

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Honorable Walton J. McLeod, IV, Circuit Court Judge

App. Case No: 2019-001060

Andrew E. Torrence,

Petitioner,

vs.

State of South Carolina,

Respondent.

APPENDIX
VOLUME II OF IV

Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

Attorney for Petitioner

Alan Wilson
Attorney General

Don Zelenka
Deputy Attorney General

Sherrie Butterbaugh
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-6305

Attorneys for Respondent

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DEFENDANT ON CROSS

1 A. . .

2 Q. You pulled the trigger on purpose. Right?

3 A. I said it to let her know that I'm the shooter. I
4 shot him. That's so she would know I'm the shooter.

5 Q. No, sir. My question was did you pull the trigger
6 intentionally?

7 A. Yes.

8 Q. Two times you pulled the trigger intentionally?

9 A. Yes.

10 Q. There wasn't a struggle over the gun, was there?

11 A. Um, I mean, you're talking about something that hap-
12 pened in a second. Yeah, there was a struggle.

13 Q. Is it your testimony that Zach Chaplin sees you've
14 drawn a gun and then you struggle over the gun?

15 A. . .

16 Q. Did you not say it on direct?

17 A. I thought he was reaching. I shot to stop him. I
18 had to shoot to stop him. Nothing more, nothing less,
19 but correct.

20 Q. So your answer is that you are not saying that he
21 got control of your weapon? You're saying he tried to
22 get control of your weapon?

23 A. Yes.

24 Q. You're not here saying that his hand ever touched
25 your weapon? Are you saying that you believe that he

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1 your weapon?

2 A. I don't remember if he touched the weapon or not.

3 Q. You fired before he touched the weapon, is that cor-
4 rect?

5 A. The first shot? No, I can't really say because it
6 happened so fast.

7 Q. So you can't say you were fighting over the weapon?

8 A. . .

9 Q. Correct? You are not saying that?

10 A. I'm not saying he didn't either.

11 Q. You are saying you don't know?

12 A. I don't remember.

13 Q. Your employment at Allegiance overlapped with your
14 employment at Hawkeye?

15 A. I can't recall. I know I was trying to get a job
16 with Hawkeye before the thing at Allegiance and Ms.
17 Mozenko.

18 I mean, you have the records but I don't recall the
19 exact dates.

20 Q. At some time were you working at Allegiance at the
21 same time you were working at Hawkeye? Yes or no.

22 A. I don't think so. I mean, when I was working at
23 Allegiance -- I don't think so. I think I still had the
24 job when I knew I was going to quit, if that makes
25 sense.

DEFENDANT ON CROSS

1 Q. So you weren't fired?

2 A. No, not that I recall.

3 Q. Were you . .

4 A. I mean, I . .

5 Q. You either were fired or you were not?

6 A. I don't remember.

7 Q. And you don't remember whether Mr. Chaplin had his
8 hand on the gun or not?

9 A. No.

10 THE COURT: Ask him one question at a time and let
11 him answer.

12 SOLICITOR: Yes, Your Honor.

13 BY SOLICITOR:

14 Q. You cannot remember if you were fired from Allegiance,
15 correct?

16 A. I knew that I was trying to secure a job with
17 Hawkeye.

18 Q.. My question -- yes or no -- do you remember whether
19 you were fired by Allegiance?

20 A. No, I don't think I was fired. I could have been by
21 the paperwork standards.

22 Q. Prior to working at Rush's on Broad River Road on
23 the night of November 27, 2008, had you been told to bring
24 in your inventory . .

25 A. I don't recall that, no. No.

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1 Q. You were not told that?

2 A. No, sir, and I'll be glad to take a polygraph
3 on all of this stuff.

4 Q. We're not talking about polygraphs.

5 A. I know that.

6 Q. So if I called somebody from Hawkeye Security,
7 they are not going to say that you were told to bring in
8 your inventory?

9 A. I'm not saying that. They are probably trying to
10 protect their business from the incident and me.

11 Q. So if somebody from Hawkeye came and said that they
12 told you to bring your inventory, they would be lying?

13 A. . .

14 THE COURT: No, sir. That's an improper question.
15 Ask your next question.

16 SOLICITOR: Yes, Your Honor.

17 BY SOLICITOR:

18 Q. You were told -- your testimony is that nobody from
19 Hawkeye Security told you to bring in our inventory. Is
20 that correct?

21 A. Yes.

22 Q. And it's your testimony that you worked at Rush's
23 on Broad River the night of November -- September 27th
24 from what time on the 27th to what time on the 28th?

25 A. I believe nine seven -- something like that. It is

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1 on Rush's paper, the time in and time out.

2 It was nine fifteen to one forty-five, I believe.

3 REPORTER: One minute, please. One minute. Judge,
4 I'm sorry.

5 (Brief pause in proceeding)

6 BY SOLICITOR:

7 Q. Mr. Torrence, if it says on here on 9 28 08, nine
8 o'clock P.M. to one fifty A.M., is that correct?

9 A. That's correct.

10 Q. And that is your signature on there?

11 A. Yes.

12 Q. And the manager's signature on there?

13 A. Yes, sir.

14 Q. Tell me if this is how the process works. Isn't it
15 true that you show up and when you show up you go in and
16 tell the manager, I'm here, and you sign the first time
17 with the time?

18 A. It's basically clocking in, saying on here, and she
19 confirms that I'm here so I will be paid for it.

20 Q. And then when you leave, it says one fifty A.M., and
21 Andrew E. Torrence, Jr. again?

22 A. Yes, sir. I don't ever sign out until I leave,
23 saying that I worked the shift.

24 Q. Isn't it true that when you were working at Brush's
25 that's not an inside job, is it?

501

DEFENDANT ON CROSS

1 A. What do you mean?

2 Q. Are you inside Rush's?

3 A. Part of it.

4 Q. So it's also an outside job?

5 A. I go around checking things. Like I said, our job
6 is mostly for back-up.

7 Q. So is it more to stop patrons from getting inside
8 or let everybody outside know that security is here?

9 A. It's a little bit of both. It is just saying we've
10 got their security there. I mean, I can't read minds,
11 but it is a fluid active approach. That's what security
12 is all about.

13 Q. Are you proactive if you are inside sitting at a
14 table?

15 A. Yes. If I'm in uniform, yes.

16 Q. And you're protactive if you're outside walking around
17 too, aren't you?

18 A. Yes.

19 Q. You are not here to say that this saying the manager
20 is vouching for you being there the entire time, are you?

21 A. I don't understand the question.

22 Does this piece of paper say that you were there the
23 entire time?

24 A. Yes.

25 Q. Now, isn't it true that what it really says is that

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1 you were there at nine P.M. and that you were there again
2 at one fifty A.M.?

3 You clocked in and clocked out. Isn't that what the
4 piece of paper says?

5 A. I clocked in at Rush's and I clocked out at Rush's.

6 Q. This paper says that you were there at nine o'clock
7 P.M. and . .

8 A. That's what they're saying.

9 Q. . . you clocked out at one fifty A.M.?

10 A. Yes.

11 Q. That's what they're saying?

12 A. Yes. I never left Rush's.

13 Q. I'm sorry.

14 A. I never left Rush's.

15 Q. We'll talk about that.

16 A. There are security cameras.

17 Q. Do you have tapes to show you were there the whole
18 time?

19 A. No, but I will take a polygraph test.

20 Q. We're not here to talk about polygraphs.

21 A. Okay.

22 Q. Looking at Defendant's Exhibit Number 7 . .

23 SOLICITOR: Your Honor, may I approach?

24 THE COURT: Yes, sir.

25 BY SOLICITOR:

DEFENDANT ON CROSS

1 Q. Here is your signature, Andrew E. Torrence, Junior,
2 Andrew E. Torrence, Junior?

3 A. Yes.

4 Q. They look different to me. Do they look different
5 to you?

6 A. . .

7 MR. FLOYD: Your Honor, I would object.

8 SOLICITOR: This is on cross examination.

9 THE COURT: I understand. He's bringing in evidence
10 as to credibility but he is on cross examination. I'll
11 allow it.

12 Perhaps you can clear it up a little bit, Solicitor.

13 SOLICITOR: I can, Your Honor.

14 BY SOLICITOR:

15 Q. Mr. Torrence, can you explain why your signatures
16 look different?

17 A. I'm more fatigued at that time from walking around.
18 I'm tired.

19 Q. It doesn't have anything to do with the fact that
20 you were drinking alcohol between those hours?

21 A. No.

22 Q. If I could . .

23 MR. FLOYD: Your Honor, I would object.

24 THE COURT: Mr. Foreman and ladies and gentlemen of
25 the jury, we have a matter to take care of so I would ask

1 that you go briefly to your jury room.

2 Please leave your notes in your chair and do not
3 discuss the case during this brief recess.

4 (Jury excused from Courtroom)

5 THE COURT: All right, Mr. Floyd. I'll be glad to
6 hear from you.

7 MR. FLOYD: Your Honor, I am incensed. I not only
8 move for a mistrial, I move for a dismissal on prosecu-
9 torial misconduct. That was outrageous.

10 They have no basis at all to ask that question of
11 Mr. Torrence and plant that seed in the jury's mind.

12 They have no evidence of it. In fact, they have evi-
13 dence that what they asked him was not true or credible.

14 They have a letter from the manager of Rush's on
15 Broad River Road, and they gave me a copy of it. They
16 asked if Mr. Torrence was there and if Mr. Torrence was
17 drinking that night, and the response was we have no re-
18 cord of it. If we had noticed anything like that, we
19 would have, of course, notified the security company, and
20 we didn't.

21 So there is no evidence of it. The evidence is that
22 he was there doing his job. Their witnesses are lieing
23 in their testimony that he was at State Street at mid-
24 night, and they just won't admit it.

25 There is no basis for asking that question except to

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1 try to prejudice him in the eyes of the jury.

2 We would move for a dismissal.

3 THE COURT: Would you withdraw your motion for a
4 mistrial?

5 MR. FLOYD: At this point, Your Honor.

6 THE COURT: Thank you.

7 I'll hear from you, Solicitor.

8 SOLICITOR: Your Honor, an investigator for our of-
9 fice went and talked to the manager whose signature that
10 is, and what she said was she did not notice any smell of
11 alcohol about Mr. Torrence.

12 I believe, and if I'm wrong I'll ask my investigator
13 to correct me -- I believe she did not have a lot of in-
14 volvement with Mr. Torrence. He signed in and then he
15 signed out.

16 That was her only involvement with him, and his job
17 was an outside job. She said she did not smell any alco-
18 hol but that does not mean that Mr. Torrence did not leave
19 there and go to State Street Pub, have a drink with Tonya
20 Mozenko and Stephen Smith.

21 I think I had a reasonable basis to ask a question
22 about him being there, going there and having a drink.
23 He can deny it but I don't think it is any grounds for a
24 mistrial. There is a reasonable basis to say that.

25 THE COURT: All right. Thank you, Solicitor.

1 SOLICITOR: Your Honor, just for clarification, I
2 did give information to Mr. Floyd, the letter from the
3 manager, and a letter written by me based on my conversa-
4 tion with my investigator.

5 THE COURT: Thank you.

6 (Brief pause in the proceeding)

7 THE COURT: All right, I'm going to deny your motion
8 for dismissal based on prosecutorial misconduct.

9 Perhaps it was not as precise a question as could
10 have been asked. I think the point he was intending to
11 make was that there is a point in time on the document,
12 Defendant's Exhibit Number 7.

13 MR. FLOYD: Yes.

14 THE COURT: You have it? There is a point that be-
15 tween nine ten P.M. and -- excuse me. At nine P.M., on
16 the date of 9 27 08, Mr. Torrence signed the time in, and
17 there is a point at timeout at one fifty A.M., which is
18 the morning of the 28th.

19 Obviously, the one hour and fifty minute period of
20 time directly conflicted with the testimony of Mr. Smith
21 and Ms. Mozenko, who testified they arrived at the State
22 Street Pub at around twelve and the Defendant was present
23 at that time.

24 This document does only address two points in time.
25 The Solicitor is attempting to ask could you leave and come

1 back, which is a correct statement.

2 There is no evidence that I'm aware of that he was
3 drinking while he was working on the 27th or the 28th.
4 I still think it is a question of credibility for the
5 jury, what they choose to believe. Whether they choose to
6 believe Ms. Mozenko and Mr. Smith versus the Defendant in
7 this case as far as the time line is concerned.

8 I would deny the motion to dismiss based on prosecutor-
9 ial misconduct.

10 MR. FLOYD: Your Honor has overlooked the fact that
11 their investigation revealed that there was no evidence
12 whatsoever that Drew Torrence was anywhere but at work
13 on that night during the times shown on there.

14 They talked to the manager, and there is nothing to
15 show that he left during that time. The fact that they
16 can ignore what they know is true to try to hang this man
17 is appalling, Judge.

18 I mean, . .

19 THE COURT: I have ruled. Do you have another mo-
20 tion?

21 MR. FLOYD: Your Honor, I would like to speak to my
22 client before going any further or making a further motion.

23 THE COURT: Yes, sir, I will allow you to do that.
24 Soicitor, do you have objection to that?

25 The cases kind of bounce around both ways on an

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1 attorney being able to confer with a client once the
2 client has taken the witness stand.

3 In these unusual circumstances though, I think I
4 would allow Mr. Floyd to do that.

5 Do you have any objection?

6 SOLICITOR: No, Your Honor, but he is under Cross,
7 and any discussion should be related to that question
8 and nothing else.

9 MR. FLOYD: He can count on me living up to my eth-
10 ical obligations, Your Honor.

11 SOLICITOR: I resent that, Your Honor.

12 THE COURT: What is -- well, for what it's worth,
13 this Court has the highest regard for both of you person-
14 ally and professionally.

15 I'm going to take a fifteen minute recess.
16 You may confer with your attorney in this regard, Mr.
17 Torrence, but you may not discuss any of your testimony.
18 You are subject to continued Cross Examination and to
19 Redirect.

20 WITNESS: Yes, sir.

21 THE COURT: Any questions you want to ask me about
22 what we've just gone over?

23 WITNESS: No, sir. I trust my lawyer.

24 THE COURT: Then you may step down. The Court will
25 be in recess for some fifteen minutes. If that is not

1 enough time, send word to me.

2 MR. FLOYD: Thank you.

3 (Whereupon, the Court took a recess, and the mat-
4 ter was then resumed)

5 THE COURT: All right. Mr. Floyd?

6 MR. FLOYD: Your Honor, we would not pursue a mis-
7 trial motion at this time.

8 THE COURT: All right. As to your other motion,
9 do you wish a curative instruction?

10 MR. FLOYD: Yes, Your Honor.

11 THE COURT: What do you suggest?

12 MR. FLOYD: I would ask that the jury be told that
13 that was an improper question by the Solicitor since we
14 have evidence that he was on duty that night.

15 THE COURT: I think that would be a charge on the
16 facts. I would say that the last question phrased some-
17 what in terms of whether he was drinkig at work was an
18 improper question; that I have ruled it is not admissi-
19 ble and would not be any part of their deliberations.
20 I would strike both the question and the answer from the
21 record.

22 MR. FLOYD: The only problem I have is -- I would
23 appreciate that, but I think it still leaves a question
24 of the jury thinking, well, there must be a reason if he
25 can't ask the question and answer the question.

1 THE COURT: Yes, sir.

2 MR. FLOYD: I don't want that in their minds either.

3 THE COURT: Solicitor.

4 SOLICITOR: Your Honor, if I ask the question, I did
5 not mean to accuse Mr. Torrence of drinking at the Rush's
6 location. If that's the way I asked the question, I am
7 sorry I asked the question.

8 If he wishes a stipulation from me saying that he
9 wasn't drinking on Rush's property I would agree to that,
10 but I don't have evidence he was there the entire evening
11 or not.

12 THE COURT: Would you all stipulate then that there
13 is no evidence -- you will stipulate that he was not
14 drinking while working at Rush's on the shift that started
15 at nine P.M. on September 27th?

16 SOLICITOR: I'm not sure how to word it. I am
17 -- my allegations are that he had the ability to leave,
18 to drink and come back, so . .

19 THE COURT: I understand that but I don't think you
20 have a reasonable basis to ask that question. In other
21 words, I think you can ask could you have left and gone
22 to a bar and then could you have returned.

23 Certainly that is time and distance, circumstantial
24 evidence, and I would take it, since you have two people
25 who have testified that they saw him in a bar on -- I

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1 mean, I don't even know where Rush's is on Broad River
2 any more.

3 SOLICITOR: Well, I mean, I'm not sure -- I don't
4 know how Mr. Floyd wants to word it, but I am not accus-
5 ing Mr. Torrence of drinking while on the Rush's prop-
6 erty.

7 MR. FLOYD: Your Honor, I guess I'm still at a loss
8 to understand. From the investigation that has been done
9 by the Solicitor's office, it is clear that the manager
10 at Rush's didn't see anything wrong with Mr. Torrence's
11 shift.

12 They have acknowledged that they have no evidence
13 that he left Rush's that night to--and none of Rush's
14 people have said he left during that five hours he was
15 there on Rush's property.

16 So they know that, and yet they would try to imply
17 otherwise. I just don't understand how that's possible
18 for the Solicitor's Office to do that.

19 THE COURT: All right. Solicitor?

20 SOLICITOR: Your Honor, if I may, my investigator
21 informs me that the Rush manager said that it is conceiv-
22 ably possible that Mr. Torrence left and came back.

23 She said that they do not stay in contact with him
24 at all times during a shift.

25 I have also spoken with the director of security for

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1 Hawkeye Security, which is who Mr. Torrence was working
2 for, and he said that on several occasions -- not Mr.
3 Torrence, but on several occasions some of his employees
4 have been on duty and have left and come back.

5 THE COURT: All right. Mr. Floyd?

6 MR. FLOYD: Your Honor, there was nothing said in
7 this letter about Mr. Floyd being able to leave and come
8 back.

9 SOLICITOR: The letter -- I don't know if I remember
10 what the letter said. We can look at it, but the purpose
11 of my letter was saying that the manager did not notice
12 Mr. Torrence had alcohol on his breath.

13 I just turned that over as possible Brady informa-
14 tion that Mr. Floyd might want to know about instead of
15 later finding it out.

16 (Pause in the proceeding)

17 THE COURT: Mr. Floyd, is it your position that he
18 could not ask this question of your client?

19 MR. FLOYD: That's correct.

20 THE COURT: He could try to verbalize the question
21 -- and I know your answer -- did you leave the Rush's
22 location at any time between nine P.M. on the 27th --
23 have the occasion to leave -- I mean, can the Solicitor
24 ask that question?

25 MR. FLOYD: Well, our problem there, Judge, is that

1 -- while they did an investigation into that, there is
2 no evidence that he did.

3 THE COURT: The Solicitor has already asked questions
4 about this document, about him being there at two points
5 in time, nine P.M. and one fifty A.M.

6 Can he then ask the question, did you later leave dur-
7 ing that time or were you on that site for the entire
8 period of time? The entire span of time?

9 MR. FLOYD: I would say that question is the same.

10 THE COURT: So really the manager's testimony then
11 -- I don't know. I'm not up during those hours.

12 You're saying it is speculation on whether or not
13 he did or did not leave. Correct?

14 MR. FLOYD: I don't remember the exact wording of
15 the letter I received. My understanding is the letter
16 I received was that he was there, and if there was some
17 problem with alcohol that we noticed that we would have
18 contacted the company.

19 It seems to me that means he was there the whole
20 five hours, but I didn't have the conversation with them.

21 SOLICITOR: I can get it, Your Honor.

22 (Brief pause in the proceeding)

23 SOLICITOR: Your Honor, . .

24 THE COURT: Yes, sir.

25 SOLICITOR: I have the letter, and I have the manager

1 from Rush's coming in. She should be here in a few min-
2 utes. I am getting a copy of the letter for Your Honor.

3 (Pause in the proceeding)

4 SOLICITOR: This is in reference to -- Ms. Baldwin
5 is her name, and it's the very last paragraph on the sec-
6 ond page.

7 THE COURT: This letter doesn't say anything about
8 whether or not he left or did not leave. This letter
9 says, finally, my investigator spoke with Lynn Baldwin,
10 the manager of Rush's on Broad River the night of Septem-
11 ber 27-28, 2008.

12 Ms. Baldwin stated that she would have noticed if
13 -- if she would have noticed the security guard to have
14 been drinking or have observed alcohol about him, she
15 would have notified someone.

16 So it doesn't say anything about her observations of
17 him for that entire span of time, and if you all will de-
18 cide on a stipulation and decide on a curative instruction.

19 MR. FLOYD: I don't remember the exact question,
20 Your Honor.

21 THE COURT: Well, if you want to publish a stipula-
22 tion, I ask you to prepare one.

23 I'm going to bring the jury out and tell them I have
24 ruled the last question concerning whether or not Mr.
25 Torrence was drinking during the shift that began at nine
515

1 P.M. on the 27th is an improper question and that based
2 on the investigation there is no evidence that he was
3 drinking while he was on duty during his shift beginning
4 on the night of the 27th.

5 SOLICITOR: If they believe Tonya and Steve he was
6 at State Street drinking sometime around midnight on that
7 night.

8 So I agree he wasn't drinking on the shift, but I
9 would not agree he was not somewhere else during the time
10 period he was supposedly working.

11 THE COURT: Kind of a reverse alibi. That he wasn't
12 at Rush's; that he was at the first bar that he went to.

13 SOLICITOR: The question I would like to ask at this
14 point and move on from here is, is it possible that you
15 could have left, gone to the State Street club and come
16 back, and nobody notice.

17 That's where I--I probably will be going next, and
18 after that we can move on.

19 THE COURT: Mr. Floyd?

20 MR. FLOYD: Well, the problem that would raise and
21 that was raised back then is he's going to raise the im-
22 plication that he was drinking during the period that
23 is in question.

24 There is no reason to ask the question unless you're
25 suggesting the answer.

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1 There is again no evidence to support the implica-
2 tion.

3 SOLICITOR: If I said that he was drinking at Rush's,
4 that is not what I intended to imply or ask. I'm willing
5 for a curative instruction to say that that is improper,
6 and that is not what I meant to ask him.

7 I'm not implying that he brought alcohol in his car
8 and that he went out to the car and got it during his
9 shift.

10 The only point I want to make out of this is that
11 Tonya and Steve are not lying and that he left, went some-
12 where and came back during the hours, I guess, of midnight
13 and one fifty.

14 That's the only point I'm trying to get out in this
15 Cross Examination.

16 THE COURT: I guess they'd have to be more thorough
17 in their investigation. Did she notice -- how could he
18 have left and gone to the State Street Pub, either taken
19 off his security shirt and belt, or went in State Street
20 Bar with his security shirt on and belt?

21 There's been no testimony to that, and had four
22 shots or -- talking about Ms. Mozenko and her testimony
23 -- how many shots there? The testimony varies -- but
24 then leave and go to Rush's, being in full security guard
25 uniform, and in the presence of the manager secure the

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1 building, walk the manager to her car, and her never smell
2 any alcohol?

3 SOLICITOR: Your Honor, may I be heard on that?

4 THE COURT: Sure.

5 SOLICITOR: I believe that Mr. Torrence stated that
6 he did not get to State Street until around two forty-five
7 or three.

8 THE COURT: That was his testimony.

9 SOLICITOR: Ms. Mozenko and Mr. Smith said that they
10 left at . .

11 THE COURT: That they were there and left about one
12 fifteen, walked down the street and their friends that
13 were playing in the band had already left, so they walked
14 back to State Street Pub only for purposes of going through
15 there to their car, as I understood it.

16 As I understood it, at that time Mr. Floyd had gone,
17 and then they stayed there until three thirty and went
18 from there to Shaggy's.

19 I doubt anybody was watching the clock. I don't
20 mean it like it was precise either, but they would have
21 had to see him between twelve and one fifteen because he
22 was the reason they left, as I took it, when they kind
23 of slipped out.

24 Then when they came back ten -- ten or fifteen min-
25 utes later, he was gone.

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1 You all are arguing over an hour and fifteen min-
2 ute span of time because he would have had to be gone by
3 one something to get back to Rush's on Broad River Road
4 at one fifty to sign out and walk the manager to her car.

5 SOLICITOR: Your Honor, just for clarification, Ms.
6 Baldwin will testify that did not happen; that he did not
7 walk her to her car.

8 That he came in and signed his time and she continued
9 to work and he left.

10 THE COURT: It depends on what the jury believes and
11 if they believe Ms. Baldwin, but even then if he signed
12 out -- I don't know the answer to the question.

13 I'm going to give a curative instruction. You all
14 can ask your questions and object at the time, and I will
15 rule on it.

16 Bring the jury, please.

17 (Jury returned to Courtroom)

18 THE COURT: Welcome back, ladies and gentlemen. All
19 right, before we continue the trial of the case I will
20 advise that the last question by the Solicitor was with
21 reference to alleged conduct that Mr. Torrence may have
22 engaged in.

23 According to Defendant's Exhibit 7, he came in at
24 nine P.M. on the 27th of September, 2008. As to whether
25 or not he was drinking during that shift, there is no

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1 evidence he was drinking on that shift that began at nine
2 on September 27th.

3 There is no evidence that anyone smelled any alco-
4 holic beverages on Mr. Torrence's breath, or observed
5 any drinking by Mr. Torrence on that shift.

6 I have ruled that that question is inadmissible, and
7 any response to that question is inadmissible.

8 I have stricken that question and any response from
9 the record. What that means to the jury is you cannot
10 consider that question nor any response to that question
11 in any way whatsoever during your deliberations in reach-
12 ing your verdict.

13 I realize that it is hard to unring a bell, and you
14 cannot do it, but -- people say you cannot do it, but if
15 you are true to your oath you will follow my instructions
16 and it will not even be discussed in the jury room, that
17 question and any response to that question.

18 I am sure you will be true to your oath. Thank you.

19 Solicitor, you may continue your examination, and I
20 would ask the members of the jury to give the parties
21 your complete and undivided attention to the evidence.

22 Thank you.

23 CROSS EXAMINATION CONTINUED

24 BY SOLICITOR:

25 Q. Mr. Torrence, would you agree with me if I said that

520

1 it was approximately a fifteen minute drive from Rush's,
2 Broad River Road, to the State Street Pub?

3 A. I don't know the exact distance, but I'm sure it
4 would be possible.

5 Q. Would you agree that it would be possible for you to
6 have left Rush's sometime around midnight or a little bit
7 before, driven over in approximately fifteen minutes; been
8 at the State Street Pub for some period of time and driven
9 back without the manager knowing?

10 A. No.

11 Q. You are saying that that is impossible?

12 A. Yes.

13 Q. It is also your testimony that you stayed and you
14 walked the manager out to her car and that Rush's was en-
15 tirely shut down when you left and she left?

16 Is that correct?

17 A. I walked her to her car, yes.

18 Q. Well, do you remember or not?

19 A. It is normally policy to walk a lady out.

20 Q. I understand the policy.

21 A. Yes.

22 Q. But are you saying -- I'm not asking whether it was
23 policy. The way I understood it was that you did that
24 on that night.

25 I'm asking whether you did that that night or not.

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1 A. As best as I remember, yes.

2 Q. That was the only night you had worked at Rush's in
3 that week?

4 A. It's on the work records. I think the night before
5 I had worked there too.

6 Q. This happened on the last night of your employment,
7 correct?

8 A. No.

9 Q. Your employment with Hawkeye Security?

10 A. No. Not at all.

11 Q. Did you continue to work for Hawkeye Security after
12 the shooting?

13 A. No, they took me to jail.

14 Q. So that was -- September 28, 2008, was the last time
15 you worked for Hawkeye Security, correct?

16 A. Yes.

17 Q. Did you or did you not see Tonya and Steve at the
18 State Street Pub?

19 A. Not on that night.

20 Q. Do you remember having a conversation with your
21 mother where you told her that you did meet Tonya and
22 Steve at the State Street Pub?

23 A. Yes.

24 Q. Did you not tell your mother that you had invited
25 Tonya over to Shaggy's?

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1 A. Yes.

2 Q. But it was not the night of this incident?

3 A. It was not the night of the incident. Ms. Mozenko
4 is lying in her testimony, and so is Mr. Smith.

5 Q. I understand you . .

6 A. Or they are confused about what night all of this
7 happened.

8 Q. So it's your testimony that you did not see Tonya
9 and Steve at the State Street Pub?

10 A. Which night?

11 Q. The night we're talking about, the night that Mr.
12 Chaplin was shot.

13 A. Did I see them the morning Mr. Chaplin was shot --
14 the morning before?

15 Q. I'm sorry if I worded it wrong. In the early morning
16 hours of September 28th, 2008, after you got off shift, . .

17 A. Yes.

18 Q. . . or whenever, did you see Tonya and Steve in the
19 State Street Pub?

20 A. Yes.

21 Q. Did you invite Tonya to join you at Shaggy's?

22 A. From State Street on the night -- they're confused
23 about the night is what I'm trying to -- what I'm trying to
24 tell you.

25 Q. And now I am too. Did you see Tonya and Steve in

DEFENDANT ON CROSS

1 the early morning hours of September 28, 2008, at State
2 Street Pub? Yes or no.

3 A. Yes.

4 Q. Did you invite Tonya to join you . .

5 A. Yes.

6 Q. . . at Shaggy?

7 A. Yes.

8 Q. So nobody lied about that. Correct?

9 A. Um, no.

10 Q. Nobody is confused about that, correct?

11 A. No.

12 Q. You went on during your direct testimony to talk
13 out how much you had to drink, and although it is your
14 testimony that you had ten drinks . .

15 A. That night, yes.

16 Q. You had a beer at State Street, and then five or six
17 beers and two or three shots at Shaggy's?

18 A. Approximately.

19 Q. Well, under Direct didn't you testify that you had
20 ten drinks that night or that morning?

21 A. Approximately. I don't keep a count of it.

22 Q. And that was from -- I believe you testified you got
23 to State Street sometime between two forty-five and . .

24 A. Yes, sir.

25 Q. Is that right?

1 A. Yes.

2 Q. Between two forty-five and three?

3 A. Yes.

4 Q. And so between two forty-five and three and the time
5 of the shooting, which is approximately six thirty A.M.,
6 you had ten drinks?

7 A. Yes, sir.

8 Q. So in the course of three and a half hours, you had
9 ten drinks?

10 A. Roughly.

11 Q. You made a comment that you're a happy drunk?

12 A. I made that comment, yes.

13 Q. And you stand by that comment, correct?

14 A. Yes.

15 Q. And is it your testimony that calling somebody or
16 calling, hey, gay guy, across the bar is happy -- a happy
17 way to talk?

18 A. It wasn't across the bar, but the intention was as
19 an ice-breaker, you know. Saying, hey. You're at a bar
20 and you want people to be comfortable.

21 Q. Is it your testimony that to make Lee comfortable at
22 the bar, the first time you went up you called him gay?

23 A. Yes, it seems odd, but I'm a person who wants people
24 to be comfortable.

25 Q. Would you describe yourself as arrogant and obnoxious

DEFENDANT ON CROSS

1 when you're drinking?

2 A. Sometimes, yes.

3 Q. Would you agree with me that you were arrogant and
4 obnoxious that morning?

5 A. Yes.

6 Q. You also testified that Zach came up to you at some
7 point and said or asked you how much money you had on
8 you. Correct?

9 A. Something along that line, or in my wallet.

10 Q. And is it your testimony that Orlando Boyd, the black
11 gentlemen who was in the bar, would have heard that state-
12 ment?

13 A. Yes, sir. He was sitting in between -- it's a U-bar
14 like I said earlier, and he was sitting in between, I
15 think, Zachary and somebody else. Whether he heard what
16 Zachard said, I mean, I can't say for sure, but I know
17 there is a ninety percent chance that he heard him say
18 that, because I heard him.

19 Q. He could have heard it because he was close?

20 A. Yes, sir.

21 Q. And it looked like he was paying attention to the
22 conversation between you two?

23 A. Yes, sir.

24 Q. It's your testimony that you crossed over to the
25 bar to apologize to Mr. Buchanan before you left?

1 A. Yes, sir.

2 Q. Is that right?

3 A. Yes.

4 Q. You could tell that he was upset then, right?

5 A. Yes.

6 Q. And it was your testimony that you were ready to leave
7 at that time, and that was going to be the last thing you
8 did before you left the bar?

9 A. Yes, sir, to apologize for being a jerk to him. I
10 don't like leaving anywhere with somebody -- no matter
11 what happened, I was rude to him the way he took it, and
12 in a bad way, which I didn't mean it like that.

13 So I went to apologize anyway because he got upset.

14 Q. So it is your testimony that he continued to be up-
15 set?

16 A. When I walked back around there, yes.

17 Q. Okay.

18 A. He was going through the stuff of you shouldn't say
19 that kind of stuff; I don't care -- I mean, I was in the
20 process of, hey, man, you know, I apologize, and I think
21 I even reached back and said something like, you know,
22 don't take it personal or something like that, something
23 along those lines, to Zachary and Ms. Mozenko, because I
24 had made some comments to Ms. Mozenko earlier that night.

25 Q. So you didn't ask her if she was . .

DEFENDANT ON CROSS

1 A. I asked her, again, as an ice-breaker, what -- are
2 you fifty? I mean, she's a very attractive lady and to
3 make her laugh I said that.

4 Q. How long did you sit next to Mr. Buchanan?

5 A. All together?

6 Q. Yes.

7 A. I mean, you know, I walked around and that was the
8 end of the night or whatever you want to call it. I
9 can't recall every detail.

10 Q. No, Mr. Torrence, I'm not talking about walking
11 around, but I'm talking about the time you sat next to
12 him right at the very end to apologize.

13 How long would you say you were there?

14 A. Thirty seconds to a minute. A minute, maybe.

15 Q. Once Mr. Buchanan got upset and you knew you were
16 leaving, why didn't you just say I'm sorry and leave?

17 A. Because I got assaulted.

18 Q. No, sir. Before that.

19 A. I'm sorry?

20 Q. Once Mr. Buchanan -- you say you went to apologize.

21 It's your testimony that you did not say, kiss my ass, or
22 do you want to kiss my ass?

23 A. No.

24 Q. You did not say that to Mr. Buchanan?

25 A. No.

DEFENDANT ON CROSS

1 Q. And you didn't tell your mother that you might have
2 said that to Mr. Buchanan?

3 A. No.

4 Q. And you didn't tell her that you might have said it
5 but you don't remember?

6 A. I might have said that to my mother, but from what
7 I recall I went over to apologize and then all this.

8 Q. Let's stop for a second. Did you . .

9 A. I didn't say do you want to kiss my ass. I mean, I
10 told my mother on one of the securest phones from the
11 jail, it's not that I couldn't have said something like
12 that throughout the night, but I didn't say that at the
13 end.

14 Q. So you may have said that comment but just not right
15 then?

16 A. Right.

17 Q. So it was more . .

18 A. As best as I can remember. You know, I don't think
19 I said that. My intention was to apologize for being a
20 jerk.

21 Q. Well, the first time -- I think your testimony was
22 the first time you called him gay he got upset. Right?

23 A. . .

24 Q. When you were by Mr. Boyd, I believe you said?

25 A. Well, I -- you know, that's an initial reaction of

1 anybody, but then I was going to try to make him feel
2 comfortable, you know.

3 Q. All right, as I understand your testimony, and you
4 correct me if I'm wrong, but you said you went over when
5 you first came in to see Mr. Boyd there, and then you
6 said, hey, gay boy, or are you gay or something like that?

7 A. I said, hey, gay guy. He was to my left, and Mr.
8 Boyd was -- Orlando Boyd was commenting, and he was like,
9 you can walk in and you can walk out, and, you know, . .

10 Q. At that moment that is all you said. Correct?

11 A. At that moment, I said, hey, gay guy, and he looked
12 at Orlando and he said, oh, okay, like to Orlando, be-
13 cause he knew Orlando had said something to me.

14 That's how I took it. I might be wrong.

15 Q. So how did -- when you left Mr. Buchanan at that time
16 was he upset, or was it a joke?

17 A. I think he took it as being a pretty much who are
18 you type thing. He might have took it real upset, you
19 know, but the whole point was not to make him upset but
20 to make him feel comfortable.

21 Q. Okay, but what was his reaction? Was he upset or
22 not?

23 A. I think he was, yes.

24 Q. Did you ever call him gay again?

25 A. I possibly could have over the night.

DEFENDANT ON CROSS

1 Q. Why would you continue to call him gay when you knew
2 he was upset?

3 A. . .

4 Q. Was that a part of being drunk and obnoxious?

5 A. Probably, yeah. Yes, sir.

6 Q. And you are not disputing that at some point that
7 night you asked him if . .

8 A. I could have said it. Like I say, I don't recall
9 every detail.

10 The reason I went to talk to him was to say, I apolo-
11 gize for the way I was talking and the comments I made
12 because I know it upsets people, you know.

13 It's -- the whole point was just to make him under-
14 stand that I'm just messing around, you know; just kidding
15 and don't take it personal type thing.

16 Does that make sense? I would think so.

17 THE COURT: Don't ask a question.

18 WITNESS: Yes, sir.

19 THE COURT: Just answer the questions he asks.

20 WITNESS: Yes, sir.

21 BY SOLICITOR:

22 Q. Do you deny that you made a -- you said you made
23 some derogatory comments to Donna. Is that correct?

24 A. Yes.

25 Q. And do you deny making the comment about knowing

DEFENDANT ON CROSS

1 what menses was?

2 A. I don't even know what that is. I mean, somebody
3 told me after the fact what it means or something, but
4 it was after that night. I said, how old are you? Fifty.
5 That's what I remember saying to her.

6 Q. Was that the extent of your conversation with her?

7 A. She was kinda putting me off, you know. Okay, I was
8 talking to him first, you know.

9 Q. Your testimony is that that was the only conversation
10 you had with Donna the whole time you were there?

11 A. Well, I mean, I would sit there and -- as best I can
12 remember.

13 Q. And you don't remember how much alcohol you had to
14 drink? If that was all the alcohol you had to drink?

15 A. I said I had ten total, approximately. I can't re-
16 member after the shock of everything.

17 You know, I had to shoot a guy. It was a traumatic
18 event.

19 Q. Did you say anything to provoke Zach?

20 A. No. I mean, . .

21 Q. I'm sorry. Go ahead.

22 A. I mean, can you restate that where I can understand
23 it?

24 Q. Yes, sir.

25 A. I didn't understand it.

1 Q. Yes, sir, I can. At the time you were sitting over
2 there by Lee Buchanan, did Lee Buchanan ask you to stop
3 talking about him being gay?

4 A. Not as I recall, no.

5 Q. Did he ask you to move back to the other side of the
6 bar?

7 A. He might have said something like that. He could
8 have possibly said it, but I don't recall it. I was tell-
9 ing him, hey, I apologize, and I reached back -- I said
10 I apologize and reached back -- hey, don't take it per-
11 sonal. You know, like that, and I was trying to talk to
12 him and try to smooth things over and he started to get
13 upset.

14 You can see all that on the video.

15 Q. Do you agree with me that Lee was upset and wouldn't
16 accept your apologies?

17 A. No, sir, I didn't know that. I was just beginning
18 to say, look, I apologize, and I was about to leave any-
19 way. It was my intention of leaving.

20 Q. Did . .

21 A. After I apologized to Mr. Buchanan.

22 Q. Did Zach Chaplin ever say to stop saying anything
23 more?

24 A. I don't recall that. He could have. I really --
25 I don't recall. We said a lot of things, you know.

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1 I told him -- I let a lot of things go in him try-
2 ing to provoke me into a fight. You know, what you got
3 in your pocket, he said, because, he said, I'm going to
4 kick your ass and take it.

5 I said, okay, whatever, buddy, and this was during
6 the beginning of the night.

7 Q. Your testimony is that he never said for you to stop
8 saying . .

9 A. I mean, all this stuff came in afterwards, not like
10 I knew everything that was going on. I don't remember
11 everything, and I learned all this stuff after the fact.

12 Q. My question is about what you remember from that
13 night, not what people have told you or not from you see
14 on the video.

15 A. I don't recall. I know he made comments to me like
16 he wanted to kick my ass. I don't know why he was mad.
17 It probably could have been because he and Lee were friends
18 but I don't know.

19 Q. Did you feel irate?

20 A. Are you talking about . .

21 Q. At the time Zach made these threats to you, did you get
22 irate?

23 A. No.

24 Q. You're a big guy, right?

25 A. I'm bigger than Zachary, yes, but that doesn't mean

1 anything. Only that I'm bigger than him.

2 Q. You can handle yourself, correct?

3 A. Yes.

4 Q. You've had training through -- training to become a
5 security guard, training about soft and hard head depu-
6 ties, use of weapons, things like that?

7 A. Yes, sir.

8 Q. You were in the Marines?

9 A. For a short period, yes.

10 Q. You've worked as a bouncer in clubs before, and, in
11 fact, isn't it true that one time you took on seven peo-
12 ple and you took care of them all by yourself?

13 A. I don't remember that.

14 Q. You don't remember that?

15 A. That sounds like a fairy tale or something a friend
16 probably came up with.

17 Q. But you have taken care of yourself as a bouncer
18 before in a physical altercation with people?

19 A. Yes.

20 Q. It's true, looking back at the video, that you are
21 telling the jury that you now believe that Lee Buchanan
22 was not assaulting you and trying to break the fight up.
23 Is that correct?

24 A. After looking at the video. You know, initially I
25 didn't know what was going on. I thought at the time

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1 he was detaining me or helping Mr. Chaplin.

2 Now that I've seen it -- I was not aware of the se-
3 curity cameras. So I'm trying to secure a witness to
4 being assaulted.

5 Q. Looking now at the video, it is your testimony you
6 do believe Lee Buchanan was not assaulting you, and he
7 was breaking up the fight. Correct?

8 A. I can't tell you what was going on in Mr. Buchanan's
9 head, but I know I was held and I felt like I was being
10 assaulted by two people.

11 Q. In your testimony on direct, did you say that you
12 understand now that Mr. Buchanan was not assaulting you?
13 Did you not say that?

14 A. Yeah, whatever you want -- you know, . .

15 Q. Did you or did you not?

16 A. If it's on the record that I said that, then I said
17 it.

18 Q. You have made a comment about after -- would you
19 agree with me that you tried to fight back?

20 A. I tried to get him away from me because he had just
21 assaulted me.

22 Q. Did you try to shove him back against the wall or
23 something like that? To get some distance or . .

24 A. To get him away from me. To get some distance and
25 separate him.

DEFENDANT ON CROSS

1 Q. You tried to grab him around the throat, go for his
2 eyes?

3 A. No. I didn't go for his eyes. I held him.

4 Q. Would you agree with me that the video is . .

5 A. It is what it is.

6 Q. And you've testified under Direct that after the as-
7 sault you went outside, and I think your words were that
8 in discussing why you got your gun and come back that
9 you would do what anyone would do?

10 A. . .

11 Q. Is that correct?

12 A. In that situation, where you think you might die, yes.
13 I said that.

14 Q. No, sir, this is not talking about why you shot the
15 gun. It's talking about why you went out to the car, got
16 the gun, and came back.

17 A. With intentions of detaining them.

18 Q. You were -- is it true or not that you said that you
19 did -- that anyone would do what you did, go to their car
20 and get their gun and come back?

21 A. I don't think I said that. Now, if I was referring
22 to in that when he was attacking me, he was coming toward
23 me.

24 Anybody would have done that, to defend themselves,
25 is what I meant.

1 Q. So you didn't mean to say that anybody who had been
2 assaulted in a bar when they were drunk would go out and
3 get their gun and come back and try to make what you're
4 saying is a citizen's arrest.

5 A. Is that correct?

6 A. I'm not saying -- I didn't say that? What's the
7 question? I don't understand.

8 Q. It wasn't your testimony that anybody would -- that
9 anybody who had been drunk in a bar -- that anybody in
10 that situation would have gone out to their car, got their
11 gun and come back inside?

12 A. No, I didn't mean it's normal. It's not normal for
13 something like that to happen. No.

14 Q. But you're not saying that anyone in that situation
15 or everyone in that situation would do that?

16 A. Not everybody that has been assaulted will go out to
17 their car and retrieve a weapon and come back in, no.
18 That's not what I'm saying.

19 Q. Just when they were drunk, would everybody do that?

20 A. No.

21 Q. You admit to calling the West Columbia Police Depart-
22 ment, nine one one?

23 A. Yes.

24 Q. Do you have any reason why West Columbia Police De-
25 partment cannot find a record of your nine one one call?

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1 A. I don't know but I would be willing to take a poly-
2 graph on that.

3 Q. Again, we're not talking about polygraphs.

4 A. Well, I think they have longitude and latitude that
5 they can tell what time. I mean, they keep detailed re-
6 cords of calls that are made.

7 Q. Did you bring any records to show that?

8 A. I could not obtain those, but, like I said, I
9 called.

10 Q. No question you know you called nine one one?

11 A. I know I called nine one one after the initial as-
12 sault when I got assaulted.

13 Q. Prior to going back inside after the assault, when
14 you went outside, you called the West Columbia Police De-
15 partment nine one one?

16 A. Yes. Nine one one -- nine one one.

17 Q. But you do not know -- did you talk to a dis-
18 patcher?

19 A. Yes.

20 Q. You do not know what agency that dispatcher was with?

21 A. I have no idea. It was a lady.

22 Q. You stated, I believe, that your phone died during
23 the conversation and you threw it down on the ground?

24 A. The phone died when I was trying to get help, but I
25 was in the middle of a conversation, and I said, I'm at

539

1 Shaggy's; please send your units; I've been assaulted,
2 and, sir, where's Shaggy's, you know. Then the phone went
3 out.

4 Q. When the phone died, you threw it down?

5 A. Yes, because I was upset. I mean, I had been as-
6 saulted and I tried to get help but the phone died.

7 Q. Did you pick that phone up?

8 A. I probably did. I don't know.

9 Q. You stated that you called and you were waiting for
10 a response?

11 A. Yes.

12 Q. You were waiting for nine one one -- waiting for
13 officers to show up?

14 A. I waited in my vehicle for -- I don't know the ap-
15 proximate time, but probably six or seven minutes. I
16 don't know the time but the video will show it. I don't
17 know.

18 Q. When you went back in, do you deny that you told Lee
19 this has nothing to do with you? Is that correct?

20 A. I don't recall saying that, no. I might have said
21 that. I only remember going in and saying, put your
22 fucking hands on the bar; do it now, in a loud voice.

23 I don't remember saying this doesn't have anything
24 to do with you. Obviously it did because I'm detaining
25 him.

1 I'm detaining him at that moment.

2 Q. Did you or did you not tell him this doesn't have
3 anything to do with you?

4 A. I don't recall it, no. I would say no, from what I
5 remember. I said what I just said. You're talking about
6 two years and nine months almost or something like that.

7 I can't remember every single detail.

8 Q. Do you deny pointing the gun to Lee when you came in
9 the door?

10 A. I didn't point the gun.

11 Q. You made the statement on direct that people get ner-
12 vous with guns around. Correct?

13 A. Yes.

14 Q. So does it surprise you that you took a gun into a
15 bar when you were drunk and people were scared and some-
16 body was hurt and . .

17 MR. FLOYD: Objection, Your Honor.

18 THE COURT: Rephrase the question.

19 BY SOLICITOR:

20 Q. You agreed with me that people get nervous with guns
21 around?

22 A. Yes.

23 Q. You knew when you took a gun into a bar when you were
24 drunk that people would get nervous. Correct?

25 A. . .

1 MR. FLOYD: Your Honor, I would object.

2 THE COURT: Overruled. Objection overruled.

3 MR. FLOYD: He said he had been drinking and he knew
4 he shouldn't be driving, not that he was drunk.

5 SOLICITOR: If I may, Your Honor, he admitted that
6 he was drunk.

7 THE COURT: Under the standards of driving?

8 SOLICITOR: I didn't ask him. I asked if he was drunk
9 and he said yes.

10 THE COURT: You asked him in terms of the quantity
11 he had had to drink, Solicitor. Rephrase it.

12 BY SOLICITOR:

13 Q. Mr. Torrence, you would agree with me that people
14 get nervous when somebody who is drinking and has been
15 assaulted, and then goes out and gets a gun?

16 Would you agree with me that people in the bar would
17 get nervous when he came back in?

18 A. Any time a gun is in play, people will get nervous.
19 I agree.

20 Q. And guns escalate and do not de-escalate situations.
21 Do you agree with that?

22 A. Not in all circumstances, no. I haven't been -- I
23 don't know.

24 I think it would make people nervous, like I said
25 earlier. I said earlier the reason I took it in there

DEFENDANT ON CROSS

1 was to gain control.

2 Q. You would agree with me that if you had not taken
3 a weapon into that bar that Zach Chaplin would be alive
4 today?

5 A. He would still be alive to this day if I had not
6 made the decision to take the weapon into the bar.

7 Q. You testified that he might have had something in
8 his hands, correct?

9 A. Yes.

10 Q. But you didn't see anything in his hands, did you?

11 A. I didn't. Like I said, it was a split second decis-
12 ion. I'm -- I knew he was coming towards me and I was
13 scared and I shot.

14 Q. So you were scared and shot an unarmed man who
15 was coming toward you, correct?

16 A. Yeah, I -- yes. I didn't know he didn't have a wea-
17 pon.

18 Q. But you didn't see anything in his hands?

19 A. . .

20 THE COURT: That's been asked and answered. Ask
21 another question.

22 BY SOLICITOR:

23 Q. Double tab -- what does that term mean?

24 Q. Double tab -- that's a term for when you shoot twice.
25 Some people refer to double tab when they shoot twice.

DEFENDANT ON CROSS

1 Q. Is it your testimony that that's what happened in
2 this case?

3 A. I don't remember if I said that. I guess I said it
4 but I don't know.

5 Q. I'm not asking what you said, but I'm asking is it
6 your testimony right now -- my question is were your shots
7 considered a double tab?

8 A. Yes.

9 Q. No stop between them, no other movement?

10 A. I got the rounds off as fast as I could get them
11 off.

12 Q. Would you agree with me that you were not acting as
13 an armed security guard when you went back in with a gun?

14 A. No, sir. I don't have authority to arrest off duty
15 or off premises. It's only -- you've got arrest author-
16 ity as a sheriff's deputy. It used to be a sheriff, but
17 they've changed it to a sheriff's deputy on places you
18 are paid to protect.

19 When you leave, you are just like anybody else.

20 Q. So at Shaggy's Bar that morning, you were no differ-
21 ent from any other citizen?

22 A. That's right.

23 Q. Do you admit that you were drunk and obnoxious at
24 Shaggy's that morning?

25 A. I was being obnoxious, yes.

DEFENDANT ON CROSS

1 Q. And you were drunk?

2 A. Yes. Not -- it depends on what your term drunk is.
3 Legally drunk, you know.

4 Q. Do you remember calling Ken Robison the morning of
5 September 28th at eleven o'clock A.M., in the morning?

6 A. Yes.

7 Q. Do you remember telling him that you called the West
8 Columbia Police Department nine one one?

9 A. Yes. I remember nine one one.

10 Q. The West Columbia Police Department nine one one?

11 Did you not say the West Columbia Police Department
12 nine one one?

13 A. I don't know but it should be on record whether I
14 said nine one one or West Columbia nine one one. I don't
15 know what you all have, like I said. I know I dialed nine
16 one one.

17 Q. Do you remember telling him that you did what he
18 trained you to do?

19 A. To shoot until the threat stops, yes.

20 Q. But nobody trained you to go in when you are drink-
21 ing and after you have been assaulted?

22 A. No. Absolutely not.

23 Q. Do you remember talking to Chris Robinson?

24 A. Yes.

25 Q. Telling him that you went back in to detain a suspect?

1 A. No, but one of the two was the suspect.

2 Q. Do you deny that you told him that you were going to
3 detain a suspect?

4 A. All I know is that my intention was to go in and de-
5 tain one of the two suspects. It didn't matter which one
6 it was, and to hold them until the police arrived.

7 It was a stupid decision, and I never thought in a
8 thousand years somebody would, knowing I had a weapon,
9 charge a weapon after throwing a barstool.

10 My point in taking the weapon in, however stupid it
11 was, was to hold them.

12 Q. Do you remember talking with Coleman Sullivan?

13 A. Coleman Sullivan?

14 Q. Yes.

15 A. Yes.

16 Q. Do you remember telling him that it was an accident?

17 A. I mean, you're talking about two years of -- yes, I
18 probably called it that.

19 Q. Why was it an accident if you intentionally pulled
20 the trigger?

21 A. Yes, I did.

22 Q. You would agree with me that if you hadn't brought
23 the gun in, you wouldn't have been in a situation where
24 anybody attacked you?

