—like nominal representation at trial—does not suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better

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<sup>1</sup> Here, appellate counsel's final brief to the Court of Appeals was a mere six pages long, including the cover page, table of contents, and signature page. The argument section consisted of two substantive paragraphs, prompting the Court of Appeals to write in a footnote: "We are disturbed by the brevity of the legal argument in Sam's appellate brief, which consists of less than a page." During his testimony at the PCR hearing, appellate counsel explained that he was "cranking briefs out" during the time of this case, and that he could not argue with the Court of Appeal's conclusion that his brief was too short.

position than one who has no counsel at all." *Id.* at 396. In order to be effective, appellate counsel must give assistance of such quality as to make the appellate proceedings fair. *Id.* "However, appellate counsel is not required to raise every non-frivolous claim, but may select among them in order to maximize the likelihood of a favorable outcome." *Smith v. Robbins*, 528 U.S. 259, 288, 120 S.Ct. 746 (2000).

In deciding a claim of ineffective assistance of counsel, the focus is on "the fundamental fairness of the proceeding whose result is being challenged." *Strickland v. Washington*, 466 U.S. 668, 685, 696 (1984). First, the burden of proof is on the petitioner to show that counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms. *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Second, "the petitioner must prove that he or she was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* (citing *Strickland*, 466 U.S. 668).

**i. Failure to Preserve Argument on Involuntary Manslaughter Charge**

Applicant argues that appellate counsel was ineffective in failing to preserve argument on one definition of involuntary manslaughter. This Court respectfully disagrees.

Voluntary and involuntary manslaughter are both lesser-included offenses of murder. *State v. Williams*, 399 S.C. 281, 731 S.E.2d 338 (Ct. App. 2012). In South Carolina, involuntary manslaughter is defined as: (1) the intentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. *State v. Wharton*, 381 S.C. 209, 672 S.E.2d 786, 789 (2009).

While appellate counsel's entire argument on this one and only issue consisted of just two paragraphs and only addressed the second definition of involuntary manslaughter, this Court finds the ultimate outcome on appeal would not have been different had appellate counsel adequately briefed the court on the first definition. Unlike most PCR cases alleging ineffective assistance of appellate counsel, we know definitively what the Court of Appeals would have held on this issue because the appellate judges analyzed both definitions of involuntary manslaughter and affirmed the trial court.<sup>2</sup> Here, appellate counsel's failure to raise the first definition of involuntary manslaughter in his brief amounted to harmless error. Thus, Applicant has failed to satisfy the second prong of Strickland as to this ground of his PCR application.<sup>3</sup>

ii. **Failure to Raise Issue of Trial Counsel's Motion for Mistrial**

Next, Applicant argues that appellate counsel was ineffective in failing to raise the issue regarding trial counsel's motion for mistrial in his appellate brief, and that the trial court should have granted that motion. This Court respectfully disagrees.

In the trial of Applicant's case, it was revealed on the stand that law enforcement had videotaped statements of two eyewitnesses in its possession that were not turned over to the prosecutor or trial counsel. Trial counsel moved for a mistrial based on the State's failure to comply with Rule 5 and Brady. The trial judge took the matter under advisement overnight to give both

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<sup>2</sup> The Supreme Court later found this to be in error: "[W]e conclude the Court of Appeals should not have considered the first definition of involuntary manslaughter as it was not properly preserved." State v. Sams, 410 S.C. 303, 310, 764 S.E.2d 511, 514-15 (2014).

<sup>3</sup> In Respondent's Motion to Amend, the State asks this Court to deny Applicant's PCR application based on overwhelming evidence; the Court declines to fully address this argument because it ruled in favor of the State on other grounds, and because "the existence of 'overwhelming evidence' does not automatically preclude a finding of prejudice." Smalls v. State, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018).

sides a chance to review the videotapes, then ruled as follows the next morning when trial counsel renewed his motion:

I think I have to find, for purposes of your motion, Mr. Mathews, that there is some manifest injustice here that requires the Court to grant a mistrial. I recognize that, sometimes, even though there's a good faith on both parts, that mistakes are made in discovery. . . . However, I am fortunate enough, number one, that we're still in your case, and I can require the Solicitor to bring the witnesses back to this courtroom, and allow you to cross-examine them, and confront with whatever information you feel was on the tapes, that you should have brought out during your earlier cross-examination. In other words . . . I'll put them back on the stand as State's witnesses and allow you to lead them and cross-examine them. For that reason, I do not believe that what has occurred here results in the type of injustice necessary, nor has any showing been made to me of that injustice, other than the fact that [trial counsel] has reviewed the tapes and would like to have had them earlier in your cross-examination, because you might have handled the witness differently. But I'm going to give you, which is extraordinary in a criminal case, a second bite at the apple in the cross-examination, which I think cures any problem that may have occurred from what was obviously nothing intentional but a mistake.