25 A. . .

DEFENDANT ON CROSS

1 Q. Yes or no.

2 A. Well, I don't understand the question. I'm sorry.

3 Q. If you had not taken a gun back into the bar, nobody
4 would have attacked you in the bar?

5 A. I don't know if I had not taken the gun into the
6 bar whether they would have attacked me or not. I can't
7 -- like I said, I can't read minds.

8 Q. The question is, if you hadn't gone in the bar at
9 all, there wouldn't have been this conversation. Correct?

10 A. Correct.

11 Q. If you hadn't taken the gun back into the bar, Zach
12 Chaplin wouldn't have charged you, and you wouldn't have
13 had to shoot?

14 A. Yes.

15 Q. Do you remember telling Coleman that three people at-
16 tacked you?

17 A. I don't remember saying that. Two or three people.
18 I didn't know, you know.

19 I went -- I have thought after all this was over and
20 I was sitting in jail -- I didn't know what the hell was
21 going on - excuse my language.

22 We have the blessing of surveillance.

23 Q. You mentioned on your Direct, I think, about the
24 Hour of Power?

25 A. Yes, sir.

DEFENDANT ON CROSS

1 Q. I think what you are referring to there, and correct
2 me if I'm wrong, is a course of treatment for somebody
3 who has been injured?

4 A. Yes, sir.

5 Q. You learned some form of CPR in the Marines?

6 A. Yes, sir. Well, first aid, how to apply first aid,
7 how to apply field dressings, stuff like that.

8 Q. And you also completed and passed courses for armed
9 security for Hawkeye?

10 A. Yes.

11 Q. And you were taught to apply direct pressure to gun-
12 shot wounds, correct?

13 A. Yes.

14 Q. Did you attempt at Shaggy's to help Zach Chaplin af-
15 ter he was laying on the ground bleeding?

16 A. Besides calling the police and getting EMS there.

17 Q. You didn't call the police, did you? The police
18 called you?

19 A. Yes, and telling them to get EMS and telling Lee
20 Ann to call them.

21 Q. But you didn't do anything to help Zach Chaplin as
22 far as his condition?

23 A. I said, don't get up.

24 Q. You said, don't get up?

25 A. I said, don't get up.

DEFENDANT ON CROSS

1 Q. And was he talking back to you?

2 A. I don't recall. I just told him -- he was moving
3 around and he was bleeding and all.

4 Q. Do you deny that you told your friend, Daniel Cameron,
5 that you took off your shirt and applied direct pressure
6 to Mr. Chaplin's wounds?

7 A. I never said that to anyone at all.

8 Q. You deny saying that?

9 A. Yes.

10 Q. Do you admit that you did not call nine one one to
11 get assistance for Zach Chaplin after he had been shot?

12 A. I told Lee Ann to call, and you will see it on the
13 video, call them, call them. I'm holding my hands up
14 like this.

15 Q. My question is, did you call nine one one and ask for
16 help?

17 A. No. Not after the shooting.

18 Q. In fact, nine one one had to call back to the bar,
19 correct?

20 A. Yes, I guess. They called the bar. It's kind of a
21 crazy nine one one call.

22 Q. You would agree with me that your training with
23 Hawkeye Security -- your training officer was an individual
24 named Bright, district manager? Correct?

25 A. Yes, sir.

DEFENDANT ON CROSS

1 Q. You would agree that he made the statement to you
2 during your training that guns and alcohol don't
3 mix?

4 A. Yes, sir, and he was correct. They don't.

5 Q. But yet you decided that morning to get your gun af-
6 ter you had been drinking and go back into the bar?

7 A. Worst decision I ever made in my life. Yes, sir.

8 Q. And it's your testimony that you made that decision
9 because you wanted to detain somebody?

10 A. Correct.

11 Q. Do you deny the fact that you went in there because
12 you were mad and you were upset at Zach, and that you
13 wanted to go back and be the man and show everybody that
14 you had the gun and people would do what you say?

15 Correct?

16 A. No, I went in to detain either -- I was angry that
17 I had been assaulted, and that's why I called nine one
18 one when I left the bar.

19 When I came back in I was angry, but not with the
20 intention to kill somebody. I had thirteen rounds, and
21 if you look at the video there was only fired two rounds.
22 It's right there.

23 Why didn't I kill all the people -- if I'm so smart,
24 why didn't I kill all the people in the bar and burn it
25 down?

1 Q. I think your testimony was that you didn't pick up
2 Mr. Chaplin coming to you until he came around the bar,
3 and that's when you did bring up the gun?

4 Is that right?

5 A. Sir? I'm sorry.

6 Q. I believe earlier you said you didn't pick Mr.
7 Chaplin up until he was coming around the bar, and that's
8 when you brought the gun up?

9 A. About -- it's -- the bar is about right here, like
10 this. I mean, it's a small room.

11 Q. The truth is, when you came in Zach Chaplin ran,
12 didn't he?

13 A. I noticed that, yes. He ran out to the side, to
14 the employee's entrance, but I still had Mr. Buchanan.
15 That's why I gave the voice commands.

16 Q. But you would agree with me that Zach Chaplin was
17 afraid, was he not, when you came in?

18 A. At the time I thought both of them were going to
19 hurt me, after the . .

20 Q. You would agree with me that Zach is the one you
21 wanted?

22 A. . . initial assault. What do you mean wanted?

23 Q. Zach Chaplin is the one you wanted to get, correct?

24 A. Whatever would happen at the end of it, yes, but
25 one of the two suspects -- one of the two guys that had

1 assaulted me, I wanted to detain Mr. Chaplin or Mr.
2 Buchanan.

3 It wasn't like, well, I'm going to get Zach. It
4 wasn't like that.

5 I was going in to hold somebody, whichever one of
6 the two I could get to faster. That's . .

7 Q. It's your testimony that at the time you thought Lee
8 had assaulted you, but now you know that he didn't. Is
9 that right?

10 A. I don't -- I'm not a lawyer. I don't know the term
11 assault and all that stuff. I'd have to know briefly what
12 assault or assault and battery is -- stuff like that.

13 Q. You testified earlier that he was trying to break the
14 fight up?

15 A. After reviewing the video, I believe his intention
16 was to separate, but the fact is that I didn't know that
17 at the time.

18 Q. Your testimony is that you thought at the time that
19 both of them attacked you, but now you know . .

20 A. I know it, yeah. I had been punched twelve times in
21 the face.

22 Q. Now you want to say that you were wrong; that Lee
23 didn't attack you. Correct?

24 A. I understand that in my opinion after watching the
25 surveillance video, and in listening to what he said, I

1 really do believe he was trying to do the best he can to
2 prevent a fight.

3 But at that time, I didn't know that.

4 Q. You would agree with me that you took a gun into a
5 business that served alcohol for on-site consumption?

6 A. Yes.

7 Q. You knew that was against the law at the time you
8 did it, didn't you?

9 A. I knew it had to be against some law, but at that
10 time I don't know. My mind-set at that time was to de-
11 tain the subjects.

12 I knew that once somebody was detained that the po-
13 lice would most likely -- because I'm the man with the
14 gun on the call, and, hey, they would come and at least
15 figure out what's going on.

16 They would come in and, hey, put the gun down, and
17 I might be charged with unlawful carrying of a weapon,
18 but I'm going to detain one of the two.

19 Q. My question was, you took a gun into a bar that
20 served liquor?

21 A. Yes, sir.

22 Q. And you knew that that was wrong, didn't you?

23 A. Yes, the worst decision I've ever made.

24 Q. You knew it was against the law?

25 A. Yes.

DEFENDANT ON CROSS

1 Q. Would you agree with me that your training officer,
2 Officer Bright, told you that if you have a gun out you
3 had better be prepared to use it?

4 A. I don't recall that exactly.

5 Q. Do you disagree with that?

6 A. . .

7 Q. That you should not display a gun unless you plan on
8 using it?

9 A. I don't disagree with it. I agree with that state-
10 ment.

11 Q. So when you took the gun in and had it out for peo-
12 ple to see, you were ready to use it if you needed to?

13 Is that correct?

14 A. The whole point . .

15 Q. Yes or no, and then you can explain.

16 A. I'm sorry. Repeat the question.

17 Q. You knew when you had that gun out that you shouldn't
18 have a gun out unless you are prepared to use it? Yes or
19 no.

20 A. I didn't go in with intention to kill anybody.

21 Q. That's not the question I asked you. I asked you,
22 sir, when you had the gun out then didn't you know you'd
23 better be prepared to use it if you displayed a handgun?

24 A. Yes.

25 THE COURT: You may explain your answer if you want.

1 A. It depends on what it was used for. If you have a
2 weapon then people most likely are going to listen to what
3 you're saying, what you have to say.

4 If you go in there after being assaulted, like I
5 did, and not having a weapon -- if I have a weapon in my
6 hand and I tell you to do something, you're most probably
7 going to do it because in your mind you probably are
8 thinking, well, if I don't he's going to shoot me.

9 So it was to gain control so I could secure one or
10 the other.

11 Q. You would agree with me that you were taught by Mr.
12 Wright about citizen's arrest? You made some brief com-
13 ment about it, and he told you that if you do a citizen's
14 arrest you better be right, didn't he?

15 A. He could have said something like that. I don't re-
16 call that.

17 Mr. Wright is an excellent training officer, but I
18 don't recall him saying that.

19 Q. The continuum force -- you know what I'm talking
20 about when I start talking about that?

21 A. I know from the class, you know. Yes, I knew.

22 Q. Do you agree that you could have put somebody under
23 arrest by just telling them you're under arrest?

24 A. Yes.

25 Q. But yet . . .

1 A. While working at the site, yes.

2 Q. So you don't know as a citizen you can just tell
3 somebody you're under arrest, and if you're right it has
4 the force of law?

5 A. I know ..

6 Q. You did know that?

7 A. I know you can do that, yes.

8 Q. But yet you chose to take a gun in?

9 A. Yes.

10 Q. Because you wanted to control the situation?

11 A. Yes.

12 Q. You were working armed security at Rush's that night?

13 A. Armed.

14 Q. You were armed security at Rush's?

15 A. Yes.

16 Q. So tell me how you were outfitted? You talked about
17 having a uniform. Tell me what you were wearing?

18 A. I had a 240, I believe. I don't know the model num-
19 but it's a forty caliber. Um, it's . .

20 Q. Do you want one of the deputies to stand up?

21 A. Yes, sir, if they don't mind.

22 Q. Okay.

23 A. Pepper spray, a baton, weapon, cuffs. I think that's
24 it.

25 Q. So, Mr. Torrence, is it your testimony that you

DEFENDANT ON CROSS

1 at Rush's that night were wearing a sidearm?

2 A. Yes.

3 Q. That you had an Asp baton?

4 A. Yes.

5 Q. And that you had pepper spray?

6 A. Yes.

7 Q. That you had handcuffs?

8 A. Yes.

9 Q. I believe you said when you went off duty you took
10 your belt off and left it in the car?

11 A. It was in the back, yes.

12 Q. So the baton was in your car?

13 A. It was there.

14 Q. Your handcuffs were in the car?

15 A. Your pepper spray was in the car?

16 A. Yes.

17 Q. I guess the Glock was in your car?

18 A. The Glock was in the glove compartment. I inter-
19 change it when on duty due to weather conditions but it
20 wouldn't rust like a Zeig would.

21 Q. And it's your testimony that you went in to detain
22 somebody. Correct?

23 A. Yes.

24 Q. Okay, and why were you going in to detain somebody?

25 A. Because I had just been assaulted.

DEFENDANT ON CROSS

1 Q. Why couldn't you have waited for the West Columbia
2 Police Department to come?

3 A. I did.

4 Q. No, sir, you went inside. Why didn't you wait out-
5 side for the West Columbia Police Department to come?

6 A. . . .

7 MR. FLOYD: He can ask a question and wait for an
8 answer.

9 THE COURT: Rephrase your question.

10 BY SOLICITOR:

11 Q. Mr. Torrence, did you wait outside until the West
12 Columbia Police Department came on the scene?

13 A. No.

14 Q. When you went outside after being assaulted, it is
15 your testimony you called the West Columbia Police Depart-
16 ment?

17 A. Yes.

18 Q. It's your testimony you were waiting on the West
19 Columbia . . .

20 A. Nine one one. I don't know who West Columbia is, but
21 it's nine one one. I know it's nine one one.

22 Q. And it's your testimony that you were waiting for
23 the West Columbia Police Department police to show up?

24 A. Yes.

25 Q. But instead of waiting for them to show up, you went

DEFENDANT ON CROSS

1 inside? You made that decision to go inside?

2 A. Made the decision to go inside and detain them un-
3 til the police got there, because I don't know who these
4 people are. I don't know them.

5 Q. Well, you had met Lee? You said you had met Lee?

6 A. I met him that night. It's not like we grew up together.

7 Q. And you met Zach that night?

8 A. Right.

9 Q. And there were multiple people in the bar that you
10 knew?

11 A. I know a lot of people through various places that I
12 go, frequent.

13 Q. You could have gone to the West Columbia Police De-
14 partment and filed a police report, couldn't you?

15 A. Yes.

16 Q. And they would have investigated it, and you could
17 have gone to a magistrate and gotten warrants taken out,
18 couldn't you?

19 A. I guess so.

20 Q. But instead of doing that, you chose to go inside
21 with a gun because you wanted to be the man, didn't you?

22 A. Um, no, not be a man. I wanted to control the
23 situation and detain one of the suspects until the
24 police arrived so they could do their investigation as to
25 what really happened.

DEFENDANT ON CROSS

- 1 Q. You wanted to take the gun in and control, right?
- 2 A. Control one of the two suspects.
- 3 Q. Nobody was leaving though, were they?
- 4 A. When?
- 5 Q. Nobody was leaving.
- 6 A. People were leaving.
- 7 Q. I'm sorry. My question, Mr. Torrence, is did you
- 8 ever see -- prior to going in, did you see Zach Chaplin
- 9 or Lee Buchanan try to leave the premises?
- 10 A. . .
- 11 Q. You didn't, did you?
- 12 A. I saw Zachary, I think, running because I came for-
- 13 ward, and when he went I saw Mr. Buchanan because he was
- 14 closer.
- 15 Q. I'm sorry. The question is, prior to making a decis-
- 16 ion to go in and detain them, rather than going to get a
- 17 warrant -- my question is you didn't need to go inside be-
- 18 cause nobody was leaving the bar?
- 19 A. I went in with intentions to detain Mr. Chaplin or
- 20 Mr. Buchanan.
- 21 Q. I'm sorry. I didn't hear what you said.
- 22 A. I intended when I went in to secure Mr. Chaplin or
- 23 Mr. Buchanan, or Mr. Buchanan or Mr. Chaplin -- whatever
- 24 order you want to put it in.
- 25 Q. My question for you was, you didn't see anybody try

DEFENDANT ON CROSS

1 to leave -- did you ever see anybody try to leave after
2 you were assaulted and before you went in with a gun? Yes
3 or no.

4 A. In between?

5 Q. You got assaulted?

6 A. Yeah.

7 Q. You went out -- you got assaulted one time or was
8 there another assault I don't know about?

9 A. I mean, there were two separate incidents.

10 Q. The first time Mr. Chaplin hit you in the face and
11 when you went outside you said you made a decision -- you
12 said you called nine one one.

13 You made a decision to get your gun and go back in
14 . . .

15 A. After waiting for West Columbia because that's usu-
16 ally who shows up. It's their jurisdiction.

17 Q. But you made a decision not to wait any longer and
18 you went inside. Correct?

19 A. Yes, sir, I made that decision and it was stupid.

20 Q. And you would agree with me that you didn't see Zach
21 Chaplin or Lee Buchanan or anybody in that bar trying to
22 leave?

23 A. Zach -- after they saw a gun, yes.

24 Q. No, sir. The question is, before you went back in
25 and brought that gun out, had anybody tried to leave the

1 bar?

2 A. I don't know. I was parked -- if you look at the
3 photos you can see where I'm parked at.

4 There are two different entrances to the back park-
5 ing lot and if somebody had left I wouldn't have known.
6 I'm parked in the front and the reason I'm parked in the
7 front is they had -- vandalism is a problem back there
8 for vehicles.

9 Q. Did you think that Lee Buchanan and Zach Chaplin
10 were in the bar or not?

11 A. Did I think they were in there?

12 Q. When you went back with a gun . .

13 THE COURT: Take that into custody, please, that
14 phone.

15 (Brief pause)

16 THE COURT: Thank you. You may re-ask the question,
17 Solicitor.

18 BY SOLICITOR:

19 Q. I believe I had asked it, so I'll wait for an an-
20 swer.

21 A. What is it?

22 Q. Did you know or did you have any reason to believe
23 that Lee Buchanan and Zach Chaplin were still in the bar?

24 A. What do you mean? You're playing with words.

25 Ask a direct question, please. I don't understand

DEFENDANT ON CROSS

1 what you're saying.

2 THE COURT: If you don't understand the question,
3 Mr. Torrence, just say that you don't understand the ques-
4 tion.

5 WITNESS: I'm sorry. I apologize.

6 THE COURT: Do not make comments to the Solicitor
7 about playing with words and things like that. Okay?

8 WITNESS: Yes, sir. I apologize.

9 THE COURT: Thank you so much.

10 BY SOLICITOR:

11 Q. Mr. Torrence, my question is, when you left after
12 being assaulted by Zach Chaplin when he punched you in
13 the face, what you're referring to as the first assault
14 -- do you understand me?

15 A. Yes, sir.

16 Q. You went outside and you called the West Columbia
17 Police Department -- you called the police to come, cor-
18 rect?

19 A. Yes.

20 Q. Then you . .

21 A. Sitting in my vehicle.

22 Q. I'm sorry.

23 A. Sitting in my vehicle.

24 Q. Sitting in your vehicle?

25 A. Uh hm.

DEFENDANT ON CROSS

1 Q. So did you have any opinion as to whether Zach
2 Chaplin or Lee Buchanan were still in the bar?

3 A. I thought they were still in there. I don't have
4 any idea what time it was, you know.

5 Q. If you knew they were still in there, then why did
6 you need to go in there with a gun when you knew the po-
7 lice were coming?

8 A. Because I wasn't totally sure. The call -- since --
9 the call got broke up in the middle of it of me saying at
10 Shaggy's.

11 Q. Isn't it true that you had two or three other --
12 two other phones in your car?

13 A. I possibly could have. I don't know.

14 Q. Didn't you tell your mother that you had two other
15 phones in your car, a track phone maybe and somebody
16 else's phone?

17 A. Possibly. I don't know. I don't know if they were
18 activated or the batteries were dead on them. I
19 don't know.

20 Q. So you don't know . . .

21 A. If I had another phone and knew -- I mean, you un-
22 derstand, I wouldn't have went back in the bar. I'd
23 get to the other phone and call nine one one -- hey, I've
24 just been assaulted, because the phone had died in the
25 middle of the conversation.

1 Q. So it is your testimony that it was your purpose not
2 to go in and provoke a fight, not to be the man, not to
3 win this confrontation with Zach, but you went to detain
4 him?

5 A. Yes.

6 Q. That was your sole purpose of going back in?

7 A. Yes.

8 Q. You would agree with me that there were other non-
9 lethal things in your car you could have taken
10 in with you?

11 A. Yes, sir, everything in my duty belt.

12 Q. You didn't take the Asp Baton?

13 A. I didn't think that after being assaulted that my
14 bringing in a baton would be the appropriate measure ver-
15 sus if I had a weapon and showed that I had a weapon to
16 to get it back to reason.

17 Q. You took the gun in because you expected everybody
18 to back down because you would show them you were in con-
19 trol. Correct?

20 A. No, it was to actually detain Mr. Chaplin or Mr.
21 Buchanan.

22 Q. I know you're saying that, but the truth is that you
23 took the gun back in to control Zach Chaplin, correct?

24 A. Or Mr. Buchanan.

25 Q. Because you were upset and embarrassed because you

DEFENDANT ON CROSS

1 got beat up?

2 A. I mean, I was not embarrassed. I was a little upset
3 but it wasn't enough to go in and kill somebody.

4 Q. But that's what you did, isn't it?

5 A. . .

6 MR. FLOYD: Objection, Your Honor. That's for the
7 jury to answer, that question.

8 THE COURT: Overruled.

9 A. Would you repeat the question?

10 BY SOLICITOR:

11 Q. But that's what you did, isn't it? You went in and
12 killed somebody?

13 A. I shot Zach Chaplin in self defense. I tried to
14 get him help as soon as I shot.

15 Q. Do you agree you could have taken in the baton rather
16 than using your gun?

17 A. Yes.

18 Q. Do you agree that you chose not to do that, and you
19 consciously made the decision to take your gun in. Cor-
20 rect?

21 A. Yes, sir, because the Glock was here and all my duty
22 stuff was in the back. I didn't have no authority to ar-
23 rest them as a security officer.

24 Q. I agree with you on that. I don't think you had any
25 authority to make an arrest at all.

DEFENDANT ON CROSS

1 MR. FLOYD: Your Honor, he's arguing with the wit-
2 ness. It's a jury matter.

3 THE COURT: I would have to sustain. Mr. Foreman,
4 ladies and gentlemen of the jury, you will disregard the
5 comment.

6 SOLICITOR: I apologize, Your Honor.

7 BY SOLICITOR:

8 Q. So it's your testimony your baton was in the back of
9 the car and it was too far to go get it? Is that what
10 you're saying? It was too much trouble to get to?

11 A. No, it wasn't a reasonable option, I wouldn't think,
12 because of the intention.

13 I mean, I had a pistol for show and not for use be-
14 cause I had been assaulted. It was an in-control situa-
15 tion.

16 Q. A baton is an offensive weapon or a defensive weapon,
17 is that correct?

18 A. Yes, sir, depending on the scenario of the situation.

19 Q. And you've been tried to use it, correct?

20 A. Yes.

21 Q. You had pepper spray in your car as well and you
22 chose not to bring that in?

23 A. Yes.

24 Q. You could have brought that in, and you agree with
25 me that would be a non-lethal form of defensive measure

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1 to protect yourself?

2 A. That would be trying to provoke him.

3 Q. No, sir. My question is, if somebody charged you,
4 you could have sprayed them in the face, couldn't you?

5 A. Yes, sir.

6 Q. But you, again, chose not to bring pepper spray in
7 and went for the gun. Right?

8 A. Yes, sir.

9 Q. It's your testimony you were trying to detain one or
10 both of them. Right?

11 A. Yes, sir.

12 Q. You had handcuffs in the back of your car, didn't
13 you?

14 A. Yes, sir.

15 Q. You had a handcuff key on your keyring, didn't you?

16 A. Yes.

17 Q. You didn't bring handguns in to help anybody, did
18 you?

19 A. No, I did not bring handcuffs in because it was on
20 my duty belt with the other weapons.

21 Q. So it was too much trouble to get in those four min-
22 utes and forty seconds you were outside?

23 A. It wasn't too much trouble to get. I just didn't
24 think about it.

25 Q. You were thinking, I need to detain these people,

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1 weren't you?

2 A. Right.

3 Q. And you were thinking, I need a gun to detain these
4 people, correct?

5 A. Yes.

6 Q. You didn't think, wow, how am I going to hold them?
7 I don't need my handcuffs -- is that the way it was?

8 A. I don't -- I'm confused right now and trying to work
9 with you. I don't understand the question.

10 Q. You chose not to bring your handcuffs in, correct?

11 A. Yes.

12 Q. You had been trained in the use of handcuffs, cor-
13 rect?

14 A. Yes.

15 Q. When you detain somebody, handcuffs are the best
16 thing to do, aren't they?

17 A. Not all the time, no.

18 Q. If somebody is incapacitated and not much of a threat,
19 put them in handcuffs. Isn't that what you're taught?

20 A. There is many applications for handcuffs.

21 Q. Would you agree with me that if you put handcuffs on
22 somebody, they are less of a threat to you?

23 A. Yes.

24 Q. But you chose not to bring them in, correct?

25 A. Because I did not think about it.

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1 Q. Did you, when you came in the door, tell anybody
2 they were under arrest?

3 A. No. No. I said, put your fucking hands on the bar
4 now, in a wild manner, and Mr. Buchanan complied. I went
5 to do an outer garment search and that's when Mr. Chaplin
6 threw the barstool.

7 Q. So would you agree with me that Mr. Chaplin didn't
8 know that you were trying to place him under arrest?

9 A. Well, I can't read minds.

10 Q. You did nothing affirmatively to tell Mr. Chaplin he
11 was being placed under arrest and you were there to de-
12 tain him, did you?

13 A. No. Not to Mr. Chaplin because he was on the end.
14 Mr. Buchanan was the closest to the corner of the bar.

15 Q. And the only thing you told Mr. Buchanan was put
16 your hands on the bar and don't move. Correct?

17 A. Yes.

18 Q. And you may have told him it has nothing to do with
19 you, but you don't remember that. Correct?

20 A. I mean, I don't remember. To the best of my know-
21 ledge, I came in and I have already told you what I said.
22 I came in and I had the gun to my side. I looked at -- I
23 think Ms. Muszynski was trying to come toward to me. I
24 moved her to the side.

25 And Zach saw me and he ran out the side entrance. I

1 looked over and saw the other one and I told him, put
2 your fucking hands on the bar and do it now, in a loud
3 manner. He complied.

4 That's what happened to the best of my knowledge.

5 Q. You would agree with me that the only injuries you
6 sustained from this was before you went out to the car to
7 get your gun was that Zach struck you ten to twelve times.
8 Correct?

9 A. Yes.

10 Q. And those were -- you didn't have a broken nose?

11 A. No.

12 Q. Isn't it true that you were hitting on Donna Muszynski
13 that night?

14 A. No.

15 Q. Isn't it true that . .

16 A. I don't understand how that can be interpreted or
17 took in a thousand different ways. So can you clarify
18 that, please?

19 Q. Were you flirting with her to the effect that you
20 wanted to have some kind of a relationship with her?

21 A. No.

22 Q. Zach came in and took her away from you, didn't he?

23 A. No.

24 Q. You told Tonya and Steve that you were mad and you
25 were going to get you gun and shoot Zach Chaplin, didn't

1 you?

2 A. No, not that I recall.

3 Q. You did or you didn't?

4 A. I don't remember. If I said something like that, it
5 would have been in a drunken manner. I don't recall say-
6 ing that.

7 Q. So saying I'm going to get my gun and shoot somebody
8 is just being drunk and obnoxious?

9 A. I don't know.

10 Q. You're saying you do not remember making that state-
11 ment?

12 A. No.

13 Q. You could have made it and you don't know?

14 A. Yes.

15 Q. You could have made that statement?

16 A. Yes, I could have made it but I don't remember say-
17 ing it.

18 Q. Isn't it true that you insulted Zach?

19 A. I don't know.

20 Q. Isn't it true that you insulted Lee?

21 A. Yes.

22 Q. Isn't it true that you insulted Donna?

23 A. By saying how old are you? Fifty? I guess you
24 could take that as an insult, yes.

25 Q. The truth is you don't remember everything you said

1 that night, do you?

2 A. No. A lot of times that's what happens when you have
3 a traumatic event.

4 Q. Or when you drink ten beers in three and a half hours?

5 A. That can be a factor as well.

6 Q. The truth is, Lee was telling you to stop, wasn't he?

7 A. . .

8 Q. Leave me alone and go away; I'm done with that; don't
9 call me gay any more?

10 A. . .

11 Q. When you were sitting by him at the bar?

12 A. Could you repeat the question, please?

13 Q. Isn't it true that Lee Buchanan -- it is on the video
14 that you moved from the far side of the bar to near the
15 door and sat down by Mr. Buchanan, and he told you to leave
16 him alone, didn't he?

17 A. He could have said something to that effect. I was
18 trying, like I said, to squash, if you will, anything and
19 tell him I apologized for comments I made and for being a
20 jerk.

21 Q. You continued to . .

22 A. He acted mad.

23 Q. You continued to call him gay after that, didn't you?

24 A. No.

25 Q. Zach told you to stop, didn't he?

1 A. At what point? It's a long night.

2 Q. When Lee told you to leave him alone and stop and
3 you didn't stop, Zach told you to stop, didn't he?

4 A. I don't recall Zach saying stop. He could have. He
5 possibly could have said that, yes.

6 Q. But you weren't going to let people tell you what
7 to do, were you?

8 A. . .

9 Q. You don't like people to tell you what to do, do you?

10 A. I follow orders pretty well.

11 Q. Then when Lee said, leave me alone, why didn't you
12 leave him alone?

13 A. Sir?

14 Q. When Lee told you to leave him alone, why didn't you
15 leave him alone?

16 A. Because I was joking with him to try to get him to
17 be comfortable, you know, in a small bar that is crowded,
18 and just say, hey, you know, I should have said that.

19 That's who I am to try to say stuff like that to try
20 to make him comfortable.

21 Q. When you're drunk and somebody tells you to leave
22 them alone, don't you think you should leave them alone?

23 A. Yes.

24 Q. So your decision that time though was to continue to
25 try to provoke the situation, wasn't it?

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- 1 A. Could you repeat the question? I'm kind of tired.
- 2 Q. Your decision . .
- 3 THE COURT: Do you need a break, Mr. Torrence?
- 4 WITNESS: Whatever you guys want to do.
- 5 THE COURT: Well, you're the one that's on the wit-
- 6 ness stand. Do you need a break? I can send the jury
- 7 out and . .
- 8 WITNESS: No, sir. They've been running in and out
- 9 all day.
- 10 THE COURT: If you need a break, we'll take a break.
- 11 WITNESS: No.
- 12 THE COURT: All right. Continue, Solicitor.
- 13 SOLICITOR: Thank you, Your Honor.
- 14 BY SOLICITOR:
- 15 Q. Isn't it true that you were being drunk and obnox-
- 16 ious and you ignored Lee Buchanan telling you to leave
- 17 him alone because you didn't want people to see him tell
- 18 you what to do and you were trying to ratchet up the pres-
- 19 sure on everybody?
- 20 A. No, it wasn't a wrestling match.
- 21 Q. But you don't like to lose, do you?
- 22 A. No, I have a competitive -- I don't know -- attitude,
- 23 I guess. I grew up playing team sports and stuff like
- 24 that.
- 25 Q. Zach Chaplin told you to stop, didn't he?

- 1 A. I don't know. He could have. I don't remember it.
- 2 Q. If he had told you to stop, would you have stopped?
- 3 A. Depending on -- yeah.
- 4 Q. So he must not have told you because you didn't stop,
- 5 correct?
- 6 A. I don't know.
- 7 Q. Isn't it true that he . .
- 8 A. He got upset. I think that he got upset because of
- 9 the comments I made to Mr. Buchanan. I don't know.
- 10 Honestly, I don't know if I found out later that they
- 11 were together -- they came there to meet. After that, I
- 12 just -- you know, okay, now I've got to make amends.
- 13 Say I'm sorry to everybody because I'm going home.
- 14 I forgot what time it was.
- 15 Q. Zach Chaplin wouldn't have attacked you if you were
- 16 apologizing, would he?
- 17 A. I don't know.
- 18 Q. Is it your testimony that you were apologizing and
- 19 Zach Chaplin got up and started hitting you in the face?
- 20 A. Yes.
- 21 Q. Isn't it true that you went out to your car and you
- 22 didn't call nine one one, did you?
- 23 A. Yes, I did. I'll take a polygraph, if you like.
- 24 Q. You went out and chose to get your gun out of the
- 25 things you had available in your car, didn't you?

1 A. The worst mistake, yes.

2 Q. Because you wanted to go back in there and provoke
3 the situation, show you're the man, be in your own words
4 in control. Isn't that true?

5 A. I was going in to detain Mr. Buchanan or Mr.
6 Chaplin.

7 Q. The truth is, you didn't really care what happened.
8 You took a gun back in to escalate a situation and let
9 everybody in the bar know you were the man, didn't you?

10 A. No.

11 Q. You didn't care -- true or false -- you didn't care
12 what happened, did you?

13 When you went back in with a gun and people ran, you
14 won, didn't you?

15 A. No. When somebody -- I don't consider this a vic-
16 tory for anybody.

17 Q. The truth is, you went back in to control and show
18 who the man was, and you took a gun to make sure of it,
19 correct?

20 A. I took a firearm in so that Mr. Buchanan and Mr.
21 Chaplin would listen to my voice commands.

22 Q. You would agree with me that you had been drinking
23 -- in your own words not really drunk but you had been
24 drinking -- and you made a decision to go get your gun
25 and to back in a bar, correct?

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1 A. I made a decision to go back in the bar with a gun,
2 yes.

3 Q. And you knew people would be nervous when you did
4 it?

5 A. Yes.

6 Q. But you didn't tell anybody that you were putting
7 anybody under arrest other than telling Lee to put his
8 hands on the bar. Correct?

9 A. Well, I didn't shoot because what else would I have
10 been doing?

11 Q. Trying to show everybody you were the man and in
12 control.

13 A. . .

14 Q. Because you were going to win, weren't you?

15 A. I wanted either Mr. Buchanan or Mr. Chaplin to be
16 arrested for assaulting me, and I detained them or that
17 was the whole intent, to take control of either Mr.
18 Buchanan or Mr. Chaplin

19 Q. You chose to put yourself in the situation of going
20 back into the bar, knowing you had been drinking, with a
21 gun, didn't you?

22 A. Yes, and it was stupid.

23 Q. That was your choice, wasn't it?

24 A. Yes.

25 Q. So it's no wonder that Zach Chaplin, being a hero,

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1 charged you?

2 A. It's no wonder what? Would you repeat the question?

3 Q. No wonder that Zach Chaplin, being a hero, charged
4 you, is it?

5 A. I don't understand the question.

6 Q. Well, you've got Lee over here on the bar with a gun
7 at your side, correct?

8 A. Yes, he's complying. He's complying to my command.

9 Q. Going along with your intention to control people,
10 correct, and Donna is under a pool table?

11 A. I didn't know. I wasn't paying attention to Donna.

12 Q. Jennifer was behind the bar?

13 A. As the video shows. I didn't know it at the time I
14 had him secured.

15 Q. You would agree with me that you had people trapped
16 in the bar?

17 A. Not . .

18 Q. You had Mr. Buchanan under arrest and people were
19 trapped in the bar who could not move because of the gun?

20 A. I had Mr. Buchanan detained in the middle of -- I
21 went to search him for a weapon as I had been trained.

22 Q. Was it any surprise that Zach Chaplin, acting on
23 appearances of a man who had been drink, who had been ob-
24 noxious, and who had gone back in the bar after four min-
25 utes and forty-two seconds . .

1 A. Yes.

2 Q. . . and come back in, that he charged you?

3 A. Yes. That is him. I didn't expect it.

4 Q. But you put yourself in that situation that you were
5 either going to beat a man by bringing a gun in, or if
6 somebody charges you that you were going to put them
7 down, didn't you?

8 A. No. My intention was to detain Mr. Chaplin or Mr.
9 Buchanan.

10 Q. But when you took a gun in, you knew you were
11 going to use it if you needed to, didn't you?

12 A. That was not my intention.

13 Q. You knew that if you took a gun into that bar and
14 you needed to use it that you would?

15 A. Yes.

16 Q. Thank you.

17 THE COURT: Any Redirect?

18 MR. FLOYD: May the attorneys approach, Your Honor?

19 THE COURT: Yes, sir.

20 (Conference at the bench between counsel and the
21 Court off the record)

22 THE COURT: Mr. Torrence, you are subject now to Re-
23 direct and Recross.

24 WITNESS: Yes, sir.

25 THE COURT: However, I am going to break for the

1 evening now, and I'm going to let you step down for the
2 evening recess.

3 I need to confer with your attorney about other mat-
4 ters.

5 You may not confer with your attorneys about your
6 testimony. Do you understand that?

7 WITNESS: I can't speak to my attorney about this
8 testimony?

9 THE COURT: Correct. You can speak to him about other
10 matters within the attorney-client purview, but you may
11 not talk to him about your testimony.

12 WITNESS: Yes, sir.

13 THE COURT: Thank you. You may step down.

14 (Witness excused from stand)

15 THE COURT: Given the hour, ladies and gentlemen, we
16 are not going to finish with this witness this evening.

17 However, I find that when you sit still too long --
18 not just you but myself -- that it may cause you to lose
19 a little bit of your or my focus.

20 It also has a tendency to really wear out the Court
21 staff, and I don't think that's appropriate.

22 With that being said, I believe we are going to take
23 our evening recess.

24 I would remind you during the recess -- and perhaps
25 you can repeat this back to me by this time -- you may not

1 discuss the case with anyone, with your fellow jurors,
2 family members, friends, or anyone else. If anyone tries
3 to talk with you, please let me know.

4 Do not watch, read or listen to any news reports
5 about the case, if there should be any.

6 Do not do any investigation on the internet or phone
7 lines. Do not look up any information that you think
8 would be important or any prior reports about the case,
9 if the news media should have any, or any information
10 about a party, attorney or court officer, or any informa-
11 tion through your research of any other topic that you
12 may think would be helpful in deciding this case.

13 You will be required to decide the case based on the
14 evidence and testimony that you hear in this Courtroom,
15 the law as I tell you it is.

16 The end of the case is in sight. I will tell you
17 that not that you be excited, but I tell you that because
18 the parties have done a lot of preparation in an effort
19 to complete the case, both for the State and for the De-
20 fendant. This is an important case, a very important
21 case.

22 So I know that you will be true to the oath you have
23 taken and follow my instructions as I have given them to
24 you.

25 Leave your notes on the chair upside down. The Clerk

1 will secure them over the evening hours.

2 Please return promptly at nine thirty in the morning.

3 I will see you promptly at nine thirty in the morning.

4 Thank you.

5 (Jury excused for the evening recess.)

6 THE COURT: Anything further from the State?

7 SOLICITOR: No, Your Honor.

8 THE COURT: The Defense?

9 MR. FLOYD: No, Your Honor.

10 THE COURT: I understand there is one matter to de-
11 cide concerning the in-camera video. Correct?

12 MR. FLOYD: Yes, Your Honor.

13 THE COURT: Mr. Torrence, do you have any questions
14 of me regarding my instructions to you not to discuss
15 your testimony with anyone, including your attorney?

16 DEFENDANT: No questions.

17 THE COURT: Thank you very much.

18 (Whereupon, the Court stood in recess for the even-
19 ing and the matter continued on June 2, 2011)

20 THE COURT: The jury Foreperson has indicated to
21 the Bailiff that he did not realize it but many years
22 ago he knew Dr. Schwab. He didn't realize that.

23 I have not inquired any further in that regard. It
24 is the Foreperson of the jury, and I wanted to bring it
25 to the attention of the parties.

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1 Do you want me to interview the juror any further
2 in that regard? Do you want me to ask him any questions
3 in that regard.

4 Solicitor?

5 SOLICITOR: No, Your Honor.

6 THE COURT: Mr. Floyd?

7 MR. FLOYD: No, Your Honor.

8 THE COURT: All right. Anything from the State be-
9 fore we bring in our jury?

10 SOLICITOR: No, sir.

11 THE COURT: From the Defense?

12 MR. FLOYD: No, Your Honor, but has Your Honor made
13 a decision on the video?

14 THE COURT: I did. I looked at this last night.
15 Last night I remembered how long it was as somewhere over
16 thirty minutes. The majority of it is no more than Mr.
17 Torrence seated in the back of the patrol car, making no
18 statements whatsoever.

19 There is a part of it where he has some question of
20 Officer Griffin about the condition of the victim. Is
21 that correct?

22 MR. FLOYD: Yes, sir.

23 THE COURT: That was about all the conversation I
24 saw -- or I should say it is about all the conversation
25 I heard.

1 Was there more conversation in that regard?

2 MR. FLOYD: There were three or four similar com-
3 ments. There was a time when the officer asked him whe-
4 ther he was comfortable or something.

5 THE COURT: I know the officer asked him some ques-
6 tions about was he okay or something. I guess I was
7 pointing toward more substantive issues concerning him.

8 SOLICITOR: Your Honor, I think that would be self-
9 serving hearsay when he asked the officer about the victim.

10 THE COURT: Is there going to be argument about
11 that, Solicitor?

12 SOLICITOR: About his concern for the victim, from
13 our point of view, or his lack of concern. I don't think
14 remorse is relevant.

15 THE COURT: I'm not sure I agree about remorse or
16 concern. That may be the proper way to equate it; I
17 don't know.

18 Would there be more argument in that regard?

19 SOLICITOR: I'm sorry, Your Honor. I apologize but
20 I missed your question to me.

21 THE COURT: I mean, your argument is going to be
22 that he had no concern for the victim?

23 SOLICITOR: The only argument the State is looking
24 for was on Cross yesterday, but beyond that there is no
25 other argument.

1 MR. FLOYD: That is a matter for the jury, Your
2 Honor, whether he had concern for the victim.

3 THE COURT: Well, I don't know that I would put it
4 that he had no concern. He put out that -- I assume
5 there would be some evidence or testimony in reply con-
6 cerning statements he may have made about applying direct
7 pressure.

8 Of course, the shirt is in evidence and the jury can
9 see whether there was blood involved on it that is the
10 victim's blood on the shirt.

11 My ruling is that it is self-serving hearsay and
12 it will not be admitted.

13 All right, and that is Defense 2 and State's 1 for
14 ID.

15 REPORTER: Yes, sir.

16 MR. FLOYD: Are you ruling that we would not be able
17 to argue that he had no concern for the victim?

18 THE COURT: I think that would be a violation of
19 403. I think that's misleading to the jury.

20 I think the Solicitor can argue whether he did or he
21 didn't call nine one one, and the Solicitor can argue
22 whether he did or didn't apply direct pressure.

23 There was another issue the Solicitor brought up on
24 yesterday that was not grounded although I can't quite
25 wrap my mind back around it.

1 But remorse should have no place in it. I think that
2 would be misleading to the jury because of what is in
3 view on this tape or this DVD.

4 MR. FLOYD: Your Honor, just that it goes to his
5 state of mind, that he had concern for the victim.

6 THE COURT: It is still self-serving; though. It
7 may go to his state of mind, Mr. Floyd, but -- you can
8 ask him what he said.

9 You can ask him those questions. I'm not ruling
10 you cannot ask those questions to get those responses or
11 whatever responses you get. I'm ruling that the DVD of
12 the in-car camera is self-serving hearsay under the
13 law as I understand it.

14 MR. FLOYD: Thank you.

15 THE COURT: I think at the beginning of the tape,
16 as you're well aware, he was walking with the officer
17 from the corner of the building to the automobile.

18 It appears to me the officer is -- has hold of him
19 in some manner. There is no conversation there. I be-
20 lieve that part would be admissible.

21 Do you have objection to that?

22 SOLICITOR: No, Your Honor.

23 THE COURT: I think you can ask the officer about
24 his coherence or did you understand him.

25 It is my understanding that was in that letter also

1 where -- the same letter that addressed the lady -- that
2 officer said that he wasn't intoxicated, Officer Griffin.

3 That is according to the letter sent to you from the
4 Solicitor.

5 MR. FLOYD: I think he testified, Your Honor.

6 THE COURT: So I think you could -- if you want to
7 put that part in, I think that's admissible because it is
8 not a statement. It is just an observation of his de-
9 meanor and his walk.

10 I believe he's got him handcuffed behind his back.
11 I don't know how that affects how you walk. Fortunately,
12 I've never been handcuffed.

13 But you can ask the officer that.

14 MR. FLOYD: Thank you.

15 THE COURT: Is there going to be any Redirect tes-
16 timony, Mr. Floyd?

17 MR. FLOYD: No, Your Honor.

18 THE COURT: All right. Let me ask, are you going
19 to call any other witnesses?

20 MR. FLOYD: No, Your Honor.

21 THE COURT: Are you going to offer the tape?

22 MR. FLOYD: Your Honor, I would offer it as far as
23 you would allow me, but it needs redacting.

24 THE COURT: Well, you can stop it.

25 SOLICITOR: Your Honor, if I may, if we could play

1 the video without listening to it.

2 THE COURT: Play it without the audio?

3 SOLICITOR: Play it without the audio.

4 MR. FLOYD: Well, I don't want to give the jury the
5 impression that he just sat there without saying anything
6 at all. That would give a misleading impression to the
7 jury in itself.

8 THE COURT: Well, again, you may make a decision in
9 that regard. That is a trial tactic, Mr. Floyd.

10 I will allow you to offer any and all of the tape
11 you want to offer by way of the video.

12 MR. FLOYD: Your Honor, that would not -- I would
13 withdraw offering of the video.

14 THE COURT: So you are prepared to rest when the
15 jury comes out?

16 MR. FLOYD: That's correct.

17 THE COURT: Do you have objections to me hearing
18 the . . .

19 MR. FLOYD: Does that mean the State is not going
20 to put up Reply?

21 THE COURT: What about it, Solicitor? I don't know
22 that it means that but I wasn't sure. You would have to
23 renew your motions at the conclusion of your case before
24 the Reply.

25 I don't know if he's going to put up any Reply or not.

1 The point I was making -- I haven't seen the Solicitor or
2 you or talked to you in the hall since yesterday, so I
3 didn't know if you were ready to renew your motions.

4 MR. FLOYD: Yes, sir, I would be ready.

5 THE COURT: And that is a motion for directed ver-
6 dict as to the -- whatever motion you have.

7 MR. FLOYD: Your Honor, we would renew our motions
8 for a directed verdict of acquittal on the same basis as
9 we made at the conclusion of the State's case.

10 The evidence taken as a whole, even in the light
11 most favorable to the State, fails to show any intent on
12 the part of Mr. Torrence to commit either murder or man-
13 slaughter, kill anyone.

14 THE COURT: Okay.

15 MR. FLOYD: The tape makes clear that the weapon is
16 only discharged at the very last moment to protect him-
17 self from the attack that has been started by Mr. Chaplin.

18 We would renew our motion for a dismissal for prose-
19 cutorial misconduct on the questioning on Cross Examina-
20 tion yesterday of Mr. Torrence in which the State tried
21 to imply through their questions without any evidence in
22 support of it that Mr. Torrence was drinking on duty on
23 the night that he was working before this incident oc-
24 curred.

25 We would renew our motion that we should have been

1 allowed to place the video into evidence, including the
2 audio portions of it, the audio and video being taken by
3 Officer Griffin after Mr. Torrence was arrested.

4 THE COURT: I would respectfully deny the motion
5 for directed verdict. I think there is direct and cir-
6 cumstantial evidence that the State presented, and, addi-
7 tionally, at this stage, considering the evidence that
8 was offered by the Defense also, that there were things
9 that would indicate malice, by the Defendant toward the
10 victim, and that the death of the victim was proximately
11 caused by the malicious acts of Defendant.

12 I would renew my previous ruling as far as a dis-
13 missal based on prosecutorial misconduct. I have ruled
14 on that. I have given what I considered to be an appro-
15 priate curative instruction to the jury in that regard.
16 I have every confidence that this jury will follow it
17 and not consider that question nor any answer that was
18 posed by the Defendant.

19 As far as what is State's 1 and Defense 2 for ID, I
20 would renew my previous ruling. The statements thereon
21 are self-serving hearsay under the law, such as State
22 versus Sweet, State versus South.

23 The Defense may play any part of the tape that it
24 chooses to without the audio.

25 Anything further, Mr. Floyd?

1 MR. FLOYD: Nothing further, Your Honor.
2 THE COURT: Thank you.
3 Does the State intend to offer any evidence in re-
4 ply?
5 SOLICITOR: Yes, Your Honor.
6 THE COURT: How long will that take?
7 SOLICITOR: I believe there are three witnesses,
8 Your Honor.
9 THE COURT: Bring the jury for us, please.
10 (Jury returned to Courtroom)
11 THE COURT: Good morning, ladies and gentlemen of
12 the jury.
13 I hope you all had a pleasant evening, and welcome
14 back.
15 We are continuing the trial of the case with the
16 presentation of evidence and testimony by the Defendant
17 in its case in chief.
18 Mr. Floyd, you may call your next witness.
19 MR. FLOYD: Your Honor, the Defense rests.
20 THE COURT: Thank you, Mr. Floyd, and you renew all
21 your motions?
22 MR. FLOYD: Yes, I do, Your Honor.
23 THE COURT: And I would renew all my previous rul-
24 ings in that regard.
25 You have now heard all the evidence and testimony

1 you're going to hear from the Defense insofar as their
2 case in chief.

3 The State would have the opportunity at this point
4 to present any evidence and testimony it chooses to
5 do in reply.

6 So we would now turn our attention to the Solicitor
7 and ask, Solicitor, does the State intend to offer any
8 evidence or testimony in reply?

9 SOLICITOR: Yes, Your Honor.

10 THE COURT: All right. Reply testimony, ladies and
11 gentlemen, is testimony that would focus on any new matter
12 that was brought up during the course of the Defendant's
13 case.

14 That being said, Solicitor, you may call your
15 first witness in reply.

16 SOLICITOR: Thank you, Your Honor. The State calls
17 Daniel Cameron.

18 THE COURT: All right, Mr. Cameron, if you'd come
19 around and be sworn, please.

20 DANIEL CAMERON, being duly sworn,
21 testified as follows:

22 CLERK: Please have a seat and state your full name
23 for the record.

24 WITNESS: Daniel Allen Cameron, and the last name is
25 C A M E R O N.

1 CLERK: Allen is A L L E N.

2 WITNESS: A L L E N. Yes, maam.

3 DIRECT EXAMINATION

4 BY SOLICITOR:

5 Q. Mr. Cameron, good morning.

6 A. Morning, sir.

7 Q. You really don't want to be here today, do you?

8 A. No, I don't. Not at all.

9 Q. Do you know Andrew Torrence?

10 A. Yes, sir. I've known Andrew for about fifteen
11 years.

12 Q. And how would you describe your relationship with
13 him?

14 A. He's a really good friend of mine, one of my --
15 probably one of my best friends over everybody over the
16 years.

17 I've known Drew since high school on up until now.

18 Q. Okay. Back in October or thereabouts of 2008, did
19 you have the opportunity to speak with Andrew about the
20 occurrence at Shaggy's . .

21 A. I did.

22 Q. . . on September 28th?

23 A. Yes, sir.

24 Q. And in that regard, did Mr. Torrence make any state-
25 ments to you concerning anything about the shooting?

1 A. Yes, sir. He told me his version of what happened,
2 basically what happened that night.

3 Q. Did he tell you anything about what happened after
4 the shooting occurred?

5 A. He told me about when the police came and all that,
6 after what's in question. He told me that afterwards he
7 was trying to help Zach and took his shirt off and tried
8 to help, you know.

9 Q. Okay.

10 A. I'm getting ahead of myself.

11 Q. I just want to make sure I understand. You are say-
12 ing that Mr. Torrence told you that after he shot Zach
13 he took his shirt off and attempted to help him?

14 A. Yeah, that's what I got. I mean, I can't remember
15 quotes and everything.

16 Q. I'm not asking you to remember quotes.

17 A. That was not . . .

18 Q. But in your conversation with Mr. Torrence, . . .

19 A. Yeah, that's what I came away with, that after every-
20 thing happened he tried to help him. I know he tried to
21 -- when he cops showed up, he immediately said, hey, I'm
22 here, you know, and was actually trying to expedite the
23 process, to help him out.

24 The impression I got was that he took his shirt off
25 and was trying to, you know, stop the bleeding and

1 everything.

2 Which I assumed was, you know, kind of like a life-
3 saving course thing that he'd had before or something.

4 Q. That's all I have. Please answer any questions Mr.
5 Floyd may have for you.

6 THE COURT: Thank you. Thank you, Solicitor.

7 Mr. Floyd?

8 CROSS EXAMINATION

9 BY MR. FLOYD:

10 Q. Mr. Cameron, . .

11 A. Yes, sir.

12 Q. . . did Drew tell you why he went back in the bar?

13 A. Originally?

14 Q. Yes.

15 A. Yes, sir, he said he wanted the police out there.

16 He wanted to make sure they didn't leave until the cops
17 got out there.

18 Q. He didn't say he went back in the bar to detain them?

19 A. Yes, sir.

20 Q. And did you look at the videotape?

21 A. Yes, sir. I had the chance to see it.

22 Q. And did what he say to you about what happened that
23 night -- did that coincide with what you saw on the video?

24 A. Oh, yes, sir. Exactly.

25 SOLICITOR: Objection, Your Honor. That calls for

1 speculation.

2 THE COURT: Overruled.

3 BY MR. FLOYD:

4 Q. And so you knew he was working as a security officer?

5 A. Oh, yes, sir.

6 Q. And did -- after viewing the videotape, did it ap-
7 pear to you that he was acting in self-defense?

8 A. Yeah, it looked like he was trying to, like, take
9 the gun away from him.

10 Q. And are you taught as a security guard if someone
11 tries to take . .

12 REPORTER: I'm sorry. I didn't understand you.

13 Q. Are you taught in the security field that if some-
14 one tries to take your weapon . .

15 SOLICITOR: Objection, Your Honor.

16 THE COURT: Yes, sir, overruled.

17 (End of question not audible due to Solicitor speak-
18 ing at the same time)

19 A. Yes, sir. That's why when we're out on the range,
20 you know, we do kind of what's called a rock back. It's
21 for where people are trying to take your gun, you actually
22 put your hand in front of your face and kind of rock back
23 which simulates somebody trying to get your gun.

24 Q. And is that what you saw Mr. Torrence performing on
25 the video?

1 A. To be honest with you, I don't remember a lot of the
2 tape. I was trying to -- I really -- to be honest with
3 you I really didn't want to see it.

4 And so, you know, everything -- I walked away with
5 the video impression after viewing it that, you know, the
6 gun was about to be taken from him.

7 Q. Thank you.

8 MR. FLOYD: Your Honor, no further questions.

9 THE COURT: Redirect, Solicitor.

10 SOLICITOR: Yes, sir, Your Honor.

11 REDIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. Mr. Cameron, do you recall Mr. Torrence telling you
14 there was a struggle over the handgun?

15 A. Well, yeah. The -- he was coming to get it, and
16 they were, you know -- like, he had to take evasive action
17 and, like, move, you know.

18 It was like a struggle to keep that from happening.
19 Like, if he would have stuck in his present course, you
20 know, just standing there, he wouldn't have that gun.

21 Q. And did he also tell you how the gun went off?

22 A. No, we never got into the, you know -- you can see
23 the gun being fired, so, I mean, I never got into the
24 mechanics behind that or anything really.

25 You know, I really didn't -- just because I've

1 ended up in the position I'm in right now, I didn't want
2 to really get a lot of information on what was happening,
3 to be honest with you.

4 Basically I didn't want to end up testifying for
5 anybody.

6 Q. That's all I have. Thank you.

7 THE COURT: Recross?

8 MR. FLOYD: No, sir, no further questions.

9 THE COURT: Thank you, sir. You can step down.

10 WITNESS: Thank you.

11 (Witness excused from stand)

12 THE COURT: Solicitor, you may call your next wit-
13 ness.

14 SOLICITOR: The State calls Mr. Ken Robison.

15 THE COURT: All right, Mr. Robison, if you would come
16 around, please, and be sworn.

17 KENNETH ROBINSON, being duly
18 sworn, testified as follows:

19 CLERK: Have a seat and state your full name, spell-
20 ing your last name.

21 WITNESS: My name is Kenneth H. Robison, R O B I
22 S O N, Senior.

23 DIRECT EXAMINATION

24 BY SOLICITOR:

25 Q. Good morning, Mr. Robinson, how you doing?

MR. ROBISON ON DIRECT

1 A. Fine. How about you?

2 Q. Fine, thank you.

3 Would you tell the jury what your employment is?

4 A. I'm director of security and a private investiga-
5 tor, one of the owners of Hawkeye Security and Investiga-
6 tion.

7 Q. Let me take you back to the year 2008. Did you
8 have an occasion to hire an individual by the name of
9 Andrew Torrence, Junior?

10 A. I did.

11 Q. And do you recall when you hired him?

12 A. I believe, if I'm not mistaken, it was May of 2008,
13 or in that area.

14 Q. And at the time you hired him, do you recall his
15 position as a security guard being either armed or unarmed?

16 A. He was initially hired as unarmed.

17 Q. And then at some point in time, did he become an
18 armed security guard?

19 A. He did.

20 Q. And do you recall when that occurred?

21 A. It was several months or a couple of months later,
22 I believe.

23 Q. Let me take you to September 27. Was he assigned
24 a job on that day or night?

25 A. Yes, sir.

600

1 Q. Do you recall where that was?

2 A. Rush's on Broad River Road.

3 Q. And would that have been an armed job or an unarmed
4 job?

5 A. Unarmed.

6 Q. Unarmed?

7 A. Unarmed.

8 Q. The weapons that your armed security officers are
9 allowed to carry, how is that determined by your company,
10 your policy?

11 A. The State Law Enforcement Division does that under
12 state law. They may carry up from a three eighty, an
13 automatic, to a forty-five or ten millimeter, calibers in
14 between, and in a revolver a thirty-eight or three fifty-
15 seven that must be loaded with thirty-eight caliber
16 rounds.

17 Q. And in order for to be an armed security guard for
18 your company, do they have to qualify with the weapon
19 which they carry?

20 A. They have to go through a training program and go
21 in a classroom, pass a test, required by state law, and
22 they are taken to a range to qualify, yes.

23 Q. And are they limited to that weapon?

24 A. No. A weapon of the caliber they qualify with,
25 yes, sir.

1 Q. When they are armed, are they only armed with a fire-
2 arm?

3 A. No.

4 Q. What other types of weapons do they -- are they al-
5 lowed to carry?

6 A. Upon completion of training they may carry pepper
7 spray, mace. They may also carry an ASP baton, or other
8 impact weapon such as that, as long as they've qualified
9 with it and been trained with it.

10 Q. Would those be considered non-lethal weapons?

11 A. Correct.

12 Q. Have you ever had the occasion to see Mr. Torrence
13 in any type of altercation?

14 A. Yes.

15 Q. And do you recall when that occurred?

16 A. Not exactly. Several.

17 MR. FLOYD: Your Honor, . .

18 THE COURT: Yes, sir.

19 MR. FLOYD: . . I have a matter of law.

20 (Conference at the bench between counsel and the
21 Court)

22 BY SOLICITOR:

23 Q. Mr. Robison, on September 28th, 2008, did you re-
24 ceive a call from Andrew Torrence?

25 A. I did.

1 Q. And approximately what time was that?

2 A. Well, I received a few throughout the morning when
3 I was asleep and did not answer.

4 At eleven A.M. I received a call that I answered.

5 Q. Was it Mr. Torrence?

6 A. Yes.

7 Q. What was the content of that call? Do you recall
8 it?

9 A. He told me he was in the Lexington County Jail; that
10 he had been arrested for a shooting.

11 He stated that he had shot a guy who had jumped him.

12 Q. Did he say anything that he had done prior to the
13 shooting?

14 A. I asked him where it occurred, and he told me the
15 location, and I said, you had a gun in a bar, and he then
16 stated, no, I went out and got the gun from my truck.

17 Q. Do you recall him saying that he had called the West
18 Columbia Police Department?

19 A. He said he called nine one one and I believe he said
20 WCPD.

21 Q. WCPD?

22 A. Right.

23 Q. Which is . . .

24 A. The West Columbia Police Department.

25 Q. The West Columbia Police Department?

1 A. Right.

2 Q. And did he say whether or not he talked to anyone?

3 A. He said he told them to come to Shaggy's. He didn't
4 go into depth on it.

5 Q. Thank you very much. That's all I have.

6 Please answer any questions Mr. Floyd may have.

7 THE COURT: Thank you, Solicitor.

8 Mr. Floyd?

9 MR. FLOYD: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. FLOYD:

12 Q. Pursuant to his record of employment with you as his
13 boss, he was supposed to call you if he got arrested?

14 A. Yes, sir.

15 Q. Thank you. No further questions.

16 THE COURT: Redirect, Solicitor?

17 SOLICITOR: No, sir, Your Honor.

18 THE COURT: Thank you very much, Mr. Robison. You
19 may step down.

20 (Witness excused from stand)

21 THE COURT: Solicitor, you may call your next wit-
22 ness.

23 SOLICITOR: The State calls Lynn Baldwin.

24 THE COURT: All right, Ms. Baldwin, if you'd come
25 around and be sworn for us, please.

1 LYNN BALDWIN, being duly sworn,
2 testified as follows:

3 CLERK: Please have a seat and when you are seated
4 state your name, spelling your last name for the re-
5 cord, please.

6 WITNESS: Betty Lynn Baldwin, B A L D W I N.

7 DIRECT EXAMINATION

8 BY SOLICITOR:

9 Q. Ms. Baldwin, where are you employed?

10 A. By Rush's.

11 Q. And on September 27th into September 28th of 2008,
12 where were you?

13 A. At Rush's on Broad River Road.

14 Q. What was your job duty at Rush's on Broad River Road
15 at the time?

16 A. Manager.

17 Q. Are you still a manager there today?

18 A. Yes, sir.

19 Q. Does Rush's have security?

20 A. On the weekends, during like the football games.

21 Q. Do you remember whether or not there was security on
22 the night of September 27 to the morning of September
23 28th, 2008?

24 A. Yes, sir.

25 Q. Do you recognize anybody in the Courtroom as being a

605

1 security guard for that night?

2 A. I don't recall exactly the face.

3 Q. But you remember you did have a security guard?

4 A. Absolutely, yes.

5 Q. I show you Defense Exhibit Number 7, and ask if you
6 recognize that, specifically referring to the bottom of
7 the page where it talks about September 27th?

8 A. Yes, sir.

9 Q. What is that document?

10 A. This is the security sheet that we do when they come
11 in. They sign in and when they leave they sign out.

12 Q. Could you explain to the jury how that process would
13 work?

14 A. They come in and we bring the sheet up. They sign
15 their name or sign in, and when they leave which is usu-
16 ally before we leave, they sign out and sign their name.
17 Then we turn it in to the office.

18 Q. Do you recognize your signature on there?

19 A. Absolutely.

20 Q. So what time did the security guard come in that
21 night?

22 A. At nine P.M.

23 Q. And can you read the signature of the person who
24 signed it?

25 A. I can tell only because I know the name Andrew, and

1 other than that, I can't.

2 Q. What time did that individual sign out?

3 A. Pardon me.

4 Q. What time did that individual sign out?

5 A. One fifty.

6 Q. What are you doing during the hours of nine to one
7 fifty?

8 A. I'm doing my shift, handling the customers. It's
9 really busy.

10 I am running things on my end and . .

11 Q. What is the security guard supposed to be doing for
12 you?

13 A. They are supposed to be actually outside on the prem-
14 ises for us, continuously walking. You know, doing secur-
15 ity for the building.

16 Q. Do you remember seeing Mr. Torrence working as a se-
17 curity guard between on September 27th between nine o'clock
18 and one fifty?

19 A. No.

20 Q. Would it be unusual for you to have not seen the se-
21 curity guard?

22 A. It would be usual that we don't -- they show their
23 face every once in a while, but if they don't show their
24 face I have no idea whether they are there are not be-
25 cause I'm so busy doing my job.

MS. BALDWIN ON DIRECT

1 Q. So is it possible that the security guard on that
2 night or any night could disappear for a period of time?

3 A. Absolutely.

4 Q. How would you describe your contact with the indi-
5 vidual that night? Did you have any other contact with
6 him?

7 A. When they sign in, we usually don't see them until
8 later that night, like after we close -- after we close
9 at twelve.

10 Q. What time did the security guard sign out that night?

11 A. At one fifty A.M.

12 Q. What time did you leave work that night?

13 A. Two forty-six A.M.

14 Q. Did the security guard that was working with you in
15 the early morning hours of September 28th walk you to your
16 car?

17 A. No. Nobody walked me to my car.

18 Q. Thank you, Ms. Baldwin.

19 Please answer any questions Mr. Floyd may have.

20 THE COURT: Thank you, Solicitor.

21 Mr. Floyd.

22 MR. FLOYD: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. FLOYD:

25 Q. Ms. Baldwin, that form is signed by the person --

1 by the security guard?

2 A. Yes.

3 Q. And you see him at that time, don't you?

4 A. Right.

5 Q. And on that occasion when Mr. Torrence signed at one
6 fifty A.M., did you notice anything unusual about his de-
7 meanor?

8 A. Not that I recall.

9 Q. If he had smelled of alcohol, . .

10 A. I would have definitely noticed it.

11 Q. . . would you have reported that?

12 A. Right.

13 Q. Now, you have been work Rush's how long?

14 A. Twenty-three years.

15 Q. And you know your job?

16 A. Right.

17 Q. You're good at your job?

18 A. Good.

19 Q. And do you think that if you didn't see that secur-
20 ity guard every now and then you would wonder where he
21 was?

22 A. No, because I'm busy doing my job, handling my em-
23 ployees.

24 Q. So you don't recall him being gone?

25 A. I wouldn't know whether he was or not. I'm doing my

1 job.

2 Q. But you have no information or evidence that he did
3 leave?

4 A. No, sir.

5 Q. No question that when he signed out at one fifty he
6 did not have an odor of alcohol?

7 A. I don't recall.

8 Q. You said if you had noticed it you would have reported
9 it?

10 A. Yes.

11 Q. Thank you. No further questions.

12 THE COURT: Redirect, Solicitor?

13 SOLICITOR: No, Your Honor.

14 THE COURT: Thank you very much.

15 Thank you for being with us, Ms. Baldwin. You may
16 step down.

17 (Witness excused from stand)

18 THE COURT: All right, Solicitor, you may call your
19 next witness.

20 SOLICITOR: Your Honor, those are all the witnesses
21 the State would have in reply.

22 THE COURT: Thank you very much.

23 Mr. Floyd, do you have any evidence or testi-
24 mony in surreply?

25 MR. FLOYD: No, Your Honor.

1 THE COURT: Thank you.

2 Mr. Foreman and ladies and gentlemen of the jury,
3 you have now heard all of the testimony that you're going
4 to hear in the trial of this case.

5 Momentarily, I'm going to give you a brief recess.
6 When you come back, we will hear the closing arguments
7 by the attorneys.

8 Is the State going to open, Solicitor?

9 SOLICITOR: No, Your Honor.

10 THE COURT: The procedure we follow in a case such
11 as this is that Mr. Floyd will present the closing argu-
12 ment on behalf of his client, Mr. Torrence.

13 Then you will hear from the Solicitor, who will pre-
14 sent the closing argument on behalf of the State.

15 The State being the party that bears the burden of
16 proof, they present their closing argument last generally.

17 After the closing arguments, I will instruct you on
18 the law that applies to the facts of this case.

19 They case will then be submitted for your delibera-
20 tions and your verdict.

21 I haven't discussed with the attorneys how long they
22 will argue. However, generally what I do when we've been
23 out here for a while as the attorneys are closing is to
24 take a brief recess, depending on how long that closing
25 is, or we may not.

611

1 Again, it all depends on how long you and I have
2 been seated out here.

3 My charge to you will be the last part, and we may
4 take a break, as I say, between the closings or after
5 the closings, before my instructions to you on the law of
6 this case.

7 Please remember that you are not to discuss this
8 case with your fellow jurors or anyone else until you
9 have heard the closing arguments by the attorneys, the in-
10 structions on the law by the Court, and then are directed
11 by the Court to begin your deliberations with your fellow
12 jurors in your jury room.

13 I will give you about a twenty minute recess, Mr.
14 Foreman and ladies and gentlemen.

15 If you would leave your notes again upside down on
16 your chairs and go with the bailiff to your jury room.

17 Thank you very much.

18 (Jury excused from Courtroom)

19 THE COURT: All right. We discussed at the witness
20 stand the State's Cross Examination of Mr. -- excuse me,
21 the State's Direct Examination of Mr. Robison concerning
22 observing the Defendant in a prior confrontation -- I for-
23 get the exact words that he used.

24 I specifically ruled under 608 B that specific in-
25 stances of the conduct of a witness for the purpose of

1 attacking or supporting the witness' credibility other
2 than the conviction of a crime provided in Rule 609 may
3 not be proved by extrinsic evidence.

4 I think that is clearly the law in South Carolina.
5 Further, under Am Jur Second -- One Am Jur Second, Wit-
6 nesses, Section 960, it would have to be a matter that
7 is material to the issue and cannot go into a collateral
8 matter by extrinsic evidence.

9 All right. Anything from the Defense, Mr. Floyd,
10 at this time?

11 MR. FLOYD: At this time with the case completely
12 over, we would renew our motions for a directed verdict
13 of acquittal on the grounds that the evidence, even when
14 taken in the light most favorable to the State, fails to
15 establish beyond a reasonable doubt the offense of mur-
16 der, and there is absolutely no showing or evidence of
17 any intent on Mr. Torrence's part to commit murder or
18 manslaughter.

19 Furthermore, the evidence fails to establish that
20 the death of Mr. Chaplin occurred as a proximate cause of
21 actions taken by Mr. Torrence.

22 We would renew all motions made during the trial,
23 including the motion to dismiss for prosecutorial miscon-
24 duct, as well as our motion to allow into evidence the
25 videotape from the car of Officer Griffin, the audio

1 portion showing the jury Mr. Torrence's state of mind and
2 also his coherence, sobriety.

3 THE COURT: Do you care to respond to any or all
4 of those motions, Solicitor?

5 SOLICITOR: No, Your Honor.

6 THE COURT: All right. I would renew my previous
7 rulings and respectfully deny the motions for directed
8 verdict.

9 I would renew my previous ruling as to denying the
10 Defendant's motion to dismiss based on prosecutorial mis-
11 conduct.

12 I would renew my ruling as to the videotape state-
13 ments on the in-car video.

14 All right, as to the charge, Solicitor, have you re-
15 viewed the requests -- I can take it in any order you want
16 to, Solicitor and Mr. Floyd. I just happened to have Mr.
17 Floyd's requests on top.

18 Have you reviewed his requests to charge?

19 SOLICITOR: I have not, Your Honor.

20 THE COURT: Do you all want to take a recess and
21 then come back and let me know your position on those mat-
22 ters?

23 SOLICITOR: Yes, sir.

24 THE COURT: All right, we'll take about a fifteen
25 minute recess and then get square on the requests to

1 charge.

2 Thank you very much. The Court will be in recess
3 for fifteen minutes.

4 (Whereupon, the Court took a brief recess, after
5 which the matter was resumed)

6 THE COURT: All right, Solicitor and Mr. Floyd, did
7 you all have an opportunity to review each other's re-
8 quests to charge?

9 SOLICITOR: Yes, Your Honor.

10 THE COURT: All right, Solicitor. Your position?

11 SOLICITOR: The Defendant's request number one, I
12 would ask for your standard charge on proximate cause.

13 THE COURT: Let me see.

14 (Brief pause)

15 THE COURT: All right, Mr. Floyd. I have a charge
16 on proximate cause, and a part of that charge cites State
17 versus Burton, State versus Clary.

18 I think it would be in the vicinity of your request
19 to charge.

20 MR. FLOYD: If you've got that already covered, that
21 is . . .

22 THE COURT: Actually it is much broader than your
23 request to charge. Okay.

24 Solicitor?

25 SOLICITOR: Again, your Honor, on the charge of self-
615.

1 defense or request to charge on self defense, I would ask
2 again for your standard charge.

3 THE COURT: Am I to -- I do have the standard charge,
4 and I have acting on appearances.

5 MR. FLOYD: That pretty much is standard . .

6 THE COURT: I think my charge is much more expansive,
7 frankly, than your request although that encapsulates
8 Judge Anderson's.

9 SOLICITOR: You have Judge Anderson's . .

10 THE COURT: Yes, sir.

11 SOLICITOR: Mr. Floyd's request to charge number 4,
12 on accident, I don't believe that is appropriate under
13 the facts of the case.

14 THE COURT: All right. Mr. Floyd, I'll be glad to
15 hear from you in that regard.

16 MR. FLOYD: Your Honor, I think the evidence can be
17 viewed in such a way as to encompass this charge.

18 Basically, I don't think he intended to kill him and
19 the killing was unintentional.

20 I think he believed he was acting lawfully to af-
21 fect a citizens' arrest, that he intended to make a citi-
22 zen's arrest. In the care and exercise of having the
23 weapon he did not point it at anyone until he perceived
24 that there was a threat of the weapon being taken from
25 him.

o16

1 THE COURT: All right. I will deny that request.

2 I do not intend to charge accident or involuntary man-
3 slaughter.

4 I do not think he was acting lawfully in unlawfully
5 arming himself in that regard.

6 Yes, sir, Solicitor?

7 SOLICITOR: You are not giving a charge on involun-
8 tary manslaughter?

9 THE COURT: I am not.

10 SOLICITOR: I do not have a copy of the jury charge
11 number three involving citizen's arrest, or request number
12 three.

13 I know that Mr. Floyd would argue that it was an
14 accident and what it has is a correct statement of the
15 law, but I believe there is some language that needs to
16 be added to that.

17 I don't know what Your Honor has in that regard as
18 far as your charge.

19 THE COURT: I would, quite frankly, be somewhat guided
20 by you all in that regard and only as far as citizen's
21 arrest is concerned.

22 I will be glad to pull these cases especially the
23 Cooney case, and look at the language in those cases.

24 You don't have an objection to that charge with some
25 additional language, Solicitor?

1 There is expansive language in the Cooney case that
2 I will be glad to add. You don't have objection to it,
3 but you just think it need something additional, Solici-
4 tor?

5 SOLICITOR: I have no problem if language is added
6 to it, as it is discussed.

7 THE COURT: The language in that case?

8 SOLICITOR: Some of it. I mean, there is State v.
9 Nail, another case that provides language.

10 THE COURT: Is that N A I L?

11 SOLICITOR: N A I L, and the cite is 404 SE 2d 404,
12 and there is language in there that is relevant to this
13 case.

14 THE COURT: I will work on that charge and look at
15 that language.

16 Anything else?

17 SOLICITOR: Also, in the same line, Your Honor, un-
18 der Cooney, which I have a cite -- I don't know but I
19 have State versus Cooney, which is 473 SE second 597 from
20 1995.

21 I think there they talk about reasonableness, of
22 course. That case has to do with a felon who is fleeing,
23 and that in a citizen's arrest the jury has to look at
24 the totality of the determination of the use of force in
25 -- the determination of the reasonableness of the use of
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1 force; that it depends on the facts of the case and is a
2 question for the jury.

3 It says they have to consider all the facts and cir-
4 cumstances.

5 THE COURT: All right, I will look at that as well.

6 SOLICITOR: Another thing that I would ask, Your
7 Honor, to be in there is that South Carolina recognizes
8 that there is no right to arrest without a warrant for
9 the offense.

10 THE COURT: All right.

11 SOLICITOR: Because if there is no one to determine
12 whether a felony was committed or if there is a misde-
13 meanor committed . .

14 MR. FLOYD: But, Your Honor -- sorry. I didn't mean
15 to interrupt.

16 THE COURT: I don't know how a warrant would ever
17 come into play in a citizen's arrest, Solicitor.

18 SOLICITOR: No, it says -- I'm sorry. It says South
19 Carolina recognizes no right for a citizen's arrest with-
20 out a warrant for misdemeanor.

21 It stands for the proposition -- I believe it was a
22 breach of peace case where someone was trying to arrest
23 someone for breach of peace, and it basically says there
24 is no right to arrest for a misdemeanor; that you can only
25 arrest for a felony.

1 So the jury has to come to a determination that it
2 was a felony.

3 MR. FLOYD: Your Honor, there are two statutes on a
4 citizen's arrest. and they are referred to in my request
5 to charge.

6 If you read it, there must be a determination that
7 there was a felony involved in the incident, and also the
8 Defendant must have a reason to believe he has a right to
9 make the arrest, whether or not the circumstances actu-
10 ally result in a felony.

11 It's our position that is what is determinative of
12 the issue.

13 SOLICITOR: Your Honor, there is no basis for a rea-
14 sonable belief that a felony was involved.

15 Citizens used to be able to arrest for a breach of
16 peace, misdemeanors and felonies, but that was abrogated
17 by the South Carolina Code numerous years ago.

18 And now a citizen's arrest is controlled solely by
19 whether there is a felony, and the common law does not
20 apply any more.

21 THE COURT: Can you point to the statute?

22 SOLICITOR: It's 17 13 10.

23 MR. FLOYD: Your Honor, another case that could give
24 you some guidance in this area is McNeal at 13 Southeast
25 Second 10.

1 THE COURT: What was that cite again, Mr. Floyd?
2 MR. FLOYD: It's 13 Southeast Second 10.
3 THE COURT: Thirteen Southeast Second 10?
4 MR. FLOYD: Yes, sir, or do you need the SC cite?
5 THE COURT: No, sir.
6 (Brief pause)
7 THE COURT: You cite 13 Southeast Second?
8 MR. FLOYD: Yes, sir. I have a copy of it.
9 THE COURT: All right.
10 Do you have any reply to that, Solicitor?
11 SOLICITOR: Your Honor, it's my understanding that
12 17 13 20 talks about arresting a person regarding the prob-
13 ability of escape . . (reading rapidly)
14 REPORTER: I'm sorry -- arresting a person . .
15 SOLICITOR: Arresting . .
16 THE COURT: Only as to subsection A. All right.
17 MR. FLOYD: Your Honor, we would suggest also that
18 that statute authorizes use of force.
19 THE COURT: Yes, sir, I understand. From the begin-
20 ning of it to the comma after Subsection A.
21 That's what you are referring to, Mr. Floyd?
22 MR. FLOYD: Yes, sir.
23 THE COURT: Okay, but going to fleeing and all of
24 that, that doesn't apply.
25 MR. FLOYD: Yes, sir.

1 (Brief pause)

2 THE COURT: All right, I'll work on that charge.

3 MR. FLOYD: Thank you.

4 THE COURT: Let me see where the Solicitor is at.

5 SOLICITOR: I do believe, Your Honor, that there is
6 some language on here that we don't have here, that for a
7 citizen's arrest -- there is probably a requirement for
8 some requirement that he is not held to the same standard
9 as a police officer.

10 I can't remember -- there was a case that came out
11 where -- I don't remember all the facts that were there,
12 but it held that he is not held to the same standard as a
13 police officer; that he has not gone through the same
14 training and so forth.

15 THE COURT: All right. As to voluntary manslaughter,
16 Solicitor?

17 SOLICITOR: I would leave that in Your Honor's dis-
18 cretion. I think that he has not met requirements of
19 that, under State versus Starnes.

20 THE COURT: Yes, I'm going to charge voluntary. I
21 think there are other cases besides State versus Starnes.
22 I think that is a different factual scenario in that re-
23 gard, Solicitor. I think he has met the requirements.

24 I think it is a jury issue as to whether or not there
25 was sufficient cooling time.

1 SOLICITOR: So you are charging murder, voluntary man-
2 slaughter, assault and battery with intent to kill.

3 THE COURT: Yes, sir.

4 SOLICITOR: Are you charging assault and battery of
5 a high and aggravated nature?

6 THE COURT: My position right now, Solicitor, is if
7 I charge voluntary I would charge assault and battery of
8 a high and aggravated nature.

9 The way I will explain it to the jury is that when
10 -- in working on the verdict of murder, first they de-
11 termine on the charge of murder probable cause; voluntary
12 manslaughter as a lesser included offense.

13 If they find the injuries or injury inflicted by the
14 Defendant was not the proximate cause of the victim's
15 death, then they would be authorized to consider assault
16 and battery with intent to kill, or the lesser included
17 offense of assault and battery of a high and aggravated
18 nature.

19 So I guess the hierarchy is murder, voluntary man-
20 slaughter, not guilty, or if they say death was not the
21 proximate cause by the gunshot, they would consider in-
22 tent to kill, assault and battery of a high and aggravated
23 nature, or not guilty.

24 Of course, in possession of a firearm, if they find
25 him guilty of murder or voluntary manslaughter, or of

1 assault and battery with intent to kill, those are vio-
2 lent crimes and, of course, the weapon on the premises, is
3 guilty or not guilty.

4 SOLICITOR: Your Honor, I'm sorry, but going back
5 to citizen's arrest, . . .

6 THE COURT: Yes, sir.

7 SOLICITOR: . . . how are you going to define felony for
8 the jury?

9 I mean, that is obviously an important question for
10 the jury.

11 THE COURT: Mr. Floyd?

12 SOLICITOR: I don't know that Mr. Floyd has -- he's
13 got two people that he has said he thought were attacking
14 him, but I don't know what he's saying constitutes the
15 felony.

16 I don't know what he will be saying to the jury.

17 THE COURT: Mr. Floyd?

18 MR. FLOYD: Well, I'm not sure it is a question for
19 the jury. I think there are two potential felonies here.
20 One is the -- one is lynching, and one is kidnapping.

21 THE COURT: Do you want me to define it by a laundry
22 list?

23 SOLICITOR: I guess I don't know the answer, but I
24 believe the jury has to make a determination whether or
25 not there was a felony. They will need more than just

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1 the word, felony.

2 I guess we could ask Mr. Floyd to enumerate what he
3 thinks they are, if he thinks it's kidnapping and lynch-
4 ing, or whatever other felonies he thinks . .

5 MR. FLOYD: I don't think the law requires there to
6 be a question of felony for the arrest warrant. I mean,
7 it may be looked at later, but it is in the mind of the
8 person making the arrest.

9 I think the cases seem to say that there may not
10 necessarily be a felony, as long as the person doing the
11 acting believed that there was.

12 THE COURT: Well, that may be for civil matters, or
13 for civil purposes.

14 (Brief pause)

15 SOLICITOR: In State v Cooney, Your Honor, what they
16 were referring to was -- I believe that's the case where
17 the father believed his daughter's car was being broken
18 into, and they said that goes not into the view of the
19 felony being committed, but it goes to the father having
20 information a felony had been committed, and whether it
21 was reasonable or not, and they found, I believe, that
22 that was not a felony and the belief was not reasonable.

23 So I think from a reading of this that the jury
24 has to find that a felony was committed before they can
25 permit the defendant's citizen's arrest.

1 So that you are held responsible for being wrong, it
2 seems.

3 THE COURT: Well, if you read footnote 7 and 8 of
4 Cooney -- footnotes 7 and 8 -- within the body of Cooney,
5 they talk about the Trial Judge's discretion as far as
6 the evidence is concerned, but then it goes on to say ac-
7 tual guilt of a suspect is not required to justify the
8 citizen's arrest.

9 The right to make a citizen's arrest may be based on
10 certain information that a felony has been committed.

11 There was evidence admitted which established that
12 the felony had been committed, and under State versus Nall,
13 N A L L, and there is another case, N A I L -- if it was
14 later found that the person arrested -- in this case it
15 would be Mr. Buchanan or Mr. Chaplin -- if it was later
16 found that the person arrested did not commit the felony,
17 the arrest would still be lawful if there was reasonable
18 cause for suspicion.

19 So I think, if I understand Mr. Floyd's position, a
20 citizen may make an arrest, even in a criminal setting,
21 does not have to be correct as to whether or not it is
22 or is not a felony.

23 SOLICITOR: The difference in that, Your Honor, is
24 that, as I read it, 17 13 10 -- the first section says
25 upon viewing a felony committed -- Mr. Torrence was there

1 and he saw what happened.

2 The second section of 17 13 10 says that upon certain
3 information that a felony has been committed, which is
4 not the case here.

5 THE COURT: It is even more specific in this case.
6 He is acting on his observations that he was assaulted
7 by two people.

8 In other words, it's nothing but hearsay of Mr.
9 Torrence to Mr. Torrence. I'm not saying it was or was
10 not a felony.

11 I'm saying he does not have to be correct as to whe-
12 ther it was or was not a felony.

13 Do you have a position in that regard, Solicitor?

14 SOLICITOR: I mean, I understand what Your Honor is
15 saying.

16 I object to it, but I understand what you're saying,
17 Your Honor. I would have nothing more to add.

18 THE COURT: Anything further in regard to the citi-
19 zen's arrest?

20 SOLICITOR: No, sir.

21 THE COURT: Mr. Floyd?

22 MR. FLOYD: Nothing further.

23 THE COURT: All right, Solicitor. Next?

24 SOLICITOR: I would -- and I've never done this be-
25 fore so I don't know how this works.

1 It's my understanding that you would charge the ap-
2 plicable law not just to the Defendant but to the case
3 in general?

4 THE COURT: Correct.

5 SOLICITOR: Accordingly, Your Honor, the State would
6 ask for a charge about the right to resist an illegal ar-
7 rest.

8 I would pass up to you and to Mr. Floyd and I've
9 highlighted what I believe is appropriate dealing with
10 the right of Mr. Chaplin to resist an illegal arrest.

11 THE COURT: All right. Mr. Floyd?

12 MR. FLOYD: Your Honor, we would object to that
13 charge in this situation in this case.

14 It is our position that Mr. Torrence was acting upon
15 his belief that he is making a lawful arrest, and it is
16 a comment on the facts . .

17 THE COURT: Well, all of this goes to the intent of
18 the parties, the totality of the circumstances, and I'd
19 think that part of the totality of the circumstances is
20 the actions or reactions of Mr. Buchanan and Mr. Chaplin,
21 along with -- I don't think you can tell the jury the law
22 in a vacuum.

23 You know, if I -- I mean, I think I would be mislead-
24 ing the jury if I only focus on the right or that Mr.
25 Torrence was exercising his right to make a citizen's

1 arrest and not also give them the law as to what rights
2 Mr. Buchanan or Mr. Chaplin had.

3 So I think I would charge that.

4 SOLICITOR: Thank you.

5 THE COURT: All right, anything further?

6 SOLICITOR: Additionally, Your Honor, the State would
7 ask for a defense of others charge which I have highlighted
8 in what I'm handing up.

9 THE COURT: Who is that as to?

10 SOLICITOR: That would be referring to Mr. Chaplin,
11 Mr. Buchanan, Ms. Reynolds at the bar, Ms. Muszynski under
12 the table.

13 THE COURT: I mean, how do we know that's what he
14 was doing?

15 SOLICITOR: Well, I don't know but I think it's a
16 jury question.

17 We can only go by his actions. He had an opportun-
18 ity to leave.

19 The video shows Mr. Buchanan being held on the bar.

20 THE COURT: Mr. Floyd?

21 MR. FLOYD: Well, Your Honor, I don't think there is
22 any evidence to support that charge, Your Honor.

23 There was no evidence that anyone's life was threat-
24 ened. No action he took against anyone else.

25 THE COURT: I will word that within the self defense

1 charge.

2 SOLICITOR : That's all we would have.

3 THE COURT: Anything further, Mr. Floyd?

4 MR. FLOYD: Yes, Your Honor. We would like Your
5 Honor to charge involuntary manslaughter.

6 THE COURT: I deny that. I thought I had denied
7 that earlier.

8 MR. FLOYD: I'm sorry. I may be in error but I did
9 want to make sure I put it on the record.

10 THE COURT: I do not think you can reach the elements
11 of involuntary manslaughter, in regard to the circumstances
12 of this case.

13 Anything further?

14 MR. FLOYD: Nothing further, Your Honor.

15 THE COURT: All right, bring us our jury.

16 (Jury returned to Courtroom)

17 THE COURT: All right. Welcome back, ladies and gen-
18 tlemen. I apologize for the delay.

19 You will recall that prior to the recess I informed
20 you that we would next hear the closing arguments by the
21 attorneys.

22 The procedure we will follow is that Mr. Floyd will
23 close in behalf of his client, Mr. Torrence, and followed
24 by closing argument by the Solicitor in behalf of the
25 State.

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1 Thereafter, I will charge you both the general law
2 and the law that applies to this case.

3 You will recall there are three indictments. There
4 is an indictment for murder, an indictment for possession
5 of a weapon during the commission of a violent crime, and
6 an indictment for carrying a pistol or firearm onto the
7 premises of a business that has alcoholic beer, liquor or
8 wine for on-premises consumption.

9 You would have to return a verdict as to all of those
10 indictments.

11 Encapsulated within the charge of murder is a lesser
12 included offense of voluntary manslaughter.

13 Additionally, if you find that the injuries inflicted
14 by Mr. Torrence -- that he could be found not guilty of
15 murder and not guilty of voluntary manslaughter, or not
16 guilty of either one, but if you find that the injuries
17 inflicted were not the proximate cause of the death of the
18 victim, you could also consider the charge of assault and
19 battery with intent to kill, and a lesser included charge
20 of assault and battery of a high and aggravated nature.

21 I will explain these charges you in more detail after
22 the closing arguments.

23 Ladies and gentlemen, please give the attorneys your
24 undivided attention.

25 For all others in the Courtroom, I do not allow any

1 movement in or out of the Courtroom during the brief time
2 in which the attorneys are addressing the jury. You may
3 leave between the closing arguments and you may leave cer-
4 tainly at the end of the closing arguments and before the
5 beginning of my instructions to the jury.

6 With that being said, Mr. Floyd?

7 MR. FLOYD: Thank you, Your Honor.

8 Mr. Foreman and ladies and gentlemen of the jury, on
9 behalf of Andrew Torrence, I would like to thank you for
10 your presence. We talked a little bit about this in open-
11 argument, but the decision of the jury is by far the most
12 important decision in Mr. Torrence's life.

13 He is a man who has been charged with an offense, the
14 most serious offense, of murder. That's what we've got
15 here today.

16 We've got Andrew Torrence, a man you never met be-
17 fore, and he's charged with the worst crime in this
18 society, the killing of another person, and he has said
19 he is not guilty.

20 He is not guilty just simply because he has been
21 charged. He is not guilty simply because he has been ar-
22 rested.

23 He is not guilty simply because he sits here before you
24 now to be judged.

25 He is only guilty if the evidence proves to you all

1 beyond a reasonable doubt that he's guilty of murder, and
2 only you, the jury, twelve members of the community, unani-
3 mously agree that that evidence proves that guilt beyond a
4 reasonable doubt.

5 What do I mean by a reasonable doubt? A reasonable
6 doubt is that doubt which would cause a reasonable person
7 to hesitate to act -- that doubt would cause a reason-
8 able person to hesitate to act.

9 Take all of this evidence you heard in this Courtroom
10 and put it in the shape of this piece of paper, and because
11 of one piece of that evidence or the lack of one piece of
12 that evidence you would hesitate to convict him of this
13 charge, then it your obligation under the oath which you
14 took as jurors in the case to return a verdict of not
15 guilty.

16 Even if there is evidence in the case that makes you
17 suspicious that would be your obligation under your oath,
18 because when you vote guilty or not guilty you are not
19 voting on whether or not you think he's guilty, but what
20 you are voting on is whether the evidence proves his guilt
21 beyond a reasonable doubt. That is their burden of proof,
22 beyond a reasonable doubt.

23 As I stand here, as I speak to you, I will be making
24 some statements to you about the law in this case, and
25 I caution you this, that Judge McMahon is the Judge of

1 the law in this case.

2 When we lawyers finish speaking to you, he will read
3 you the law, called charging you the law, and if I should
4 say something to you about the law different from what he
5 tells you, it would not be my intention to do that and
6 you must go by what he says as the Judge of the law.

7 And as I stand here, I will be commenting to you,
8 talking to you, about pieces of evidence that came out in
9 this trial, as will the Solicitor.

10 You are the judges of the facts, and if we say some-
11 thing to you different then your memory of it, then it is
12 not intentional, but you are to go back to your jury room
13 and remember what you heard to be the evidence in the
14 case.

15 What does the State have to prove to you in order
16 for Mr. Andrew Torrence, Junior, to be convicted of the
17 crime of murder?

18 The State must prove to you that on the early morn-
19 ing hours of September 28, 2008, he did intentionally
20 kill Mr. Zachariah Chaplin with malice aforethought, with
21 evil in his heart; that he intended to kill him.

22 If that is indeed the case, why should you hesitate
23 to convict him? What is there about this case that would
24 make you hesitate before you vote on the issue of guilt?

25 I suggest to you that there is no evidence in this

1 case whatsoever that establishes that he had intent in
2 his heart to kill Zachariah Chaplin whatsoever. The
3 State has not proved its case. The State has not proved
4 his guilt.

5 Now, before I get into the evidence, I want to point
6 out something to you, and that is sometimes how you have
7 to interpret some things you hear in a case.

8 It has nothing to do with the facts in the case it-
9 self, but it is just to show you what the intention was.

10 You all, of course, were able to see this tape, and
11 I'll show you what to look at again. This is the tape
12 the State has shown you and said this is evidence that Mr.
13 Torrence is guilty of murder.

14 If you will recall, both Mr. Buchanan and Donna
15 Muszynski-- both of them said after he was struck in the
16 face approximately a dozen times by Zachariah Chaplin and
17 left -- what did they say?

18 They said they were not celebrating, but everything
19 went back to normal. You all look at that tape.

20 When Andrew Torrence walked out of the door, what
21 do you see? Pats on the back, friendly touching, all of
22 that. It's all there.

23 Now, why were we hearing this kind of testimony?
24 Human nature is such that most people want to say things
25 that would help their friends to overcome their enemies, to

1 place themselves on the side of their friends.

2 So when you hear some of this testimony, consider
3 if that is what is going on.

4 Now, was there any intent -- was there any intent?
5 When you look at this tape, here's what you see.

6 We know that Andrew Torrence is seated at the bar.
7 If you look at it, I believe his testimony was that he
8 was apologizing for what he might have said. You can see
9 it there.

10 Zach Chaplin gets out of his seat, walks over -- he
11 walks over and starts pounding Drew Torrence in the face.
12 Lee Buchanan said he tried to break it up, and he seems
13 to be pushing Mr. Torrence.

14 But Drew Torrence never grabs Zach Chaplin nor is
15 he trying to hit him. I would suggest -- let me suggest
16 something to you.

17 That in itself is an assault. It's an assault by
18 Mr. Chaplin on Andrew Torrence. An assault and battery.
19 It's also a kidnapping because when you restrain a person
20 in that fashion, that's considered kidnapping.

21 Now, there is the crime that is committed upon Drew
22 Torrence. So what does he do?

23 He goes out and makes an effort to call nine one one
24 but there is a problem with that during the call. If you
25 will look at page four of six, at the bottom down here,

1 on page four of six at the bottom, a call came in.

2 So what he did was take his weapon, go back into the
3 bar with intention of detaining them.

4 Now, here is where you have to make your decision.
5 The State's case or the State's theory is that he grabbed
6 that gun to go back in and kill somebody, Zach Chaplin.
7 That's their case.

8 If you don't think he went in there to kill somebody,
9 that's not murder. He didn't intend to kill him.

10 Then to try to put this theory together that somehow
11 he was going to kill him because he thought Donna
12 Muszynski liked Zach better than him. Does that make sense?

13 Do you know why they put that theory together for
14 you? Because they've got to come up with some kind of
15 motive for you, because they know it would take that for
16 them to show he went in there to kill somebody.

17 So they've got to come up with this motive, but,
18 ladies and gentlemen, it just doesn't fly.

19 Donna wasn't even there for Zach. Donna was there
20 looking for this other guy, Zach's friend, and she can't
21 remember any conversation she had with him, except that
22 it wasn't pleasant, you know. Think about that.

23 Think about the way they are trying to spin their
24 theory, to come up with their version of the story, but
25 Donna comes up with, I was looking for this other guy.

1 Also, they put up Tonya Mozenko and her friend, Mr.
2 Smith, to help to spin their theory.

3 Do you remember my cross examining Ms. Mozenko?

4 Are you sure you all went to the State Street Pub
5 at midnight and Drew was already there? Yes. Yes. I'm
6 sure, because the State depends on that.

7 Yes, that's what happened, but when was her state-
8 ment given? Her statement was made in December, several
9 months after this occurred.

10 What was the occasion for the statement Mr.
11 Smith made? He had occasion to be at the West Columbia
12 Police Department on another matter when he happened to
13 mention to the officer what had happened some time back.
14 Is there some relationship between this other matter and
15 the State to help the State in this case against Andrew
16 Torrence?

17 I suspect they didn't have too much because we know
18 the statement is not accurate. Because we know that Drew
19 Torrence was working at Rush's as a security guard until
20 one fifty in the morning.

21 So he could not have been at State Street when they
22 got there at midnight. So the whole premise of that
23 statement is false.

24 So how can the State use that to convict anybody of
25 anything?

1 And not only that, but Ms. Mozenko says she had to
2 terminate him, and this form is only signed June 15th,
3 but he was already working for the other security company
4 by the middle of May.

5 What did Ms. Baldwin say, the manager at Rush's? I
6 guess this gives a different outlook -- well, he must have
7 left his post at Rush's while he was supposed to be work-
8 ing, and he went over to the State Street Pub before mid-
9 night.

10 I guess to be there at midnight when Tonya and Steve
11 arrive.

12 And he has these four shots or six shots, however
13 many it was, and three beers, and then he goes back to
14 work -- after I guess having changed out of his security
15 uniform, gone there, had the shots, had the beers, and he
16 puts back on his security uniform, drives back out to
17 Rush's and checks out.

18 Ms. Baldwin says nothing was unusual about him, so
19 we know that theory will not fly either. Nothing unusual
20 and no odor of alcohol, nothing. That can't fly.

21 Now, let's look at what happened as far as the shoot-
22 ing. Look at Ms. Muszynski's testimony. She has cocaine
23 in her purse. She lies about it.

24 You know, another thing too. If you go back to the
25 part right after Drew Torrence leaves the bar -- go

1 back there, and you can tell me if I'm wrong. From the
2 testimony, she said when she got to the bar she gave her
3 purse to someone to put it behind the bar. I don't know
4 who, but what I do know is if you look at that video and
5 the time when there was a celebration because Drew had
6 just left, after Zach beat up Drew, the purse is there,
7 and there's a lot of going in and out of that purse.

8 I say purse -- pocketbook, I guess you'd say. It's
9 kind of long and narrow.

10 Anyway, let's get back to the main question. What
11 evidence is there that Drew Torrence intended to kill
12 Zachariah Chaplin?

13 Did he come in and, bam, bam? No. What you will
14 see is Drew telling Lee to put his hands on the bar. You
15 will never see that gun raised against anyone until the
16 very last moment.

17 And let me stop there and go on. All of a sudden
18 here at trial they call two witnesses. One is Tonya
19 Mozenko and the other is Lee Buchanan. All of a sudden
20 now -- all of a sudden, when we get here to Court, they
21 say that they saw him point the gun at them.

22 Of course, it's not on the video. It's not on the
23 video, so what's going on?

24 Why are they trying to put together this case out
25 of nothing?

1 Because that's what has happened here. They are
2 trying to make this into a murder case when they know it
3 is not a murder case by looking at the tape.

4 They put a guy up here, they put him on the stand,
5 and they get him to say, folks, he was pointing the gun
6 at me when I opened the door.

7 I know I never did say it before -- in September I
8 never did say it on those times I was questioned -- never
9 did say that.

10 Well, okay, it was two shots, by the way, although I
11 told them one back in September of 2008 when this thing
12 first happened.

13 People try to get their stories together in some
14 kind of way, to point the finger at Drew Torrence, to try
15 to convince you to convict him of murder when it's not a
16 murder case.

17 Let's talk about when he came back in the bar with
18 the gun, and what you see on the video.

19 Drew first sees Lee Buchanan, and you can see it on
20 the video. You can see the gesturing, and he gets Lee to
21 put his hands on the bar.

22 Just as Agent West from SLED said, yes, that is an
23 appropriate step when you are conducting an arrest of
24 somebody to control their hands, and that's what he did.
25 You can see that.

1 He wanted to secure Lee when he went back in that
2 bar, and his intent was not to kill anybody, but to go
3 in there and make that citizen's arrest. He's not pointing
4 that gun at anybody.

5 The next thing that happens is a barstool is thrown
6 at him. Now, you look at that tape. Even when the bar-
7 stool is coming at him, he did not raise his gun toward
8 anybody, toward Zach, Lee Buchanan.

9 Because he wasn't there to kill anybody, he wasn't
10 there to hurt anybody. He was just trying to make a cit-
11 izen's arrest, and the Judge will charge you on the law
12 of citizen's arrest.

13 Then after throwing the barstool at Drew, Zach then
14 charged him. Look at the tape. Now, some of it is kind
15 of difficult -- it is kind of difficult to pick out the
16 exact spot, and I've tried to look at it again and again.
17 I tried to look at it last night, and it's -- because at
18 some point right before they meet Lee jumps on the bar.

19 Let's clear this up. You've kind of got a horse-shoe
20 bar, so you've got Zach charging. He's coming around the
21 horse-shoe here. You've got Zach charging, and you can
22 see Lee -- Lee's looking toward him, and you can see Drew
23 looking toward him. You can see that on the tape.

24 But he doesn't raise his gun at that time. He does
25 not shoot Mr. Chaplin, and then Zach comes around and he

1 reaches -- it is only when he is in that position, right
2 there to grab his weapon, that a shot was fired.

3 You can see the gun here, Zach there, and the shot.
4 Then the momentum carried him further and here is the sec-
5 ond shot.

6 You can see all of that on the tape, and you will
7 have this with you in your jury room.

8 Now, in this gun were thirteen rounds of ammunition.
9 Twelve in the magazine and one in the chamber. It was
10 testified to. That two shots were fired -- two shots.

11 Now ten, not five or thirteen, but two shots. Now,
12 if Drew had intended to kill Zach, why didn't he use the
13 rest of the bullets?

14 Zach is lying on the floor, and if he wanted to kill
15 him he could have fired another round or several more. He
16 could have done it, but he didn't do that.

17 What did he do? You heard about the phone call at
18 that time. I've shot somebody; send an ambulance.

19 Then the police come. What's this all about? I did
20 it, I'm the shooter, and he has given up his gun so there
21 is no more danger in there.

22 Now, in addition, the State has to prove that Andrew
23 Torrence, Junior, intended to kill Zach Chaplin, Zachariah
24 Chaplin, and they must also prove beyond a reasonable
25 doubt that the injury suffered by Zachariah Chaplin was

1 the proximate cause of his death.

2 What do we know about that? We do know this, that
3 after several weeks, he was released from or by Richland
4 Memorial Hospital, in stable condition, and not for addi-
5 tional medical treatment, but for rehabilitation.

6 We do know that there were many times that he then
7 refused treatment both at Richland Memorial Hospital and
8 at the Veterans Administration rehabilitation center, and
9 we are told that the cause of death was interim abdominal
10 hemorrhaging.

11 We heard on cross examination that with his condi-
12 tion there was no bleeding whatsoever from either one of
13 the gunshot wounds upon his release from the hospital.

14 And another curious thing is that the State did not
15 put in evidence the records from the Veterans Administra-
16 tion rehabilitation center.

17 Remember again that the burden is always upon the
18 State to prove its case beyond a reasonable doubt. So
19 where are those records from the Veterans Administration
20 rehab facility that the State does not want you to see?
21 Why did they not bring them in for you?

22 Now, one last thing in this case. Why did -- why did
23 Zachariah Chaplin charge Andrew Torrence? Why would he
24 do that?

25 My suggestion is that he had cocaine, amphetamines in

1 his system, and when you've got cocaine and amphetamines
2 coursing through our bloodstream, things can happen and
3 you do crazy things, and particularly when you have been
4 engaged in an altercation already, as all the witnesses
5 have said.

6 Now, the Judge is going to talk to you about the law
7 after the completion of these arguments, and what the
8 Judge tells you is what you have to use in deciding your
9 verdict.

10 In his charge, the Judge will tell you that the charge
11 of murder carries with it the lesser included offenses,
12 so that when one is charged with the crime of murder it
13 can carry with it what's called the crime of voluntary
14 manslaughter.

15 The difference between the two is that murder would
16 require evil intent beforehand, whereas in manslaughter
17 there may be some what they call provocation other than
18 just an evil heart causing the death.

19 However, remember that that still must be proven be-
20 yond a reasonable doubt. They must prove beyond a rea-
21 sonable doubt that Andrew Torrence, Junior, did intend to
22 kill Zachariah Chaplin for it to be murder.

23 There are other lesser included offenses which are
24 called assault and battery with intent to kill and also
25 assault and battery of a high and aggravated nature.

DEFENDANT ON CROSS

1 A. No, but one of the two was the suspect.

2 Q. Do you deny that you told him that you were going to
3 detain a suspect?

4 A. All I know is that my intention was to go in and de-
5 tain one of the two suspects. It didn't matter which one
6 it was, and to hold them until the police arrived.

7 It was a stupid decision, and I never thought in a
8 thousand years somebody would, knowing I had a weapon,
9 charge a weapon after throwing a barstool.

10 My point in taking the weapon in, however stupid it
11 was, was to hold them.

12 Q. Do you remember talking with Coleman Sullivan?

13 A. Coleman Sullivan?

14 Q. Yes.

15 A. Yes.

16 Q. Do you remember telling him that it was an accident?

17 A. I mean, you're talking about two years of -- yes, I
18 probably called it that.

19 Q. Why was it an accident if you intentionally pulled
20 the trigger?

21 A. Yes, I did.

22 Q. You would agree with me that if you hadn't brought
23 the gun in, you wouldn't have been in a situation where
24 anybody attacked you?