Tr. p. 203, l. 24 – p. 205, l. 2. Subsequently, trial counsel was able to re-cross-examine Ballard and Strickland and play their videotaped statements for the jury. Tr. p. 211, l. 1 – p. 221, l. 24.

a. Violation of Rule 5 and *Brady*

The State is required to disclose evidence in its possession favorable to the accused and material to guilt or punishment. *Brady v. Maryland*, 373 U.S. 83 (1963). This includes impeachment evidence. *State v. Gunn*, 313 S.C. 124, 437 S.E.2d 75 (1993). Rule 5(a)(1)(C) of the South Carolina Rules of Criminal Procedure provides that "[u]pon request of the defendant, the prosecution shall permit the defendant to inspect and copy . . . documents, photographs, [and] tangible objects . . . which are material to the preparation of his defense[.]" The rule also provides the available remedies for a failure to comply with a discovery request:

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, *the court may order such party to permit the discovery or inspection*, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.



Rule 5(d)(2), SCRCrimP (emphasis added). Failure to disclose Brady material is reversible error only when its omission deprives the defendant of a fair trial. State v. Gunn, 313 S.C. 124, 437 S.E.2d 75 (1993).

This Court does not have the benefit of viewing the videotaped statements of Strickland and Ballard, but from a review of the transcript, it appears that any discrepancies between the women's video statements and in-court testimony or written statements were minimal. Even when viewing the record before it in a light most favorable to Applicant, it is clear that the trial court selected a remedy from the options available to it in its discretion pursuant to Rule 5. The trial court also found that the Solicitor's Office was not aware of the existence of the videotapes, i.e. the non-disclosure did not rise to the level of prosecutorial misconduct, and Applicant would not be deprived of a fair trial after remedying the situation.

**b. Denial of Motion for a Mistrial**

"A motion for a mistrial is, by its very nature, both an allegation of error and an allegation of prejudice sufficient to warrant a mistrial." State v. Wilson, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010). Therefore, "[a] mistrial should only be granted when absolutely necessary, and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). "The granting of a motion for a mistrial is an extreme measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." Id. (citing State v. Stanley, 365 S.C. 24, 33-34, 615 S.E.2d 455, 460 (Ct. App. 2005)).

"The decision to grant or deny a mistrial is within the sound discretion of the trial court." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). Our Supreme Court "favors the exercise of the wise discretion of the circuit judge in determining the merits of such

motion in each individual case." State v. Thompson, 276 S.C. 616, 621, 281 S.E.2d 216, 219 (1981) (citing State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976)). "The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009).

Here, it does not appear that the trial court made an error of law. Instead, the trial court was able to remedy the discovery issue in accordance with the Rules of Criminal Procedure and preserve the integrity and fairness of the trial. South Carolina case law is clear that the trial court is given substantial deference on appeal absent an error of law. Thus, had appellate counsel briefed the mistrial issue to the Court of Appeals, this Court finds it unlikely that the trial judge would have been overturned. Again, appellate counsel is not required to raise every non-frivolous claim, but may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S.Ct. 746 (2000).

In conclusion, because the trial court was able to remedy the failure of the State to disclose the videotapes, this Court finds Applicant was not prejudiced, and the fairness of his trial was preserved. The trial court also acted within its discretion in denying trial counsel's motion for a mistrial. Finally, because appellate counsel is under no duty to raise unsuccessful arguments, and because there is not a reasonable likelihood that the appellate courts would have reached a different outcome had the mistrial issue been briefed, this Court finds Applicant has failed to satisfy the second prong of Strickland as to this ground of his PCR application.

#### **V. CONCLUSION**

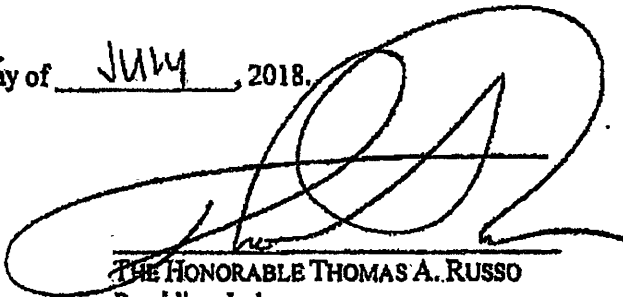
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1g, SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. This Application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30<sup>th</sup> day of JULY, 2018.



THE HONORABLE THOMAS A. RUSSO  
Presiding Judge  
Fourteenth Judicial Circuit

Florence, South Carolina