25 A. . .

1 Now, Andrew Torrence is not the one who assaulted
2 and did physical harm to Zach Chaplin, but there was an
3 assault by Zach Chaplin on Drew Torrence and while Lee
4 Buchanan was holding both of his arms. It's on the video
5 that you have seen.

6 Andrew Torrence made the decision to make a citizen's
7 arrest, as he told you. He has told you that taking the
8 gun into that bar was the worst decision he's ever made
9 in his life.

10 I'm not standing up here to tell you he was a good
11 citizen, but it still doesn't make him guilty of murder
12 or manslaughter because he didn't take the gun in there to
13 harm anybody.

14 He went in there to detain them as he told you un-
15 til the police came, until he was threatened or he felt
16 his life was threatened. That's when he shot and not be-
17 fore that.

18 He didn't fire his weapon until he was attacked by
19 Zachariah Chaplin who was diving toward him to grab his
20 weapon.

21 He felt that he was threatened, his life was in
22 danger, and that is what caused him to shoot the weapon.

23 Please listen to the Judge's charge.

24 We recognize that he shot the gun twice. The ques-
25 tion is was he authorized to use that force, and he

1 was if he was threatened; if a reasonable person would
2 believe that they were threatened from what he had ex-
3 perience in the altercation that he did not institute.

4 You've got all of those factors to consider in this
5 case, so this is a case of self-defense, I suggest to you,
6 beyond a reasonable doubt, and he is not guilty of murder.

7 Now, the other things he is charged with, possession
8 of a firearm in the commission of a crime is the first,
9 and if you feel from the evidence that the State has
10 proven that Andrew Torrence, Junior, committed a violent
11 crime and that during that time he was in possession of
12 a weapon, then you would find him guilty of that charge.

13 The violent crimes that are involved in your consid-
14 eration today are murder, manslaughter, assault and bat-
15 tery with intent to kill.

16 Assault and battery of a high and aggravated nature
17 would not apply if that was the verdict. It is not con-
18 sidered in the scheme of things.

19 He is also charged with carrying a weapon into an
20 establishment that allows the consumption of alcohol,
21 beer or wine on its premises. We're not going to argue
22 against that. He freely admits that.

23 I ask you to consider the video. I ask you just to
24 look at it.

25 The way the system works, when I shut up and when I

1 go over there and I sit down, I don't get to say anything
2 else to you.

3 One of these fine Solicitors will get up behind me,
4 and they will be able to talk to you just like I'm talk-
5 ing to you now, and that means that they can comment on
6 the evidence like I've been commenting on the evidence.

7 And I suggest to you that they will talk about it
8 from a different viewpoint than I've talked about it, and
9 going last is an advantage, but, you see, the State has
10 that advantage because they have the burden of proof, and
11 the State therefore allows them to argue last, just like
12 they get to sit closest to you.

13 These are among the advantages they get because they
14 must prove the guilt of the Defendant beyond a reason-
15 able doubt.

16 So whatever they bring up, I do not get the opportun-
17 ity to come behind them and say, oh, I know they said
18 this, but what about this. I don't get that opportunity
19 to do that.

20 As far as you and I are concerned, once I sit down
21 nobody else is going to ever say anything to you in Mr.
22 Torrence's behalf. That is why I try to cover all the
23 questions.

24 You see, the system does not allow me to talk with
25 you individually, to say what questions do you have? What

1 questions do you have?

2 That doesn't matter, so I have to try to cover every-
3 thing here, you know.

4 All we can ask if for you to go back in that jury room
5 and think of how we could have responded if we had had
6 a chance to do that.

7 Remember that the law is all about intent. It is all
8 about intent. What were the intentions of Drew Torrence
9 when he went into that bar with a gun?

10 And unless the State has proved to you beyond a reason-
11 able doubt that Drew Torrence's intention of going into
12 that bar was to kill Zachariah Chaplin, then you could not
13 find him guilty of murder.

14 Now, you may need to see it again, the video, and when
15 he went in that bar the gun was pointed down. You will
16 never see on that video the barrel of that gun rise from
17 the direction of the floor until Zachariah Chaplin, with
18 cocaine and amphetamines coursing through his system, did
19 charge and leap toward him and try to take his gun away
20 from him, and then, and only then, did he fire.

21 Drew Torrence did not go into that bar with the inten-
22 tion of killing Zachariah Chaplin.

23 Thank you very much for your attention, and on be-
24 half of Andrew Torrence I appreciate your presence here
25 today and this week.

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1 Thank you very much.

2 THE COURT: Thank you, Mr. Floyd.

3 Solicitor?

4 SOLICITOR: Your Honor, if I could request a
5 brief recess?

6 THE COURT: Certainly. Ladies and gentlemen, if you
7 would leave your pads in your chairs and step to your
8 jury room.

9 Do not discuss the case, and we'll take a brief re-
10 cess.

11 Thank you.

12 (Jury excused from Courtroom)

13 (Whereupon, there was a brief recess, after which
14 the matter was continued)

15 THE COURT: Are you ready to begin, Solicitor?

16 SOLICITOR: Yes, sir.

17 THE COURT: Anything before we bring in the jury,
18 Solicitor?

19 SOLICITOR: We can go ahead and begin.

20 THE COURT: Anything from the Defense?

21 MR. FLOYD: No, Your Honor, except that Mr.

22 Graham and I have discussed the way in which the jury
23 would be able to view the videotape.

24 If they request to see it, they may need to have
25 someone show them how to operate the machine.

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1 THE COURT: All right.

2 SOLICITOR: Thank you.

3 THE COURT: Bring us the jury.

4 (Jury returned to the Courtroom)

5 THE COURT: Ladies and gentlemen, if you will give
6 now your complete and undivided attention to the closing
7 argument by the State, as you have done throughout the
8 trial of this case.

9 Solicitor?

10 SOLICITOR: To be the man, you've got to beat the
11 man.

12 Drew Torrence knew that, and he lived it on the morn-
13 ing hours of September 28, 2008.

14 This is a case about credibility, who are you going
15 to believe. Who is lying, who is telling the truth?
16 Why would people lie?

17 We know that Drew Torrence was at Shaggy's, and we
18 know all these other people were there as well. You will
19 have the video back with you to look at and you will have
20 this photograph that talks about the people who were on
21 it.

22 Now, the people who are on this were the people you
23 heard from. You heard from Tonya, the lady who owned the
24 security company which Mr. Torrence worked for, and her
25 friend, Stephen.

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1 They were the ones who were at the State Street Pub
2 and Drew Torrence drank with them. Then they all split
3 for a while, and they went to Shaggy's.

4 And what did they tell you? They told you that they
5 went to Shaggy's. They walked in and they sat down.
6 There were only a couple of seats available, and Mr. Drew
7 Torrence came over to them.

8 Mr. Torrence was immediately complaining about Zach
9 and Donna. Donna was the object of his affection, and,
10 you know, it didn't mean anything to her because you have
11 heard that she didn't really notice he was flirting with
12 her.

13 He was, because Tonya and Steve told you that he was,
14 because they said so, and why would they lie about that?
15 Why would they come in here and put their hands on the
16 Bible and lie to you about something that happened?

17 There is no reason given why they would lie, and
18 what did they tell you?

19 That he came and sat down, and he started telling
20 him how upset he was, how mad he was, how he, Zach, was
21 getting in his way when he had a chance with Donna, and
22 how mad he was at Zach; so mad at Zach that he said, not
23 once, not twice, but more than that, I'm going to go get
24 my gun and shoot him. Shoot him.

25 And at that moment he was telling you what he was

1 willing to do if he needed to, because he wanted to win.
2 He's not going to let somebody take a girl away from him.
3 He's not going to let somebody make him look bad, or let
4 somebody embarrass him, because Drew Torrence wants to be
5 the man.

6 But how else do we know that Tonya and Steve were
7 telling the truth?

8 What did Tonya tell you? The next morning she came
9 by and she saw the crime scene tape out, and she called
10 the bar owner, and what did she say? Drew shot Zach,
11 didn't he?

12 Sonny, the bar owner, came up on the stand, and he
13 told you, Tonya called me the next morning and said that.
14 Nobody is making that up.

15 Drew Torrence, I think, on his -- when he testified
16 he said he didn't remember that; that may be he did say
17 it. Drew Torrence said it and he meant it.

18 He meant that he was going to go get his gun and
19 shoot Zach. Drew Torrence told you on the stand that he
20 was drunk; that he had had ten beers in three and a half
21 hours and he said he was drunk. So did everybody else
22 in the bar.

23 He told you that he was obnoxious, didn't he? And
24 everybody in the bar agreed. He was crude and rude to
25 the bartender. He was crude and rude to Donna.

1 He was crude and rude to Lee, and he even made some
2 threats or remarks to Zach, but the remarks to Zach were
3 not enough.

4 So he moved on to Donna and Lee, and on the video
5 you can see Drew Torrence move over.

6 He sits down next to Lee, and he tells you he is there
7 to apologize, but Lee tells an entirely different story.
8 So does everybody else.

9 So why is everybody lying on Drew Torrence, or is it
10 maybe Drew Torrence who is lying?

11 They say he sat down next to Lee, and Mr. Torrence
12 wants you to believe he went there to apologize and say
13 he was sorry because somehow it makes people feel comfort-
14 able in a bar and you call them, gay guy -- when you come
15 in a bar to tell him, hey, gay guy, welcome to my bar.

16 You give that whatever weight you think it is worth,
17 but Lee didn't take it as that. Lee took it as him being
18 rude and obnoxious.

19 He said, leave me alone, go away, stop saying it --
20 on the video -- go back over there.

21 Did Drew Torrence do that? No, he kept saying it
22 again, and even whispered in his ear, you want to kiss
23 my ass.

24 Drew Torrence said, yeah, I might have said that.
25 He did. Is that an apology or is that a provocation?

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1 stepping it up?

2 Is that Drew Torrence drawing closer to murder, but
3 that is for you to decide, ladies and gentlemen.

4 He leans over to the African-American nurse, who told
5 you she heard him say something about do you know what
6 menses is to Donna, and he said it in a way to make her
7 think that he was asking her -- pardon me for saying this
8 -- are you on the rag; are you PMSing; what's your prob-
9 lem?

10 Donna said, I know what it is, and her body language
11 was, leave me alone.

12 Is that apologizing to everybody the bar? Do you
13 believe that?

14 You give it the weight you think it deserves.

15 Zach Chaplin didn't think it was. Zach Chaplin was
16 standing up for his friends, and he stands up and says,
17 enough, stop it, don't say it again.

18 But Drew Torrence did, because he wasn't going to
19 let Zach win. He tried to call him names but that wasn't
20 enough to get a rise out of him. He has met a man who
21 was coursing with cocaine and amphetamines in his system.

22 So he insulted Lee, his friend, and it went on, not
23 just one time but several. Did Zach do anything then?
24 No.

25 He insulted Donna. Did Zach do anything then?

1 But at some point enough is enough. Nobody likes a
2 drunk. Nobody likes people to be obnoxious, and at some
3 point somebody is going to stand up to them, and that's
4 what Zach did.

5 He told him to stop, but Drew Torrence wasn't going
6 to let anybody tell him what to do, and he said it again.

7 The video shows Zach getting up and punching him,
8 and Zach got hit -- no question about that.

9 Did anybody at the bar get up and call nine one one
10 at that point? Say, hey -- you know because people prob-
11 ably thought he got what he deserved.

12 But what does Lee do? Lee is not a fighter and Lee
13 was insulted, but he got up and got between them and he
14 tried to separate them.

15 He told you that, and Mr. Torrence in looking at the
16 video said he noticed that.

17 He got up and tried to separate them, and he did
18 separate them.

19 Mr. Torrence is driving. His body is driving toward
20 Zach, trying to get to him. He's trying to fight back.

21 If you notice one frame in the video, you're going
22 to see him reaching up for his throat, going for his eyes,
23 maybe even trying to throw a punch.

24 But he's too drunk to fight. Ten beers in three and
25 a half hours, and he told you he was drunk and everybody

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1 else did too.

2 Maybe on any other day he could have taken Zach, but
3 not on that day.

4 So he lost again. Zach put him in his place. He
5 showed him you can't be drunk, you can't be obnoxious and
6 you can't insult my friends.

7 Lee Buchanan helps him pick up his glasses from the
8 floor and pats him on the backs, tells him to go on home
9 now.

10 Then they go back, and nobody is celebrating on the
11 tape. Nobody is saying, good for us; hey, we got Drew
12 Torrence.

13 And what does Drew Torrence do? Well, we know he
14 talked about malice, but you don't have to have the in-
15 tent to kill when you come back in the bar, and that is
16 not what the Judge is going to tell you.

17 That's not what malice is. Malice can mean hatred
18 or ill will to another person, which clearly he had to-
19 ward Zach Chaplin.

20 He said, I should get my gun and shoot him, and he
21 is saying rude and obnoxious things to Lee and everybody
22 else around him.

23 But it does not of necessity import ill will toward
24 the person injured. It just signifies a general malig-
25 nant recklessness to the lives and the safety of others.

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1 Bringing a gun into a bar when you've been drinking?
2 Does that sound reckless? If it's not, I don't know what
3 is.

4 Or a condition of the mind and heart, regardless of
5 social duty, and fatally bent on mischief.

6 I'm going to get my gun, and I'm going to be the
7 man.

8 You are not going to win, Zach Chaplin. I am going
9 to win. You are either going to back down from me and
10 run, but if you come at me I'm going to put you down.
11 That's malice.

12 He said he was going to do it and, lo and behold, he
13 did.

14 He goes out and he gets his gun, and he tells you he
15 called nine one one on the cel phone. Ken Robison, his
16 former boss, and his boss that night, said he told me he
17 called West Columbia nine one one because I asked him who
18 he called.

19 He said he called WCPD, the West Columbia Police De-
20 partment nine one one. Well, what do we know about that?
21 The West Columbia Police Department -- the dispatcher who
22 took the call that morning came and told you, I got three
23 phone calls. You heard that.

24 The only call that came in was from the Grog Shop
25 which is a part of Sonny's business -- Shaggy's in the

1 back with the bar -- I mean, with the liquor store in the
2 front and a restaurant on the side, I believe.

3 You couldn't say what was said. The dispatcher has
4 not said that's a hangup and you should call back. The
5 second call is on the video, and if you look on the video
6 you're going to see the phone light up on the bar. It
7 rings six times. That's why all the ringing is going
8 on.

9 Drew Torrence is trying to figure out, what am I
10 going to say; I just killed this man, what am I going to
11 say?

12 So he picks up the phone and the second call you
13 hear is Drew Torrence talking. The third phone is Orlando
14 Boyd who really didn't want to get involved, but he is
15 here today. He testified in front of you all.

16 He goes down to the gas station to -- he goes to
17 call nine one one. He's talking about rounds popping
18 off. There are no other nine one one calls to the West
19 Columbia Police Department.

20 She told you she didn't get any, and Johnny Dollar
21 -- he was the first person who testified -- he had the
22 records and he said he was the custodian of the records.

23 I think he told you he looked an hour before and an
24 hour after, and there were no hang-up calls. There were
25 no calls by Drew Torrence. There was no call about

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1 Shaggy's, no calls about an assault -- nothing but the
2 three phone calls you heard.

3 But if you think Drew Torrence called nine one one,
4 called to ask for help, you can give it whatever weight
5 you think it deserves.

6 He said he called nine one one and he waited --
7 he waited -- and that was four minutes and forty-two sec-
8 onds before he went back in.

9 What is Drew Torrence doing that time? Is he
10 getting in his car and driving to the police station to
11 make a report? No.

12 In Cross Examination he told you, I know I could
13 file a report and go get a warrant. He could have done
14 that. He could have left, but he chose not to.

15 He chose, if you want to believe him, to detain some-
16 body. Is that true, or was that Drew Torrence trying
17 to give himself a reason for going back inside that bar,
18 to escalate the situation?

19 He goes back in the bar with a gun, and people are
20 leaving -- he said he didn't see anybody leave. He could
21 have stayed out there forever to wait for the West Columbia
22 Police Department to come.

23 In fact, he could have flagged down a car and said,
24 would you call nine one one? I need to stay here and see
25 what's going on.

1 He never told you that he saw anybody try to leave
2 there. He never said he saw Zach try to leave. He never
3 said he saw Lee Buchanan try to leave.

4 He's drunk, he's obnoxious, he's mad, he's upset
5 about being beat up and embarrassed. So what's he think-
6 ing?

7 What he's thinking is what he said earlier. I'm
8 going to get my gun and shoot them. By God, I'm at the
9 place where I can get my gun and go back in now.

10 He knows it's against the law to go in a bar with a
11 gun, because he said that too. Now he wants to use cit-
12 izen's arrest for a reason for him to go back in.

13 Did he provoke the fight, did he want all of this
14 to happen? I don't know, but it did happen, and he chose
15 to take the consequences of that and the benefit of that,
16 take advantage of it.

17 He wants you all to think he was going to make a
18 citizen's arrest. Do you think that's what a citizen's
19 arrest means? That a drunk man can go in a bar and pro-
20 voke a fight, get beat up; go outside and wait four and a
21 half minutes; come back in with a gun and provoke a
22 shooting? If so, then let him go.

23 But that is not what a citizen's arrest is for. You
24 think about what a citizen's arrest is for, and the Judge
25 is going to tell you what the law is.

1 A citizen's arrest is for when you see a police offi-
2 cer and there is a struggle over his gun or someone takes
3 a police officer's gun and you want to do something about
4 it. I hope somebody does something about it.

5 It is when a bank robber comes out from a bank with
6 an alarm going off with a gun in his hand and money, and
7 somebody is screaming, he just robbed the bank. That's
8 for citizen's arrest.

9 But if you think the law in South Carolina -- if
10 that's what you want a citizens arrest to be, including
11 all the circumstances -- if that's what you think a
12 citizen's arrest is, if you can use a citizen's arrest
13 to settle a personal score, then Drew Torrence is not
14 guilty.

15 What is he doing while he's out in his car? He has
16 said he was just waiting. Why didn't he just wait? He
17 did not have to go back in. He didn't have to go back
18 in.

19 And he talked about what he had in the car and what
20 he chose not to bring back in. He said he had handcuffs
21 in his car. The best way to detain somebody is with hand-
22 cuffs.

23 But he didn't bring them in, and he chose not to, as
24 it wasn't really about detaining anybody. It was provok-
25 ing, it was about escalating, it was about being the man

1 and taking a step closer to murder, if he needed to.

2 What else could he have taken in? He said he had
3 pepper spray in the car. If somebody charges you, you
4 can spray them and that's a way to take them down.

5 That wasn't enough for Drew Torrence, and he told
6 you that. He also talked about an Asp baton -- this is
7 an Asp baton.

8 It is an offensive and a defensive weapon, as you
9 heard Agent West from SLED testify to. You can use it to
10 kick out peoples' knees, arms; use it to defend yourself
11 and take people down.

12 Drew Torrence had one of these in his car, he told
13 you. He didn't take it in. He didn't want to. It was
14 not enough.

15 He could have put on that duty belt that had all these
16 things on there. It had his handcuffs, his pepper spray,
17 his Asp baton, and I think he said a Sig, which is another
18 firearm that he said he wore at Rush's, although the Rush's
19 manager or his former boss told you Rush's is an unarmed
20 position.

21 But that's what he told you he had that night, and
22 that is all in the car ready to be put on, and instead
23 he gets out his Glock, because is he really going in to
24 detain someone, or is he going in to provoke the situa-
25 tion?

1 Agent West and Mr. Torrence both told you that a gun
2 escalates a situation. It doesn't defuse the situation.

3 A man who goes in to provoke a fight with a gun out
4 is escalating the situation because it's not about deten-
5 tion. It's not about citizen's arrest. It's about being
6 a man.

7 You beat me up, you embarrassed me, and you're not
8 going to do it.

9 If you don't think there is malice and you want to
10 go down to voluntary manslaughter -- Judge McMahon will
11 tell you the law on that -- one of the things has to do
12 with a cooling off period.

13 You have to be enraged, you have to be in the heat
14 of passion on sufficient legal provocation. He will ex-
15 plain all of that to you.

16 So what is he mad about? Is he mad and enraged
17 because of getting beat up? And nobody is going to deny
18 that Mr. Torrence got pummeled, he got punched twelve
19 times -- no question about that.

20 But his injuries were all superficial too, and you
21 heard that from their own witness, Dr. Schwab, from the
22 E.R.

23 He was there thirty minutes, they cleaned him up and
24 put sterile strips on it and let him go.

25 So is he enraged about that? Is that what his

1 provocation is, because if you want to accept that theory
2 then he's got four minutes and forty-two seconds that he
3 is outside, thinking about what he's going to do.

4 The Judge is going to tell you about a cooling off
5 period. If that's what he's enraged about, then he goes
6 out and he has time to think, to deliberate, and if it
7 comes to him say I'm going to call nine one one, whether
8 he did or not; I'm going to choose to get my warrant, as
9 opposed to getting my handcuffs, my Zig, my Asp, my pepper
10 spray -- thinking about what he's going to do.

11 To go back in -- which door am I going to go back
12 in? How am I going to do this when I come in?

13 If you think that he's still enraged because of that
14 then I guess it's voluntary manslaughter.

15 But if you think that's why he's enraged and that
16 is the legal provocation, four minutes and forty-two sec-
17 onds is a long time to cool down.

18 As you cool down and you're being deliberate, then
19 it goes back to malice. Because the truth is, he gets
20 what he wants.

21 He says, I ought to get my gun and shoot him, and
22 now he's doing that. He is one step closer to murder.

23 He goes back into the bar with a gun. He pounds on
24 the door. Donna testified she said, don't open the door,
25 but Lee Did.

1 I know that's a decision he'll regret the rest of his
2 life, but at that point Mr. Torrence comes in, and you
3 have all seen the video.

4 Both Donna and Lee tell you that he pointed a gun
5 at Lee. You go through the video, each frame on that
6 video, which you'll have back in your jury room, and you
7 look and see if you can see a gun when Mr. Torrence is
8 coming in. That will be up to you.

9 Everybody in the bar scatters, and why wouldn't they,
10 because a drunk man who just got beat up is back in with
11 a gun.

12 Jennifer, the bartender, is hiding under the bar, and
13 Lee is trapped over in the corner. Zach runs and you will
14 see him take a female and push her out the door.

15 Then you'll see his head disappear for a second and
16 he comes back in.

17 You will see Donna go toward the door, and I think
18 she testified she was on the wrong side and she was hit-
19 ting the inside as opposed to the door side to get out.
20 She couldn't get out so she ran and got under a pool
21 table.

22 At that point, Drew Torrence is still provoking the
23 situation.

24 He got Zach to run so he thinks he's won at this
25 point. Now he's got Lee here, and he thinks I can't leave

1 anybody who is a threat; I've got a gun; I've got to know
2 what's going on..

3 Maybe he was detaining them, but is that really --
4 was he really detaining, or was it really provoking?

5 Do you want to let somebody use a citizen's arrest
6 to provoke people, to do things they couldn't otherwise
7 do? Use it as an excuse to manipulate the law? That
8 is a question for you to decide.

9 You see Zach -- you see him looking over the bar.
10 At this moment, Donna is trapped under the pool table,
11 Lee is over against the bar hiding. His friends were
12 trapped inside.

13 I'm going to stop for a second. There were some
14 things that Drew Torrence told you. He knew it was wrong
15 to take a gun into a bar.. He knew that guns and alcohol
16 don't mix.

17 He knew that if you take a gun out, you'd better
18 be prepared to use it, and he was.

19 He knew that if you're going to claim citizen's
20 arrest, you had better be right.

21 He knew all of those things when he came in, and he
22 admitted to that, but he chose to come in with a gun to a
23 bar, which he knew was wrong.

24 He chose to display a gun when he was drunk, which
25 he knew was wrong.

1 At what point are you going to say, the circumstances
2 don't allow you to claim citizens' arrest under these cir-
3 cumstances?

4 He told you why he went in and why he took a gun, if
5 nothing else. He told you why he didn't take an Asp baton,
6 why he didn't take handcuffs, because of psychological
7 control -- his words -- of a loaded firearm. Not an un-
8 loaded firearm -- he came with a loaded firearm, so he
9 could use it if he needed to.

10 He's going to win. Either Zach is going to run away
11 and I'm the winner, or if he comes at me I'm going to put
12 him down and I'm going to claim citizen's arrest or claim
13 self-defense.

14 They won't prosecute me, and I got away with murder.

15 Ladies and gentlemen, it's your decision. Do not let
16 him do that, do not let him get away with murder.

17 Murder is the unlawful killing with malice afore-
18 thought. You have to decide whether it's a lawful or an
19 unlawful killing.

20 If it's self-defense, then it's not unlawful, and
21 Mr. Torrence goes home.

22 This is self-defense. There are four things you must
23 find in order for you to say Mr. Torrence acted in self-
24 defense.

25 Is there a killing? No question that he killed Zach

1 Chaplin. He told you from the stand that Mr. Chaplin
2 would be alive if he hadn't shot him.

3 The Defendant was without fault in bringing on the
4 difficulty. I'm not sure of Mr. Torrence's definition of
5 bringing on the difficulty, but I would tell you this.

6 He was drunk, he was obnoxious, he was rude, he was
7 crude, he was offensive to everybody in that bar.

8 He was at fault. He provoked a fight. He was told
9 to be quiet, which you can't tell Drew Torrence what to
10 do, so he got beat up. And he tried to fight back but
11 he got beat up.

12 He got put out of the bar, and if he would have left
13 right there Zach Chaplin probably would have been arrested
14 for assault and battery. He would have gone to the po-
15 lice department and filed a report, and we all wouldn't
16 be sitting here today.

17 So what does he do to bring on the difficulty. He
18 goes out to his car, drunk, and he gets his gun, and he
19 comes back in, to escalate a situation which is what it
20 is when you bring a gun into a bar.

21 A drunk man who has just been beat up comes back
22 with a gun -- my gosh, what is everybody thinking that's
23 in there?

24 He comes in, points the gun at people, and there is
25 testimony as to that. Is that not bringing on the

1 difficulty?

2 If it is, you don't even need go any further, and
3 self-defense doesn't apply.

4 The Defendant must have actually been in danger of los-
5 ing his life or sustaining serious bodily injury where he
6 was. You all have seen the video so you have the advant-
7 age of that.

8 Why did he tell you he felt he was in danger of los-
9 ing his life? First, he said maybe Zach had a gun or
10 had a knife. I didn't know what he had.

11 But that's not good enough. He never said, I saw
12 a gun. He never said, I saw a knife. The police didn't
13 find a gun or a knife on Zach. If they had, you would
14 have heard about it.

15 So why was he in imminent danger of losing his life
16 or sustaining serious bodily injury? He told you it was
17 because if he took my gun from me then he would shoot
18 me and kill me.

19 Ladies and gentlemen, who brought the gun? Who brought
20 the gun?

21 Drew Torrence chose to bring that gun, and he has
22 talked about his having a gun, but if you think that sat-
23 isfies that element, that he was in danger, in imminent
24 danger when he brought the gun that was the cause of the
25 danger, then you give it whatever weight you think that

1 it deserves.

2 He wants to tell you that he was in danger of losing
3 his life or of sustaining serious bodily injury. He wants
4 to tell you that he was trapped over in the corner of the
5 bar, and you see the area. You've got the diagram and
6 there are some photographs of it, but he put himself there.

7 He chose to come back in with a gun and to put him-
8 self there, detaining Lee -- put your hands on the bar
9 and don't move. This has nothing to do with you.

10 You heard Lee say that. I could be wrong, but I
11 think Mr. Torrence said I might have said that, so if it
12 doesn't have anything to do with Lee, the only other per-
13 son it has to do with his coming back in for is Zach, be-
14 cause Drew Torrence can't be beat. He is going to be the
15 man, so he comes back in with a gun, knowing that he's
16 drunk, to prove to everybody and himself that you can't
17 push him around.

18 Then he's taken another step closer to murder, and
19 if you want to say it was all okay up to that point, that
20 he was trapped in a corner when the gunshot was first shot,
21 you give that whatever weight you want to give it, what-
22 ever weight you think it deserves.

23 But you look at the video. Agent West talked to
24 you about percussions, a firearm being fired. Look at
25 what is coming from the ceiling and think about the

1 percussion and disturbing the dust and the lint and the
2 insulation, and see if you can figure out when the shots
3 occurred.

4 If the first shot -- if Mr. Torrence is pointing at
5 Zach and he's like this, and the first shot is in the arm,
6 you are going to see the gunpointed in that position.

7 The first shot is in the arm, and you're going to
8 see the gun pointed in an upright position on the video.
9 When the gun is fired, almost immediately after, you are
10 going to see stuff fall from the ceiling.

11 You are going to watch Mr. Torrence's body rotate
12 and turn. Is it a quick time period? It is, but it is
13 not like taking one shot at somebody -- pow, pow.

14 There is time to fire and turn, and notice where his
15 hands are. Down and lower, because that's where Zach
16 Chaplin is. He's falling down on the ground from the
17 shit.

18 The first shot fractured his arm. Look at the angle
19 of the gun. Look at the dust coming from the ceiling,
20 and in the second shot look at the recoil of the arm when
21 it was fired, and Agent West talked to you about it.

22 If you're not holding it rigid, you're going to see
23 it bounce back. You look and see what you can see.

24 The pathologist told you that the second shot went
25 in behind the mastoid bone so it didn't hit the bone but

1 below the bone here, and it crossed down the spine, and
2 that's the shot that paralyzed him.

3 That's why you know it's the second shot. Zach
4 Chaplin is down on the ground. We know that bullets fire
5 in a straight line. The gun barrel goes down, comes in,
6 come around.

7 You all figure what the angle was, and you all fig-
8 ure out where Zach Chaplin was.

9 But how much time is there between the first shot and
10 the second?

11 If you don't think there was malice with the first
12 shot, and you don't think he provoked that situation,
13 think about the second shot.

14 At that point, if this is the corner and he's
15 trapped when he fires the first shot, then he turns and
16 he lowers it and he fires a second shot. Who is behind
17 him now?

18 All he had to do was back up. He's not in fear of
19 his life at that moment, but he chose to fire a second
20 shot, because he had malice.

21 He had malice from the moment he said he was going
22 to shoot him all the way through to the time he pulled
23 the second trigger.

24 Does the video show Drew Torrence offering help to
25 Mr. Chaplin after the shooting?

1 Donna said he went over and he said, are you going
2 to get up now, and you can see him on the video walking
3 over.

4 Does he take off his shirt? Does he apply first aid
5 like he's taught? He told us he had training while in
6 the Marines and training for CPR in gunshot wounds speci-
7 fically for the Marines.

8 He told his friend, Daniel Cameron, that I took off
9 my shirt and I applied pressure, but the video shows that
10 didn't happen.

11 So ask yourself why Drew would say that? Why did he
12 need to make it look better than the truth?

13 Because the truth is he went in with malice that had
14 been building up over the night, and he ended up with what
15 he said he was going to do -- I'm going to get my gun and
16 shoot him, and he made that situation happen.

17 But he wanted his friend, Mr. Cameron, to believe he
18 was making a citizen's arrest; that was self-defense, and
19 I took my shirt off and put pressure on it.

20 This is his shirt. Look at the front of it, and you
21 look for the blood.

22 Mr. Floyd wants you to believe that Zach Chaplin was
23 hopped up on cocaine and amphetamines, and the toxicology
24 report that he showed showed that he had those drugs in
25 his system.

1 But if you look in the medical records, some eighteen
2 hundred and some odd pages that are on a disc -- if you go
3 to page 61 of that you will see that Drew -- I'm sorry --
4 that Zach told them that he had used cocaine the day be-
5 fore the shooting.

6 So he didn't -- did he have cocaine in his system?
7 The doctor said that cocaine can stay in your system for
8 up to seventy-two hours.

9 Yeah, you may test positive for it, but does it really
10 mean that it's making you do things? Does it really mean
11 it's making you mad, that it's making you act other than
12 deliberate.

13 You give that whatever worth you think it's worth.
14 If you think that is a reason for letting Drew Torrence
15 go, find him not guilty.

16 Mr. Floyd wants to talk to you about reasonable
17 doubt, and I wish that I could give you every piece of
18 evidence you want. I wish we could go into peoples'
19 minds and you could read their minds, but all we can do
20 is interpret their actions.

21 If I show you a picture and there's a piece missing,
22 do you really have any reasonable doubt as to what that
23 is?

24 You still know what the pictures is whether that is
25 there or not.

1 Yeah, there is always going to be some doubt. There
2 is always going to be the question you wish you had an
3 answer to. The question becomes, is there a reasonable
4 doubt?

5 Drew Torrence is guilty of murder. He's not guilty
6 of voluntary manslaughter. He's not guilty of assault
7 and battery with intent to kill because the shooting was
8 the proximate cause.

9 Dr. Ross told you the second shot severed his spine
10 and was the cause of his death. Just because he didn't
11 bleed from the gunshot wounds to death doesn't mean that
12 it was not the proximate cause.

13 That's what the Judge will tell you. As Dr. Ross
14 said, he would be alive but for being in the hospital
15 after getting these wounds, and if you don't think that
16 is not the proximate cause then give it whatever weight
17 you think it's worth.

18 The last charge of assault and battery of a high and
19 aggravated nature -- that means he didn't have malice and
20 that is not the cause of death.

21 Ladies and gentlemen, if you don't believe that is
22 all this case boils down to -- this is Drew Torrence's
23 gun, the gun that he fired two rounds to kill Zach
24 Chaplin.

25 If you believe he is only guilty of assault and

1 battery of a high and aggravated nature, then find him
2 not guilty and let him have his gun back.

3 MR. FLOYD: Your Honor, I object to that. That is
4 improper.

5 THE COURT: Ladies and gentlemen of the jury, I'd
6 sustain that objection.

7 You may continue, Mr. Solicitor.

8 SOLICITOR: Thank you, Your Honor. The Judge will
9 tell you the rights a citizen has to resist an unlawful
10 or illegal arrest.

11 He will tell you that Zach Chaplin had a right to
12 do that. So if you believe there was a citizen's arrest
13 attempt to be made, and that it was illegal and was for
14 Zach, Zach can resist. He can charge to protect himself,
15 and the Judge will tell you that.

16 Zach Chaplin was a hero. He gave his life for his
17 friends in the bar.

18 Donna was trapped, Lee was trapped, Jennifer was
19 trapped. Zach could have left, but he went back in be-
20 cause he is a hero.

21 Don't let a hero die in vain. Make Drew
22 Torrence responsible for what he did. Hold him account-
23 able for provoking a fight, for being drunk, being obnox-
24 ious, for choosing to go out and get a gun; for not doing
25 anything else but continue to escalate the situation.

1 As he told you it did, when you bring a gun into a
2 bar. Make him responsible for what he did, tell him that
3 he had malice, tell him he is guilty of murder.

4 Thank you.

5 THE COURT: Thank you, Solicitor.

6 If you would move this board here, Solicitor?

7 All right, Mr. Foreman and ladies and gentlemen of
8 the jury, my charge is lengthy. It's about forty pages,
9 and my timing, I believe, is about one minute per page.

10 My Court Reporter thinks my timing is about one hour
11 per page, but it is about one minute per page, so it will
12 take forty or forty-five minutes to charge the jury.

13 Your lunch is here, so what I am going to do is break
14 and allow you all to eat your lunch.

15 Go to your jury room, and as soon as you have fin-
16 ished eating knock on the door and alert the bailiff. At
17 that time, we will reassemble out here, get started back.

18 If you need forty-five minutes, that's fine -- an
19 hour is fine. If any of you want to step outside and get
20 some air or anything of that nature you may certainly do
21 so.

22 Do not discuss the case among yourselves during the
23 recess. As I say, I'm not going to say an hour or hour
24 and a half. Just let me know when you are ready to re-
25 assemble and we will start back again.

1 Leave your notes upside down in the chair. Do not
2 discuss the case during this brief recess. Thank you very
3 much.

4 Please go with your bailiff.

5 (Jury excused from the Courtroom for the lunch re-
6 cess).

7 THE COURT: All right, do you have a matter, Mr.
8 Floyd?

9 MR. FLOYD: Your Honor, it would be an objection to
10 the Prosecution's closing argument, and, of course, to the
11 argument he made about the weapon.

12 I didn't want to make a legal argument in front of
13 the jury at the time, Your Honor, so I just stated an ob-
14 jection.

15 We would move that the charges be dismissed against
16 Andrew Torrence because of the improper argument that
17 was made by the Solicitor in regard to returning the gun.

18 I mean, you can't tell the jury to let him go and
19 give him his weapon back.

20 In the first place, Mr. Torrence is not going to
21 get his weapon back, and it also is something that has
22 nothing to do with whether or not he is guilty of this
23 offense or innocent.

24 He's telling them go let him go and give him his
25 weapon back so he can go shoot somebody else, which

1 is a totally improper argument.

2 Further, Your Honor, during his closing argument
3 there was open and loud weeping by the family members
4 of the victim, which was improper, we think.

5 THE COURT: Thank you, Mr. Floyd.

6 Solicitor?

7 SOLICITOR: Your Honor, my argument -- if it was im-
8 proper I apologize. I have used that argument before and
9 did not know it would cause a problem.

10 THE COURT: Thank you.

11 SOLICITOR: If I am wrong, I guess I would ask for
12 a curative instruction, Your Honor.

13 Thank you very much.

14 THE COURT: All right. Well, I think the argument may
15 have originally been argued in State versus South. I
16 don't know if that's the case you are referring to.

17 Under some more recent cases, State versus Reese,
18 for example, the ruling was not on that argument but it
19 was on the whole argument.

20 I think the ruling was that the Solicitor's argument
21 in its totality was improper. You argued about forty-five
22 minutes and that was the only objection, and it was the
23 only reference to that issue.

24 I do not think it interjects into the trial any
25 factor that would cause the Defendant not to receive a

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1 fair trial by a fair and impartial jury.

2 Taking the entire argument of the Solicitor into ac-
3 count, I do not think it was delivered in the sense as to
4 inflame the passions or prejudices of the jury against
5 the Defendant.

6 I will give a charge to the jury in that regard that
7 they cannot make their decision, make their verdicts, based
8 on passion, emotion or any consideration not connected to
9 the case.

10 I also didn't hear any weeping or crying on the part
11 of the family. Now, that being said, it is not any -- I
12 did not notice it, but I would deny your motion to dismiss
13 the case based on the prosecutor's closing argument, and
14 I would deny your motion to dismiss based on crying, not
15 just because I didn't hear it, but I certainly believe
16 you, Mr. Floyd.

17 I will certainly give an instruction in that regard
18 and would certainly give a curative instruction if you
19 desire one.

20 MR. FLOYD: We would request a curative instruction,
21 Your Honor.

22 THE COURT: Thank you very much. We'll be in recess,
23 but don't go too far so that we can re-assemble when the
24 jury is ready.

25 Thank you.

1 (Whereupon, the Court stood in recess for the lunch
2 break and the matter thereafter resumed)

3 THE COURT: All right, bring us our jury, please.

4 (Jury returned to the Courtroom)

5 THE COURT: All right. Welcome back, ladies and
6 gentlemen.

7 Please give me your complete and undivided attention.
8 I'm now going to charge or instruct you on the law that
9 you would use to apply to the facts of the case as you
10 find the facts to be.

11 The procedure that I follow is I give the general
12 group of laws in South Carolina that applies to all crim-
13 inal cases that we try. Thereafter, I cover the charges
14 in the Indictments, starting with murder and the lesser
15 included offense of voluntary manslaughter.

16 Then, based upon your finding or lack of finding of
17 probable cause of death, I will then cover assault and
18 battery with intent to kill and the lesser included of-
19 fense of assault and battery of a high and aggravated na-
20 ture.

21 Thereafter, I will cover the law on self-defense,
22 the law on citizen's arrest, and, finally, I will cover
23 the forms of the verdicts in this case.

24 I ask that you give me your complete and undivided
25 attention.

1 The Indictments charge the Defendant with murder,
2 the possession of a weapon during the commission of a
3 violent crime, and carrying a pistol or firearm onto pre-
4 mises that sell alcoholic liquors, beers or wines for on-
5 premises consumption.

6 I would remind you that the fact that the Defendant
7 was arrested and charged and indicted in this case is not
8 evidence and cannot be considered by you as evidence of
9 guilt, nor may it create any presumption of the Defen-
10 dant's guilt.

11 These documents or these Indictments are simply the
12 formal documents or formal written instruments that convey
13 the charges made against the Defendant.

14 These are the formal documents by which this case is
15 brought into Court.

16 The Indictments in the case contain several differ-
17 ent offenses against the Defendant. The charges as to In-
18 dictment One is murder; as to Indictment Two, possession
19 of a weapon during the commission of a violent crime; and
20 as to Indictment Three, carrying a pistol or firearm onto
21 premises or business selling alcoholic liquors, beers or
22 wines for on-premises consumption.

23 Each Indictment charges a separate and distinct of-
24 fense, and you must decide each Indictment only on the
25 evidence and the law that applies to it, uninfluenced by

1 your decision as to the other Indictments.

2 The Defendant may be convicted or acquitted on any
3 or all of the offenses charged. You will be asked to
4 write a separate verdict of guilty or not guilty for each
5 Indictment.

6 Presumption of Innocence.

7 The Defendant has pled not guilty to these Indict-
8 ments, and that places the burden on the State to prove
9 the Defendant guilty.

10 A person charged with committing a criminal offense
11 in South Carolina is never required to prove himself inno-
12 cent.

13 I charge you that it is an important rule of law
14 that a defendant in a criminal case, no matter what the
15 seriousness of the charge may be, will always be presumed
16 to be innocent of the crime for which the Indictment was
17 issued unless guilt has been proven by evidence satisfy-
18 ing you of that guilt beyond a reasonable doubt.

19 This presumption of innocence does not end when you
20 begin your deliberations but it accompanies the Defendant
21 throughout the trial until you reach a verdict of guilt
22 based on evidence satisfying you of that guilt beyond a
23 reasonable doubt.

24 The presumption of innocence is like a robe of right-
25 eousness placed about the shoulders of the Defendant which

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1 remains with the Defendant until it has been stripped
2 from the Defendant by evidence that satisfies you of the
3 Defendant's guilt beyond a reasonable doubt.

4 The presumption of innocence is not a mere legal
5 theory. It is not just a legal phrase. It is a substan-
6 tial right to which every defendant is entitled unless
7 you, the jury, are satisfied from the evidence of the De-
8 fendant's guilt beyond a reasonable doubt.

9 Reasonable Doubt.

10 What is a reasonable doubt in the law? A reasonable
11 doubt is the kind of doubt which would cause a reasonable
12 person to hesitate to act.

13 The State has the burden of proving the Defendant's
14 guilt beyond a reasonable doubt.

15 Some of you in the past may have served as jurors
16 in civil cases where you were told it was only necessary
17 to prove that a fact is more likely true than not true,
18 such as by the greater weight or the preponderance -- the
19 preponderance of the evidence.

20 In criminal cases such as this, the State's proof
21 must be more powerful than that. It must be -- must
22 be beyond a reasonable doubt.

23 Proof beyond a reasonable doubt is proof that leaves
24 you firmly convinced of the Defendant's guilt. There are
25 very few things in the world that we know with absolute

1 certainty, and in a criminal case the law does not re-
2 quire proof beyond every possible doubt, but if based on
3 your consideration of the evidence you are firmly con-
4 vinced that the Defendant is guilty of the charge, you
5 must find the Defendant guilty.

6 If, on the other hand, you feel there is a real pos-
7 sibility that the Defendant is not guilty, you must give
8 the Defendant the benefit of the doubt and find him not
9 guilty.

10 I remind you that during this trial you and I have
11 certain duties to perform. It is the Trial Judge's re-
12 sponsibility to preside over the trial of this case, and
13 I also have the duty to rule upon the admissibility of
14 the evidence offered during the trial.

15 You are to consider only the competent evidence be-
16 fore you. If there was testimony ordered stricken from
17 the record in this case or during this trial, you must
18 disregard that testimony.

19 You are to consider only the testimony which has
20 been presented to you from the witness stand and any ex-
21 hibits which have been made a part of the record in the
22 case, and any stipulations of counsel.

23 It is my additional duty to charge you the law as it
24 applies to this case. As the Presiding Judge, I am the
25 sole judge of the law in this case, and it is your duty

1 as jurors to accept and apply the law as I now state it
2 to you.

3 If you already have any ideas as to what the law is,
4 or what the law ought to be, and if it does not agree
5 with what I now tell you the law is, you must abandon
6 your ideas because you are sworn, you have taken an oath,
7 to accept the law and apply the law exactly as I state
8 it to you.

9 In every case tried in this Courtroom before a trial
10 jury, the jury becomes the sole and exclusive judges of
11 the facts in the case.

12 A trial judge cannot make statements, comment on, or
13 make any reference to a trial jury about the facts in a
14 case. Since you, the jury, are the judges of the facts
15 in this case, you are not to infer what I may have said
16 during the progress of this trial in ruling upon the ad-
17 missibility of evidence or otherwise, or anything that I
18 say now during these instructions to you, that I have any
19 opinion about the facts in the case.

20 The law does not allow me to have any opinion as
21 about the facts of this case. That is a matter solely
22 for you, the jury, to determine.

23 As jurors, it is your duty to determine the effect,
24 the value, the weight and the truth of the evidence pre-
25 sented during the trial.

1 Direct and Circumstantial Evidence.

2 There are two types of evidence which are generally
3 presented during a trial, direct evidence and circumstan-
4 tial evidence.

5 Direct evidence is the testimony of a person who
6 claims to have actual knowledge of a fact, such as an eye-
7 witness or an ear-witness, or any evidence which imme-
8 diately establishes the main fact to be proven.

9 Circumstantial evidence is proof of a chain of facts
10 and circumstances which indicate the existence of a fact.
11 It is evidence which immediately establishes collateral
12 facts, from which the main fact may be inferred.

13 Circumstantial evidence is based on inference and
14 not on personal knowledge or observation.

15 The law -- our law makes absolutely no distinction
16 between the weight or the value to be given to either di-
17 rect or circumstantial evidence, nor is there a greater
18 degree of certainty required for circumstantial evidence
19 than of direct evidence.

20 You should weigh all of the evidence in the case
21 and, after weighing all of the evidence, you are not con-
22 vinced of the guilt of the Defendant beyond a reasonable
23 doubt then you must find the Defendant not guilty.

24 Credibility of Witnesses.

25 Necessarily, you must determine the believability,

1 the credibility, of witnesses who have testified in this
2 case.

3 Credibility simply means believability. It is your
4 duty as jurors to analyze and evaluate the evidence, and
5 to determine which evidence convinces you of its truth.

6 In determining the believability of witnesses who
7 have testified in this case, you may believe one witness
8 over several or several over one. You may believe a part
9 of the testimony of a witness and reject the remainder of
10 the testimony of that same witness.

11 You may believe the testimony of a witness in its
12 entirety or reject the testimony of a witness in its en-
13 tirety.

14 You may consider whether any witness has exhibited
15 any interest, any bias or prejudice in this case, and you
16 may also consider the appearance or the manner of a wit-
17 ness while testifying on the witness stand.

18 Expert Witnesses.

19 The rules of evidence ordinarily do not permit wit-
20 nesses to testify to opinions or conclusions. An excep-
21 tion to this rule is as to witnesses that we call expert
22 witnesses.

23 A witness who by education or experience is an ex-
24 pert in some art or profession or calling may state an
25 opinion as to relevant and material matter in which the

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1 witness claims to be an expert, and may also state the
2 reasons for that opinion, for holding that opinion.

3 You should consider any expert opinion received in
4 evidence in this case like any other evidence. You are
5 to give it such weight as you think it deserves.

6 If you decide the opinion of an expert witness is
7 not based on sufficient education and experience, or if
8 you conclude that the reasons given in support of the
9 opinion are not sound, or that the opinion is outweighed
10 by other evidence, you may disregard the opinion.

11 An expert witness' testimony is to be given no
12 greater weight as that of other witnesses simply because
13 the witness is an expert.

14 Further, you are not required to accept an expert's
15 opinion even though it is not contradicted.

16 Intent.

17 In order to establish criminal liability, criminal
18 intent is required.

19 For example, the mental state required to be proven
20 by the State for a particular crime might be purpose or
21 intent or knowledge or recklessness or criminal negli-
22 gence.

23 Criminal intent must be proven by the State beyond
24 a reasonable doubt. Criminal intent is always a matter
25 that must be determined by the jury from the circumstances

1 surrounding the situation.

2 Now, there is no way to prove intent with mathemati-
3 cal certainty. There is no way that medical science can
4 dissect a person's brain to determine what the person had
5 in mind, so the law, our law, says that criminal intent
6 may be inferred from the circumstances shown to have
7 existed, and this is how you make your determination of
8 whether or not the element requiring intent is present.

9 It is not necessary to establish intent by direct
10 and positive evidence, but intent may be established by
11 inference in the same way as any other fact, by taking
12 into consideration the acts of the parties and all of the
13 facts and circumstances of the case.

14 Criminal intent is a mental state, a conscious wrong
15 doing. It is up to you, the jury, to determine what the
16 Defendant intended to do based on the circumstances shown
17 to have existed.

18 Criminal intent can arise from actions or a failure
19 to act. It may arise from negligence or recklessness
20 to duty, or consequences considered by the law to be the
21 equivalent of criminal intent.

22 Statement of the Defendant.

23 A statement alleged to have been made by the Defen-
24 dant has been admitted into evidence in this case. While
25 this Court has determined that the statement could be

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1 admitted into evidence, I instruct you that you make the
2 ultimate decision as to whether or not the Defendant made
3 the statement.

4 If a Defendant did make the statement, you must de-
5 termine whether the statement was made by the Defendant
6 voluntarily of his own free will and accord.

7 This means that the statement was not caused by
8 pressure, force, fear or threats, or coercion or intima-
9 tion, or by any promise of leniency or reward of any kind.

10 In deciding whether a statement was voluntary, you
11 should consider both the characteristics of a Defendant
12 and the details of the statement.

13 The State has the burden of proving beyond a reason-
14 able doubt that the alleged statement was voluntary. If
15 you determine it was, you may give the statement any fur-
16 ther consideration that you deem proper.

17 You must decide what weight, if any, should be given
18 to the alleged statement. If you determine that the al-
19 leged statement was not the free and voluntary statement
20 of the Defendant, you are not to consider the statement
21 at all.

22 Prior Record; Limitation for Impeachment.

23 You have heard evidence that the Defendant was con-
24 victed of a crime other than the one for which the
25 Defendant is now on trial.

1 This evidence may be considered by you, if you con-
2 clude it is true only, in deciding whether the Defendant's
3 testimony is believable, and for no other purpose.

4 It may only be considered for the purpose of credi-
5 bility. You must not consider the Defendant's prior re-
6 cord as any evidence of the Defendant's guilt on those
7 charges which we are trying today.

8 That is the general criminal law, and I am now going
9 to begin with the Indictments, each particular Indictment.

10 I will start with the Indictment for murder again,
11 including the lesser offense of voluntary manslaughter,
12 and after I explain proximate cause I will further cover
13 the offenses of assault and battery with intent to kill
14 and assault and battery of a high and aggravated nature.

15 The Defendant is charged with murder. The State
16 must prove beyond a reasonable doubt that the Defendant
17 killed another person with malice aforethought.

18 The term malice is hatred, ill will, hostility to-
19 wards another person. It is the intentional doing of a
20 wrongful act without just cause or excuse, and with an
21 intent to inflict an injury or under circumstances from
22 which the law could infer fatal intent.

23 Malice aforethought does not require that malice
24 exist for any particular time before the act is committed
25 but malice must exist in the mind of the Defendant just

1 before and at the time that the act was committed.

2 Therefore, there must be a combination of the pre-
3 vious evil intent and the act.

4 Malice aforethought may be express or inferred. Now,
5 these terms express or inferred do not mean different
6 kinds of malice, but merely the manner in which malice
7 may be shown to exist; that is, either by direct evidence
8 or by inference from the facts and circumstances which
9 are proven, express or inferred.

10 Express malice is shown when a person speaks words,
11 expresses hatred or ill will for another, or when the
12 person prepares beforehand to do the act which was later
13 accomplished.

14 For example, lying in wait for a person, or any other
15 act or preparation going to show that the deed was in the
16 Defendant's mind, would be express malice.

17 Malice may be inferred from conduct showing a total
18 disregard for human life.

19 Proximate cause.

20 When a person inflicts a fatal injury on another
21 person, and that other person dies at a later time, you
22 must be convinced beyond a reasonable doubt that the inflic-
23 tion of the first injury was the proximate cause of the
24 victim's death.

25 Proximate cause is the direct cause, the immediate

1 cause. It is the efficient cause. It is that cause with-
2 out which the death of the victim would not have resulted.
3 There must be a chain of causation from the time of the
4 injury inflicted by the Defendant until the time of his
5 death.

6 Proximate cause does not necessarily mean that it
7 occurred immediately prior to death. There may be more
8 than one proximate cause. The acts of two or more per-
9 sons may combine together to be a proximate cause.

10 It is not a defense to show that the victim might
11 have recovered had he been treated according to the most
12 prudent medical standards or as a reasonably prudent doc-
13 tor may have treated him, or even by showing treatment
14 negligence.

15 Now, ladies and gentlemen, in the charge of murder
16 is included the lesser included offense of voluntary man-
17 slaughter.

18 So if you find that the State has failed to prove
19 beyond a reasonable doubt that the Defendant committed
20 murder, you may consider whether the State has proved be-
21 yond a reasonable doubt that the Defendant committed vol-
22 untary manslaughter.

23 Included within the offense of murder is the lesser
24 offense of voluntary manslaughter.

25 To prove voluntary manslaughter, the State must

1 prove beyond a reasonable doubt that the Defendant took
2 the life of another in the sudden heat of passion, based
3 on sufficient legal provocation.

4 Both heat of passion and sufficient legal provoca-
5 tion must be present at the time of the killing to con-
6 stitute voluntary manslaughter.

7 Sudden heat of passion may for a time affect a per-
8 son's self-control. It may temporarily disturb a per-
9 son's reason.

10 The sudden heat of passion must be of the type that
11 would make an ordinary person unable to cool and reflect
12 on his actions, and would produce an uncontrollable im-
13 pulse to do violence.

14 Sufficient legal provocation must be the type that
15 would make a person of ordinary reason and caution become
16 enraged and to lose control temporarily.

17 The provocation leading to voluntary manslaughter
18 must come from some act of or related to the victim.

19 Words alone, however vulgar or insulting, are not
20 enough to be legal provocation.

21 The exercise of a legal right, no matter how offen-
22 sive it is to another, is never sufficient legal provoca-
23 tion for voluntary manslaughter.

24 If the heat of passion has cooled or if there was
25 enough time between the provocation, if any, and the

1 killing for the passion of a reasonable person to
2 cool, it would not be voluntary manslaughter; the kill-
3 ing would not be voluntary manslaughter.

4 In deciding whether a reasonable person has had
5 enough time to cool off, you would consider all of the
6 surrounding circumstances in the killing.

7 You may consider the nature of the provocation, if
8 any, the Defendant's mental and physical state, and the
9 circumstances of the relationship between the parties.

10 That is the charge of murder and the lesser included
11 offense of voluntary manslaughter.

12 Again, ladies and gentlemen, if you find that the
13 death of the victim was not proximately caused by the in-
14 jury inflicted by the Defendant to the victim, you would
15 then consider assault and battery with intent to kill or
16 the lesser included offense of assault and battery of a
17 high and aggravated nature.

18 In order to prove assault and battery with intent to
19 kill the State must prove beyond a reasonable doubt that
20 the Defendant committed an unlawful act of a violent na-
21 ture to the person of another with malice aforethought.

22 An assault occurs when a person unlawfully at-
23 tempts or offers to commit a violent injury upon another
24 person and has the present ability to complete the at-
25 tempted injury.

1 An assault is the intentional creation of a reason-
2 able fear of immediate bodily harm. It is not necessary
3 that the attempted injury or the attempted harm actually
4 take place. This is the definition of an assault.

5 If I walk up to you to within an arm's reach of you
6 and I draw back to hit you, then that is an assault.

7 A battery is the unlawful touching of another by a
8 person who has committed an assault. The unlawful touch-
9 ing can be caused by a part of the accused's body or by
10 any object the accused may put in motion.

11 The battery is the completion of the assault by the
12 using of or apply force to another person, however slight,
13 in a rude, angry or resentful manner, without legal justi-
14 fication for doing so.

15 Using my earlier example to you, if I carry through
16 with the assault by hitting you, then that is the battery.

17 Malice, as I said before under the charge of mur-
18 der, is hatred, ill will or hostility toward another. It
19 is the intentional doing of a wrongful act without just cause
20 and excuse, and with an intent to inflict injury or under
21 circumstances that the law would infer an evil intent.

22 Again, malice aforethought does not require the mal-
23 ice to exist for any particular time before the act is
24 committed.

25 Malice must exist in the mind of the Defendant just

1 before and at the time the act is committed.

2 Therefore, there must be that combination of the
3 previous evil intent and the act.

4 For assault and battery with intent to kill, again
5 malice aforethought may be express or inferred.

6 A specific intent to kill is not enough for assault
7 and battery with intent to kill. There must be a general
8 intent to commit serious bodily injury. Intent means in-
9 tending the result which actually occurred, not accidental
10 or involuntary.

11 Intent may be shown by acts and conduct of the Defen-
12 dant under the circumstances, from which you may naturally
13 and reasonably infer intent.

14 Evidence of the character of the assault, the char-
15 acter of the instrument used, the manner in which it was
16 used, the purpose to be accomplished, and the resulting
17 wounds or injuries may be considered in determining the
18 intent with which the assault was committed.

19 Intent may be inferred when it is demonstrated that
20 the Defendant voluntarily and wilfully commits an act,
21 the natural tendency of which is to destroy another's
22 life.

23 Again, under the law that the greater encompasses
24 the lesser included offense, if you find that the State
25 has not proven the Defendant guilty of assault and

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1 battery with intent to kill, you must then determine whe-
2 ther the State has proved the Defendant guilty of assault
3 and battery of a high and aggravated nature.

4 Assault and battery of a high and aggravated nature
5 includes all of the elements of assault and battery with
6 intent to kill except malice aforethought.

7 In addition, the State must prove beyond a reason-
8 able doubt the circumstances of aggravation.

9 Circumstances of aggravation include but are not lim-
10 ited to the following:

11 The use of a deadly weapon.

12 The intent to commit a felony.

13 The infliction of serious bodily injury.

14 A great disparity in the ages or physical conditions
15 of the parties.

16 The purposeful infliction of shame and disgrace.

17 The resistance of lawful authority.

18 These are only examples of circumstances of aggrava-
19 tion.

20 That is the charge, ladies and gentlemen, on murder
21 and the lesser included offense of voluntary manslaughter.

22 Also, if you do not find the State has proved beyond
23 a reasonable doubt the injuries inflicted proximately were
24 the cause of death of the victim, you would consider as-
25 sault and battery with intent to kill and the lesser

1 included offense of assault and battery of a high and
2 aggravated nature.

3 As to all of these charges, the law of self-defense
4 may apply. I will now charge you the law of self-
5 defense.

6 The Defendant has raised the defense of self-de-
7 fense. Self-defense is a complete defense, and if it is
8 established you must find the Defendant not guilty.

9 The State has the burden of disproving self-defense
10 by proof beyond a reasonable doubt. If you have a rea-
11 sonable doubt as to the Defendant's guilt, after consid-
12 ering all the evidence, including the evidence of self-
13 defense, then you must find the Defendant not guilty.

14 On the other hand, if you have no reasonable doubt
15 as to the Defendant's guilt after considering all the evi-
16 dence, including the evidence of self-defense, then you
17 would find the Defendant guilty.

18 The following elements are required to establish
19 self-defense.

20 First, without fault -- the Defendant must be with-
21 out fault in bringing on the difficulty.

22 If the Defendant's conduct was the type which was
23 reasonably calculated to and did provoke a deadly assault,
24 the Defendant would be at fault in bringing on the diffi-
25 culty.

1 He would not be entitled to an acquittal based on
2 self-defense.

3 Contemptuous Language.

4 Self-defense is not available to a person who uses
5 language which is so contemptuous that a reasonable per-
6 son would expect it to bring on a physical encounter and
7 which can actually be a trigger to the physical encounter.

8 Second, Imminent Danger.

9 The second element of self-defense is that the De-
10 fendant was actually in imminent danger or death or ser-
11 ious bodily injury, or that the Defendant actually believed
12 he was in reasonable danger of death or serious bodily
13 injury.

14 If the Defendant was actually in imminent danger, it
15 must be shown that the circumstances would have warranted
16 a person of ordinary firmness and courage to strike the
17 fatal blow to prevent death or seriously bodily injury.

18 If the Defendant believed he was in imminent danger
19 of death or serious bodily injury, it must be shown that
20 a reasonable, prudent person, a person of ordinary firm-
21 ness and courage, would have had the same belief.

22 In deciding whether the Defendant actually was or
23 believed he was in imminent danger of death or serious
24 bodily injury, you should consider all the facts and cir-
25 cumstances surrounding the event, including the physical

1 condition and characteristics of the Defendant and of the
2 victim.

3 Right to Act on Appearance.

4 The Defendant does not have to show that he was act-
5 ually in danger. It is enough if the Defendant believed
6 he was in imminent danger, and that a reasonable and pru-
7 dent person of ordinary firmness and courage would have
8 the same belief.

9 The Defendant has the right to act on appearances,
10 even though the Defendant's belief may have been mistaken.

11 It is for you to decide whether the Defendant's fear
12 of being in danger of death or serious bodily injury was
13 reasonable, and that it would have been felt by an ordi-
14 nary person in the same situation.

15 Prior Difficulties.

16 Evidence of prior difficulties between the Defendant
17 and the victim may be considered in deciding whether the
18 threat existed and whether the Defendant had a reason to
19 believe a threat existed and how serious that threat was.

20 Size and Age.

21 The relative size, age and weight of a Defendant and
22 the victim may be considered in deciding the apparent or
23 actual need for force in self-defense, and the amount of
24 force needed.

25 Prior Knowledge About a Victim.

1 Prior instances of violence by a victim may be con-
2 sidered in deciding whether the Defendant actually believed
3 he was in imminent danger of death or serious bodily in-
4 jury or whether he was actually in imminent danger.

5 Intoxication.

6 The intoxication of the parties may be considered
7 whether the Defendant's fear of death or bodily harm was
8 real.

9 No Other Way to Avoid Danger.

10 The final element of self-defense is that the Defen-
11 dant had no other way to avoid the danger of death or of
12 serious bodily injury than to act as the Defendant did in
13 this particular case.

14 In Great Risk of Harm.

15 The Defendant had no means of retreat if by doing so
16 the danger of being killed or suffering serious bodily in-
17 jury would increase.

18 Defense of Third Person.

19 The law recognizes the right of every person to de-
20 fend himself or to defend a friend or relative from death
21 or serious bodily harm at the hands of another.

22 In doing so, a person may use such force as is rea-
23 sonably necessary, even to the extent of taking the life
24 of the assailant.

25 Degree of Force.

1 A person cannot be required to make an exact calcu-
2 lation as to the degree or amount of force that may be
3 needed to avoid death or serious bodily harm.

4 Therefore, in self-defense, the Defendant has a right
5 to use the force needed to avoid death or serious bodily
6 harm. The force used in self-defense does not have to be
7 limited to the degree or the amount of force used by the
8 victim.

9 The Defendant has a right to use so much force as
10 would appear to be necessary for complete self-protection,
11 and which a person of ordinary reason and firmness would
12 have believed to be necessary to prevent death or serious
13 bodily injury.

14 Continuing Until Threat of Harm is Ended.

15 If the Defendant is justified in defending himself or
16 others and in firing the first shot, then the Defendant
17 is also justified in continuing to shoot until it is ap-
18 parent that the danger of death or serious bodily injury
19 has completely ended.

20 Now, ladies and gentlemen, as to self-defense being
21 a complete defense, that is the law which applies to this
22 case.

23 I have referred to the Defendant primarily. However,
24 parts of that charge may in fact apply to the victim in
25 this case, as far as defense of a third person or the

1 defense of others.

2 So you need to consider all of the totality of the
3 facts and circumstances in determining whether or not
4 the element of self-defense or the element of the defense
5 of others would apply to the parties in this particular
6 case.

7 Ladies and gentlemen, I assure you that the end is
8 in sight, and you need to continue to give me your un-
9 divided attention before I go to the weapons charges in
10 the case.

11 I'm going to charge you the law in South Carolina
12 as well on citizen's arrest, being the right that a citi-
13 zen may have in making an arrest, a citizen's arrest.

14 There are statutes in South Carolina which address
15 that issue in Title 17 13 10 and Title 17 13 20.

16 Upon, A, a view of a felony committed, or, B, cer-
17 tain information that a felony has been committed, or,
18 C, a view of a larceny committed, any person may arrest
19 the felon and take him to a judge or magistrate to be
20 dealt with according to the law.

21 A citizen's arrest is unlawful unless a felony has
22 been committed, or if no felony has been committed.

23 Under 17 13 20, a citizen may arrest a person in the
24 nighttime by efficient means if the darkness and the prob-
25 ability of escape render it necessary, even if the life

1 of the person may be taken if the person has committed
2 -- when the person has committed a felony.

3 In order to invoke the defense of a justifiable kill-
4 ing, it must be shown that the felony has been committed
5 and that the shooter used reasonable means to effect the
6 arrest.

7 The determination of reasonable means depends upon
8 the totality of the facts and circumstances in the case,
9 even if -- even if it is later found that the person at-
10 tempting to make a citizen's arrest, or the person that
11 the arrestor is attempting to arrest did not commit a
12 felony.

13 The arrest would still be lawful if there was reason-
14 able cause for suspicion.

15 That is the law on citizen's arrest in South
16 Carolina, and I am now going to cover the law on posses-
17 sion of a weapon during the commission of a violent crime.

18 There is a statute in South Carolina, 16 23 490.

19 When a Defendant is charged with possession of a
20 weapon during the commission of or attempt to commit a
21 violent crime, the State must prove beyond a reasonable
22 doubt that the Defendant was in possession of a firearm
23 visibly displayed, or what appeared to be a firearm, dur-
24 ing the commission of a violent crime.

25 A firearm means a machine gun, revolver, pistol or

1 any weapon which will, is designed to or may be readily
2 converted to expell a projectile.

3 In order to find a Defendant guilty of possession
4 of a weapon during the commission of a violent crime, you
5 must first find the Defendant guilty of either committing
6 or attempting to commit a violent crime.

7 I charge you that murder, voluntary manslaughter,
8 and/or assault and battery with intent to kill are vio-
9 lent crimes.

10 Assault and battery of a high and aggravated nature
11 is not classified in South Carolina as a violent crime.

12 The Defendant is also charged with carrying a pis-
13 tol or a firearm onto a business selling alcoholic liquor,
14 beer or wine, for on-premises consumption.

15 It is unlawful for a person to carry a pistol or a
16 firearm into a business which sells alcohol liquor, beer
17 or wine for on-premises consumption, or consumption on
18 the premises.

19 That is the charge in that regard to the Indictments
20 which the Defendant has been indicted for.

21 Finally, ladies and gentlemen, I will cover the
22 forms of the verdict in this particular case.

23 Once again, ladies and gentlemen, you cannot allow
24 yourselves to be governed by sympathy or prejudice or
25 passion or emotion or any other arbitrary factors that

1 are not in evidence in this particular case.

2 Both the State and the Defendant have a right to ex-
3 pect that each of you will carefully and impartially con-
4 sider all the evidence in this case, and that you will
5 follow the law as I have explained it to you.

6 Mr. Foreman, ladies and gentlemen, you will have all
7 the items of evidence that have been introduced during
8 the course of the trial in the jury room with you, and,
9 additionally, you will have the verdict form.

10 I think that it is self-explanatory, but I will go
11 over it very briefly with you here in the Courtroom, with
12 the Indictment numbers and the lesser included offenses.

13 I will begin with the charge in Indictment 2010 GS
14 32 2318, which is for murder.

15 You have three choices as to the crime of murder, Mr.
16 Foreman, and the order in which I have them listed on the
17 paper has no significance whatsoever, as one must be
18 listed first.

19 It states, we, the jury, by unanimous consent, find
20 the Defendant guilty of murder, guilty of voluntary man-
21 slaughter, or not guilty.

22 If, after your deliberations and your view of the
23 evidence you determine that the State has proven to you
24 its case beyond a reasonable doubt as to murder, proven
25 each and every element of murder beyond a reasonable

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1 doubt, you would reach a unanimous verdict of guilty of
2 murder.

3 So then, Mr. Foreman, if you would check to the
4 left of guilty of murder, circle the check mark by those
5 three words, guilty of murder.

6 If, after your deliberations and your view of the
7 evidence you determine that the State has not met its
8 burden of proof in the case beyond a reasonable doubt as
9 to murder, but has met its burden of proof beyond a rea-
10 sonable doubt as to the crime of voluntary manslaughter,
11 by unanimous consent, I would ask you to check to the left
12 of the form by guilty of voluntary manslaughter, and to
13 circle the check mark and those words, those four words.

14 If you find based upon your view of the facts that
15 the State has failed to prove its case as to murder, and
16 has failed to prove its case as to voluntary manslaughter,
17 you would find the Defendant not guilty, and check to the
18 left and circle those two words, not guilty.

19 Now, if that decision is based on proximate cause,
20 and it is your view of the facts that the State has failed
21 to prove that the death of the victim was proximately
22 caused from the injuries inflicted by the Defendant upon
23 the victim, you would consider the second, we, the jury,
24 by unanimous consent, find that the Defendant's actions
25 were not the proximate cause of the death of the victim,

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1 then, by unanimous consent, you would find the Defendant
2 not guilty of assault and battery with intent to kill,
3 or guilty of assault and battery of a high and aggravated
4 nature, or not guilty, again based upon your view of the
5 evidence, your determination of the evidence. That must
6 be unanimous.

7 Now, during your deliberations on murder and the
8 lesser included offense of voluntary manslaughter, you
9 would take into account those charges as to criminal in-
10 tent, my instruction as to self-defense, my instructions
11 as to citizen's arrest, and all the general instructions
12 as I have given you on the criminal law in South Carolina.

13 Those instructions would also apply to assault and
14 battery with intent to kill and to assault and battery of
15 a high and aggravated nature.

16 If you find the Defendant guilty of assault and bat-
17 tery of a high and aggravated nature or voluntary manslaugh-
18 ter, or murder, those are violent crimes, and under In-
19 dictment Number 2011 GS 32 01440, possession of a weapon
20 during the commission of a violent crime, and the State
21 has proven all the elements of that, you have the option
22 to find the Defendant guilty or not guilty.

23 Again, on the carrying of a pistol on the premises of
24 a business which has on-premises consumption of liquor,
25 beer or wines, you would find the Defendant guilty or not

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1 guilty. You would check what is your verdict, and then
2 you would circle the check and those words, and then
3 sign and date it.

4 Ladies and gentlemen, your verdict must be the unani-
5 mous verdict of all of you. When the jury has agreed upon
6 your verdict and you have filled out the form, Mr. Fore-
7 man, please sign and date it.

8 You would then knock on the jury room door and then
9 inform the Bailiff that you have reached a verdict. At
10 that time, we will receive you back into the Courtroom.

11 Momentarily, I want to ask you to go to your jury
12 room. The law requires that I must speak one final time
13 with the attorneys outside of your presence. I'm not sure
14 how long that will go on, four minutes or four hours or
15 four days, but we do have to cover something.

16 I will allow you to take your notes this time with
17 you but do not begin your deliberations until you are told
18 to do so by the Clerk or the Bailiff.

19 If you have any questions, Mr. Foreman, during the
20 course of your deliberations, please write me out a note,
21 knock on the jury room door, and your fine Bailiff will
22 bring that to my attention.

23 Also, the attorneys have informed me that they will
24 have equipment available for you to use to view the video-
25 tapes which were introduced into evidence. I understand

1 Mr. West will be available to operate that equipment for
2 your viewing, if that becomes necessary.

3 With that being said, if you would now go with your
4 Bailiff to your jury room.

5 (Jury excused from Courtroom)

6 THE COURT: All right, Solicitor.

7 SOLICITOR: Your Honor, I did not hear the right to
8 resist an illegal arrest.

9 THE COURT: All right. I'll look at that.

10 Anything further?

11 SOLICITOR: No, sir.

12 THE COURT: It was all paper-clipped together as I
13 read it.

14 Mr. Floyd?

15 MR. FLOYD: Of course, Your Honor, we object to it,
16 to any emphasis being placed on it.

17 THE COURT: I'll be glad to recharge self-defense. I
18 will just recharge all of self-defense, all the law on that.

19 MR. FLOYD: Your Honor, we object to your failure to
20 charge involuntary manslaughter.

21 THE COURT: Anything else?

22 MR. FLOYD: No, sir.

23 THE COURT: All right.

24 SOLICITOR: Your Honor, another thing, and I know it
25 was just a matter of speech, but I believe Mr. West will

1 show them how to work it and not operate it for them.

2 THE COURT: Well, when I said that, I wasn't sure
3 what you all had agreed on, although I know he would not
4 be allowed to be in the jury room.

5 SOLICITOR: I think what he told me he would try to
6 do was try to type up directions on how to do it but he
7 would be available if need be.

8 THE COURT: All right. He could show them how to
9 play it, I guess.

10 SOLICITOR: And, Your Honor, we need to go through
11 the evidence.

12 THE COURT: Yes, sir.

13 Bring the jury, please.

14 (Jury returned to Courtroom)

15 THE COURT: All right. Ladies and gentlemen, please
16 give me your undivided attention. I do not think this
17 will take very long.

18 I am going to review with you again my charge on
19 citizen's arrest.

20 Upon, A, a view of a felony committed, or, B, cer-
21 tain information that a felony has been committed, or,
22 C, a view of a larceny committed, any person may arrest
23 a felon and take him to a judge or magistrate to be dealt
24 with according to the law.

25 Under South Carolina Code 17 13 10.

1 A citizen's arrest is unlawful unless a felony has
2 been committed.

3 Under Section 17 13 20, the citizen may arrest
4 a person in the nighttime by efficient means if the dark-
5 ness and the probability of escape render it necessary,
6 even if the life of the person may be taken when the per-
7 son has committed a felony.

8 In order to invoke the defense of a justifiable kill-
9 ing under these circumstances, it must be shown that a
10 felony has been committed and that the person attempting
11 to make the arrest used reasonable means to affect the
12 arrest.

13 The determination of reasonableness depends upon the
14 totality of all of the facts and circumstances in the
15 case.

16 A citizen is not required to submit to an illegal
17 arrest and may use as much force as is reasonably neces-
18 sary to prevent an unlawful arrest.

19 Under the law, a person has a right to resist an
20 unlawful arrest by force if such be necessary. In so
21 doing, he may use such force as is apparently necessary
22 to regain his liberty if such be necessary.

23 To justify the use of force in resisting an arrest,
24 it is not necessary that a person show he had no opportu-
25 nity to retreat or escape. He may stand on his right and

1 use such force as may be apparently necessary to repel
2 an unlawful arrest or detention or interference with his
3 person, provided such force is reasonable in degree and
4 kind, even if it is later found the person attempting to
5 make the arrest against the person they are attempting to
6 arrest did not commit a felony.

7 The arrest would still be lawful if there was reason-
8 able cause for suspicion that the felony was committed.

9 That is the charge on citizen's arrest.

10 I may have mis-spoke one time in my charge as to
11 possession of a firearm during the commission of a vio-
12 lent crime.

13 I would restate that murder is a violent crime, vol-
14 untary manslaughter is a violent crime, and assault and
15 battery with intent to kill is a violent crime.

16 Assault and battery of a high and aggravated nature
17 is not classified as a violent crime in South Carolina.

18 You may recall or may not recall during the course
19 of the trial I gave you certain instructions concerning
20 firearms and ammunition. You will have the weapon in
21 there with you with the gunlock or cable lock.

22 Mr. Foreman, if you wish the ammunition, knock on
23 the door and let the bailiff know. The gun will come out
24 and the ammunition will come in.

25 They will not be in there together at any time.

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1 Mr. Foreman and ladies and gentlemen of the jury, on
2 my form of the verdict I changed it a little bit. It is
3 still very similar to what I explained.

4 You have the indictment number as to murder on the
5 left, and it will be, we, the jury, by unanimous consent,
6 find the Defendant either guilty of murder, guilty of
7 voluntary manslaughter, guilty of assault and battery
8 with intent to kill, guilty of assault and battery of a
9 high and aggravated nature, or not guilty.

10 That will be the various potential verdicts listed
11 under that particular indictment.

12 Finally, ladies and gentlemen, I had mentioned to
13 you that Agent West would set up the video, but what he
14 has done is type out a list of instructions.

15 The first instruction is find the most, quote, tech,
16 unquote, interested person to operate. That is on the
17 explanation, and as you go through I believe you all will
18 be able to manage this.

19 Should you not be able to, please let me know. I
20 assure you by letting me know you will not have found the
21 most tech interested person, but I will make that person
22 available for you.

23 That person may not be in your jury room during your
24 deliberations, and maybe I'll get in trouble while I'm
25 saying this, but you will have the instructions with you.

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1 All right. Again go to your jury room and do not
2 begin your deliberations until you are instructed to do
3 so.
4 Thank you very much.
5 (Jury excused from Courtroom)
6 THE COURT: All right, any exceptions, Solicitor?
7 SOLICITOR: No, Your Honor.
8 THE COURT: Mr. Floyd?
9 MR. FLOYD: No, Your Honor.
10 THE COURT: All right. If you all would check the
11 evidence, please. Have you all checked the evidence?
12 SOLICITOR: Yes, sir.
13 THE COURT: Mr. Floyd?
14 MR. FLOYD: Yes, Your Honor.
15 THE COURT: And have you checked the instructions
16 of Mr. West?
17 MR. FLOYD: I haven't, but I'm sure there is no prob-
18 lem with it.
19 THE COURT: Then I'm going to bring the Alternates
20 out and request they be sequestered in separate jury rooms.
21 Then we will await the jury verdict.
22 MR. FLOYD: Thank you, Your Honor.
23 (Whereupon, the alternates were removed from the
24 jury room and sequestered, and the jury panel was taken
25 the evidence and requested to commence with their

1 deliberations.)

2 (Whereupon, the Court stood at ease awaiting the
3 jury's verdict)

4 (The matter was thereafter resumed)

5 THE COURT: They want the charge. I don't have any
6 objection to it as long as you all consent.

7 MR. FLOYD: We would have no problem with it.

8 SOLICITOR: Do you want us to make another copy?

9 THE COURT: If you could do that. I write on mine
10 and I'm going to have to clean it up a little bit.

11 It will take me a while.

12 SOLICITOR: We can get a copy of it. That's okay.
13 Judge.

14 THE COURT: We'll send it on back.

15 (Another recess taken while waiting on the jury, and
16 the matter was resumed)

17 THE COURT: Before I bring in our jury, I want to re-
18 mind all of the spectators in the Courtroom that many
19 times the taking of the verdict can be a very emotional
20 point in the trial for one side or the other, or for both
21 sides.

22 I do not condone, nor do I tolerate, any outbursts
23 or any show of emotion in any manner. If you feel you
24 cannot control your emotions, I will ask you to please
25 leave at this time because I will direct the Sheriff to

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1 take any individual into custody that shows any display
2 of emotion that I consider to be inappropriate. Afterward,
3 we will have a hearing to determine whether or not they will
4 be held in contempt.

5 Again, if you feel you cannot contain your emotion
6 I would ask you to leave at this time.

7 All right, please bring us our jury.

8 (Jury returned to Courtroom at 6:45 P.M.)

9 THE COURT: All right, Mr. Foreman, have you reached
10 your verdict?

11 FOREMAN: We have.

12 THE COURT: Please pass it up by the Baliff.

13 (Verdict exhibited to the Court)

14 THE COURT: All right. The verdict form appears to
15 be in proper form and is signed by our Foreperson, dated
16 with today's date.

17 Madam Clerk, you may publish the verdict, please.

18 CLERK: Yes, sir. Indictment Number 2010 GS 32 2318,
19 The State versus Andrew Torrence, Junior, as to murder,
20 by unanimous consent, find the Defendant guilty of volun-
21 tary manslaughter.

22 Indictment Number 2011 GS 32 01440, as to possession
23 of a weapon during a violent crime, we, the jury, by unan-
24 imous consent, find the Defendant guilty.

25 Indictment Number 2011 GS 32 011444, as to

1 unlawful carrying of a pistol or firearm onto premises of
2 business selling alcohol liquors, beers or wines for on-
3 premises consumption, we, the jury, by unanimous consent,
4 find the Defendant guilty.

5 And it is signed by the Foreperson, dated June 3, 2011.

6 Mr. Foreman, ladies and gentlemen of the jury, if these
7 are your verdicts, please indicate, each of you, by rais-
8 ing your hand, please.

9 All jurors have so indicated.

10 THE COURT: Thank you very much, Madam Clerk.

11 The alternates have rejoined their fellow jurors, as
12 they were sequestered in a separate room during the delib-
13 erations in this case.

14 Is there anything further for the Jury from the
15 State?

16 SOLICITOR: No, Your Honor.

17 THE COURT: From the Defendant?

18 MR. FLOYD: I would request polling.

19 THE COURT: Thank you very much, Mr. Floyd.

20 Madam Clerk, if you would explain that procedure to
21 the jury and then poll them.

22 CLERK: Yes, sir, Your Honor.

23 As I call your name, if you'll hold up your hand so
24 I can recognize you, please.

25 I will ask you a two-prong question as to the verdicts.

1 Were these your verdicts and are they still your verdicts.
2 If you will please respond at that time.
3 THE COURT: Your response, of course, is either yes or no.
4 (Whereupon, the jurors were polled individually, as
5 each juror answered in the affirmative as to both questions
6 by the Clerk.)
7 CLERK: The jury has been polled, Your Honor.
8 THE COURT: Thank you, Madam Clerk.
9 Is there anything further from the jury for the De-
10 fense, Mr. Floyd?
11 MR. FLOYD: Not for the jury, Your Honor.
12 THE COURT: Thank you very much, Mr. Floyd.
13 All right, ladies and gentlemen, momentarily I will
14 release you from your jury service for whatever little
15 bit of the week it makes.
16 Thank you very much for your service this week and
17 your duty. It has been my please and privilege to be with
18 you this week.
19 You are disqualified from jury service for the re-
20 mainder of this year as far as the State Circuit Court
21 of Record.
22 You would have an additional two year exemption for
23 2012 and 2013.
24 Should you be recalled for jury duty and you wish
25 to exercise that exemption, you can certainly do so for

1 the State Circuit Court of record.

2 Momentarily, I'm going to hear from the De-
3 fense and thereafter I will impose sentence on Mr.
4 Torrence. You may remain for that proceeding if you
5 choose to do so.

6 However, you may be excused if you choose to leave.
7 Thank you very much.

8 Mr. Foreman, I do need you to meet momentarily with
9 the Clerk of Court to conform the verdicts on the In-
10 dictments themselves, with consent.

11 Again, it has been my pleasure and privilege to be
12 with you this week.

13 Also, ladies who were Alternates in this case, thank
14 you very much as well for your service this week. I real-
15 ize you were not part of the deliberations. However, I
16 did require you all to remain and appreciate your service
17 very much also.

18 (Whereupon, the jury was excused by the Court)

19 THE COURT: All right, Mr. Floyd.

20 MR. FLOYD: Thank you, Your Honor. If I could put
21 something on the record first?

22 My time may be off on this, but at approximately
23 4:40 P.M. the jury sent out a question to the Court as to
24 whether or not they could consider the crime of involun-
25 tary manslaughter.

1 We were in your Chambers when the question was ad-
2 dressed.

3 At that time, we requested that Your Honor charge
4 them on the crime of involuntary manslaughter since they
5 seemed to be considering that by their request.

6 Your Honor, the concern that I have with it is that
7 there is no question that the jury gave indication that
8 they were kind of stuck in a box.

9 It appears from the question, at least to me, that
10 they did not feel that the -- that there was proximate
11 cause between the incident and the death and that's why
12 they did want to go down below some type of manslaughter.

13 That they felt that this was not a case of voluntary
14 manslaughter and that they felt involuntary manslaughter
15 would be an appropriate charge. Of course, when they did
16 not have that option, then their only option was to find
17 he was not guilty or go back up to the voluntary man-
18 slaughter charge.

19 For this reason, we would move for a new trial in the
20 matter.

21 In addition, Your Honor, we would renew all motions
22 that were made at the conclusion of the State's case, at
23 the conclusion of the entire case. We would renew all of
24 those motions and respectfully request that the Court con-
25 sider those motions.

1 We would, of course, renew our objections to the
2 Court's refusal to charge involuntary manslaughter, which
3 we requested in our charge conference.

4 For all these reasons, we would move that the ver-
5 dict be set aside and that Mr. Torrence be granted a new
6 trial.

7 THE COURT: Thank you very much, Mr. Floyd.

8 I received two notes from the jury. One when they
9 first went out, requesting a copy of the charge, which
10 I did send in.

11 I sent it in with the consent of the Solicitor and
12 you.

13 MR. FLOYD: That's correct.

14 THE COURT: I have the note and will have it marked
15 a Court's Exhibit, Court's Exhibit 1.

16 REPORTER: Yes, sir.

17 THE COURT: The other note that I received -- and I
18 do not question the time at all. I wasn't clock-watching
19 at the time.

20 The note reads, is there a possible charge of invol-
21 untary manslaughter, end quote, and my response, as I in-
22 dicated to you and the Solicitor was going to be, and it
23 was: No, involuntary manslaughter is not an issue before
24 the jury, and signed by myself.

25 I will have this marked as Court's Exhibit Number 2.

1 Again, I would note that there is evidence upon which
2 the charge of voluntary manslaughter would be appropriate
3 in this case. I do not think the Defendant was acting
4 lawfully, and his testimony was such that he intentionally
5 fired the weapon twice.

6 His position was that it was in self-defense. It may
7 have been that the jury found that it was not the appro-
8 priate thing, that it was discharged in sudden heat of
9 passion with sufficient legal provocation.

10 The real issue was in my opinion the issue of reason-
11 ableness of the total thing. I think the verdict was
12 appropriate, and I would deny your motion.

13 I do not think the facts support a charge of invol-
14 untary manslaughter. I am sure you are protected on the
15 record in that regard.

16 I would deny pre-trial motions as to the previous
17 issues that have been brought to the attention of the
18 Court.

19 Any other motions, Mr. Floyd?

20 MR. FLOYD: No, Your Honor.

21 THE COURT: All right, any reason, Mr. Floyd, that
22 sentence should not be imposed at this time?

23 MR. FLOYD: No, Your Honor.

24 THE COURT: Thank you. Come around, please, Mr.
25 Torrence.

1 (Defendant coming before the Court with counsel)
2 THE COURT: Anything further, Mr. Floyd?
3 MR. FLOYD: Nothing further.
4 THE COURT: Anything further from the State before
5 sentencing, Solicitor?
6 SOLICITOR: Your Honor, we do have some -- we have
7 two persons who wish to be heard.
8 THE COURT: All right, I'll be glad to hear from them.
9 SOLICITOR: As far as his prior record, as has al-
10 ready come out, Your Honor, he has a prior conviction in
11 2005 for trespassing, and then as Your Honor is aware he
12 has the conviction for assault, second, for assaulting
13 and breaking a correctional officer's nose. That inci-
14 dent date was June 26, 2010. He pled to in front of Your
15 Honor this year.
16 THE COURT: Thank you, Solicitor.
17 SOLICITOR: Your Honor, this is Catherine Chaplin,
18 the mother of Mr. Chaplin.
19 THE COURT: All right, Mrs. Chaplin. Is that cor-
20 rect, maam?
21 MRS. CHAPLIN: Yes, sir.
22 THE COURT: Mrs. Chaplin, I'll be glad to hear from
23 you.
24 MRS. CHAPLIN: I tried many years to become a parent,
25 and on September 11, 1977, Zachariah Chaplin made me a

1 mother. He was my parents' first grandchild and my sib-
2 lings were thrilled to become aunts and uncles.

3 Zach blessed me with two beautiful grandchildren, and
4 the smile on his face whenever he was with them was brighter
5 than the sun.

6 As a child at bedtime, I sang to him his favorite lull-
7 aby, You Are My Sunshine, and even as an adult he would
8 still ask me to sing it again.

9 At the funeral, I had my final fifteen minutes with
10 my Zach and thanked God. I talked to him and I sang, You
11 Are My Sunshine.

12 For the last time I kissed his cheek, and I left my
13 baby in the hands of God, as a result of the choice the
14 Defendant made.

15 I respectfully request that he be punished to the
16 fullest extent of the law.

17 Thank you.

18 THE COURT: Thank you, Mrs. Chaplin.

19 Do you have another witness, Solicitor?

20 SOLICITOR: Yes, sir.

21 THE COURT: I'll be glad to hear from her.

22 SOLICITOR: I believe Ms. Muszynski would like to ad-
23 dress the Court also.

24 THE COURT: Yes, maam.

25 SISTER: Thank you. Twenty years before this terrible

1 event, I was kidnapped and assaulted by a convicted rap-
2 ist. At my attacker's sentencing, I chose not to speak
3 because I didn't have the words.

4 Today I am at a loss today as I am compelled to
5 speak on behalf of Zach Chaplin.

6 As a mother, I have empathy for the Torrence family.
7 Also, I have deep grief for Zach's mother, uncle and
8 daughters who will never see how great their dad was.

9 I think Drew's testimony and the story he created
10 exemplify his narcissistic and self-righteous character.
11 He could have chosen not to take the stand but instead he
12 made an oath on the Bible and lied.

13 On the night of the shooting, he provoked and bul-
14 lied everyone he could. Zach drew a line in the sand and
15 Drew crossed it.

16 Drew pushed and pushed, and Zach knocked him down,
17 and he then pushed some more by getting his gun and com-
18 ing back in to bully some more.

19 In my position under the pool table I was terrified
20 for Zach, lying there motionless on the floor, as well as
21 for my own life.

22 Drew did nothing to help him. His time in talking
23 with him was still only that of a bully.

24 I was helpless to go to Zach to help him, for fear
25 that Drew would shoot me too.

1 Drew Torrence pushes every opportunity he is given
2 over the line. People like him only learn how to better
3 escape the law for the next crime.

4 Even after killing a man, he continued to spit in
5 the eye of the law.

6 I ask you to impose the maximum sentence on this
7 coward who has no respect for people, our inalienable
8 rights, or the officials who protect us.

9 Thank you.

10 THE COURT: Thank you, Ms. Muszynski.

11 Anything further, Solicitor?

12 SOLICITOR: No, Your Honor.

13 THE COURT: Thank you.

14 Mr. Floyd.

15 MR. FLOYD: Thank you, Your Honor. I certainly do
16 not want to rehash the facts of the case. Certainly you
17 have listened to the case, and you know the circumstances
18 of the shooting.

19 Mr. Torrence is before you for punishment. He does
20 not have much of a record before you, and until this in-
21 cident happened all he had was a trespassing offense on
22 his record.

23 He has lived with this every day. These people who
24 have spoken don't see him every day. They don't know what
25 it has done to him. I think it has changed his life

1 immensely also and that of his family. It has just been
2 terrible for everybody.

3 We ask Your Honor to consider a reasonable sentence
4 for him. The jury has spoken and we can't go against
5 what they have said.

6 I can't help but think though that with their re-
7 questing this charge of involuntary manslaughter that that
8 was where they wanted to go.

9 Drew was drinking and things happened that night and
10 morning that wouldn't ordinarily have happened otherwise.
11 He did what he did.

12 We would ask Your Honor to consider a reasonable sen-
13 tence. He has a lot of good, strong family support, and
14 he needs their support.

15 I think some of them would like to speak with you,
16 Judge, as well.

17 THE COURT: I'll be glad to hear from anyone as well
18 as from Mr. Torrence.

19 MR. FLOYD: Thank you.

20 THE COURT: If you would state your name, please.

21 MRS. TORRENCE: My name is Brenda Torrence, and I am
22 Drew's mother.

23 THE COURT: I will be glad to hear from you, Mrs.
24 Torrence.

25 MRS. TORRENCE: Much like Mrs. Chaplin, we struggled

1 to have a child ourselves, and after over ten years of
2 marriage we adopted Drew.

3 We adopted him as a newborn. He came home to us
4 when he was five days old. We have been his mother and
5 his father every day right up until this very second, and
6 we will continue to be until we breathe our last breath.

7 As most children are, you have times when you have
8 difficulties with them. You try to bring them up in the
9 way they should go and sometimes they depart from that,
10 and that can be said for both sides' children, Zach
11 Chaplin and Drew Torrence.

12 I can tell you that he made a very big error in his
13 selection of friends, the places he went, things he did.
14 I know that.

15 He is sorry for that and he has been. When we paid
16 the money to bond him out on December 3rd of 2008, I
17 spent hours watching him pace the floor all night long.

18 He didn't sleep. The next morning I would find him
19 sitting in his room on the side of his bed, and he would
20 burst into tears as I held him, and all he said was why.
21 Why, mom, why did he charge me?

22 Why, mom, why didn't he accept the medical help that
23 was available to him?

24 I don't have answers for that. I don't have answers
25 for any of this.

1 All I can tell you is that we love our son uncondi-
2 tionally. We could have stood up here and we could have
3 tried to introduce negative evidence, if you will, or
4 negative character information against many of the witnes-
5 ses, against the victim himself. We chose not to do that.
6 Drew asked us not to do that.

7 Have we been angry with the prosecution and the Soli-
8 citor's Office? Yes, we have.

9 Drew's response to me last night was, mom, calm down;
10 they're just doing their job.

11 Drew was a loving individual. I have seen him give
12 up his own money, money he didn't really have, because
13 he never has had a high-paying job -- giving it to people
14 who has needed it, needed help.

15 The Christmas Drew came home after being bonded out,
16 he spent Three Hundred Dollars on a family where the mom
17 didn't have a job and there was a three year old boy.

18 I have seen him have me take money to inmates who
19 needed it for wives or children because they didn't have
20 money.

21 I have made phone calls for people from the jail be-
22 cause they didn't have phone accounts. They couldn't
23 afford it, and this was all at Drew's request.

24 I understand the seriousness of this charge. I do.
25 We have lived through this agony and the death along with

1 Drew since the moment this happened.

2 You are going to be the one to sentence our son, and
3 I understand that, but I am asking you for mercy. He did
4 make a major mistake.

5 He said on the stand yesterday it was the worst mis-
6 take of his life. In a thousand years he never expected
7 to happen what happened.

8 We have prayed for God's mercy. I ask you for your
9 mercy as well for our son.

10 Thank you.

11 THE COURT: Thank you, Ms. Torrence.

12 State your name, please, sir.

13 MR. TORRENCE: Andrew Torrence, Senior.

14 THE COURT: I'll be glad to hear from you.

15 MR. TORRENCE: Your Honor, it has been over twenty-
16 seven years since I've had a drink, and I used to do that.
17 I've been in many places, and at any time anybody started
18 anything in that business usually I would try to stop it
19 before it exploded any further.

20 You know, this thing had to originate somewhere, and
21 if I come in here saying things to people you will have
22 me removed because you are running a business place, and
23 it is the law that somebody, if you serve him this much
24 alcohol and something happened, somebody should be re-
25 sponsible.

1 I know that's the way it used to be. Maybe it has
2 changed now.

3 You know, there were a lot of things that could have
4 been said by other people. I know my son took in a gun
5 and things happened, and I'm just thankful to the Lord
6 that nothing like that happened with me; that I had a sec-
7 ond chance.

8 I know my son goes over this in his mind every day,
9 and he will for the rest of his life. I know he's a grown
10 man, and he made a wrong decision. I don't agree with
11 what he did, but I don't think that he intended for any
12 of this to happen. He will spend the rest of his life
13 with this.

14 Everything is not right with this thing. I mean,
15 it's just not right.

16 If you came to me right now and found cocaine in my
17 pocket, what would you do to me? I mean, that's what I
18 am trying to say. Things are not right with this thing.

19 I see people all the time who make mistakes with al-
20 cohol, and I am asking you in behalf of my son to have
21 mercy on him and take in consideration that I will never
22 believe that Zach Chaplin wouldn't be here today if he
23 had cooperated with the doctors.

24 That's what I believe, and I am asking you to have
25 mercy on him, Judge.

1 Thank you very much.

2 THE COURT: Thank you, Mr. Torrence.

3 Tell me your name.

4 WITNESS: Micah Merchant. I am the pastor of the
5 Torrences' church that they go to.

6 I have known Drew since I was seventeen years old
7 but I wouldn't say I considered him a friend until the
8 last two years, in which he has found himself in this
9 trouble.

10 I have started meeting with him on a weekly basis on
11 Tuesday nights to try to help him make sense of everything
12 that's going on in his life.

13 Since that time, he and I have become friends. I
14 cannot speak necessarily to the decision he made on that
15 night. I haven't been here for the rest of the trial.

16 I do believe he acted in self-defense, and I believe,
17 as he has mentioned, that he made a terrible decision,
18 going into that bar with -- a terrible decision to go in
19 that bar, period, but I know Drew's heart now and I've
20 known it for two years.

21 He is a kind person to me. He is not malicious. He
22 is a caring person. He gives what he doesn't even have.
23 That's not a trait you learn. It's something that is
24 inside of you.

25 He has been a good friend to me, probably a better

1 friend than I've been to him.

2 I would simply ask for your grace and mercy for
3 Drew. I spoke to him a little bit earlier about
4 the situation.

5 I don't have any expertise but the situation from
6 my perspective is like me looking at God and telling him
7 that he's culpable for my bad decisions. For this indi-
8 vidual to refuse medical treatment, Drew shouldn't be
9 punished for the decision he made.

10 But to the fullest extreme, I just don't see him
11 as being culpable as to that.

12 I would just ask for a little bit of grace and mercy,
13 a little bit of compassion, from Your Honor.

14 I also would like to say that I am sorry to the vic-
15 tim's family. Sorry for their loss and I hope that they
16 can grieve properly. I'm sorry for what happened to their
17 son.

18 Thank you.

19 THE COURT: Thank you. Thank you for being here,
20 Pastor.

21 WITNESS: Your Honor, I am (inaudible). I am Drew's
22 aunt.

23 I would just like to ask for the Court to have mercy
24 for Drew. I am not sure he has always made the right
25 decisions but I know he has a big heart.

738

1 I know he did not make a right decision by going in
2 there that night. I fully believe that he did go in to
3 just hang out, as he said earlier.

4 I have talked with Drew through the years, and I know
5 he is deeply a very good person. He has compassion for
6 people, Drew's family and Drew's friends.

7 I just ask that you have mercy on him.

8 Thank you.

9 THE COURT: Thank you.

10 (Other persons speaking in behalf of Mr.
11 Torrence)

12 MR. CHAVIS: Your Honor, my name is Butch Chavis. I
13 have known Drew since Drew was five years old.

14 Drew is a good person. Drew does have a big heart,
15 and he does things for other people.

16 Drew has made, as we know here from listening to
17 this trial -- we do know that Drew has made some decis-
18 ions that go against the grain of probably everybody in
19 here, a very bad decision.

20 The decision he made on that night in September was,
21 no doubt, the worst decision anyone could make or that he
22 will make in his life. That decision not only caused him
23 grief but caused his whole family grief and another family
24 grief.

25 What we need to understand here is that Drew was a

1 victim himself. Drew was somewhere he shouldn't have been,
2 but Drew had also been assaulted. Drew also had come
3 back to try to, in his opinion, arrest individ-
4 uals who had attacked him.

5 We all saw the video. We saw this. We saw that Drew
6 was attacked again.

7 Mrs. Chaplin went into how Drew could have left and
8 went on, but Mr. Chaplin could have went on too, but he
9 ran from the bar.

10 But he also to come back, and he also chose to throw
11 the barstool across the room to hit Drew and charged him.
12 That was his choice, not Drew's.

13 Drew was acting in a manner that I think any male
14 adult would act. Whether he was acting in self-defense
15 I can't say because I wasn't there that night.

16 One thing you need to take into account is that Drew
17 -- if Drew went in there to kill somebody, there would
18 have been more than one person dead because he did have
19 thirteen rounds in that gun.

20 But he did not -- after we saw the video and after
21 the shooting, Drew was not brandishing the weapon. He was
22 not threatening anybody. He was not a threat.

23 He did answer the phone. He did ask for help. The
24 things that Drew did is not something you would expect
25 if he had intended to murder him.

1 He is not the murderer that the Solicitor has tried
2 to make him out to be. He made a bad decision which is
3 something he will have to live with the rest of his life
4 as well.

5 Just like the others, I would ask that you take com-
6 passion and have mercy on Drew, and if you would, be the
7 one to grant Drew Torrence a second chance.

8 That's all we can ask of you, and we thank you for
9 your time. I certainly do thank you for the way you have
10 conducted this trial. I certainly appreciate that. It
11 is something I never have been involved with before, and
12 again I do thank you for the manner in which you have con-
13 ducted it.

14 I would ask that you extend some compassion and mercy,
15 if you would.

16 Thank you.

17 THE COURT: Thank you.

18 Anything you wish to say, Mr. Torrence?

19 DEFENDANT: Yes, Your Honor. I would tell everybody
20 that is the worst decision I've made in my life. I should
21 never have gone back into that bar. Never. I should
22 have never gone back in. I should have waited for the
23 police to come, but that did not happen.

24 I ask for your mercy. I ask for you to just give me
25 your mercy.

1 That's all I have to say. I know you are wonder-
2 ing what happened because you wasn't there, but I was
3 wrong for going back into the bar.

4 THE COURT: Thank you, Mr. Torrence.

5 Anything further, Mr. Floyd?

6 MR. FLOYD: Your Honor, Mr. Torrence didn't say any-
7 thing about this, but Mr. Torrence wrote a letter to Mrs.
8 Chaplin. He has instructed me not to give it to her un-
9 til after this trial was over because he didn't want her
10 to think he was sending her this letter to better his pos-
11 ition, get compassion from her.

12 But it is a very heart-felt letter in which he ex-
13 presses his remorse for what has happened and for her
14 loss of Zach.

15 I think it shows that he cares and that he is very
16 sorry for what happened, from the fact that he would not
17 let me give it to her until this was over. That gives
18 weight that it was very heart-felt, that he wanted me to
19 wait to give it to her.

20 He knows he made some very bad choices that night,
21 and I suggest that the video demonstrates that he did not
22 intend to go in there and kill anybody.

23 We ask that you take all of that into consideration,
24 Your Honor, and take into consideration the strong family
25 support and the people that care about him, which shows

1 he has some good qualities.

2 So we ask that you give a sentence that will allow
3 him at some point to resume his life and make his contri-
4 bution to the community.

5 Thank you.

6 THE COURT: Thank you. Thank you, Mr. Floyd.

7 THE COURT: Mr. Torrence, before I impose sentence,
8 I want to make a few statements concerning the sentence I
9 intend to impose.

10 I do take into account that it appears that you were
11 attacked. I don't think anybody here questions that from
12 the video and eye-witnesses who say that.

13 That was wrong, and there's no question about
14 that, and, of course, there is where the wrongs start
15 edging up in this case.

16 It hurts so many people that are left behind to
17 grieve their deceased, and that are going to be left be-
18 hind to grieve your going to the penitentiary.

19 Probably when you are not drinking, you have other
20 qualities that the pastor spoke about and others spoke
21 about and your mother and father spoke about as well;
22 that you are a good person; that you have a good heart.

23 It's kind of like a Jekyll and Hyde; that you are
24 not a good person when you drink.

25 It is not a good thing. It is not evidence of a

1 good heart. Not that you're not a good person or have
2 a good heart -- I don't mean it like that, but it is not
3 evidence of goodness when you call somebody a gay man;
4 hey, gay boy; hey, wolverine. I'm not trying to label you.

5 You would know that that would invite a response and
6 that you would end up with a response, which is what you
7 received from Mr. Chaplin, and I do not condone that.

8 I am sure your father can tell you and many gentle-
9 men -- many men and women in this Courtroom -- I know my
10 daddy and granddaddy would tell me at most times when a
11 barroom fight had been over and done with -- no harm, no
12 foul, no police.

13 There is a suture or maybe not even a suture -- the
14 butterfly or bandaid on the nose, or a bruised
15 knuckle, a bruised ego.

16 But you made those choices not to do that, and in
17 addition with that gun you had no right to go in -- to
18 go back in there.

19 I know that you know how wrong a decision that was.
20 I recall when you pled in front of me on the assault on
21 the corrections officer I thought you were genuinely re-
22 morseful for your actions toward Mr. Warren -- is that
23 right?

24 SOLICITOR: Tony Ward, Your Honor.

25 THE COURT: Mr. Ward -- I thought you were genuinely

1 remorseful and not just trying to help yourself out, to
2 get a lighter sentence.

3 I don't remember what I gave you. What did I give
4 you? Eighteen months?

5 MR. FLOYD: Three years, Your Honor.

6 THE COURT: That shows you I don't remember what I
7 gave you.

8 SOLICITOR: Three years suspended on eighteen months,
9 Your Honor.

10 THE COURT: Well, I thought eighteen months was in
11 there somewhere.

12 Now this lady here, Mrs. Chaplin, can only visit her
13 son in the cemetery, and here are your loving parents over
14 here who can only visit you in the penitentiary.

15 I don't know which one is worse. I think -- and I
16 understand your family and friends believe and maintain
17 that you were the victim and such as that. I understand
18 that, and I don't fault them for holding those beliefs at
19 all.

20 That is why we have a jury to determine the credibil-
21 ity and believability of the witnesses and to reach a ver-
22 dict, and they have no friends to reward and no enemies
23 to punish.

24 I asked my law clerk, and I wanted to ask that
25 pathologist -- do you ever think of the balance of life

1 and death?

2 Mr. Chaplin's head was probably less than an eighth
3 of an inch away when that bullet entered in the fleshy
4 part of the shoulder. If it had been a little bit more,
5 you might not even have hit him. That second bullet.

6 DEFENDANT: Yes, sir, that's true.

7 THE COURT: There is nothing anyone in this Courtroom
8 can do now about that.

9 On 2010 GS 32 2318, State versus Andrew Torrence,
10 Junior, the jury having returned a verdict of guilty as to
11 voluntary manslaughter, the Defendant is committed to the
12 State Department of Corrections for a determinate term of
13 twenty-five years.

14 On 2011 GS 32 01440, the jury having convicted Mr.
15 Torrence of possession of a weapon during the commission
16 of a violent crime, the Defendant is committed to the
17 State Department of Corrections for a determinate term
18 of five years.

19 On 2011 GS 32 01441, the jury having convicted Mr.
20 Torrence of taking a weapon on premises where alcoholic
21 beverages are consumed on premises, the Defendant is com-
22 mitted to the State Department of Corrections for a de-
23 terminate term of five years.

24 Those are concurrent, with credit for all
25 time served by Mr. Torrence.

1 Good luck to you, Mr. Torrence.

2 (Discussion by the Court with Sheriff as to the manner
3 for the individuals in the Courtroom to leave)

4 Thank you very much.

5 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, do hereby certify that the foregoing Transcript was prepared to the best of my ability from the records of L. Coconut Pantsari, having been heard in the Court of General Sessions for Lexington County, South Carolina, from May 31, 2011, to June 3, 2001.

FURTHER, I certify that I am neither of kin nor counsel to any party to this action, nor do I possess any interest in the outcome of the same.

This 29th day of October 2011

Harriet P. Bennett

WITNESSES

West Columbia Police Department

Bruce Wade

Law Enforcement Case #: 0824998

DSG

ARREST WARRANT NUMBER

11-STR-00231

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 5/9/11

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS3201440

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2011

**THE STATE
vs.**

Andrew E Torrence Jr

CDR #: 0549

Indictment for

Possession Weapon during a violent crime

§ 16-23-0490

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.G.P., G.S. & F.O.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

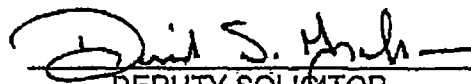
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INDICTMENT FOR
Possession Weapon during a violent crime
§ 16-23-0490

At a Court of General Sessions, convened on May 2011, the Grand Jurors of Lexington County present upon their oath:

That Andrew E Torrence Jr did in Lexington County, South Carolina on or about September 28, 2008 knowingly and willfully, possess a firearm, during the commission of a violent crime or attempt to commit a violent crime, to wit: Murder such weapon described as a handgun in violation of § 16-23-490 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.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Andrew E Torrence Jr

AKA: _____

Race: _____

Sex: MAge: 31City, State, Zip: W COLUMBIA, SC 29170DL#: _____ SID#: 01605390*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490of the S.C. Code of Laws, bearing CDR Code # 0549☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Shawn Anderson
Solicitor11650
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$55.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$1.00

3% to County (if paid in installments) \$ \$

TOTAL \$ \$

Clerk of Court/Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

Lex. Co. U.C.C.P., G.S. & F.C.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3201440A/W#: 11-STR-00231Date of Offense: 9/28/2008S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge John M. M...Judge Code: 2145Sentence Date: 3 June 2011

WITNESSES

West Columbia Police Department

Bruce Wade

Law Enforcement Case #: 0824998

DSG

ARREST WARRANT NUMBER

J032426

ACTION OF GRAND JURY

TRUE BILL

Michael Heew

Foreperson of Grand Jury

Date: *8/9/10*

VERDICT

GUILTY - VOLUNTARY MANSLAUGHTER

[Signature]

Foreperson of Petit Jury

Date: *4/3/2011*

DOCKET NO. 2010GS3202318

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2010

THE STATE

vs.

Andrew E Torrence Jr

CDR #: 0116

Indictment for

Murder

§ 16-03-0010

DONALD V. MYERS, SOLICITOR



STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Murder

§ 16-03-0010

At a Court of General Sessions, convened on August 2010, the Grand Jurors of Lexington County present upon their oath:

That **Andrew E. Torrence** did in Lexington County on or about September 28, 2008, willfully, feloniously and with malice aforethought, kill one Zachariah Chaplin by shooting him in the neck and right arm with a semi-auto handgun and the victim died as a proximate result thereof, in violation of § 16-3-10, 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.

A TRUE COPY

Lex. Co. C.C.C.B. C.S. & H.C.

David Sham Graham
DEPUTY SOLICITOR

ARREST WARRANT

J-032426

STATE OF SOUTH CAROLINA

County: ☒ Municipality:
WEST COLUMBIA

THE STATE

against

TORRENCE ANDREW E JR

Sex M Race W Height 600 Weight 225

State SC DOB [REDACTED]

DOB 02/12/1980

Agency File # SC0320501

Prosecuting Agency WCPD

Prosecuting Officer BRUCE WADL

Offense MURDER - 16-3-10

Offense Code 116

Code/Ordinance Sec 16-3-10

This warrant is CERTIFIED FOR SERVICE in the

County: ☒ Municipality of

WEST COLUMBIA

The Accused

is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date

RETURN

A copy of this arrest warrant was delivered to

Defendant

1/14/08 Andrew Torrence

1/14/08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

JUDGE

200 N 12TH STREET

WEST COLUMBIA SC 29169

STATE OF SOUTH CAROLINA

County: ☒ Municipality:
WEST COLUMBIA

Personally appeared before me the Affiant EDWARDS WIM

being duly sworn deposes and says that defendant TORRENCE ANDREW E JR

is within this County and State on 09/28/2008

State of South Carolina

in the following particulars

DESCRIPTION OF OFFENSE:

MURDER - 16-3-10

further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

IN THAT ON OR ABOUT SEPTEMBER 28 2008 WHILE [REDACTED] IN THE CITY OF WEST COLUMBIA COUNTY AND STATE AFORESAID ONE ANDREW E TORRENCE JR DID AFTER ARMING HIMSELF WITH A HANDGUN AND WITH MALICE AND AFORETHOUGHT SHOOT ZACHARIAH CHAPLIN IN THE UPPER BODY CAUSING MR CHAPLIN TO FALL TO THE FLOOR MR TORRENCE THEN FIRED A SECOND SHOT FROM THE HANDGUN INTO MR CHAPLIN'S UPPER BODY WHILE HE LAY ON THE FLOOR MR CHAPLIN RECEIVED IMMEDIATE MEDICAL TREATMENT BUT DIED AS A RESULT OF THE INJURIES ON NOVEMBER 12TH 2008 ALL OF WHICH CONSTITUTE THE CRIME OF MURDER AND IS IN VIOLATION OF THE SOUTH CAROLINA CODE OF LAWS OF 1976 AS AMENDED THE FOREGOING IS BASED ON THE INVESTIGATION BY THE WEST COLUMBIA POLICE DEPARTMENT

CASE #0824992

Signature of Affiant

STATE OF SOUTH CAROLINA

County: ☒ Municipality of

WEST COLUMBIA

Affiant's Address 200 N 12TH ST

WEST COLUMBIA SC 29169

Affiant's Telephone 803-794-0721

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 09/28/2008 defendant TORRENCE ANDREW E JR

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County: ☒ Municipality of WEST COLUMBIA

as set forth below

DESCRIPTION OF OFFENSE:

MURDER - 16-3-10

Having found probable cause and the above affiant having sworn before me you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable.

Sworn to and subscribed before me

on

(L.S.)

Signature of Issuing Judge

Judge Code: 000

Judge's Address 200 N 12TH STREET

WEST COLUMBIA SC 29169

Judge's Telephone 803-794-0721

Issuing Court

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

BAIL set by

Judge Mc-

on 11-16-08

Type and Amount \$500

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

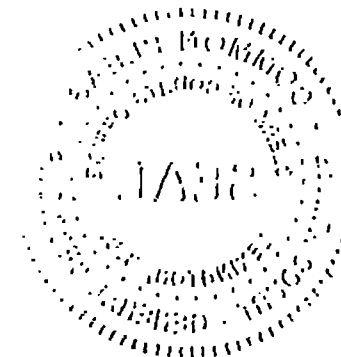
Telephone: _____

CODEFENDANTS

BETH A. O'BRIEN
CLERK OF COURT
LEXINGTON, SC

2008 NOV 18 AM 9:25

FILED



STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Andrew E Torrence Jr

AKA:

Race: White Sex: M Age: 31City, State, Zip: W COLUMBIA, SC 29170DL#: SID#: 01605390*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter / Voluntary manslaughterin violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:Shawn Harkins
Solicitor11650
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments (07.5 %))		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u> </u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u> </u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u> </u>
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$ <u> </u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u> </u>
TOTAL		\$ <u>130.00</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

Lexington O.C.P., G.S. & F.C.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS3202318A/W#: J032426Date of Offense: 9/28/2008S.C. Code § : 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge Judge Code: 2145Sentence Date: 3 JUN 2011

WITNESSES

West Columbia Police Department

Bruce Wade

Law Enforcement Case #: 0824998

OSG

ARREST WARRANT NUMBER

11-STR-00232

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 5/9/11

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS3201444

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2011

THE STATE
vs.

Andrew E Torrence Jr

CDR #: 0202

Indictment for

Carrying a pistol or firearm onto premises
of business selling alcoholic liquors, beers
or wines for on-premises consumption

§ 16-23-0465

DONALD V. MYERS, SOLICITOR

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.O.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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)
)
)

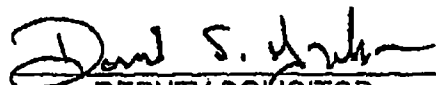
INDICTMENT FOR
Carrying a pistol or firearm onto premises of
business selling alcoholic liquors, beers or wines
for on-premises consumption

§ 16-23-0465

At a Court of General Sessions, convened on May 2011, the Grand Jurors of Lexington County present upon their oath:

That **Andrew E Torrence Jr** did in Lexington County on or about September 28, 2008, knowingly and willfully carry a pistol or firearm, without the proper legal authority to do so, onto the premises of a business which sells alcoholic liquor, beer, or wine for consumption on the premises, to wit: Shaggy's Bar, in violation of Section 16-23-465 of the South Carolina Code of Laws (1976), as amended.

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


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Andrew E Torrence Jr

AKA: _____

Race: _____ Sex: M Age: 31

Address: _____

City, State, Zip: W COLUMBIA, SC 29170DL#: _____ SID#: 01605390*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Weapons / Additional penalty for gun on premises where alcohol soldin violation of § 16-23-0465 of the S.C. Code of Laws, bearing CDR Code # 0202☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:Sharon Arakon
Solicitor11650
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/Deputy Clerk: _____

Court Reporter: _____

SCCA(217 (03/2011)

Lex. Co. C.C.C.P., G.S. & F.O.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3201444A/W#: 11-STR-00232Date of Offense: 9/28/2008S.C. Code § : 16-23-0465CDR Code #: 0202

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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	\$
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Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2145Sentence Date: 3 June 2011

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

The State of South Carolina

Plaintiff,

vs.

Andrew Torrence, Jr.

Defendant.

IN THE COURT OF GENERAL SESSIONS
OF THE
ELEVENTH JUDICIAL CIRCUIT

Indictment Numbers 2010-GS-32-02318,
2011-GS-32-01440, 2011-GS-32-01444

VERDICT FORM

PLEASE CHECK AND CIRCLE THE APPROPRIATE VERDICT BELOW AND
FOLLOW THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

I. INDICTMENT NUMBER 2010-GS-32-02318 AS TO MURDER,

We, the Jury, by unanimous consent, find the Defendant:

☐ Guilty of Murder

☒ Guilty of Voluntary Manslaughter

☐ Guilty of Assault and Battery with Intent to Kill

☐ Guilty of Assault and Battery of a High and Aggravated
Nature

☐ Not Guilty.

**II. INDICTMENT NUMBER 2011-GS-32-01440 AS TO POSSESSION OF A
WEAPON DURING A VIOLENT CRIME,**

We, the Jury, by unanimous consent, find the Defendant:

☒ Guilty

☐ Not Guilty.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

The State of South Carolina

Plaintiff,

vs.

Andrew Torrence, Jr.

Defendant.

IN THE COURT OF GENERAL SESSIONS
OF THE
ELEVENTH JUDICIAL CIRCUIT

Indictment Numbers 2010-GS-32-02318,
2011-GS-32-01440, 2011-GS-32-01444

VERDICT FORM

PLEASE CHECK AND CIRCLE THE APPROPRIATE VERDICT BELOW AND
FOLLOW THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

I. INDICTMENT NUMBER 2010-GS-32-02318 AS TO MURDER,

We, the Jury, by unanimous consent, find the Defendant:

_____ Guilty of Murder

☒ Guilty of Voluntary Manslaughter

_____ Guilty of Assault and Battery with Intent to Kill

_____ Guilty of Assault and Battery of a High and Aggravated
Nature

_____ Not Guilty.

**II. INDICTMENT NUMBER 2011-GS-32-01440 AS TO POSSESSION OF A
WEAPON DURING A VIOLENT CRIME,**

We, the Jury, by unanimous consent, find the Defendant:

☒ Guilty
_____ Not Guilty.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

III. INDICTMENT NUMBER 2011-GS-32-01444 AS TO UNLAWFUL
CARRYING OF A PISTOL OR FIREARM ONTO PREMISES OF
BUSINESS SELLING ALCOHOLIC LIQUORS, BEERS OR WINES FOR
ON-PREMISES CONSUMPTION ,

We, the Jury, by unanimous consent, find the Defendant:

☒ Guilty

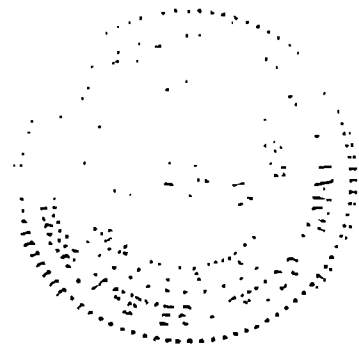
☐ Not Guilty.

June 3, 2011.

Lexington, South Carolina


FOREPERSON'S SIGNATURE

Please notify the bailiff after completing all deliberations.



FILED COPY
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) 24-8 P 12:02
Case No.: 10-GS-32-02318, 11-GS-32-01440,
11-GS-32-01444
THE STATE OF SOUTH CAROLINA)
JETHA A. GARRIGS)
CLERK OF COURT)
LEXINGTON)

Plaintiff,)
)
vs.) MOTION FOR A NEW TRIAL
) AND FOR RECONSIDERATION
ANDREW E. TORRENCE, JR.,) OF SENTENCE
)
)
Defendant,)
)
_____)

On June 3, 2011 Defendant was convicted in the Lexington County General Sessions Court of violation of, §16-03-0050, Voluntary Manslaughter, §16-23-0490, Possession of Weapon during violent crime, §16-23-465, taking gun on premises where alcohol is served. Defendant was sentenced to twenty-five (25) years on the manslaughter charge and five (5) years each on the weapons and the alcohol charge. Defendant now moves that this court to grant him a new trial in this matter and to reconsider the sentences given to the Defendant for these convictions.

Defendant moves this Honorable Court to grant him a new trial for the following reasons:

1. the court erred when it refused Defendant's request to charge the jury on the lesser included defense of involuntary manslaughter at the conclusion of the trial;
2. the court erred when it refused Defendant's request to charge the jury on the lesser included defense of involuntary manslaughter

after the jury sent a question to the Judge as to whether or not the jury could consider the crime of involuntary manslaughter;

3.) the court erred when it refused Defendant's motion to dismiss for prosecutorial misconduct for each of the following actions:

- a. improper questioning of the Defendant inferins that he was drinking alcohol while working at Rush's when there was no evidence on that point;
- b. improper jury argument of placing the weapon on the jury rail and arguing that a verdict of not guilty would put the Defendant back in the community with his weapon when the Prosecution knew that the Defendant would not be given that weapon back even if found not guilty as he is now a convicted felon;
- c. manipulation of the General Sessions trial docket to obtain a conviction for impeachment purposes of the Defendant for an offense committed over a year after the incident at trial.

4. the court erred when it allowed over Defendant's objection the use of the Defendant's guilty plea to Assault 2nd for impeachment purposes for the following reason:

- a. the prejudicial nature of the conviction outweighed it's probative value;

- b. the conviction occurred after the commission of the offense at trial and should not have been allowed;
 - c. State should not have been allowed to use the conviction to attack the creditability of the Defendant as they obtained the conviction through manipulation of the trial docket.
5. the court erred when it suppressed the admission of the video and audio recording made of the Defendant in Officer Griffin's vehicle as the audio on the tape showed the jury Defendant's state of sobriety and state of mind at and shortly after the alleged incident.
6. the court erred when it denied the Defendant's motion for directed verdict at the conclusion of the State's case and at the conclusion of the entire case as the State failed to establish probable cause between the incident in question and the death of the victim;
7. the court erred when it refused Defendant's motion for directed verdict for all the reasons set forth above and for any other motions made during the trial.

Defendant moves that this Honorable Court to reconsider the sentences given to the Defendant in connection with his convictions. Defendant is informed and believes that the sentence of twenty-five (25) years is excessive considering the circumstances of this crime and Defendant's prior criminal record. The incident in question was precipitated by the violent physical assault upon the Defendant by the victim and, although Defendant was wrong to take the firearm into the bar, a firearm was never raised toward the victim till after the victim charged the Defendant reaching toward the weapon.

The evidence clearly established self defense whether legally perfect or not, and a sentence of twenty-five (25) years is excessive, particularly when considered in light of the jury's request to be allowed to consider involuntary manslaughter.

Defendant is also informed and believes that the sentence of five (5) years for carrying a weapon into premises that serves alcohol is excessive in that it exceeds the statutory punishment for that offense.

WHEREFORE Defendant prays that this Honorable Court grant him a new trial or, in the alternative sentence reduce his sentence for the reasons set forth above.

Respectfully submitted,

Wayne Floyd Law Office, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171
(803) 739-1824

By: Wayne Floyd

West Columbia, South Carolina

June 8, 2011.

CERTIFICATE OF SERVICE

FILED
2011 JUN -8 P 12:02

This is to certify that the undersigned, Michelle M. Wash, Paralegal to Wayne
Floyd, Esquire, has this 8th day of June, 2011, served the foregoing *MOTION FOR A NEW
TRIAL AND RECONSIDERATION OF SENTENCE:*

☒ Hand delivering a copy hereof.

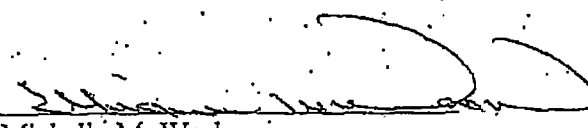
☐ Depositing a copy hereof in the
United States mail postage prepaid

☐ Certified Mail (Return Receipt
Requested).

☐ Facsimile Transmission.

upon:

Shawn Graham, Assistant Solicitor
Lexington County Solicitor's Office
205 E. Main Street
Lexington, S.C. 29072


Michelle M. Wash,
Paralegal to Wayne Floyd
WAYNE FLOYD LAW OFFICE, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171-3972
(803) 739-1824

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
THE STATE,)
vs.)
ANDREW E. TORRENCE, JR.,)
Defendant)

COURT OF GENERAL SESSIONS

FILED

2011 JUN 11 P 12:51
ORDER

2010-GS-32-02418, 2011-GS-32-01440
& 2011-GS-32-01444
CLERK OF COURT
LEXINGTON, SC

On June 3, 2011, Andrew E. Torrence, Jr. was convicted of Voluntary Manslaughter, Possession of a Weapon during the Commission of a Violent Crime, and Unlawfully Carrying a Firearm onto a Premises of Business Selling Alcoholic Liquors, Beers or Wines for On-Premises Consumption.

This matter is before me upon motion of Wayne Floyd, attorney for the Defendant, requesting a new trial and a reconsideration of the sentences.

After reviewing the motion, the following is hereby ordered:

- 1) The motion for a new trial is denied;
- 2) The motion for reconsideration of the twenty-five (25) year sentence as being excessive is denied; and
- 3) The five (5) year sentence imposed on Indictment 2011-GS-32-01444 is hereby amended to three (3) years

IT IS SO ORDERED.


The Honorable Knox R. McMahon
Circuit Court Judge

Lexington, South Carolina
June 13, 2011
1571

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Knox R. McMahon, Circuit Court Judge

Case Nos. 2010-GS-32-2318, and 2011-GS-32-1440 & -1444

The State of South Carolina, ... Respondent,

v.

Andrew E. Torrence, Jr., ... Appellant.

BRIEF OF APPELLANT

RECEIVED

NOV 06 2012

SC Court of Appeals

Blake A. Hewitt
John S. Nichols
John D. Delgado
BLUESTEIN NICHOLS
THOMPSON & DELGADO
Post Office Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)

Wayne Floyd
WAYNE FLOYD LAW OFFICE
Post Office Box 3972
W. Columbia, SC 29171
(803) 739-1824

Attorneys for Appellant

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STATEMENT OF ISSUE ON APPEAL

Whether Andrew Torrence was entitled to a charge on involuntary manslaughter when he admitted intentionally firing his weapon, but other circumstances indicated that he did not intend to inflict serious injury or death.

STATEMENT OF THE CASE

This case arises out of a bar room shooting in West Columbia, South Carolina. After being involved in a fight inside the bar, Andrew Torrence, who is the Appellant in this appeal, went outside to his vehicle, retrieved a pistol, and re-entered the bar. As Mr. Torrence—his gun at his side and pointed to the floor—attempted to perform a citizen's arrest on one of the men he believed had assaulted him minutes before, the other man involved in the fight threw a barstool at Mr. Torrence from across the room and charged him. Mr. Torrence ultimately fired twice. Both rounds struck this individual, and he died about a month and a half later. A jury found Mr. Torrence guilty of voluntary manslaughter, and the trial judge sentenced Mr. Torrence to a 25-year term of imprisonment. The issue in this appeal is whether the circumstances of this killing, viewed in the light most favorable to Mr. Torrence, entitled him to a charge on involuntary manslaughter.

This incident occurred in the early morning hours of September 28, 2008. In August of 2010, a grand jury indicted Mr. Torrence for murder (a violation of section 16-3-10 of the South Carolina Code). In May of 2011, a grand jury added charges of carrying a firearm onto the premises of a building selling alcoholic liquors (a violation of section 16-23-465), and possession of a weapon during a violent crime (a violation of section 16-23-490). The case was tried over four days—May 31 through June 3—in 2011.

As relevant to the murder charge, the trial court instructed the jury on murder and the lesser-included offense of voluntary manslaughter. See (R.p.590, line 10-p.594, line 11). The court also charged the jury on the defense of self-defense. See (R.p.598, line 3-p.602, line 22). Immediately following the jury charges, Mr. Torrence objected to the court's failure to charge involuntary manslaughter. (R.p.610, lines 19-20). There was no contemporaneous ruling on this objection, but the trial court's second set of jury instructions did not include involuntary manslaughter. (R.p.611, line 14-p.615, line 5). The issue of involuntary manslaughter was raised again later; during jury deliberations, the jury sent a written question to the court asking whether it could consider the crime of involuntary manslaughter. See (R.p.620, line 20-p.621, line 5). Mr. Torrence renewed his request for the court to charge involuntary manslaughter, see (R.p.621, lines 3-5), and the trial court refused that request. See (R.p.622, lines 17-25).

The jury found Mr. Torrence guilty of voluntary manslaughter and the two firearms charges. See (R.p.617, line 18-p.618, line 5). The jury returned its verdict on June 3, 2011. Five days later, Mr. Torrence filed a written motion for a new trial and for reconsideration of the sentence. See (R.p.2). The court's refusal to charge involuntary manslaughter were the first grounds offered in support of this motion. See *Id.* The court denied the motion in an order dated June 15, 2011 and filed the next day. (R.p.1). Mr. Torrence served and filed a notice of appeal six days later.

STATEMENT OF (CONTESTED) FACTS

The purpose of this separate statement of facts is to present the relevant background information while still abiding by the rule that the "statement of the case" shall not include

contested matters. See Rule 208(b)(1)(C), SCACR. This shooting occurred inside a bar at approximately 6:30 in the morning on a Sunday. The physical aspects of the shooting and the fight that preceded it were, in large part, captured on the bar's video surveillance equipment. See (State's Exhibit 17) (the compiled surveillance videos).

The video shows a U-shaped bar that at 6:30 a.m., has seven people seated around it and a bartender cleaning behind it. The video shows Mr. Torrence seated by himself at one corner of the bar. To his right are the two people seated closest to the surveillance camera. Moving down the bar to Mr. Torrence's left, he appears to be separated from the next individual at the bar by one or two chairs. To that individual's left there was a party of three, seated at the other corner of the bar. This party of three consisted of the decedent, whose name was Zach Chaplin, a woman named Donna Muszynski, and a gentleman named Lee Buchanan.

At about 6:31 a.m., Mr. Torrence picked up his drink and walked down the bar to his left. Mr. Torrence turned the corner of the bar, walked past the decedent and Ms. Muszynski, and took a seat at the end of their party next to Mr. Buchanan. The video shows Mr. Torrence sitting at the bar but turned to his right and facing Mr. Buchanan, and it also shows Mr. Torrence lean towards Mr. Buchanan as if the two are talking. Within a minute of Mr. Torrence's sitting down, the conversation appears to get animated. Mr. Buchanan begins to gesture with his arms and hands, moving them as if he is saying something with deliberate emphasis and insistence. About 20 seconds after Ms. Buchanan appears to get animated, the video shows the decedent get up from his seat at the bar, walk past Ms. Musyznski and Mr. Buchanan, and punch Mr. Torrence in face. Mr. Torrence responds by raising both of his

arms and pushing at the decedent, and Mr. Buchanan appears to attempt to separate the men by stepping between them and holding Mr. Torrence back. The fight continues for approximately 15 seconds with the decedent continuously punching Mr. Torrence in the face as Mr. Buchanan restrains Mr. Torrence, preventing him from retaliating. This incident does not appear to evoke any significant reaction from the bartender or the other patrons in the bar. After Mr. Buchanan and Ms. Muszyznski separated the decedent and Mr. Torrence, Mr. Buchanan assisted Mr. Torrence in looking for his eyeglasses and in leaving the bar. According to the clock on the video, Mr. Torrence left the bar at approximately 6:34 a.m.

Mr. Torrence re-entered the bar about four minutes later. The video shows Mr. Buchanan open the door to let Mr. Torrence enter, then run from the door after he apparently sees the gun Mr. Torrence is holding. Mr. Torrence entered the bar with the gun held by his right side in his right hand. The gun was pointed down at the floor, and after entering the bar, the video shows Mr. Torrence gesture at Mr. Buchanan with his left hand as if giving directions. Mr. Buchanan testified Mr. Torrence told him to put his hands on the bar. (R.p.183, lines 16-18). Mr. Torrence's testimony was similar. (R.p.380, line 24-p.381, line 3). Mr. Torrence then moved toward Mr. Buchanan—according to Mr. Torrence, to search him for weapons and to perform a citizen's arrest, see (R.p.381, lines 2-11)—and the video shows a chair being thrown at Mr. Torrence from across the bar. Moments later, the decedent ran around the bar and charged Mr. Torrence. The video appears to show the decedent swing at Mr. Torrence with his right hand and reach for the gun with his left.

Mr. Torrence admitted that he fired his weapon twice, see (R.p.385, lines 14-17), when the decedent got "[w]ithin a foot maybe." (R.p.383, lines 12-17). Both bullets struck

the decedent; one in the right arm, the other behind the right ear. The bullet that struck the decedent behind his right ear injured his spinal cord and paralyzed him from the chest down. (R.p.60, lines 21-24). Though the decedent was eventually released from the hospital and transferred to a rehabilitation facility, he died in November of 2008. (R.p.49, lines 3-4).

The State's theory of the case was that Mr. Torrence viewed the decedent as a rival for Ms. Muszynski's affections. (R.p.6, line 18-p.7, line 7) (from the State's opening argument); also (R.p.549, line 8-p.550, line 5) (from the State's closing argument). The State contended Mr. Torrence became angry when Ms. Muszynski supposedly turned her attention away from Mr. Torrence and towards the decedent, and the State argued that Mr. Torrence's act of shooting the decedent was both premeditated and an act of "beating" the decedent or "winning." (R.p.6, line 18; p.548, lines 10-11) (arguing "to be the man, you have to beat the man"). The State explained the decedent's battery on Mr. Torrence by arguing that Mr. Torrence had been making derogatory comments to several individuals in the bar and that the decedent "put [Mr. Torrence] in his place." (R.p.554, ll. 4-6). Mr. Torrence's comments had included drawing attention to Mr. Buchanan's sexual orientation. *Id.* at 176, lines 16-21.

Mr. Torrence admitted making some of the alleged statements to Mr. Buchanan and Ms. Muszynski, but he denied making others and he denied any malicious intent. See, e.g., (R.p.427, line 22-p.428, line 5) (his version of the statement to Ms. Muszynski); see also (R.p.424, lines 20-25) (denying one of the statements to Mr. Buchanan). Mr. Torrence said he went to sit by Mr. Buchanan in order to apologize for his earlier comments, and according to Mr. Torrence, Mr. Buchanan got upset and indicated he did not want to hear an apology. (R.p.375, line 15-p.376, line 6). At that point, the fight with decedent began. *Id.*

ARGUMENT

Several South Carolina cases seem to stand for the proposition that the intentional discharge of a firearm prevents a charge on involuntary manslaughter. Mr. Torrence's argument is that although intentionally shooting a firearm could preclude involuntary manslaughter in *some* circumstances, it should not do so in *all* circumstances.

All killings that result in criminal liability involve some intentional conduct. If they did not, the killing would be excused as an accident. One characteristic distinguishing involuntary manslaughter from voluntary manslaughter is that voluntary manslaughter is an intentional killing, and involuntary manslaughter is an *unintentional* killing. South Carolina should recognize that a killing can be mitigated under certain circumstances, but still criminalized, if it is the unintentional result of the use of a deadly weapon—if the circumstances indicate that the defendant did not intend to inflict serious injury or death. North Carolina allows for such mitigation. South Carolina should be no different.

By proper application of that principle, Mr. Torrence was entitled to an involuntary manslaughter charge. If this killing was committed without malice, it cannot be murder. If it was not committed during an "irresistible impulse to do violence," it cannot be voluntary manslaughter. The only means left for criminal liability is involuntary manslaughter. A reasonable jury could find that Mr. Torrence did not enter the bar intending to fire his weapon, that he shot as the decedent reached for the weapon, that he shot only at the last second, and that he shot based on "instinct." The jury could thus find that Mr. Torrence did not intend to inflict serious injury or death, and that this was an unintentional killing caused by the exceptionally reckless decision to take a gun inside a bar.

A. South Carolina Cases Suggest That the Intentional Discharge of a Firearm Precludes a Charge on Involuntary Manslaughter, but This Is Not Consistent with Involuntary Manslaughter Doctrine.

In South Carolina, involuntary manslaughter is the unintentional killing of another person that is committed without malice while (a) engaged in an unlawful activity not amounting to a felony and not naturally tending to cause death or great bodily harm, or (b) engaged in a lawful activity with reckless disregard for the safety of others. See, e.g., *State v. Smith*, 391 S.C. 408, 414, 706 S.E.2d 12, 15 (2011). It has been described as “criminal negligence,” which is statutorily defined as “reckless disregard for the safety of others.” See *State v. Crosby*, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003) (citing S.C. Code Ann. § 16-3-60 (1985), presently found in the bound volume of title 16 published in 2003).

Several principles in South Carolina jurisprudence relate different acts with firearms to whether those acts do or do not qualify for a charge on involuntary manslaughter. One such principle is that the negligent or reckless handling of a loaded firearm generally entitles a defendant to a charge on involuntary manslaughter. A common application of this principle is the case where the defendant admits *some* intentional act—pointing a gun at the decedent or grabbing a gun in the course of a conflict—but says the gun “just went off.” See, e.g., *Crosby*, 355 S.C. at 50, 584 S.E.2d at 111 (as the decedent charged him, the defendant pulled a gun out of his pocket, closed his eyes and pulled the trigger, but claimed he did not realize he pulled the trigger); and *State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (1999) (as the decedent began moving threateningly toward the defendant, the defendant grabbed his own gun and “it fired”). Several cases state this principle in the converse; meaning, several cases hold that there is no evidence to support a charge of involuntary manslaughter if the

defendant admits intentionally shooting the gun. See, e.g., *State v. Pickens*, 320 S.C. 528, 531-32, 466 S.E.2d 364, 366 (1996) (citing *State v. Morris*, 307 S.C. 480, 415 S.E.2d 819 (Ct. App.1991)).

Another principle relating acts with firearms to involuntary manslaughter is that the unlawful possession of a firearm does not, by itself, preclude the application of voluntary manslaughter. This is because it is possible to be “lawfully armed in self-defense” despite the fact that the gun was initially possessed unlawfully. Chief Justice Toal’s concurring opinion in *State v. Goodson*, 312 S.C. 278, 281-82, 440 S.E.2d 370, 373 (1994), is an explanation of this principle in the context of a claim that the killing was an accident. This Court’s decision in *State v. Gibson*, 390 S.C. 347, 356-57, 701 S.E.2d 766, 771 (Ct. App. 2010) is a recent example that deals with involuntary manslaughter. This principle often appears in “imperfect defense” cases—cases where the defendant cannot meet all of the requirements for the defense of self-defense or accident. In *Goodson*, for example, the defendant was carrying a firearm illegally and claimed he drew the firearm in response to being threatened with a pool stick by another patron in the bar. 312 S.C. at 279, 440 S.E.2d at 371-72. The confrontation with the other patron resolved when the owner of the bar intervened and escorted the defendant outside, and it was there that the gun discharged, allegedly by accident, killing the owner of the bar. Self-defense was not available because the defendant did not present evidence he believed he was in immediate danger at the time of the shooting. *Id.* at 280, 440 S.E.2d at 372. As for the defendant’s being lawfully armed in self-defense while inside the bar, the court wrote the “lawfulness in *Goodson*’s being armed ended when he was no longer threatened.” *Id.* at 282; 440 S.E.2d at 373.

South Carolina courts have described this principle as being based, at least in part, on the notion that the unlawful possession of a firearm is not always the “proximate cause” of the death. The Chief Justice’s concurring opinion in *Goodson*, for example, recites this principle and says “where, as here, the defendant unlawfully possesses a firearm, has been drinking heavily all day, and kills the bar owner with the unlawful firearm, the unlawful possession of the firearm is a proximate cause of the injury.” *Id.* at 282, 440 S.E.2d at 373. Another example is the decision in *State v. Slater*, where the defendant “carried [a] cocked weapon, in open view, into an already violent attack in which he had no prior involvement.” 373 S.C. 66, 71, 644 S.E.2d 50, 53 (2007). The court wrote “[the defendant’s] actions, including the unlawful possession of the weapon, proximately caused the exchange of gunfire, and ultimately the death of the victim.” *Id.* at 71, 644 S.E.2d at 53.

Neither of these principles—involuntary manslaughter requires evidence that the gun was fired accidentally or handled negligently, and involuntary manslaughter is not available when the illegal possession of the weapon proximately causes the death—is beyond criticism. For one thing, “proximate cause” is normally a question for the jury, see *Kennedy v. Custom Ice Equipment Co.*, 271 S.C. 171, 175, 246 S.E.2d 176, 178 (1978) (stating this in the context of a civil case), and there is no such thing as a directed verdict against a defendant in a criminal case. See, e.g., *State v. Peete*, 517 N.W.2d 149 (Wis. 1994) (“a court may not direct a verdict of guilt against a defendant in a criminal case”). Although some South Carolina cases disallow an involuntary manslaughter charge by saying that the

defendant was engaged in a felony,¹ a defendant who can offer a defense to that felony ought to be able to insist that a jury decide whether his conduct disqualifies involuntary manslaughter. And though the law seems to say that these unlawful acts completely preclude involuntary manslaughter, that rule should not be applied in all circumstances. It is one thing to purposefully display a loaded and cocked weapon while advancing on an ongoing fight, see *Slater*, 373 S.C. at 71, 644 S.E.2d at 53, but it is also possible to display a firearm in an effort to diffuse a situation or deter violence.

Consider also a comparison between acts with firearms and other acts generally found in involuntary manslaughter cases. Reasonable people might readily agree that discharging a firearm is, in general, a rather dangerous activity,² but the same might be said for one of the paradigm cases of “unlawful-act” manslaughter: a death occurring as a result of recklessly operating an automobile. See Wayne R. LaFare & Austin W. Scott, Jr., *Criminal Law* § 79 (1972) (unlawful-act manslaughter is often referred to as “misdemeanor-manslaughter” (compared to felony-murder) and the misdemeanor involved is commonly a traffic offense); see also *State v. Caldwell*, 231 S.C. 184, 188, 98 S.E.2d 259, 261 (1957) (discussing involuntary manslaughter cases involving automobiles and noting “an automobile is a dangerous instrumentality”). And where an automobile accident causes death, the unlawful

¹See *State v. Reese*, 370 S.C. 31, 36, 633 S.E.2d 898, 900–01 (2006) (defendant not entitled to an involuntary manslaughter instruction because he “presented a firearm”); and *State v. Cabrera-Pena*, 361 S.C. 372, 381, 605 S.E.2d 522, 526–27 (2004) (defendant’s conduct constituted a felony of either pointing or presenting a firearm or kidnapping). *Reese* was overruled on other grounds by *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009).

²See *Bozeman v. State*, 307 S.C. 172, 177, 414 S.E.2d 144, 147 (1992) (observing that firing a gun “naturally tends to cause death or bodily harm”).

activity—the traffic violation—is often the proximate cause of the death. For a different example, take the person engaged in a fistfight who strikes a blow “intending to inflict only minor harm, but caus[es] a quite unexpected death.” LaFave & Scott, *supra* p.10. Both of these circumstances (the car wreck and the fistfight) involve unlawful acts that are readily identifiable as dangerous. Yet, an unintentional killing resulting from the intentional act of violating the rules of the highway or the rules against combat may result in involuntary manslaughter, but an unintentional killing resulting from intentionally firing a gun may not.

The point is this: the word “unintentional” in the definition of involuntary manslaughter can modify both the action causing death—pulling the trigger—and the consequence of the action, the killing. When an opinion says simply that “the act must be unintentional,” *Morris*, 307 S.C. at 483, 415 S.E.2d at 831, that statement is not accurate. All involuntary manslaughter cases must involve some intentional act. “[W]ithout some intentional act in the chain of causation leading to death[,] there can be no criminal responsibility.” *State v. Wilkerson*, 247 S.E.2d 905, 918 (N.C. 1978).

B. The Court Should Charge Involuntary Manslaughter When There Is Evidence That the Killing Was the Unintentional Result of the Use of a Deadly Weapon and Circumstances Indicate That the Defendant Did Not Intend to Inflict Serious Injury or Death.

The Supreme Court of North Carolina has rejected the argument that the discharge of a weapon must be unintentional in order to entitle defendant to an instruction on involuntary manslaughter. See *State v. Brewer*, 386 S.E.2d 569, 583 (N.C. 1989) (calling this argument an “invalid premise”). Drawing from its own precedent, the court wrote “[w]hile involuntary manslaughter imports an unintentional killing, i.e., the absence of a

specific intent to kill, it is . . . accomplished by means of some intentional act.” *Id.* at 583 (quoting *Wilkerson*, 247 S.E.2d at 918). If there was no intentional act, the death “would be the result of accident or misadventure[,]” and would not be a crime. *Wilkerson*, 247 S.E.2d at 918. In North Carolina, “culpable negligence” is one of the states of mind required for an instruction on involuntary manslaughter, and North Carolina defines “culpable negligence” as “an act or omission evidencing a disregard for human rights and safety.” *Brewer*, 386 S.E.2d at 583. That definition is indistinguishable from South Carolina’s definition of “criminal negligence.” See *Crosby*, 355 S.C. at 52, 584 S.E.2d at 112; and S.C. Code Ann. § 16-3-60 (“criminal negligence” is “reckless disregard for the safety of others”).

Though it does not involve a firearm, the case *State v. Debiase*, 711 S.E.2d 436 (N.C. Ct. App. 2011) provides a useful example. The case arose out of a fight at an outdoor party, and the decedent’s death was the result of a large cut in his neck sustained during the fight. The court recited that the facts, viewed in the light most favorable to the defendant, showed the decedent became angry with the defendant when the defendant offered drugs to the decedent’s girlfriend. Other partygoers separated the two men after the decedent either punched or shoved the defendant, and “[the decedent] subsequently charged the defendant, who struck [the decedent] on the top of the head or the side of the neck with a beer bottle.” *Id.* at 441. The defendant and the decedent struggled and fell into the fire, and it was not until after the fight ended that the defendant realized the decedent’s neck had been injured badly.

The *Debiase* court wrote that an involuntary manslaughter charge was appropriate “despite the fact that [the] [d]efendant acted intentionally at the time that he struck [the

decedent] with the bottle[.]” *Id.* at 442. The court explained that involuntary manslaughter is appropriate when “evidence tend[s] to show . . . a killing caused by the negligent or reckless use of a deadly weapon without any intent to inflict death or serious injury[.]” *id.* at 443, and the court explained how to distinguish cases that are appropriate for involuntary manslaughter from cases where involuntary manslaughter is not appropriate. Involuntary manslaughter is not appropriate when a defendant “deliberately engages in an act likely to result in death or serious injury” but claims, somewhat flatly, that he did not mean to kill. *Id.* at 443-444. In *Debiase*, the court noted that the defendant struck the decedent with the beer bottle only after the decedent rushed at him, that the defendant only struck the decedent on one occasion, and that the defendant did not stab the decedent during the resulting melee. *Id.* at 444. The court favorably cited cases where the circumstances suggested that the infliction of the fatal wound was unintentional despite the fact that the defendant had intentionally carried a deadly instrument during the struggle. See *Id.* at 442-443 (citing *State v. Drew*, 592 S.E.2d 27 (N.C. Ct. App. 2004); *State v. Daniels*, 360 S.E.2d 470 (N.C. Ct. App. 1987); *State v. Buck*, 313 S.E.2d 550 (N.C. 1984); and *State v. Fleming*, 251 S.E.2d 430 (N.C. 1979)).

Debiase, *Wilkerson*, and the other cases that discuss these principles describe the critical question as whether the defendant’s actions with the weapon evidenced “a heart devoid of a sense of social duty.” *Debiase*, 711 S.E.2d at 442 (quoting *Fleming*, 251 S.E.2d at 433). If the defendant’s actions show “wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of social duty and deliberately bent on mischief,” the law deems his recklessness to be so severe that it implies malice. If

there is malice, although the killing may have been unintended, it is murder. See *Wilkerson*, 247 S.E.2d at 916 (discussing this in the context of an involuntary manslaughter case); see also *Belcher*, 385 S.C. at 609 n.5, 685 S.E.2d at 808 n.5 (same definition of depraved heart malice in South Carolina). But if the defendant's actions are *not* so severe, involuntary manslaughter is appropriate. These sorts of acts have been variously described as "reckless or careless behavior . . . import[ing] a thoughtless disregard of the consequences[,] . . . [or] showing a heedless indifference to the rights and safety of others[.]" *Wilkerson*, 247 S.E.2d at 917; "[a]n intentional violation of some statute designed for the protection of people which proximately though unintentionally causes death[.]" *id.* at 918; and acts that "do[] not indicate a total disregard for human life and [are] committed with no intent to kill or to inflict serious bodily injury." *Id.* at 919. Those descriptions would fit Mr. Torrence's conduct here.

There is more than a semantic difference among these standards, and they embody principles that make sense. The circumstances surrounding one person's action with a firearm—including intentionally discharging it—may well be so depraved that the law ought to imply malice and deem the killing to be murder, but other circumstances may demonstrate actions with the firearm that should be *criminal*, but do not show *malice*. South Carolina law should allow a middle ground; voluntary manslaughter is out of bounds if the killing was unintentional, and limiting the options to murder and nothing leaves the options at the extremes. North Carolina's approach is consistent with South Carolina's definition of involuntary manslaughter. Allowing involuntary manslaughter when the injury was caused by the reckless use of a weapon, but without any intent to inflict death or serious injury, is nothing more than a faithful application of the principles underlying South Carolina law.

C. A Jury Could Find Mr. Torrence Did Not Intend to Inflict Serious Injury and That this Was an Unintentional Killing Caused by the Reckless Decision to Take a Gun Inside a Bar.

The trial court commits reversible error if it refuses a request for a jury instruction on a lesser-included offense that is supported by the evidence. See, e.g., *State v. Light*, 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008) (reversing because the defendant was entitled to jury instructions on involuntary manslaughter and self-defense); and *Crosby*, 355 S.C. at 53, 584 S.E.2d at 112-13 (trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence). Mr. Torrence's case is unusual because even if reversal depended on the likelihood that the jury would have examined the lesser-included offense, there would be no room for speculation on this record. The jury specifically asked whether it could consider involuntary manslaughter.

There are two parts to examining whether the circumstances of Mr. Torrence's case fall within the rule proposed—whether a jury could find that this was a case of an injury caused by the reckless use of a deadly weapon but without any intent to inflict death or serious injury. The first part is whether Mr. Torrence's actions were “reckless.” The second is whether there is evidence showing the absence of intent to inflict death or serious injury.

Mr. Torrence's decision to take the firearm inside the bar was reckless. Taking a firearm inside a bar is unlawful, and Mr. Torrence testified that he knew it was unlawful; he explained he “knew it had to be against some law.” (R.p.449, lines 7-11). But the court should not read too much into the fact that Mr. Torrence knew he was breaking the law; the critical question is whether Mr. Torrence's conduct shows recklessness and culpable negligence or whether it shows malice. Using North Carolina's definition of “culpable

negligence” as including “[a]n intentional violation of some statute designed for the protection of people which proximately though unintentionally causes death,” Mr. Torrence’s violation looks to be of that character. Unlawfully carrying a firearm into a premises selling alcoholic beverages is a misdemeanor that is punishable by a fine of not more than two thousand dollars or a prison sentence of not more than three years. S.C. Code Ann. § 16-23-465 (Supp. 2011). It is reasonable to think that it is *possible* that taking a gun inside a bar will lead to serious injury or death, but it is another thing to conclude that it is *probable*. See 40 Am. Jur. 2d *Homicide* § 88 (2008) (citing cases for the proposition that “depraved indifference” is shown where there is a probability, rather than a mere possibility, that death will result). Taking a gun in a bar also fits within South Carolina’s common law and statutory definitions of recklessness. The criminal statute covering involuntary manslaughter speaks of “reckless disregard for the safety of others[,]” see § 16-3-60, and, in the tort context, South Carolina has defined recklessness as the conduct of someone consciously aware that he was acting negligently. *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996). Intentionally taking a firearm inside a bar seems to fit those descriptions.

As to whether Mr. Torrence intended to inflict serious injury on anyone, his testimony suggests that he did not. Mr. Torrence repeatedly testified that the reason he went back inside the bar was to hold the decedent and Mr. Buchanan until the police arrived. (R.p.378, lines 21-23; p.382, lines 6-8; p.390, lines 17-18; p.442, lines 10-12).³ Mr. Torrence

³Mr. Torrence consistently claimed he called the police and reported the assault while he was outside the bar, and that his phone stopped working during the call. (R.p.377, line 14-p.378, line 6; p.434, lines 21-23). The parties disputed this point at trial. See, e.g. (R.p.434, line

explained that he took the gun in the bar to act as a deterrent; a show of force to compel compliance with his directions as he held the decedent and Mr. Buchanan and waited for the police. (R.p.379, line 9-p.380, line 5). Mr. Torrence admitted this thought process was “stupid,” see (R.p.442, lines 7-8), but stated that he thought he had just been assaulted by two people. (R.p.376, lines 13-17; p.379, line 20; p.432, lines 5-10). Mr. Torrence testified that he entered the bar with the firearm pointed down and out, not pointing it at anyone, (R.p.380, lines 8-13); that he did not point the weapon at anyone inside the bar, (R.p.380, lines 17-18); and that he did not enter the bar with the intention of firing the weapon. (R.p.380, lines 6-7). This supports the position that Mr. Torrence did not intend to inflict serious injury or death. He did not intend to inflict *any* injury.

Some of the circumstances surrounding Mr. Torrence’s act of firing the gun show the same thing; meaning, there is other evidence to suggest that Mr. Torrence did not shoot to inflict serious injury or death, but instead, he shot to stop the decedent from charging him and getting the gun. This line of reasoning was significant in the decision of the North Carolina Court of Appeals in *Debiase*. The court noted that although the defendant admitted he intentionally hit the decedent on the head with the beer bottle, the defendant struck the decedent only after the decedent rushed at him and the defendant struck the decedent once. 711 S.E.2d at 444. The defendant testified that he struck the decedent with the beer bottle because “it was a reaction almost, it was a flash kind of just—he come toward me; and I was kind of being held; and I was afraid. I was afraid that he was going to come and hurt me.”

24-p.435, line 2) (the State, arguing that the police department could not find a record of Mr. Torrence’s call).

Id. at 440. The *Debiase* court described this as a claim that the defendant “intentionally carried and used [a deadly weapon] during the course of a struggle with the deceased, but claimed that ‘the actual infliction of the fatal wound . . . was not intentional.’” *Id.* at 442 (quoting *Buck*, 313 S.E.2d at 553).

The facts of Mr. Torrence’s case are similar. Mr. Torrence described that, as the decedent charged him, he was “scared,” he “wasn’t thinking,” and he “knew that [he] was in danger.” (R.p.385, lines 11-13). Mr. Torrence also testified that he “had been drinking . . . and [] had to make a very fast decision, and [] went with instinct.” (R.p.382, lines 22-24). When asked whether he pulled the trigger intentionally, Mr. Torrence responded that he had, see (R.p.393, lines 5-9), but he explained that he thought he saw the decedent reach for the gun and that he shot to stop the decedent. See (R.p.393, lines 17-19). He characterized it as “a split-second decision . . . I knew he was coming towards me and I was scared and I shot.” (R.p.439, lines 11-13). Mr. Torrence was unable to retreat once the decedent charged; he was standing at a dead end at the end of the bar in an area that was just over 4 feet wide. See (R.p.300, line 19-p.301, line 13; p.384, line 10-p.385, line 1) (describing the dimensions of the area); see also (R.p.647) (a diagram of the area, referenced in both sections of transcript). He shot only twice; according to him, as fast as he could get the rounds off. (R.p.385, lines 19-20). He described the entire incident as occurring “all so fast.” *Id.*

The testimonial evidence and the surveillance videos do not depict a situation where Mr. Torrence coolly raised his gun, took aim at the charging decedent, and fired. The video does not show clearly that Mr. Torrence ever fully raised the gun off his hip. The jury could

have adopted the view that this was a shooting driven by both fear and instinct. The jury also could have found that the shooting occurred the instant before a struggle for the gun began. The decedent was shot in the right shoulder and behind the right ear, and the bullet that struck the decedent behind the right ear traveled in an unusual direction; it traveled down towards the decedent's shoulders. See (R.p.50, lines 5-7) (one bullet was in the arm, the other bullet was in the upper chest); (R.p.51, line 7-p.52, line 17) (describing the entrance wound and the path of the bullet found in the decedent's chest); (R.p.644) (diagram referenced in this testimony); and (R.p.645) (x-ray referenced in this testimony) (describing chest). The jury could have concluded that these wounds were inflicted in rapid succession as the decedent dove towards the gun and that Mr. Torrence reflexively fired. It would be difficult for these particular wounds to have been inflicted in any other manner.

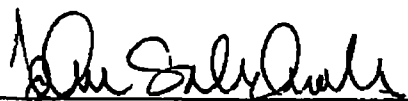
There are circumstances where it might be easier to say that the discharge of a firearm was clearly not intended to inflict serious injury. Target shooting would be one example, shooting at the ground in an effort to scare-off a would-be attacker might be another. But the rule described in *Debiase*—the rule about rapid and instinctual use of deadly weapons—is intellectually honest and legally supportable. There is a difference between deliberately shooting at someone to critically injure him as opposed to making a reactive decision to shoot a firearm in a reflexive effort to stop an assault. Mr. Torrence acknowledges that his decision to take his gun in the bar in an effort to perform a citizen's arrest was "stupid," but it seems excessively harsh to say that he ought to have foreseen that someone would throw a barstool at him and charge him aggressively. It is equally harsh to say that if the killing here was unintentional, it must be murder or nothing.

CONCLUSION

This Court should recognize that the intentional discharge of a firearm does not preclude a charge on involuntary manslaughter in all circumstances. Rather, a charge on involuntary manslaughter is appropriate when there is evidence that the killing was the unintentional result of the use of a deadly weapon where the defendant did not intend to inflict serious injury or death. Because there is evidence that Andrew Torrence's case fits that circumstance, the Court should reverse his conviction and remand this case for a new trial.

November 5, 2012

Respectfully submitted,



Blake A. Hewitt, SC Bar # 73674

John S. Nichols, SC Bar # 4210

John D. Delgado, SC Bar # 1621

BLUESTEIN NICHOLS

THOMPSON & DELGADO

Post Office Box 7965

Columbia, SC 29202

(803) 779-7599

(803) 779-8995 (facsimile)

bhewitt@bntdlaw.com

jsnichols@bntdlaw.com

Wayne Floyd

WAYNE FLOYD LAW OFFICE

Post Office Box 3972

W. Columbia, SC 29171

(803) 739-1824

Attorneys for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable K. G. R. McMillen, Circuit Court Judge

Opinion No. 333 of 1946-47

THE STATE

Respondent

ALLEN EARL TORLENSE JR.

Petitioner

FINAL BRIEF OF RESPONDENT

ALAN WILSON

Attorney General

JOHN KATE KENNY

Assistant Attorney General

Se. Ba. # 100145

Post Office Box 4749

Columbia, SC 29211

1946-47-48

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

I.

Appellant waived his right to appeal the trial judge's ruling denying the involuntary manslaughter charge because Appellant never objected with specificity to the ruling. Furthermore, Appellant was not entitled to an involuntary manslaughter charge because he admitted he intentionally shot the victim.

STATEMENT OF THE CASE

In August 2010, a Lexington County Grand Jury indicted Appellant for murder pursuant to section 16-3-10 of the South Carolina Code. In May 2012, a Lexington County Grand Jury indicted Appellant for carrying a firearm onto the premises of a building selling alcoholic liquors pursuant to section 16-23-465 of the South Carolina Code and possession of a weapon during a violent crime pursuant to section 16-23-490 of the South Carolina Code.

On May 31, 2011, Appellant proceeded to trial. On June 3, 2011, the jury found Appellant guilty of voluntary manslaughter and the two firearms charges. (R. pp. 617-618.) Thereafter, the Honorable Knox R. McMahon sentenced Appellant to twenty-five years of imprisonment for the voluntary manslaughter conviction and five years for each firearm charge. (R. p. 642.) Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

In the early morning hours of September 28, 2008, Appellant shot Zach Chaplin. Approximately six weeks later, Chaplin died as a result of the gunshot wounds. (R. p. 49; R. pp. 60-63.)

At trial, Appellant's former employer, Tonya Mozenko testified for the State. Mozenko hired Appellant as a part-time security guard. (R. pp. 82-83.) Appellant wanted to be an armed guard; however, Mozenko's company did not have any armed positions available. (R. p. 88.) On several occasions, Appellant told Mozenko that he wanted to be a police officer. (R. p. 89.) Eventually, Mozenko had to fire Appellant because Appellant could not do the job. (R. p. 84.)

A few hours before Appellant shot Chaplin, Appellant had a conversation with Mozenko and her friend, Stephen Smith, at Shaggy's Bar. Appellant told Mozenko and Smith that he tried to buy Donna Muszynski a drink earlier that night, and he was upset Muszynski gave all of her attention to Chaplin. (R. p. 94; R. pp. 128-129.) Appellant called Chaplin a "wolverine" and a "faggot." (R. p. 263; R. p. 97; R. p. 128.) However, Chaplin did not respond. (R. p. 95.) Appellant repeatedly said, "I should go to my truck and get my gun and shoot him." (R. p. 97-98; R. p. 129.) Sick and tired of Appellant's comments, Mozenko and Smith left the bar and went home. (R. p. 98.)

At trial, Lee Buchanan testified Appellant kept calling him gay. (R. pp. 264-265.) Buchanan told Appellant to leave him alone. (R. p. 177.) Appellant asked Buchanan if he wanted Appellant "to kiss his ass." (R. p. 177.) Throughout the night, Appellant made comments to Buchanan about Buchanan's sexuality. (R. p. 178.)

Eventually, Appellant and Chaplin got into a physical altercation. (R. p. 180.) Buchanan tried to stop the fight. (R. pp. 180-181; R. pp. 199-200; R. p. 226; R. p. 252; R.

p. 376.) After the fight was over, Buchanan helped Appellant find his glasses. Thereafter, Buchanan told Appellant, "[l]et's all go home. It's over and done with." (R. p. 181.) Buchanan escorted Appellant out of the bar. (R. p. 182; R. p. 213.) After Appellant left, everyone settled down. (R. p. 226.)

However, a few minutes later, Appellant knocked on the bar door and asked to come inside. Appellant reentered the bar with a gun in his hand. Appellant told Buchanan, "this has nothing to do with you, this doesn't involve you" (R. p. 183.) Buchanan could not escape. (R. p. 184.) At that point, Chaplin threw a barstool at Appellant. (R. p. 189.) Buchanan heard two gun shots, which sounded like "bam (pause) bam." (R. p. 184.) Another witness testified that the gun shots were approximately twenty seconds apart. (R. p. 214.)

In his defense, Appellant testified at trial. Appellant admitted he called Buchanan "gay." (R. p. 373.) Appellant claimed that when he went to apologize to Buchanan, Chaplin assaulted Appellant. (R. p. 376.) After the fight was over, Appellant continued to make comments. (R. p. 377.)

Thereafter, Appellant went to his truck and grabbed his gun. (R. pp. 377-380.) According to Appellant, he went back into the bar in order to detain Chaplin and Buchanan for the earlier assault. (R. p. 378-379.) Appellant ordered Buchanan to put his hands on the bar. (R. p. 381.) While Appellant searched Buchanan for weapons, Chaplin threw a barstool at Appellant. (R. pp. 381-382.) Appellant went into a defensive position. According to Appellant, when Chaplin came towards Appellant, he got scared and shot Chaplin twice. (R. pp. 382-386.) One bullet struck Chaplin in the right arm, and the other bullet struck Chaplin behind the right ear.

According to Dr. Janice Edwards Ross, Chaplin was either in a bent over position or on the ground when Appellant fired the second shot. (R. p. 59.) The bullet that struck Chaplin behind his right ear injured his spinal cord and paralyzed him from the chest down. (R. p. 60.) On November 12, 2008, Chaplin died from complications of his paralysis. (R. p. 49; R. pp. 60-63.)

Before closing arguments, the trial judge held a charge conference. (R. p. 511.) The State brought up Appellant's request to charge accident. (R. p. 513.) The following discussion occurred:

THE COURT: All right. I will deny that request. I do not intend to charge accident or involuntary manslaughter.

I do not think he was acting lawfully in unlawfully arming himself in that regard.

Yes, sir, Solicitor?

SOLICITOR: You are not giving a charge on involuntary manslaughter?

THE COURT: I am not.
(R. p. 513.)

Appellant's trial counsel did not comment. After discussing numerous charges, Appellant's trial counsel asked the trial judge to charge involuntary manslaughter. (R. p. 526.) The following discussion occurred:

THE COURT: I deny that. I thought I denied that earlier.

MR. FLOYD: I'm sorry. I may be in error but I did want to make sure I put it on the record.

THE COURT: I do not think you can reach the elements of involuntary manslaughter, in regard to the circumstances of this case.

Anything further?

MR. FLOYD: Nothing further, Your Honor.
(R. p. 526.)

After the jury began deliberations, the jury sent a note to the judge asking whether or not they could consider the crime of involuntary manslaughter. (R. p. 650; R. p. 620.) Appellant argued that the jury's request indicated that there was no proximate cause between the incident and the victim's death. (R. p. 621.) The judge told the jury that they could not consider involuntary manslaughter. (R. p. 650; R. p. 622.)

ARGUMENT

I.

Appellant waived his right to appeal the trial judge's ruling denying the involuntary manslaughter charge because Appellant never objected with specificity to the ruling. Furthermore, Appellant was not entitled to an involuntary manslaughter charge because he admitted he intentionally shot the victim.

Standard of Review

"If there is any evidence warranting a charge on involuntary manslaughter, then the charge must be given." State v. Reese, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006). "In order to amount to reversible error, the failure to give a requested charge must be both erroneous and prejudicial." State v. Gibson, 390 S.C. 347, 356, 701 S.E.2d 766, 770-71 (Ct. App. 2010) (certiorari granted March 22, 2012).

A. Appellant failed to properly preserve the jury charge issue.

Appellant argues the trial judge erred in not charging the jury on involuntary manslaughter. Moreover, Appellant urges this Court to overrule South Carolina precedent and adopt North Carolina law. However, at trial, Appellant never made that argument to the trial judge. Before the jury retired for deliberations, Appellant asked the trial judge to charge involuntary manslaughter but never stated why the charge was appropriate. (R. p. 526.) After the jury retired to deliberations and sent a note to the judge asking if they could consider involuntary manslaughter, Appellant argued the trial judge should have charged involuntary manslaughter because it was clear the jury did not think there was proximate cause between Appellant's actions and the victim's death. (R. p. 621.) However, Appellant never argued to the trial court that he should apply North Carolina law. Thus, Appellant failed to properly preserve the involuntary manslaughter issue.

Rule 20 of the South Carolina Rules of Criminal Procedure provides the following:

(a) **Time for Request.** All requests for legal instructions to the jury shall be submitted at the close of the evidence, or at such time as the trial judge shall reasonably direct. All requests must include accurate citation to authorities relied upon.

(b) **Objections to Charge.** Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state *distinctly* the matter objected to and the *grounds for objection*. Failure to object in accordance with this rule shall constitute a waiver of objection.

Rule 20, S.C.R. Crim. Pro. (emphasis added).

Moreover, an argument not raised and ruled on by the trial court is not preserved for appeal. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) Furthermore, “a specific objection to the admission of evidence must be made to preserve the issue for appeal.” McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Ct. App. 1996). In other words, “[t]he objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the trial judge.” Id. “The same ground argued on appeal must have been argued to the trial judge.” Id.

Thus, when requesting a jury charge, a trial attorney must specifically state his or her grounds for requesting the charge. Rule 20 (b), S.C.R. Crim. Pro.; see Bellamy v. Payne, 304 S.C. 179, 182-84, 403 S.E.2d 326, 328 (Ct.App.1991) (the trial court refused to instruct the jury with the appellant's requested jury instructions, and this Court held the appellant's failure to distinctly state the grounds for her objections to the trial court

precluded appellate review); see also 15 S.C. Juris. *Appeal and Error* § 81 (1992) (noting a party objecting to the trial court's refusal to give their requested jury instruction must distinctly state the grounds for the objection).

Here, the record is clear: Appellant never argued why involuntary manslaughter charge should have been charged to the jury until after the jury retired for deliberations. Even then, Appellant's argument for why the jury should be able to consider involuntary manslaughter was based upon proximate cause. Appellant never made any arguments regarding North Carolina law.

Thus, Appellant waived his right to challenge the trial judge's refusal to charge the jury on involuntary manslaughter.

B. The trial judge properly denied Appellant's request for a jury charge on involuntary manslaughter because Appellant intentionally shot the victim.

At trial, Appellant admitted he intentionally fired his gun and shot Chaplin two times. (R. p. 393.) Therefore, the trial judge did not err when he refused to charge the jury on involuntary manslaughter.

Under South Carolina law, involuntary manslaughter is defined as the following: "[T]he killing of another without malice and unintentionally while engaged in either: (1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others." Reese, 370 S.C. at 36, 633 S.E.2d at 900 (emphasis added).

Furthermore, South Carolina case law is very clear: If a defendant admits he or she intentionally fired a gun, he or she is not entitled to a jury charge on involuntary manslaughter. See State v. Morris, 307 S.C. 480, 484, 415 S.E.2d 819, 822 (Ct. App. 1991) (holding the defendant was not entitled to a charge of involuntary manslaughter

because the defendant admitted he intentionally shot the victim in self-defense); see also State v. Pickens, 320 S.C. 528, 532, 466 S.E.2d 364, 367 (1996) (holding the defendant was not entitled to a jury charge of involuntary manslaughter because the defendant admitted he shot the gun); see also State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (1976) (holding the defendant was not entitled to a jury charge of involuntary manslaughter because he admitted he intentionally fired his shotgun but claimed he only meant to shoot over the victim's head).

In the case at hand, Appellant admitted he intentionally fired his gun and shot Chaplin. However, Appellant claimed he only shot Chaplin because he was afraid Chaplin was going to get the gun from him and shoot him. (R. p. 391.)

This case is very similar to the Morris case. This Court in Morris noted the following: "Whether the shooting was excusable in the circumstances (self defense) or was committed in the heat of passion upon sufficient provocation (voluntary manslaughter) was for the jury to determine, and the judge so charged them." 307 S.C. at 484, 415 S.E.2d at 822. The case at hand was clearly a case of imperfect self-defense; therefore, voluntary manslaughter was the proper charge.¹

Moreover, the fact that Appellant claimed he did not intend to harm Chaplin when Appellant reentered the bar is irrelevant. See State v. Smith, 315 S.C. 547, 550, 446 S.E.2d 411, 413 (1994) (holding whether the defendant intended to harm the victim was irrelevant because the defendant intentionally stabbed the victim with a knife, i.e., a dangerous instrumentality).

¹ See Douglas v. State, 322 S.C. 67, 504 S.E.2d 307, FN4 (1998) ("A claim of imperfect self-defense would also be unavailing because it has no application to involuntary manslaughter.").

In summary, because Appellant admitted he intentionally fired his gun and shot the victim, the trial judge did not err in precluding the involuntary manslaughter charge.

C. The facts of Appellant's case do not warrant a jury charge of involuntary manslaughter under South Carolina law.

Even if Appellant had not testified that he intentionally shot Chaplin, involuntary manslaughter would still have been an improper jury charge under South Carolina law.

As mentioned earlier, involuntary manslaughter is defined as "the killing of another without malice and unintentionally while engaged in either: (1) an unlawful act not amounting a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others." Reese, 370 S.C. at 36, 633 S.E.2d at 900.

First, shooting someone is likely to cause death or great bodily harm. Therefore, the first section of the involuntary manslaughter definition clearly does not fit the facts of this case.

Secondly, Appellant was not acting lawfully when he brought his gun into the bar and presented it to the patrons of the bar.² Therefore, the second section of the involuntary manslaughter definition is not applicable in this case.

² See S.C. Code Ann. § 16-23-410 (presenting or pointing a loaded or unloaded firearm at another person); see also In re Spencer R., 387 S.C. 517, 692 S.E.2d 569 (Ct. App. 2010) (holding the phrase "to present" under § 16-23-410 means to offer to view in a threatening manner, or to show in a threatening manner); see also S.C. Code Ann. § 16-23-465 (carrying a firearm onto the premises of a building selling alcoholic liquors); see also S.C. Code Ann. § 16-23-490 (possession of a weapon during a violent crime).

Finally, Appellant claims he acted "recklessly" when he brought his gun into the bar. However, Appellant did not act recklessly: Appellant acted intentionally. He brought the gun into the bar so that he could get command of the room and scare the patrons. Furthermore, Appellant acted intentionally when he fired his gun at the victim. Thus, this is clearly not a "reckless disregard for the safety of others" case. Therefore, once again, the second section of the involuntary manslaughter definition is not applicable in this case.

D. The facts of Appellant's case do not warrant a jury charge of involuntary manslaughter under North Carolina law.

Even if this Court applied North Carolina law to the facts of this case, Appellant would not have been entitled to an involuntary manslaughter jury charge.

In the case at hand, Appellant testified he shot Chaplin because Chaplin was advancing towards him, and he was scared Chaplin would take his gun and shoot him. However, North Carolina law does not permit an involuntary manslaughter under these circumstances. See State v. Brooks, 266 S.E.2d 3, 4 (N.C. Ct. App. 1980) (holding that the jury should not have been charged on involuntary manslaughter when the defendant's testimony indicated that the defendant pointed the gun at the deceased and shot him while he was advancing toward the defendant).

In addition, Appellant would not be entitled to an involuntary manslaughter charge in North Carolina because he admitted he intentionally shot Chaplin, although he claimed he only shot in self-defense. See State v. Cason, 275 S.E.2d 221 (N.C. Ct. App. 1981) (holding the involuntary manslaughter charge was improper because the defendant relied on self-defense for an acquittal and there was no evidence the defendant accidentally shot the victim).

Furthermore, this is not a case where the gun discharged while Appellant and Chaplin struggled for control of the gun. See State v. McConnaughey, 311 S.E.2d 26, 29-30 (N.C. Ct. App. 1984) (holding the defendant was entitled to a jury charge of involuntary manslaughter because there was evidence that the gun discharged while the defendant and the victim were wrestling); see also State v. Buck, 313 S.E.2d 550, 553 (N.C. 1984) (holding the defendant was entitled to a jury charge of involuntary manslaughter because there was evidence that the victim was stabbed during a struggle in which both the defendant and the victim were armed with knives).

In addition, Appellant admitted he intentionally shot Chaplin. See State v. Young, 675 S.E.2d 704, 709 (N.C. Ct. App. 2009) (holding that the defendant was not entitled to a jury charge of involuntary manslaughter because all of the evidence indicated that defendant intentionally fired the shot that killed the victim and no evidence indicated that the victim's death resulted from unintentional conduct).

Moreover, this is not a case where the gun accidentally discharged and a bullet hit someone. See State v. Graham, 247 S.E.2d 300, 302-303 (N.C. Ct. App. 1978) (holding the defendant was entitled to a jury charge of involuntary manslaughter where defendant claimed he fired the first shot as a warning shot and the second shot accidentally occurred when he threw the gun up in the air).

In summary, even if this Court was inclined to apply North Carolina law, the facts of this case do not warrant an involuntary manslaughter charge.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General
SC Bar # 100145

BY: Julie Kate Keeney
Julie Kate Keeney (Bar No. 100145)

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 2, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Knox R. McMahon, Circuit Court Judge

Case Nos. 2010-GS-32-2318, and 2011-GS-32-1440 & -1444

The State of South Carolina, ... Respondent,

v.

Andrew E. Torrence, Jr., ... Appellant.

REPLY BRIEF

RECEIVED

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SC COURT OF APPEALS

Blake A. Hewitt
John S. Nichols
John D. Delgado
BLUESTEIN NICHOLS
THOMPSON & DELGADO
Post Office Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)

Wayne Floyd
WAYNE FLOYD LAW OFFICE
Post Office Box 3972
W. Columbia, SC 29171
(803) 739-1824

Attorneys for Appellant

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ARGUMENT

I. Consistent with His Request to the Trial Court, Mr. Torrence Asks this Court to Apply the Law of South Carolina, Not North Carolina, on Involuntary Manslaughter.

According to the State's brief, Mr. Torrence is asking the court to "adopt North Carolina law" or to "apply North Carolina law." The State uses that description to suggest that Mr. Torrence's argument was not raised to the trial court and is not preserved for review. This argument should not be persuasive for two reasons.

First, Mr. Torrence is not asking this Court to "adopt" foreign law. As far as the doctrine of involuntary manslaughter is concerned, North Carolina law and South Carolina law are the same. South Carolina defines involuntary manslaughter as the unintentional killing of another person, without malice, while (a) engaged in an unlawful activity that is not a felony and that does not naturally tend to cause death or great bodily harm, or (b) engaged in a lawful activity with reckless disregard for the safety of others. *State v. Smith*, 391 S.C. 408, 414, 706 S.E.2d 12, 15 (2011). North Carolina defines involuntary manslaughter as the unintentional killing of a human being, without malice, caused by (a) an unlawful act that is not a felony nor naturally dangerous to human life, or (b) an act evidencing disregard for human rights and safety. *State v. Brewer*, 386 S.E.2d 569, 583 (N.C. 1989). There is no meaningful difference between these definitions. Mr. Torrence's argument here is that when the facts are viewed in the light most favorable to him, they support a charge of involuntary manslaughter as that doctrine is defined in South Carolina. Mr. Torrence's principal brief cited North Carolina cases only because the doctrine is identical in both states and because North Carolina courts have spoken directly to this point.

Second, the only requirements for preserving an objection to a jury charge are that the defendant requested the charge from the trial court and that the defendant renewed that objection after the charges were given to the jury. These requirements are embodied in the judicial decisions instructing that the law to be charged is determined from the evidence, that the trial court must give a requested charge if there is any evidence supporting it, and that the trial court commits reversible error when it fails to give a requested charge on an issue raised by the evidence. See, e.g., *Smith*, 391 S.C. at 412, 706 S.E.2d at 14 (citing *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 835 (1989) and *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001)).

Mr. Torrence's theory of the case has consistently been that he re-entered the bar to detain the man who had assaulted him. He explained that he fired his weapon only after this man charged at him. Even then, he fired only instinctively and at the last moment, as the man reached for Mr. Torrence's gun. When arguing the case to the trial judge while the attorneys and the judge discussed jury charges, Mr. Torrence's lawyer offered that the jury could view the evidence as showing that Mr. Torrence had not "intended to kill [Mr. Chaplin] and the killing was unintentional." (R.p.512, lines 18-19). He explained, "[Mr. Torrence] believed he was acting lawfully to effect a citizen's arrest . . . [and] [i]n the care and exercise of having the weapon[,] he did not point it at anyone until he perceived that there was a threat of the weapon being taken from him." (R.p.512, ll. 20-25).

These circumstances either encompass involuntary manslaughter or they do not. The trial judge thought they did not; he responded to this narrative by saying that he would not charge involuntary manslaughter. See (R.p.513, lines 1-5). Later, when Mr. Torrence

specifically requested an involuntary manslaughter charge, the judge responded that he “thought [he] had denied that earlier.” (R.p.526, lines 6-7). And, of course, after the jury had been charged, Mr. Torrence objected to the failure to charge involuntary manslaughter. (R.p.610, lines 19-21). Although Mr. Torrence certainly could have continued repeating his version of the facts during each of these discussions, that is not required to preserve an issue for review. Error preservation requires only that an argument be raised to the lower court and ruled upon by the lower court. See *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003).

II. Rather Than Viewing the Facts in the Light Most Favorable to the State, the Court must View the Facts in the Light Most Favorable to Mr. Torrence.

In determining the law to be charged, the version of the facts that counts is the version that is most favorable to the defendant. E.g. *State v. Cottrell*, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008). The State’s brief does not honor that requirement. Instead, it frames the facts in a light favorable to the prosecution. To take one example, consider the off-color remarks Mr. Torrence made to other patrons seated at the bar. Some of those remarks were admitted, but others were denied.¹ While the State’s brief alleges that the deceased, Mr. Chaplin, “did not respond” to Mr. Torrence’s comments, (Brief of Respondent, p.3), Mr. Torrence testified that the deceased responded by asking Mr. Torrence “how much money do you have in your pocket . . . because I’m going to beat your ass and take it.” (R.p.374, lines 12-21).

¹Mr. Torrence denied asking Mr. Buchanan to “kiss his ass,” see (R.p.424, lines 21-25), but he admitted making comments referencing Mr. Buchanan’s sexual orientation. (R.p.373, lines 17-25; p.530, lines 7-25).

Of course, viewing the evidence in the light most favorable to the State, it would be possible for a jury to find that Mr. Torrence acted with malice and to convict Mr. Torrence of murder, but this appeal does not concern the version of the facts that is most favorable to the State. For the purpose of this appeal, the facts show that Mr. Torrence went to sit by Mr. Buchanan in order to apologize for his earlier remarks. This happened at about 6:30 a.m. on a Sunday morning, after everyone involved had been in a bar drinking alcohol for several hours. While Mr. Torrence was talking to Mr. Buchanan, the deceased got up from his seat at the bar, walked directly to Mr. Torrence, and—without any warning whatsoever—began punching Mr. Torrence in the face. A test performed by the hospital on the decedent's blood returned positive results for the presence of amphetamines and cocaine. (R.p.324, line 23 - p.325, line 1).² Mr. Buchanan tried to stop the fight, but his intervention served only to restrain Mr. Torrence while the deceased kept punching. The deceased resumed his aggressive actions after Mr. Torrence re-entered the bar, throwing a bar stool at Mr. Torrence, then charging Mr. Torrence and reaching for his gun.

The purpose of this narrative is not to portray Mr. Torrence as the "victim," and the argument on appeal is not that Mr. Torrence was entitled to an acquittal. Those are factual questions. However, the law does not permit the use of the State's version of the facts to determine whether the trial court erred in refusing to charge involuntary manslaughter. Nothing in the State's narrative views the facts in the light most favorable to Mr. Torrence.

²To be fair, there was testimony at trial indicating that a person's blood could return a positive test for these substances up to 72 hours after ingestion. (R.p.329, lines 6-18). The positive drug test thus does not conclusively prove that the decedent was under the influence of illegal drugs during this encounter.

III. Through a Proper Consideration and Application of the Principles of Law, Mr. Torrence Was Entitled to a Charge on Involuntary Manslaughter.

The argument in this appeal is not complex. Mr. Torrence argues simply that the proper construction of South Carolina's definition of involuntary manslaughter includes *some* killings that involve the intentional use of a deadly weapon; specifically, killings where the circumstances indicate that the defendant did not intend the use of the deadly weapon to inflict serious injury or death. That construction does not apply when a defendant deliberately engages in an act likely to result in death or serious injury but casually claims that he or she did not mean to kill anyone. The test ought to be whether a reasonable jury could view the circumstances as suggesting that the infliction of the fatal wound was unintentional, despite the fact that the defendant intentionally carried a deadly instrument during the incident.

For a number of reasons, common sense supports that test. For one thing, although many people might consider the intentional discharge of a gun to be an inherently dangerous activity that is likely to cause death or serious injury, the same consideration could apply to driving an automobile in a reckless manner, which is a classic example of an act that can justify an involuntary manslaughter instruction. See *State v. Caldwell*, 231 S.C. 184, 98 S.E.2d 259 (1957). The analysis must evaluate more than just whether the act that led to the death was "intentional" and "dangerous." Otherwise, the rule is internally inconsistent: it always removes the dangerous shooter, but it admits the dangerous driver.

The conduct of the defendants and the results in *State v. Crosby* and *State v. Burriss* are also instructive. In *Crosby*, the defendant grabbed a gun while trying to stop a fight and

claimed “I closed my eyes and pulled the trigger. I didn’t even know I pulled the trigger.” 355 S.C. 47, 50, 584 S.E.2d 110, 111 (2003). In *Burriss*, the defendant claimed that in preparing to defend himself, he intentionally grabbed his gun and “it fired.” 334 S.C. 256, 263, 513 S.E.2d 104, 108 (1999). Then consider the defendant, like Mr. Torrence, who is honest enough to admit that he fired the gun—guns do not shoot themselves—but claims that he did so as an instinctive reaction. There is no meaningful difference between Mr. Torrence’s situation and the circumstances in *Burriss* or *Crosby*. While it is fair to say that even a defendant who shot based on instinct should foresee that an injury might result, it is also fair to make the same observation about the *Crosby* and *Burriss* defendants. Those defendants intentionally grabbed firearms and pointed those firearms at other people.

Now consider the circumstances of Mr. Torrence’s case. If Mr. Torrence did not commit this killing with malice, the killing cannot be murder. If he did not have an uncontrollable impulse to do violence, it cannot be voluntary manslaughter. See *State v. Starnes*, 388 S.C. 590, 598, 698 S.E.2d 604, 609 (2010). A reasonable jury could make the findings necessary to disqualify murder and voluntary manslaughter, and that same jury could also find that Mr. Torrence “brought on the difficulty” and thereby disqualify his defense of self-defense. See *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007). Without a defense to the killing, there must be *some* criminal liability. With murder and voluntary manslaughter inapplicable, only involuntary manslaughter remains.

Finally, consider that appellate courts in North Carolina — which have applied an involuntary manslaughter doctrine that is identical to the doctrine in South Carolina — have relied on the same principles Mr. Torrence is advancing and have reinforced those principles

on a number of occasions. The Supreme Court of North Carolina has rejected the idea that involuntary manslaughter requires an unintentional discharge of a weapon, calling that argument an “invalid premise.” *Brewer*, 386 S.E.2d at 583. Using the language of an opinion of the Supreme Court, the North Carolina Court of Appeals described that an involuntary manslaughter conviction can be based on “an ‘unintentional homicide resulting from the reckless use of a deadly weapon under circumstances not evidencing a heart devoid of a sense of social duty.’” *State v. Debiase*, 711 S.E.2d 436, 442 (N.C. Ct. App. 2011). That same opinion also stated that involuntary manslaughter is not appropriate if (a) the defendant deliberately engages in an act likely to result in serious injury and (b) there is no evidence that the killing was accidental other than the defendant’s self-serving testimony that he or she did not mean to kill. *Id.* at 443-444. It also described that if the defendant “(1) intended to strike at [the victim] to keep him away, but did not intend to kill or seriously injure him; or (2) simply reacted instinctively without any intent to strike [the victim] at all[,] [e]ither scenario would support a verdict of involuntary manslaughter.” *Id.* at 443 (quoting *State v. Drew*, 592 S.E.2d 27, 30 (N.C. Ct. App. 2004)).

The State never directly responds to the argument that this should be the law. Instead, the State offers only that Mr. Torrence admitted intentionally firing at the deceased and that Mr. Torrence’s act of bringing a firearm into a bar was “intentional,” not “reckless.”

Taking these points in reverse, it ought to be obvious that Mr. Torrence’s act of bringing the firearm into the bar was “intentional.” Mr. Torrence admitted that point. But admitting that an act was “intentional” does not exclude the possibility it was also “reckless.” The Supreme Court has defined recklessness as “a state of mind in which the actor is aware

of his or her conduct, yet consciously disregards a risk which his or her conduct is creating.” *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007). Describing Mr. Torrence’s conduct as intentional says nothing about whether he was aware of his conduct and consciously disregarded the risks of it, nor does it establish that person cannot fairly be characterized as consciously disregarding the risk his or her conduct is creating when that person knowingly takes a gun into a bar. Mr. Torrence admitted that he knew his conduct “had to be against some law[,]” (R.p.449, lines 7-11), and all involuntary manslaughter cases will always involve *some* intentional act. Without at least one intentional act in the chain of causation, the death would be excused as an accident. *State v. Wilkerson*, 247 S.E.2d 905, 918 (N.C. 1978).

The evidence itself answers the question whether Mr. Torrence deliberately fired at the deceased intending to kill him (in which case he would not be entitled to an involuntary manslaughter charge), or whether he shot to keep the deceased away or shot based on instinct (in which case he would be entitled to the involuntary manslaughter charge). Mr. Torrence entered the bar with the firearm pointed “down and out,” it was not pointed at anyone. (R.p.380, lines 8-13). On entering the bar, he had no intention of firing the weapon. (R.p.380, lines 6-7). Until the shooting, Mr. Torrence did not point the weapon at anyone inside the bar. (R.p.380, lines 17-18). The evidence shows that as the decedent charged Mr. Torrence, Mr. Torrence was “scared,” he “wasn’t thinking,” and he “knew that [he] was in danger.” (R.p.385, lines 11-13). He also described that he “had to make a very fast decision, and [] went with instinct.” (R.p.382, lines 22-24). When asked whether he pulled the trigger “intentionally,” Mr. Torrence responded “yes.” But the next question was whether there was

a struggle over the gun, to which Mr. Torrence replied “you’re talking about something that happened in a second. Yeah, there was a struggle.” (R.p.393, lines 5-12). Mr. Torrence explained, “I thought [the deceased] was reaching. I shot to stop him. I had to shoot to stop him.” (R.p.393, lines 17-18). When asked whether the deceased had ever touched the weapon, Mr. Torrence replied “I can’t really say because it happened so fast.” (R.p.394, lines 3-6).

As Mr. Torrence’s principal brief fully describes, the jury could have adopted the view that the shooting was driven by both fear and instinct. The jury also could have found that the shooting occurred the instant before a physical struggle for the gun began, and the jury could have concluded that the decedent’s wounds were inflicted in rapid succession as he dove towards the gun that Mr. Torrence reflexively fired. The Court should recognize that involuntary manslaughter does include *some* killings that involve the intentional use of a deadly weapon. Based on that recognition, the Court should hold that it was reversible error for the trial court to refuse an involuntary manslaughter charge in this case.

IV. Because the Authorities upon Which the State Relies Are Distinguishable, the State’s Arguments Do Not Support the Trial Court’s Refusal to Charge Involuntary Manslaughter.

The State argues that Mr. Torrence’s case is similar to *State v. Morris*. (Brief of Respondent, p.10). Like the situation here, *Morris* involved an argument that escalated and resulted in a killing, but the similarities end there. After the defendant in *Morris* and the victim “had words,” the victim asked the defendant to leave the premises. When Mr. Morris refused, the victim hit Mr. Morris, knocking him back two steps. Mr. Morris said “I’m leaving,” and then, after the victim turned *his* back and began walking away, Mr. Morris shot

the victim in the back. 307 S.C. 480, 482, 415 S.E.2d 819, 821 (Ct. App. 1991). Comparing *Morris* and Mr. Torrence's case in simple terms, the action of a person shooting someone in the back after verbally indicating that the confrontation is over is meaningfully different from a person reflexively shooting at someone who is charging at him and reaching for his gun.

The State also relies on *State v. Brooks*, which is similar to Mr. Torrence's case only in that the defendant in *Brooks* shot while the victim was advancing on her and that she testified that she "was scared and didn't mean to shoot [the victim]." 266 S.E.2d 3, 4 (N.C. Ct. App. 1980). There is nothing in *Brooks* which describes any evidence that the shooting was the result of "instinct" or the victim reaching for the firearm; nor is there any suggestion that the defendant was at-fault in bringing on the difficulty — rather, she ran to get a gun after her estranged ex-husband had been beating her. *Id.* *Brooks* also pre-dates the North Carolina decisions in *State v. Brewer*, *State v. Debiase*, and *State v. Drew* — the principal cases discussing the legal question at issue in this case. *Brooks* was decided in 1980. 266 S.E.2d at 3. *Brewer*, the earliest of the others, was decided in 1989. 386 S.E.2d at 569; see also *Debiase*, 711 S.E.2d at 436 and *Drew*, 592 S.E.2d at 27. The State does here what the Supreme Court said the defendant did in *State v. Starnes*; it is turning "primarily fact-driven holdings into broad statements of law." 388 S.C. at 597, 698 S.E.2d at 608.

The State also cites *State v. Cason*, but the only factual description given in the opinion there is that "[a]ll the evidence shows the defendant intentionally shot [the deceased]." 275 S.E.2d 221, 221 (N.C. Ct. App. 1981). The State also cites *State v. McConnaughey*, 311 S.E.2d 26 (N.C. Ct. App. 1984) and *State v. Buck*, 313 S.E.2d 550 (N.C. 1984), both of which are cases where an involuntary manslaughter charge was given

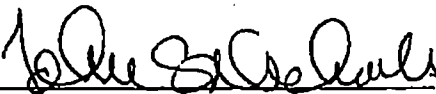
because there was evidence that the fatal injury occurred during the struggle for a deadly weapon. As the previous section of this brief described, the circumstances of Mr. Torrence's case are fairly comparable. Because there is some evidence that would support a finding that Mr. Torrence did not intend the use of the deadly weapon to inflict serious injury or death, the trial court should have charged the jury on the law of involuntary manslaughter.

CONCLUSION

This Court should recognize that the intentional discharge of a firearm does not preclude a charge on involuntary manslaughter in all circumstances. The Court should hold that a charge on involuntary manslaughter is proper when there is evidence that the killing was the unintentional result of the use of a deadly weapon where the defendant did not intend to inflict serious injury or death. Because there is evidence that Andrew Torrence's case fits this description, the Court should reverse his conviction and remand this case for a new trial with instructions to use the proper charge on involuntary manslaughter.

Respectfully submitted,

November 5, 2012



Blake A. Hewitt, SC Bar # 73674

John S. Nichols, SC Bar # 4210

John D. Delgado, SC Bar # 1621

— BLUESTEIN NICHOLS

THOMPSON & DELGADO

Post Office Box 7965

Columbia, SC 29202

(803) 779-7599

(803) 779-8995 (facsimile)

bhewitt@bntdlaw.com

jsnichols@bntdlaw.com

Attorneys for Appellant

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Andrew Torrence, Appellant.

Appellate Case No. 2011-194612

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2013-UP-152
Heard March 5, 2013 – Filed April 10, 2013

AFFIRMED

John S. Nichols and Blake A. Hewitt, Bluestein Nichols
Thompson & Delgado, LLC, of Columbia, H. Wayne
Floyd, of West Columbia, for Appellant.

Attorney General Alan Wilson, Assistant Attorney
General Julie Kate Keeney, both of Columbia, for
Respondent.

PER CURIAM: Andrew Torrence appeals his conviction of voluntary manslaughter for the shooting death of Zach Chaplin. He argues the circuit court erred when it did not charge the jury on involuntary manslaughter because there is

evidence in the record showing Torrence did not intend to inflict great bodily harm or death. We affirm.

In the early morning hours of September 28, 2008, Torrence and Chaplin got into a physical altercation while at a bar. Although Torrence initially exited the bar after the fight, he decided to go back in with his gun to make a citizen's arrest and detain Chaplin for the earlier assault. He testified he brought the gun with him as a deterrent against any further violence and had no intent to shoot the gun. However, while Torrence was conducting the alleged citizen's arrest, Chaplin charged him from across the bar. Torrence admitted he fired the gun twice at Chaplin. Both bullets struck Chaplin, and he died from complications of his injuries.

At trial for murder, the court charged voluntary manslaughter but refused Torrence's request to charge involuntary manslaughter. The jury found Torrence guilty of voluntary manslaughter, and the court sentenced him to twenty-five years imprisonment.

The law to be charged is determined from the evidence presented at trial. *State v. Gibson*, 390 S.C. 347, 355, 701 S.E.2d 766, 770 (Ct. App. 2010). The trial court commits reversible error if it refuses a request for a jury instruction on a lesser-included offense that is supported by the evidence. 390 S.C. at 355-56, 701 S.E.2d at 770.

Involuntary manslaughter is defined as the unintentional killing of another without malice while (1) engaged in an unlawful activity not naturally tending to cause death or great bodily harm or (2) engaged in a lawful activity with reckless disregard for the safety of others. *State v. Smith*, 391 S.C. 408, 414, 706 S.E.2d 12, 15 (2011). Generally, a charge of involuntary manslaughter is inappropriate where the defendant admits he or she intentionally fired a gun. *See State v. Pickens*, 320 S.C. 528, 531-32, 466 S.E.2d 364, 366-67 (1996) (holding defendant not entitled to involuntary manslaughter charge because defendant admitted intentionally shooting the gun); *Gibson*, 390 S.C. at 357-58, 701 S.E.2d at 771-72 (holding defendant not entitled to charge of involuntary manslaughter because "the essence of involuntary manslaughter is the involuntary nature of the killing" and he intentionally fired the gun); *State v. Morris*, 307 S.C. 480, 484, 415 S.E.2d 819, 821-22 (Ct. App. 1991) (holding defendant not entitled to involuntary manslaughter charge because the act must be unintentional and defendant intentionally fired the gun).

We reject Torrence's argument that the word "unintentional" in the involuntary manslaughter definition should mean the defendant's intent to cause the consequence of death or serious bodily harm when he fired the gun. Instead, we consider the word "unintentional" to relate to the defendant's intent to voluntarily fire the gun. *See Bozeman v. State*, 307 S.C. 172, 177, 414 S.E.2d 144, 147 (1992) (explaining involuntary manslaughter charge inappropriate even though defendant "only meant to shoot over the victim's head" because he intended to shoot the gun). Therefore, because there is no evidence that Torrence did not intentionally fire his gun at Chaplin, he was not entitled to a charge of involuntary manslaughter. Moreover, this case does not fall under either prong of the involuntary manslaughter definition because: (1) firing a gun is considered conduct naturally tending to cause death or great bodily harm; and (2) Torrence was not acting lawfully by brandishing the gun in a bar. *See id.* 307 S.C. at 177, 414 S.E.2d at 147 (observing that firing a gun "naturally tends to cause death or bodily harm"); *State v. Rivera*, 389 S.C. 399, 403, 699 S.E.2d 157, 159 (2010) (agreeing with State's argument that brandishing a weapon was unlawful conduct naturally tending to cause death or great bodily harm); S.C. Code Ann. § 16-23-465 (2003) (unlawful to carry a firearm onto the premises of a building selling alcoholic liquors).

Torrence cites cases from North Carolina in support of his claim that the facts warrant a charge of involuntary manslaughter. However, we must analyze this case under the law as it currently exists in South Carolina. Under South Carolina law, the facts of this case require us to find that a charge of involuntary manslaughter was not supported by the evidence. Therefore, the circuit court's refusal to charge involuntary manslaughter is

AFFIRMED.

FEW, C.J., and GEATHERS and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Knox R. McMahon, Circuit Court Judge

Op. No. 2013-UP-152 (S.C. Ct. App. filed Apr. 10, 2013)

RECEIVED

APR 23 2013

SC Court of Appeals

The State of South Carolina, ... Respondent,

v.

Andrew E. Torrence, Jr., ... Appellant.

PETITION FOR REHEARING

First, the purpose of this petition is to preserve Mr. Torrence's ability to request that the Supreme Court review the arguments he offered this Court on the merits. To that end, Mr. Torrence incorporates the arguments from his principle and reply briefs by reference.

Second, although the Court's decision contains a correct recital of language from *State v. Pickens*, *State v. Gibson*, and *State v. Morris*, the language of those cases is not consistent with current South Carolina law — in some circumstances, it is appropriate to charge involuntary manslaughter despite the fact that the defendant intentionally discharged a firearm. One need look no further than the *Morris* decision itself, which favorably cited *State v. Quick*. In *Quick*, the Supreme Court affirmed an involuntary manslaughter conviction where the defendant admitted firing the gun. See *Morris*, 307 S.C. 480, 483, 415 S.E.2d 819, 821 (Ct. App. 1991) (citing *Quick*, 168 S.C. 76, 167 S.E. 19 (1932)).

There is more to the inconsistency. After citing *Quick*, the *Morris* decision says “the act must be unintentional.” 307 S.C. at 483, 415 S.E.2d at 821. This cannot be a correct statement of the law. Without *some* intentional conduct, there can be no criminal liability. Without some intentional conduct, the killing must be excused as an accident.

Morris is a 1991 decision of this Court, and what has happened is that subsequent decisions have used this phrase from *Morris* to unhitch South Carolina’s involuntary manslaughter jurisprudence from its moorings. Not all shootings are created equal; the defendant who coolly and deliberately shoots at someone else is materially different from the defendant who shoots during the course of a brief but violent physical altercation and who shoots without the deliberate intent to kill. This loose language from *Morris* draws an arbitrary line in the sand, and the problem is that this view is erroneous under current South Carolina law. *Quick* is a Supreme Court decision, and it has never been overruled.

The jury could have found that Mr. Torrence was at-fault in bringing on the difficulty, and the jury would thus have been required to take self-defense off the table. The same jury might have found that Mr. Torrence did not intend to injure anyone, thus removing voluntary manslaughter as a possibility. There is not a category of killings that count as “nothing” — a killing is either self-defense, accident, involuntary manslaughter, voluntary manslaughter, or murder. This Court is bound by the Supreme Court’s decisions, but it is possible to rule in favor of Mr. Torrence while still remaining faithful to South Carolina’s definition of involuntary manslaughter and the case law that properly applies that definition.

Third, the question whether Mr. Torrence was acting lawfully while carrying his firearm inside the bar involves questions that were for the jury; specifically, whether Mr.

Torrence had the right to perform a citizen's arrest and whether he had the right to use deadly force (or a show of force) during that arrest. See *State v. Cooney*, 320 S.C. 107, 463 S.E.2d 597 (1995). No one has argued that Mr. Torrence's decision to take a firearm in this building was a prudent one, but for a court to say that death or serious injury was a *probable* result of this conduct — as opposed to a *possible* result — is to usurp the jury's role.

Finally, there is *some* evidence that Mr. Torrence did not intentionally discharge his firearm at the deceased. Mr. Torrence explained that he "had to make a fast decision and went with instinct," and that he did not know "how else to explain [it]." (R.p.382, lines 22-24). When asked whether there was a struggle for control of the weapon, he replied "Yeah, there was a struggle . . . I don't remember whether [the deceased] touched the weapon or not." (R.p.393, line 11 - p.394, line 2). The first statement is functionally equivalent to *State v. Crosby*, where the defendant said he pulled his gun, raised it, and "pulled the trigger, [but] I didn't even know I pulled the trigger." See 355 S.C. 47, 53, 584 S.E.2d 110, 112 (2003). In a similar fashion, several decisions recognize that evidence of a struggle for control of a weapon is sufficient for submission of an involuntary manslaughter instruction to the jury. *State v. Light*, 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008) (citing *Casey v. State*, 305 S.C. 445, 409 S.E.2d 391 (1991)). A fair reading of the evidence is that this shooting was instinctive and occurred the moment before a struggle for the gun or at the same time a struggle for the gun began.

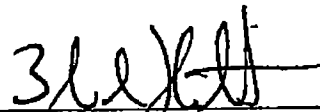
CONCLUSION

The way to write this case in Mr. Torrence's favor is for the Court to write that while it questions whether some of the statements from cases like *Gibson*, *Morris*, and *Pickens* are

faithful to involuntary manslaughter doctrine if applied literally, it is not necessary to resolve this doctrinal conflict because this shooting is not a run-of-the-mill "intentional shooting." There is *some* evidence that this shooting was instinctive — not deliberate — and occurred the moment before a struggle for the gun began or at the same time a struggle for the gun was beginning. This resolution is faithful to involuntary manslaughter doctrine and takes this potential conflict out of play. For the reasons set forth in this petition and in Mr. Torrence's merits briefs, the Court should reverse.

April 19, 2013

Respectfully submitted,



Blake A. Hewitt, SC Bar # 73674

John S. Nichols, SC Bar # 4210

John D. Delgado, SC Bar # 1621

BLUESTEIN NICHOLS

THOMPSON & DELGADO

Post Office Box 7965

Columbia, SC 29202

(803) 779-7599

(803) 779-8995 (facsimile)

bhewitt@bntdlaw.com

jsnichols@bntdlaw.com

Attorneys for Appellant

The South Carolina Court of Appeals

The State, Respondent,

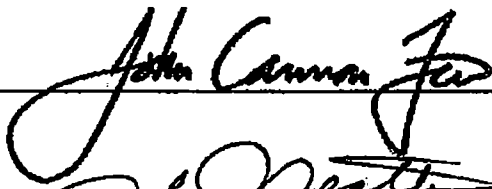
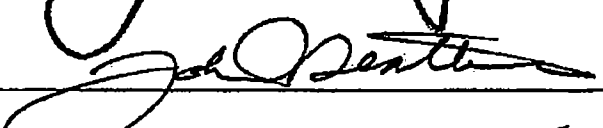
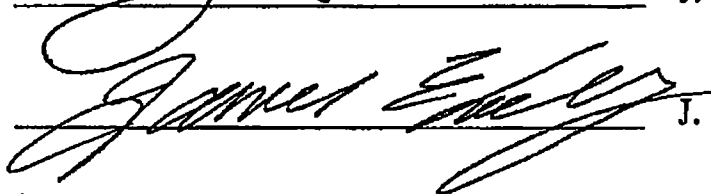
v.

Andrew Torrence, Appellant.

Appellate Case No. 2011-194612

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

John S. Nichols

H. Wayne Floyd

Blake Alexander Hewitt

Julie Kate Keeney

R. Knox McMahon

FILED

May 8, 2013

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Knox R. McMahon, Circuit Court Judge

RECEIVED

JUN 12 2013

S.C. Supreme Court

Op. No. 2013-UP-152 (S.C. Ct. App. filed Apr. 10, 2013)

The State of South Carolina, ... Respondent,

v.

Andrew E. Torrence, Jr., ... Petitioner.

PETITION FOR A WRIT OF CERTIORARI

Blake A. Hewitt
John S. Nichols
BLUESTEIN NICHOLS
THOMPSON & DELGADO
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599

Attorneys for Petitioner

Other Counsel of Record:

The Honorable Alan Wilson
Julie Kate Keeney
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

Attorneys for the Respondent

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CERTIFICATE OF COUNSEL

The Court of Appeals issued its decision on April 10, 2013. See (App.p.1). Counsel for the petitioner certifies that he filed the petition for rehearing on April 23, 2013. See (App.p.4). The court denied the petition for rehearing on May 8, 2013. See (App.p.8).

QUESTION PRESENTED

Is a criminal defendant entitled to a jury charge on involuntary manslaughter when he admits intentionally discharging a firearm, but the circumstances might nevertheless allow a reasonable jury to find that he did not intend to inflict serious injury or death?

STATEMENT OF THE CASE

On September 28, 2008, very early in the morning, Andrew Torrence was involved in a fistfight inside a bar in West Columbia. The evidence surrounding the fight was contested, but there was some evidence that Mr. Torrence was the victim of an un-provoked assault by a man named Zach Chaplin.

After the fight, Mr. Torrence went outside the bar and claimed that he used his phone to call the police. Then, Torrence retrieved a pistol from his car and re-entered the bar.

Torrence was a licensed armed security guard, but he admitted he was off-duty and intoxicated during this incident. Torrence said he went back inside the bar to perform a citizen's arrest. He believed he had been assaulted by two people—Chaplin and a friend of Chaplin's—and he said he retrieved his pistol so he could use it as a "show of force" to deter any additional violence. (R.p.379, line 7 - p.380, line 18). Torrence admitted during trial that the decision to retrieve his gun was "stupid." (R.p.442, lines 7-11).

As Mr. Torrence attempted to arrest the person he believed to be Mr. Chaplin's accomplice, Chaplin threw a barstool at Torrence and charged him. To this point, Torrence had been holding the firearm at the side of his body, pointed straight down to the ground. (R.p.380, lines 8-18).

As Chaplin charged Torrence and dove at him, Torrence fired his weapon twice. Torrence said that he shot as Chaplin was trying to get control of the gun, when Chaplin was "within a foot [of him] maybe." (R.p.383, lines 12-17). Torrence could not say whether Chaplin had ever actually touched the weapon, (R.p.393, line 10 - p.394, line 12), but he explained the shooting as a "fast decision" that was "based on instinct," (R.p.382, lines 9-24), and that he believed he "had to shoot to stop [Chaplin]." (R.p.393, lines 17-19).

Both of Torrence's shots struck Chaplin, and Chaplin died several months later. The shooting and the fistfight that preceded it were captured on the bar's video surveillance equipment. The video was an exhibit at trial. See (State's Exhibit 17) (the video).

Mr. Torrence was indicted for murder, possession of a weapon during a violent crime, and carrying a firearm onto the premises of a building selling alcoholic liquors. He admitted his guilt for the charge of carrying a firearm inside a bar, and that offense is not material to these proceedings. The case was tried in front of Judge Knox McMahon over four days at the end of May and the beginning of June in 2011.

The first time the court addressed involuntary manslaughter was during the pre-charge conference and immediately following the charges themselves. The court denied Mr. Torrence's initial requests for the charge, and it also denied Mr. Torrence's request after the court charged the jury. See (R.p.513, lines 1-5; p.526, lines 4-13; p.610, lines 19-21).

The second time the court addressed this issue was during the jury's deliberations. On its own motion, the jury sent the judge a note asking whether there was a possible charge of involuntary manslaughter. See (R.p.650). Mr. Torrence again requested the charge. The judge denied the request and wrote the jury that involuntary manslaughter was not an issue for them to consider. See *id.* (note); see also (R.p.620; line 20 - p.623, line 15) (transcript).

The jury found Mr. Torrence guilty of voluntary manslaughter. (R.p.617). Because voluntary manslaughter is a violent crime by statute, see S.C. Code Ann. § 16-1-60, this conviction necessitated a finding that Mr. Torrence was guilty of possessing a firearm during a violent crime. See S.C. Code Ann. § 16-23-490(A).

Judge McMahon sentenced Mr. Torrence to 25 years imprisonment for manslaughter. Torrence received shorter sentences on his other convictions, which the judge directed him to serve concurrently. (R.p.642).

Mr. Torrence filed a motion for a new trial and for reconsideration, see (R.p.2), and the trial court denied this motion in a written order. See (R.p.1). The written order was dated June 11, 2011.

On June 21, 2011, Mr. Torrence served and filed a notice of appeal.

The only issue Mr. Torrence raised on appeal was whether the court erred in refusing to charge involuntary manslaughter. See (App.pp.9-32; pp.51-64) (his appellate briefs).

The Court of Appeals affirmed in a unanimous unpublished decision. In the court's view, all of the evidence tended to show that Mr. Torrence had intentionally fired his weapon at Chaplin. The court then reasoned that intentionally firing a weapon precludes a charge on involuntary manslaughter. (App.pp.1-3).

ARGUMENTS

Since *State v. Morris*, the law of this State has suggested that when someone admits intentionally discharging a firearm, involuntary manslaughter is not an appropriate jury charge. The *Morris* decision offers a one sentence rationale for this rule. It provides “the act must be unintentional.” 307 S.C. 480, 483, 415 S.E.2d 819, 821 (Ct. App. 1991).

Mr. Torrence respectfully requests that the Court grant certiorari to decide whether this rule is correct. There are three reasons the Court should consider the question.

First, this has not always been the rule in South Carolina. In fact, the *Morris* decision favorably cites a previous decision from this Court in which the Court affirmed an involuntary manslaughter conviction of a defendant who admitted intentionally firing a weapon. That decision has never been overruled.

Second, the justification offered in *Morris* cannot be the true justification for this rule. If the act that gives rise to a criminal charge is truly unintentional, there cannot be any criminal liability at all. The state of North Carolina has recognized this, and it has also rejected the idea that intentionally discharging a firearm precludes an involuntary manslaughter charge. North Carolina and South Carolina have the same definition of involuntary manslaughter. These decisions should be persuasive.

Finally, there are several arguable flaws with the rule South Carolina seems to be following. This case exhibits some of them. A reasonable jury could find the facts in a way that would take murder, voluntary manslaughter, and self-defense off of the table. This should not be—there is not a category of killings that qualify as “nothing.” In similar fashion, voluntary manslaughter carries a possible prison sentence of 30 years, and it seems

wrong to say that once he made the stupid decision to take a gun inside the bar, Torrence's only options for avoiding this sort of criminal liability were to surrender his weapon to his charging adversary or to make sure he won the struggle for the gun.

A. South Carolina Law Is Not Completely Consistent on this Question.

After the defendant and the victim in *State v. Morris* had a verbal altercation, the victim asked the defendant to leave the premises. When Morris refused, the victim punched him. Morris then said that he was leaving, but after the victim turned and began to walk away, Morris shot the victim in the back. Morris asked the judge to charge involuntary manslaughter, and on appeal, the Court of Appeals affirmed the trial judge's denial of Morris' request. 307 S.C. at 482-83, 415 S.E.2d at 821.

The Court of Appeals reasoned that while the negligent use of a deadly weapon would support involuntary manslaughter if the death was unintentional, "the act" had to be unintentional as well. *Id.* at 483, 415 S.E.2d at 821. On a number of occasions, South Carolina's appellate court's have cited *Morris* to support the principle that when a defendant admits firing a gun, an involuntary manslaughter charge is not appropriate. See, e.g., *State v. Gibson*, 390 S.C. 347, 357-58, 701 S.E.2d 766, 771-72 (Ct. App. 2010); *Douglas v. State*, 332 S.C. 67, 74, 504 S.E.2d 307, 310-311 (1998); *State v. Pickens*, 320 S.C. 528, 531-32, 466 S.E.2d 364, 366 (1996).

Here is the problem: *Morris* cannot mean what it says. In the sentence that immediately precedes the statement that "the act" must be unintentional, the *Morris* court cited this Court's decision in *State v. Quick*. See *Morris*, 307 S.C. at 483, 415 S.E.2d at 821.

The *Quick* decision affirmed the involuntary manslaughter conviction of a defendant who admitted firing her gun. 168 S.C. 76, 167 S.E. 19 (1932). *Morris* cannot mean that the act of pulling the trigger must be unintentional, because if it did, *Morris* would have overruled *Quick* instead of citing it. As it stands, *Quick* has never been limited, vacated, or overruled.

This creates a problem in terms of discerning the true rule that governs these cases. If several cases cited one rule, yet there were also one or two different cases saying the opposite, there might be a tendency to view cases in the smaller camp as either outdated or outliers. The circumstances of a case might even suggest that this view would be more than possible, but highly probable.

What makes the present case different is that the *Morris* decision is the foundation of this relatively recent feature of involuntary manslaughter doctrine, yet it also favorably cites the same decision that calls this new rule into question. *Morris* cannot mean that the act of pulling the trigger must be unintentional, because the *Morris* decision cites the very case that shows this is not true.

B. North Carolina's Involuntary Manslaughter Doctrine Is Identical to South Carolina's, and North Carolina Has Rejected the Notion That Shooting the Firearm must Be Unintentional.

North Carolina and South Carolina have the same definition of involuntary manslaughter. Both states hinge this level of criminal liability on whether the circumstances of a killing show reckless disregard for the safety of other people. See (App.pp.12, 54) (the relevant sections of Torrence's briefs to the Court of Appeals).

In *State v. Brewer*, the Supreme Court of North Carolina rejected the argument that the discharge of a weapon had to be unintentional in order for an involuntary manslaughter

charge to be appropriate. 386 S.E.2d 569, 583 (N.C. 1989). The court called this proposition an “invalid premise.” *Id.* The *Brewer* court explained “[w]hile involuntary manslaughter imports an unintentional killing, i.e., the absence of a specific intent to kill, it is . . . accomplished by means of some intentional act.” *Id.* at 583 (quoting *State v. Wilkerson*, 247 S.E.2d 905, 918 (N.C. 1978)). Drawing from its own precedent, the court wrote that without some intentional act in the chain of causation, there could not be any criminal liability. *Id.*

Brewer dealt with a defendant who claimed he had been intentionally shooting at objects—not people. However, the rule has been applied in circumstances that are fairly comparable to Mr. Torrence’s case. See, e.g., *State v. Debiase*, 711 S.E.2d 436 (N.C. Ct. App. 2011) (the use of the dangerous object—a glass bottle—was intentional, but it could also have been negligent and without intent to inflict serious injury or death). The guiding principle of this doctrine is that an involuntary manslaughter instruction is appropriate if a reasonable jury could find that the infliction of the fatal wound was unintentional—notwithstanding the fact that the defendant intentionally carried a dangerous instrument during the encounter in question. See *id.* at 442-43 (citing *State v. Drew*, 592 S.E.2d 27 (N.C. Ct. App. 2004); *State v. Daniels*, 360 S.E.2d 470 (N.C. Ct. App. 1987); *State v. Buck*, 313 S.E.2d 550 (N.C. 1984); and *State v. Fleming*, 251 S.E.2d 430 (N.C. 1979)).

Torrence respectfully submits that in deciding whether to consider his case, it should say something that North Carolina and South Carolina appear to have the same basic involuntary manslaughter doctrine, but have reached opposite conclusions with respect to how intentionally shooting a firearm relates to that doctrine. This may be an area where these two jurisdictions part ways, but they should do so only after deliberate consideration.

C. There Are Several Arguable Flaws in the Rule That Intentionally Shooting a Firearm Bars an Involuntary Manslaughter Charge.

Involuntary manslaughter is the lowest level of a criminal killing in South Carolina. Murder is an unlawful killing with malice aforethought. S.C. Code Ann. § 16-3-10. Voluntary manslaughter is an intentional and unlawful killing committed in a sudden heat of passion upon sufficient legal provocation. *State v. Smith*, 391 S.C. 408, 412-13, 706 S.E.2d 12, 14-15 (2011). Involuntary manslaughter is an unintentional killing under circumstances that do not show malice but demonstrate reckless disregard for the safety of others. See S.C. Code Ann. § 16-3-60. It is statutorily defined as criminal negligence.

In terms of pure doctrine, all killings are either justified by self-defense, excused as an accident, or some sort of crime. But under this new aspect of South Carolina's involuntary manslaughter doctrine, there is a class of killings in limbo. Andrew Torrence's case is a case in point. A reasonable jury could find that Torrence was at least partially at-fault in bringing on the difficulty. This finding would take self-defense out of play. See *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007) (self-defense requires the defendant to be without fault in bringing on the difficulty). The same jury could find Torrence acted without malice (disqualifying murder), and also that Torrence made an instantaneous decision to shoot without intending to kill or seriously injure Mr. Chaplin (disqualifying voluntary manslaughter). If involuntary manslaughter is not a possibility, there is no means left to criminalize the killing, but it seems wrong to excuse the killing if the jury has specifically determined that self-defense does not apply. Following the principle that "the act must be intentional" is arguably creating illogical holes in this area of the law.

Consider also previous decisions involving defendants who intentionally pointed firearms at other people but claimed that the discharge of the firearm was unintentional. This Court's decisions in *State v. Crosby* and *State v. Burriss* are examples of such cases. See *Crosby*, 355 S.C. 47, 50, 584 S.E.2d 110, 111 (2003) ("I closed my eyes and pulled the trigger. I didn't even know I pulled the trigger."); *Burriss*, 334 S.C. 256, 263, 513 S.E.2d 104, 108 (1999) (defendant intentionally grabbed his gun and "it fired"). The point is that while one possible justification for barring involuntary manslaughter in all intentional shootings is that firearms are dangerous, a reasonable person might say the same of the decision to point a firearm at someone else. This person would object to the law commanding a distinction between intentionally pointing the firearm and intentionally pulling the trigger; he or she sees serious injury as a consequence of both courses of action. Here, the law is usurping the jury's role of determining reasonableness.

Finally, if involuntary manslaughter is disqualified because Torrence pulled the trigger the moment before a struggle began and not "during" the struggle itself, the criminal law is attaching enhanced liability in a way that seems unprincipled. It seems wrong to say that once Torrence made the stupid decision to take a gun inside the bar, Torrence's only options for avoiding a conviction of murder or voluntary manslaughter were to surrender his weapon to his charging adversary or to make sure he won the fight for the gun. All intentional shootings are not created equal. There is a difference between deliberately raising a firearm and shooting someone for the purpose of injuring them and a decision to shoot that is made in an instant and based on a reaction. A jury is capable of distinguishing between intentional and unintentional killings. The note from Torrence's jury arguably shows this.

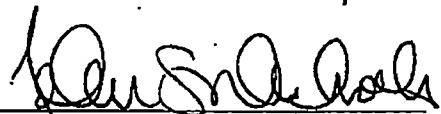
CONCLUSION

The rule that governed this Court's decision in *State v. Quick* is a rational rule. Though *Quick* does state the rule in this manner, the underlying rationale is that there is a difference between deliberately shooting a gun at somebody, perhaps even for the specific purpose of injuring or killing them, and firing a gun without such intent.

Quick has never been expressly overruled, but several of this State's more recent decisions state the law in a way that is opposite to *Quick*'s holding. While it is certainly possible that the Court has experienced a change of heart and rejected this approach, it seems equally possible that these decisions have latched on to an awkward or incorrect description of the law and inadvertently marched this piece of South Carolina's jurisprudence in a new direction. Torrence submits that this is a question worth considering, and he therefore respectfully requests that this Court exercise its discretion to review his conviction.

June 12, 2013

Respectfully submitted,



Blake A. Hewitt

John S. Nichols

BLUESTEIN, NICHOLS,

THOMPSON & DELGADO

Post Office Box 7965

Columbia, SC 29202

(803) 779-7599

(803) 779-8995 (facsimile)

bhewitt@bntdlaw.com

jsnichols@bntdlaw.com

Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Knox R. McMahon, Circuit Court Judge

RECEIVED

JUN 12 2013

S.C. Supreme Court

Opinion No. 2013-UP-152 (S.C. Ct. App. filed April 10, 2013)

State of South Carolina, ... Respondent,

v.

Andrew E. Torrence, Jr., ... Petitioner.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with the *Petition for a Writ of Certiorari* and *Appendix* by United States Mail with first class postage prepaid to the following address:

Harold M. Coombs, Jr., Esquire
Julie Kate Keeney, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

June 12, 2013



Erin Bridges
Paralegal
BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 11 2013

S.C. Supreme Court

On Writ of Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable Knox R. McMahon, Circuit Court Judge
Appellate Case No. 2013-001169

THE STATE,

Respondent,

vs.

ANDREW E. TORRENCE, JR.,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON CERTIORARI

I.

Petitioner's argument on appeal is not preserved because his argument at trial in support of his request to charge involuntary manslaughter was based on proximate cause, which is not the argument he advances on appeal. Regardless of preservation, the Court of Appeals properly affirmed the trial judge's denial of Petitioner's request to charge involuntary manslaughter because Petitioner admitted he intentionally shot the victim two times.

STATEMENT OF THE CASE

Procedural History

In August 2010, a Lexington County Grand Jury indicted Petitioner for murder. In May 2012, a Lexington County Grand Jury indicted Petitioner for carrying a firearm onto the premises of a building selling alcoholic liquors and possession of a weapon during a violent crime.

On May 31, 2011, Petitioner proceeded to trial. On June 3, 2011, the jury found Petitioner guilty of voluntary manslaughter and the two firearms charges. (R. pp. 617-618.) Thereafter, the Honorable Knox R. McMahon sentenced Petitioner to twenty-five years of imprisonment for the voluntary manslaughter conviction and five years for each firearm charge. (R. p. 642.) Petitioner filed a timely notice of appeal.

On March 5, 2013, the Court of Appeals heard arguments on the matter. On April 10, 2013, the Court of Appeals issued an unpublished opinion in which it affirmed Petitioner's conviction and sentence. State v. Torrence, 2013-UP-152 (filed April 10, 2013). On April 23, 2013, Petitioner filed a petition for rehearing, and the Court of Appeals denied the petition for rehearing on May 8, 2013. On June 12, 2013, Petitioner served a petition for writ of certiorari. This return follows.

Factual History

In the early morning hours of September 28, 2008, Petitioner shot Zach Chaplin two times. Approximately six weeks later, Chaplin died as a result of the gunshot wounds. (R. p. 49; R. pp. 60-63.)

Tonya Mozenko's Testimony

At trial, Tonya Mozenko, Petitioner's former employer, testified for the State. Mozenko hired Petitioner as a part-time security guard. (R. pp. 82-83.) Petitioner wanted

to be an armed guard; however, Mozenko's company did not have any armed positions available. (R. p. 88.) On several occasions, Petitioner told Mozenko that he wanted to be a police officer. (R. p. 89.) Eventually, Mozenko had to fire Petitioner because he could not do the job. (R. p. 84.)

A few hours before Petitioner shot Chaplin, Petitioner had a conversation with Mozenko and her friend, Stephen Smith, at Shaggy's Bar. Petitioner told Mozenko and Smith that he tried to buy Donna Muszynski a drink earlier that night, and he was upset Muszynski gave all of her attention to Chaplin. (R. p. 94; R. pp. 128-129.) Petitioner called Chaplin a "wolverine" and a "faggot." (R. p. 263; R. p. 97; R. p. 128.) But, according to Mozenko, Chaplin did not respond. (R. p. 95.)¹ Petitioner repeatedly said, "I should go to my truck and get my gun and shoot him." (R. p. 97-98; R. p. 129.) Sick and tired of Petitioner's comments, Mozenko and Smith left the bar and went home. (R. p. 98.)

Lee Buchanan's Testimony

At trial, Lee Buchanan testified for the State. On the night of the shooting, Petitioner called Buchanan "gay" numerous times. (R. pp. 264-265.) Buchanan asked Petitioner to leave him alone. (R. p. 177.) Petitioner asked Buchanan if he wanted Petitioner "to kiss his ass." (R. p. 177.) Throughout the night, Petitioner continued making offensive comments to Buchanan about Buchanan's sexuality. (R. p. 178.)

Eventually, Petitioner and Chaplin got into a physical altercation. (R. p. 180.) Buchanan tried to stop the fight. (R. pp. 180-181; R. pp. 199-200; R. p. 226; R. p. 252; R. p. 376.) After the fight was over, Buchanan helped Petitioner find his glasses. Thereafter, Buchanan told Petitioner, "Let's all go home. It's over and done with." (R. p. 181.)

¹ According to Petitioner, Chaplin did respond to Petitioner's comments. (R. p. 478.)

Buchanan escorted Petitioner out of the bar. (R. p. 182; R. p. 213.) After Petitioner left, everything was calm. (R. p. 226.)

But a few minutes later, Petitioner knocked on the bar door and asked to come inside. Petitioner reentered the bar with a gun in his hand. Petitioner told Buchanan, "this has nothing to do with you, this doesn't involve you" (R. p. 183.) Buchanan could not escape. (R. p. 184.) At that point, Chaplin threw a barstool at Petitioner. (R. p. 189.) Buchanan heard two gun shots, which according to him, sounded like "bam (pause) bam." (R. p. 184.) Another witness testified that the gun shots were approximately twenty seconds apart. (R. p. 214.)

Petitioner's Testimony

In his defense, Petitioner testified at trial. Petitioner admitted making comments referencing Buchanan's sexual orientation. (R. p. 373; R. p. 477; R. p. 530.)² But Petitioner claimed that he was assaulted by Chaplin when he went to apologize to Buchanan. (R. p. 376.) After the fight was over, Petitioner continued to make comments. (R. p. 377.)

Thereafter, Petitioner went to his truck and grabbed his gun. (R. pp. 377-380.) According to Petitioner, he went back into the bar in order to detain Chaplin and Buchanan for the earlier assault. (R. p. 378-379.) Petitioner ordered Buchanan to put his hands on the bar. (R. p. 381.) While Petitioner searched Buchanan for weapons, Chaplin threw a barstool at Petitioner. (R. pp. 381-382.) Petitioner went into a defensive position. According to Petitioner, when Chaplin came towards him, he got scared and shot Chaplin twice. (R. pp. 382-386.) One bullet struck Chaplin in the right arm, and the other bullet struck Chaplin behind the right ear. Petitioner admitted that he intentionally fired the gun

² Petitioner denied asking Buchanan if he wanted Petitioner to "kiss his ass." (R. p. 528.)

two times at Chaplin in order to stop Chaplin. (R. p. 393.) But Petitioner claimed that he "had to make a fast decision, and [he] went with instinct." (R. p. 382.)

Dr. Janice Edwards Ross' Testimony

According to Dr. Janice Edwards Ross, Chaplin was either in a bent over position or on the ground when Petitioner fired the second shot. (R. p. 59.) The bullet that struck Chaplin behind his right ear injured his spinal cord and paralyzed him from the chest down. (R. p. 60.) On November 12, 2008, Chaplin died from complications of his paralysis. (R. p. 49; R. pp. 60-63.)

Jury Charge Conference

Before closing arguments, the trial judge held a charge conference. (R. p. 511.) When the State brought up Petitioner's request to charge accident, the following discussion occurred:

THE COURT: All right. I will deny that request. I do not intend to charge accident or involuntary manslaughter.

I do not think he was acting lawfully in unlawfully arming himself in that regard.

Yes, sir, Solicitor?

SOLICITOR: You are not giving a charge on involuntary manslaughter?

THE COURT: I am not.
(R. p. 513.)

At that time, Petitioner's trial counsel did not comment. After discussing numerous charges, Petitioner's trial counsel asked the trial judge to charge involuntary manslaughter. (R. p. 526.) The following discussion occurred:

THE COURT: I deny that. I thought I denied that earlier.

MR. FLOYD: I'm sorry. I may be in error but I did want to make sure I put it on the record.

THE COURT: I do not think you can reach the elements of involuntary manslaughter, in regard to the circumstances of this case.

Anything further?

MR. FLOYD: Nothing further, Your Honor.

(R. p. 526.)

After the jury began deliberations, the jury sent a note to the trial judge asking whether or not they could consider the crime of involuntary manslaughter. (R. p. 650; R. p. 620.) Petitioner's trial counsel argued that the jury's request indicated that there was no proximate cause between the incident and the victim's death. (R. p. 621.) The judge told the jury that they could not consider involuntary manslaughter. (R. p. 650; R. p. 622.)

ARGUMENT

I.

Petitioner's argument on appeal is not preserved because his argument at trial in support of his request to charge involuntary manslaughter was based on proximate cause, which is not the argument he advances on appeal. Regardless of preservation, the Court of Appeals properly affirmed the trial judge's denial of Petitioner's request to charge involuntary manslaughter because Petitioner admitted he intentionally shot the victim two times.

Petitioner's argument on appeal fails for three reasons: First, Petitioner's argument on appeal in support of his request to charge involuntary manslaughter (i.e. his alleged lack of intent to inflict serious injury) was never presented to the trial judge; therefore the issue is not preserved for review. Second, in South Carolina, a defendant who admits to intentionally firing a gun is not entitled to an involuntary manslaughter charge. Third, regardless of this per se rule, Petitioner's actions do not fall within South Carolina's definition of involuntary manslaughter.

Standard of Review

In deciding on the law to be charged, the trial judge looks at the evidence presented at trial. State v. Gibson, 390 S.C. 347, 355, 701 S.E.2d 766, 770 (Ct. App. 2010) (certiorari granted March 22, 2012). The trial judge commits reversible error if he or she refuses a request for a jury instruction on a lesser-included offense that is supported by the evidence. Id. at 355-56, 701 S.E.2d at 770. When determining whether to charge involuntary manslaughter as a lesser-included offense, courts must view the evidence in the light most favorable to the defendant. See id. at 356, 701 S.E.2d at 770. Simply put, if there is any evidence in the record that warrants a charge on involuntary manslaughter, then the trial judge must charge it. State v. Reese, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006). But if the trial judge fails to give a requested charge that is

supported by the evidence, appellate courts will not reverse unless the error was prejudicial. Gibson, 390 S.C. at 356, 701 S.E.2d at 770-771.

A. Issue is Not Preserved

First, Petitioner's argument on appeal fails because he never argued to the trial judge that there was evidence of Petitioner's lack of intent to inflict serious injury or death. Rather, Petitioner's argument in support of his request to charge involuntary manslaughter was based on proximate cause. Thus, the issue is not preserved for appellate review.

In South Carolina, an argument not raised and ruled on by the trial court is not preserved for appellate review. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997). Further, an issue must be raised in a sufficiently specific manner to call attention to the exact error to the trial court. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005); see State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A]n objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge."). "Where an objection and the ground therefor is not stated in the record, there is no basis for appellate review." State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991).

"A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). A defendant cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court. State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); see State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); State v.

Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) (“[A] defendant may not argue one ground below and another on appeal.”); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”).

Here, the record is clear: Petitioner never argued why involuntary manslaughter charge should have been charged to the jury until after the jury retired for deliberations. Even then, Petitioner based his involuntary manslaughter argument upon proximate cause. Petitioner never made the argument that he asserts on appeal to the trial judge. Thus, the argument Petitioner asserts on appeal is not preserved for review. See State v. Benton, 338 S.C. 151, 156-157, 526 S.E.2d 228, 231 (2000) (finding Benton’s challenge to the trial judge’s refusal to give a requested charge was not preserved for appellate review where Benton “argued one ground in support of a circumstantial evidence charge at trial (State only presented circumstantial evidence of intent) and argues another ground in support of the charge on appeal (palm print is circumstantial evidence).”)

B. Intentional Use of a Firearm Precludes Involuntary Manslaughter Charge

Second, Petitioner’s argument on appeal fails because he admitted he intentionally fired his gun and shot Chaplin two times. (R. p. 393.) Because there was no evidence that Petitioner acted unintentionally, the trial judge did not in refusing to charge involuntary manslaughter.

Under South Carolina law, involuntary manslaughter is defined as the following: “[T]he killing of another without malice and **unintentionally** while engaged in either: (1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others.” Reese, 370 S.C. at 36, 633 S.E.2d at 900 (emphasis added).

The law in South Carolina is clear: If a defendant admits he or she intentionally fired a gun, he or she is not entitled to a jury charge on involuntary manslaughter. See Douglas v. State, 322 S.C. 67, 74-75, 504 S.E.2d 307, 310-11 (1998) (holding that the defendant was not entitled to a jury charge on involuntary manslaughter because at its core, involuntary manslaughter is an unintentional killing and the defendant admitted he intentionally fired his gun into a crowd); State v. Pickens, 320 S.C. 528, 532, 466 S.E.2d 364, 367 (1996) (holding that the trial judge properly refused to charge involuntary manslaughter because the defendant admitted he shot the gun); see e.g., State v. Smith, 315 S.C. 547, 550, 446 S.E.2d 411, 413 (1994) (holding that the trial judge properly refused to charge involuntary manslaughter because the defendant acted intentionally in wielding the knife); State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (1976) (holding that the trial judge properly refused to charge involuntary manslaughter because the defendant admitted he intentionally fired his shotgun but claimed he only meant to shoot over the victim's head); Gibson, 390 S.C. at 358, 701 S.E.2d at 772 (holding that the trial judge properly refused to charge involuntary manslaughter because the defendant admitted he voluntarily and intentionally fired his weapon); State v. Morris, 307 S.C. 480, 484, 415 S.E.2d 819, 822 (Ct. App. 1991) (holding that the trial judge properly refused to charge involuntary manslaughter because the defendant admitted he intentionally shot the victim in self-defense).³

³ The rule applied in South Carolina is consistent with the rule in other jurisdictions. See People v. Jackson, 874 N.E.2d 123, 130 (Ill. App. Ct. 2007) ("Illinois courts have consistently held that when the defendant intends to fire a gun, points it in the general direction of his or her intended victim, and shoots, such conduct is not merely reckless and does not warrant an involuntary-manslaughter instruction, regardless of the defendant's assertion that he or she did not intend to kill anyone."); People v. McMullan, 789 N.W.2d 857, 858 (Mich. 2010) (holding that the defendant was not entitled to an involuntary manslaughter charge because defendant's actions constituted "a malicious series of intentional acts . . . not a grossly negligent handling of a firearm that inadvertently caused death.").

In this case, there was no evidence that Petitioner unintentionally fired his gun at Chaplin. In fact, Petitioner freely and candidly admitted that he intentionally fired his gun and shot Chaplin. But Petitioner claimed he only shot Chaplin because he was afraid Chaplin was going to get the gun from him and shoot him. (R. p. 391.) Notably, the Court of Appeals in Morris instructed: “Whether the shooting was excusable in the circumstances (self defense) or was committed in the heat of passion upon sufficient provocation (voluntary manslaughter) was for the jury to determine, and the judge so charged them.” Morris, 307 S.C. at 484, 415 S.E.2d at 822. Thus, at the most, Petitioner was entitled to a voluntary manslaughter charge, not involuntary manslaughter.⁴

Further, the fact that Petitioner claimed he did not intend to harm Chaplin when Petitioner reentered the bar is irrelevant. See Smith, 315 S.C. at 550, 446 S.E.2d at 413 (holding whether the defendant intended to harm the victim was irrelevant because the defendant intentionally stabbed the victim with a knife, i.e., a dangerous instrumentality).

Contrary to Petitioner’s assertions, the current rule applied in South Carolina does not contradict the holding in State v. Quick, 168 S.C. 76, 167 S.E.2d 19 (1932). In Quick, the issue on appeal was not whether the trial judge should have charged involuntary manslaughter. Id. Rather, the issue on appeal related to the *content* of the involuntary manslaughter charge. Id. This Court pointed out in Quick that “a person who causes another’s death by the *negligent* use of a *deadly weapon* is guilty of involuntary manslaughter[.]” Id. (emphasis in original). Thus, the rule set forth in Craig, Morris, and Pickens (i.e. one cannot obtain an involuntary manslaughter charge if he or she admits to intentionally firing a gun) is supported by the holding Quick.

⁴ See Douglas, 322 S.C. at 75, 504 S.E.2d at 311 (“A claim of imperfect self-defense would also be unavailing because it has no application to involuntary manslaughter.”).

Also, the rule prohibiting an involuntary manslaughter charge when a defendant admits to intentionally firing a gun makes sense. As this Court pointed out in Douglas, “involuntary manslaughter is at its core an unintentional killing.” Douglas, 322 S.C. at 74, 504 S.E.2d at 310. When a defendant admits that he or she intentionally fired a gun in the direction of another, there is absolutely no basis for a jury to conclude that the killing was unintentional because death is a natural consequence of that intentional act. Because the rule applied in South Carolina makes sense, there is no need for this Court to abandon our rule and adopt North Carolina’s interpretation of its involuntary manslaughter doctrine.

In summary, because Petitioner admitted he intentionally fired his gun and shot the victim, the trial judge did not err in refusing to charge involuntary manslaughter.

C. Not Entitled to Involuntary Manslaughter Charge Under South Carolina’s Definition

Finally, Petitioner’s argument on appeal fails because his actions did not fall within South Carolina’s definition of involuntary manslaughter. Regardless of South Carolina’s per se rule prohibiting an involuntary manslaughter charge when a defendant admits to intentionally firing a gun, Petitioner’s argument fails because firing a gun is an activity that naturally tends to cause death or great bodily harm, and Petitioner was neither acting lawfully when he brandished his gun in the bar nor merely recklessly when he intentionally fired his gun at the victim.

As mentioned above, involuntary manslaughter is defined as “the killing of another without malice and unintentionally while engaged in either: (1) an unlawful act not amounting a felony and not naturally tending to cause death or great bodily harm; or

(2) a lawful act with reckless disregard for the safety of others.” Reese, 370 S.C. at 36, 633 S.E.2d at 900.

Here, Petitioner’s actions do not fall within the first category of the involuntary manslaughter definition because Petitioner fired a gun, which naturally tends to cause death or bodily harm. See Bozeman v. State, 307 S.C. 172, 177, 414 S.E.2d 144, 147 (1992) (holding that firing a gun naturally tends to cause or bodily harm).

Further, Petitioner’s actions do not fall within the second category of the involuntary manslaughter definition because he was not engaged in a lawful act when he brought his gun into the bar and presented it to the patrons of the bar.⁵ Further, Petitioner was not acting lawfully when he entered the bar with the gun and seized/confined, which is kidnapping,⁶ Buchanan and the rest of the patrons. In addition, Petitioner’s actions do not fall within the second category of the involuntary manslaughter definition because there was no evidence that Petitioner acted merely recklessly. Although Petitioner claims on appeal that he acted recklessly when he brought his gun into the bar, he admitted at trial that he intentionally brought the gun into the bar so that he could get command of the room and scare the patrons. Further, Petitioner admitted he acted intentionally when he fired his gun twice at the victim. This is not a situation where a defendant negligently handled a loaded gun. See State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010) (noting that the negligent handling of a loaded gun can support a charge of

⁵ See S.C. Code Ann. § 16-23-410 (presenting or pointing a loaded or unloaded firearm at another person); see also In re Spencer R., 387 S.C. 517, 692 S.E.2d 569 (Ct. App. 2010) (holding the phrase “to present” under § 16-23-410 means to offer to view in a threatening manner, or to show in a threatening manner); see also S.C. Code Ann. § 16-23-465 (carrying a firearm onto the premises of a building selling alcoholic liquors).

⁶ South Carolina’s kidnapping statute provides the following: “Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony” S.C. Code Ann. § 16-3-910.

involuntary manslaughter). Thus, Petitioner's intentional use of a deadly weapon does not support his allegation of mere criminal negligence. See Smith, 315 S.C. at 550, 446 S.E.2d at 413.

In other words, shooting someone is not a lawful act, and the intentional use of gun does not support the allegation of mere criminal negligence. See Id. at 550, 446 S.E.2d at 413 (noting that stabbing someone is not a lawful act, and the intentional use of a dangerous instrumentality does not support an allegation of mere criminal negligence).

Because Petitioner's actions were outside the definition of involuntary manslaughter, the trial court did not err in refusing to instruct the jury on the law of involuntary manslaughter.

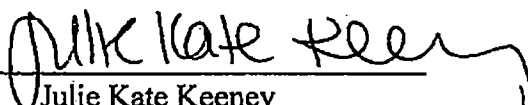
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

BY: 
Julie Kate Keeney
S.C. Bar No. 100145

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 11, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable Knox R. McMahon, Circuit Court Judge
Appellate Case No. 2013-001169

THE STATE,

Respondent,

vs.

ANDREW E. TORRENCE, JR.,

Petitioner.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to Petition for Writ of Certiorari on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Blake A. Hewitt, Esquire
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC
P.O. Box 7965
Columbia, SC 29202

I further certify that all parties required by Rule to be served have been served.
This 11th day of June, 2013.


ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Knox R. McMahon, Circuit Court Judge

Op. No. 2013-UP-152 (S.C. Ct. App. filed Apr. 10, 2013)

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AUG - 8 2013
S.C. Supreme Court

The State of South Carolina, ... Respondent,

v.

Andrew E. Torrence, Jr., ... Petitioner.

REPLY SUPPORTING CERTIORARI

Blake A. Hewitt
John S. Nichols
BLUESTEIN NICHOLS
THOMPSON & DELGADO
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599

Attorneys for Petitioner

Other Counsel of Record:

The Honorable Alan Wilson
Julie Kate Keeney
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

Attorneys for the Respondent

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ARGUMENTS

At this stage, the question presented is a gateway question: should this Court grant certiorari? Should this Court offer Mr. Torrence the opportunity to argue that intentionally shooting a firearm ought not always preclude an involuntary manslaughter charge, or, should this Court reject that argument without further discussion? Mr. Torrence's view is probably predictable—he believes the Court should issue the writ and consider the argument. To support this view, Mr. Torrence has argued that South Carolina law has been somewhat inconsistent on this point, that North Carolina has rejected the State's argument, and that the State's argument potentially leads to absurd results.

The State disagrees, and it offers three reasons to support that disagreement. First, the State says Mr. Torrence's argument is not preserved for review. Second, the State says there is no inconsistency in South Carolina law. Third, the State says that its view is the better view. In the State's opinion, intentionally firing a weapon should always preclude an involuntary manslaughter charge.

Certiorari is a matter for the court's discretion, but in exercising its discretion, this Court should not be persuaded by the State's arguments. The first argument relies on an incorrect summary of the record. The second argument relies on an incorrect description of South Carolina jurisprudence. The third argument—whether the State's approach is the correct approach—goes to the ultimate issue in the case. This Court is certainly not bound to follow North Carolina's approach, but it ought to say something that North Carolina has rejected the State's argument as "invalid." *State v. Brewer*, 386 S.E.2d 569, 583 (N.C. 1989). This ought to cast some doubt on the claim that the State's view is obviously better.

All intentional acts are not created equal. Everyone ought to agree that there is a meaningful difference between deliberately raising a firearm and shooting at someone for the purpose of killing them and a decision to shoot that is made in an instant, based on a reaction to unusual circumstances, and occurs the moment before a struggle for the weapon begins. If a jury could find that the shooter did not intend to inflict serious injury or death—if the shooting lacks malice but shows reckless conduct that is criminally “stupid”—the jury, not the judge, should decide whether involuntary manslaughter is appropriate.

A. Contrary to the State’s Suggestion, the Record Reflects That Mr. Torrence Presented His Argument to the Trial Court.

The State’s preservation argument relies on an inaccurate description of the record. The State says that Mr. Torrence’s argument to the trial court was based on proximate cause. Specifically, the State says Mr. Torrence argued that the jury’s request to consider involuntary manslaughter meant that the jury felt the shooting did not proximately cause Mr. Chaplin’s death. See (Return, p. 6).

The record is reasonably clear. The relevant dialogue appears on page 621, from line 6 to line 20. During this exchange, Mr. Torrence’s lawyer suggested that the meaning of the jury’s note was that although the jury felt this shooting *was* the proximate cause of Mr. Chaplin’s death, the jury also believed this was not a case of *voluntary* manslaughter, which was the lowest crime available under the jury instructions. This dialogue is not ambiguous. The State’s interpretation takes that which is fairly lucid and renders it incomprehensible.

There are several different ways to phrase the argument Mr. Torrence’s lawyer was making. One way would be to say that *if* the jury determined that the shooting was the

proximate cause of Mr. Chaplin's death, and *if* the jury determined that Mr. Torrence shared the fault for creating these circumstances, Mr. Torrence was suggesting that the jury was boxed-in. Having disqualified self-defense, the jury would be inclined to find Mr. Torrence guilty of *some* crime, but the only options available under the court's instructions were murder and voluntary manslaughter. The note, according to Mr. Torrence's view, was at least some evidence that the jury was experiencing this sentiment and was concerned about the remaining offenses that were available. Voluntary manslaughter is an intentional killing. See *State v. Smith*, 391 S.C. 408, 412-13, 706 S.E.2d 12, 14-15 (2011). The jury may have believed that the last-minute decision to fire was more a reaction than a deliberate decision.

Mr. Torrence's theory of this case was consistent at trial. He argued that this shooting was based on fear and instinct, that he brought the gun only as a show of force, and that he shot only at the last moment, as a struggle for the gun was beginning or about to begin. See (App.pp.55, 61-62) (Mr. Torrence's reply brief, arguing this point and citing to the trial transcript). This is the same argument he has made throughout this appeal, and this either encompasses involuntary manslaughter or it does not. The trial judge thought it did not, because he responded to this argument by saying that he would not charge involuntary manslaughter. See (R.p.512, line 18 - p.513, line 5). There is no procedural bar to the Court's review of this issue. It was raised to the trial court, and the trial court rejected it.

B. Contrary to the State's Suggestion, South Carolina Law Is Not Completely Consistent with Respect to the Question Presented.

Mr. Torrence's petition attempted to give a fair description of South Carolina's current and past approaches to this aspect of involuntary manslaughter. As the State's return

correctly observes, see (Return, p.10), several South Carolina cases suggest that when a defendant admits firing a gun, an involuntary manslaughter charge is not appropriate. These cases include *State v. Pickens*, *State v. Gibson*, and *Douglas v. State*. All of these cases were cited in Mr. Torrence's petition. (Petition, p.5).

Here is the problem: the root of this principle is unsound. South Carolina courts have justified this principle by saying that "the act" must be unintentional. This comes from *State v. Morris*, a Court of Appeals decision that sheds no light on the meaning of the phrase "the act" must be unintentional. See 307 S.C. 480, 483, 415 S.E.2d 819, 821 (Ct. App. 1991).

This cannot mean that the act of pulling the trigger must be unintentional, because two sentences before this statement, the *Morris* decision cites a case in which the defendant admitted pulling the trigger and was convicted of involuntary manslaughter. See *Id.* at 483, 415 S.E.2d at 821 (citing *State v. Quick*, 168 S.C. 76, 167 S.E. 19 (1932)). Here again, it is hard to see room for ambiguity. This is an accurate description of what *Morris* says, and it is an accurate description of what *Quick* did.

The *Quick* decision is not an outlier. This Court's decision in *State v. McLaughlin* involved a defendant who admitted pulling the trigger and was convicted of involuntary manslaughter. See 208 S.C. 462, 38 S.E.2d 492 (1946). This Court overruled *McLaughlin* in *State v. Pickens*, but that overruling took as a given the idea that a defendant who admits shooting a gun cannot claim involuntary manslaughter. See *Pickens*, 320 S.C. 528, 531-32, 466 S.E.2d 364, 366 (1996) (citing *Morris* and *State v. Bozeman*).¹

¹Like *Morris*, the *Bozeman* decision reasons that intentionally firing a weapon precludes an involuntary manslaughter charge. 307 S.C. 172, 414 S.E.2d 144 (1992). No authority is cited for this proposition. The principal reason given to support this holding is that firing a

This is circular reasoning. This principle that “the act must be unintentional” has been used over and over with no regard for whether it is ever *possible*, under the circumstances of the individual case in question, to intentionally fire a gun yet still meet the definition of involuntary manslaughter.

But more to the point, not only has the *Quick* decision *not* been overruled, it was favorably cited by the same decision—*Morris*—that allegedly overruled it. Mr. Torrence’s argument is obviously out of step with the tenor South Carolina’s recent decisions, but it should be equally clear that *Quick* offers it some support and that this modern trend in the law has a questionable origin. The court does not generally give a favorable citation to a case that it is overruling, and because *Quick* is a Supreme Court decision, the *Morris* court lacked the authority overrule it.

C. Contrary to the State’s Suggestion, a Rule That Always Disqualifies Involuntary Manslaughter When Someone Admits Firing a Gun Is Absurd and Leads to Absurd Results.

Everyone ought to agree on part of Mr. Torrence’s argument. Involuntary manslaughter cannot be disqualified in every case where someone admits firing a gun. Consider the hypothetical of two people who are taking turns shooting at a street sign—an unlawful act—and a ricochet causes the bullet to unexpectedly (but foreseeably) change direction, strike the shooter’s companion, and kill him.

Under those facts, there is no tenable claim of self-defense, murder, or voluntary manslaughter. The only options are to excuse the killing as an accident or convict the

gun is a dangerous act. That is obviously true, but it does not follow that involuntary manslaughter should *always* be disqualified whenever someone admits firing a gun.

shooter of involuntary manslaughter for the reckless use of a dangerous instrumentality. It seems unfair for a rule to summarily bar all criminal liability for this killing, but disqualifying involuntary manslaughter for all intentional shootings does precisely that.

Consider also the circumstances that were present in *State v. Causer*, a case where a group of boys were hunting, one boy admitted pointing a gun at another, and the gun was accidentally fired. 87 S.C. 516, 70 S.E. 161 (1911). *Causer* is instructive in that it illustrates the problem of using the “dangerousness of the activity” as the test. Just as a reasonable person might say that firing a gun is a dangerous activity, so too might a reasonable person say that pointing a gun at someone else—which is usually unlawful—is a dangerous activity. Saying that something is “dangerous” is a platitude. Used in isolation, it tells us nothing about why the rule should include one case but exclude the other.

This is an area where categorical exclusions cannot apply. The context of each case is crucial. Involuntary manslaughter was designed to encompass unintentional killings that lack malice, but should have some criminal liability. It was designed to cover unintentional killings that are “criminally stupid.”

Whether this is an option in an individual case should depend on the facts of the individual case. There are shootings that are deliberate, intentional, and made with the purpose of inflicting harm (murder, voluntary manslaughter, or self-defense), and there are also decisions to shoot that are instinctive, reflexive, and made as a reaction during a brief window presenting extreme and unusual circumstances. Everyone ought to agree that as to the latter category, involuntary manslaughter is not so obviously disqualified. This is why the North Carolina courts have rejected the inflexible argument that the State proposes.

If a reasonable jury could find that Andrew Torrence shot Zach Chaplin as a reaction—a defensive instinct as Chaplin charged Torrence and dove for his gun—there is no lucid justification for barring an involuntary manslaughter charge. Under certain circumstances, it is possible to intentionally fire a weapon—even to intentionally fire a weapon at another person—without the purpose and intent of harming or killing them. To hold otherwise is to usurp the jury’s role of deciding foreseeability and reasonableness, and it puts someone like Mr. Torrence in the awkward position of having to wait to shoot until a physical struggle for the gun begins, or else decide to surrender the gun to his charging attacker. A jury might reject involuntary manslaughter and find Mr. Torrence guilty of a more serious crime, but the jury should have the option.

CONCLUSION

When the facts are viewed in the light most favorable to Mr. Torrence, this is dangerously close to a “struggle for the gun” case. The only reason it has not been argued that way is that Mr. Torrence has always admitted that he pulled the trigger. This is not saying much. Guns do not shoot themselves.

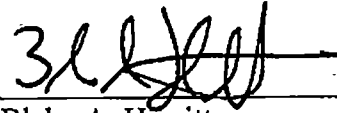
All intentional acts are not created equal. There is a difference between deliberately shooting a gun at somebody, perhaps even for the specific purpose of injuring or killing them, and firing a gun without such intent. This was the underlying rationale of the conviction in *State v. Quick*, and *Quick* has never been overruled. Mr. Torrence may have intentionally pulled the trigger, but that does not mean that his actions were not also reckless.

Because there is a conflict in authority, and because the question is fairly debatable, Mr. Torrence respectfully submits that the question presented is a question worth

considering. He therefore requests that this Court exercise its discretion to grant certiorari and review his conviction.

August 8, 2013

Respectfully submitted,



Blake A. Hewitt
John S. Nichols
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO
Post Office Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
bhewitt@bntdlaw.com
jsnichols@bntdlaw.com

Attorneys for Petitioner

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S.C. Supreme Court

The Supreme Court of South Carolina

The State, Respondent,

v.

Andrew E. Torrence, Jr., Petitioner.

Appellate Case No. 2013-001169

Lower Ct. Case No. 2010-GS-32023-18

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ATTORNEY GENERALS
OFFICE

ORDER

The petition for a writ of certiorari to review the court of appeals' decision in *State v. Torrence*, Op. No. 2013-UP-152 (S.C. Ct. App. filed Apr. 10, 2013), is denied.

George C.J.
FOR THE COURT

Columbia, South Carolina

November 7, 2014

cc:

The Honorable Jenny Abbott Kitchings
The Honorable Beth Carrigg
Blake Alexander Hewitt, Esquire
John S. Nichols, Esquire
Mary Shannon Williams, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 17, 2014

The Honorable Beth Carrigg
205 E Main St Ste 146
Lexington SC 29072-3557

REMITTITUR

Re: The State v. Torrence, Andrew
Lower Court Case No. 2010GS3202318
Appellate Case No. 2011-194612

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

The exhibits being returned are:

State's Ex.#13 (Photo)
State's Ex.# 17 (Security Video)

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".
CLERK

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JUN 18 2015

ATTORNEY GENERALS
OFFICE

Enclosure

cc: John S. Nichols, Esquire
H. Wayne Floyd, Esquire
Blake Alexander Hewitt, Esquire
Julie Kate Keeney, Esquire

Receipt Acknowledgement:

Name: _____

Printed Name: _____

Date: _____

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

ANDREW E. TORRENCE JR. #246850
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015 CP 5201993

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

1. Place of detention Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions, 205 E. Main Street, Lexington, SC 29072
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-32-01444 (possession of firearm on premise where alcohol sold)
 - (b) 2010-GS-32-02318 (voluntary manslaughter)
 - (c) 2011-GS-32-01440 (possession of weapon during commission of violent crime)
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

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Lex. Co. C.C.C.P., G.S. & F.G.

2015 CP 3201993

- (a) June 3, 2011; 5 years.
(b) 25 years.
(c) 5 years.
6. Check whether a finding of guilty was made:
(a) after a plea of guilty _____
(b) after a plea of not guilty X
(c) after a plea of nolo contendere _____
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. _____
(b) the result in each such Court to which you appealed:
i. Convictions affirmed.
ii. Certiorari denied.
iii. _____
(c) the date of each such result:
i. April 10, 2013
ii. November 7, 2014
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. Unpub. Op. No. 2013-UP-152
ii. _____
iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
(a) _____
(b) _____
(c) _____

SETH A. CARR
CLERK OF COURT
JUN 1 2015

2015 JUN - 1 P 3:26

FILED

10. State concisely the grounds on which you base your allegation that you are being held in
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[Signature]
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Revised 3/2003

custody unlawfully:

- (a) Ineffective assistance of trial counsel.
- (b) Ineffective assistance of appellate counsel.
- (c) _____

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

- (a) Failure to properly prepare Applicant prior to trial.
- (b) Failure to call witnesses and utilize evidence.
- (c) Failure to raise all meritorious issues on appeal.

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

- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.

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

- (a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

- (b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

- (c) the disposition thereof:

- i. _____
- ii. _____

FILED
JUN - 1 P 3 21
BETH A. CARRIS
CLERK OF COURT
LEXINGTON

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Lex. Co. C.C.C.P., G.S. & F.O.

Revised 3/2003

2015 CP 3201993

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

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) PCR is the proper forum.

(b) _____

(c) _____

SETH A. CARPIS
CLERK OF COURT
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Lex. Co. C.C.C.P., G.S. & F.C.

17. Were you represented by an attorney at any time during the course of:

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

2015 CP3201993

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. Wayne Flyod, P.O. Box 3972, Columbia, SC 29171
 - ii. Blake Hewitt, John Nichols, John Delgado of Bluestien, Nichols, Thompson & Delgado, P.O. Box 7965, Columbia, SC 29202
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial & sentencing.
 - ii. Direct appeal.
 - iii. _____

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

A new trial.

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

No.

FILED

2015 JUN - 1 P 3:27

RETHA A. CARRIS
CLERK OF COURT
15 ANDREWS

A TRUE COPY

BCA
Lex. Co. C.C.C.P., G.S. & F.C.

2015 CP3201993

STATE OF SOUTH CAROLINA)

VERIFICATION

County of RICHLAND)

I, Andrew E. Torrence Jr., 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.

Andrew E. Torrence Jr.

SWORN to and subscribed before me this 21
day of May, 2015.

[Signature] (L.S.)
Notary Public

My Commission Expires: 4/12/2016

FILED
JUN - 1 P 3 27
DETHA CARR
CLERK OF COURT
RICHLAND COUNTY

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.O.

Revised 3/2003

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) DOCKET NO.: 2015-CP-32-1993
2016 JUN 14 PM 2:18

Andrew E. Torrence, Jr., #346350,)
Applicant)

v.)

State of South Carolina,)

Respondent,)
_____)

KR

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

MOTION FOR DISCOVERY

COMES NOW Applicant, by and through his undersigned attorney, and requests that this Court enter an Order for Production of Discovery pursuant to S.C. Code Ann. §17-27-150(a) (2008).

This matter comes before the Court by way of an Application for Post Conviction Relief filed on June 1, 2015. Undersigned counsel has obtained case documents from Applicant's former trial and appellant attorneys, and counsel has thoroughly reviewed said files. Additionally, Applicant's counsel is and/or will be utilizing several experts and a private investigator to prepare and present Applicant's case at an evidentiary hearing.

In order to properly prepare for an evidentiary hearing, Applicant is requesting limited discovery as follows:

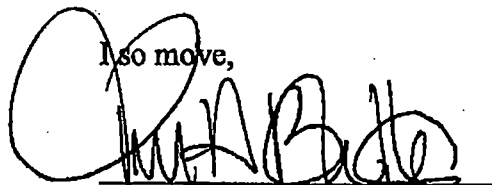
1. Authorization to issue a subpoena to Richland County Sheriff's Department for any and all records stemming from any calls made from and responded to at the Rush's (located at 2640 Broad River Road, Columbia, SC 29210) during Applicant's shift hours on September 27-28, 2008.
2. A copy of all audio and video recordings and 911 records that were subject to discovery prior to the underlying trial from the Lexington County Solicitor's Office and if not available from the Solicitor's Office, from the Lexington County Sheriff's Department.
3. A copy of all trial exhibits, including audio and video recordings, from the Lexington County Clerk of Court.

Applicant would ask the Court to find that if a party fails to comply or does not have a file or requested item to produce, a written explanation must be provided for the failure to produce said file or item to Applicant's counsel.

Applicant, through undersigned counsel, submits that the above listed requests are necessary for counsel and other retained professionals to properly prepare his case and to present his claims. Furthermore, the Applicant, through counsel, submits that this request is not being made as a fishing expedition, but it is only being submitted to the Court due to the importance of the requested materials in Applicant obtaining "one full bite of the apple."

THEREFORE, based upon the foregoing the Applicant respectfully requests that this Court conduct a motion hearing and/or enter an Order for Discovery, which allows counsel to issue subpoenas to the appropriate parties, offices and/or agencies for the above requested items that are necessary for the preparation and presentation of Applicant's case.

June 3 2016
Columbia, SC

Also move,


Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
Attorney for Applicant

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 JUN 14 PM 2:11

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2015-CP-32-1993

2016 JUN 14 PM 2: 11

Andrew E. Torrence, Jr., #346350,)

v.)

State of South Carolina,)
Respondent,)

DEBRA A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the United States Mail this 13th day of June 2016, a copy of an Motion for Discovery to Johanna C. Valenzuela of the Attorney General's Office, at:

Office of the Attorney General
Att: Johanna C. Valenzuela, Sr. Ast. Deputy AG
P.O. Box 11549
Columbia, SC 29211-1549



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

June 13, 2016

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Andrew E. Torrence, #346350,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2015-CP-32-1993

**RETURN TO MOTION FOR
DISCOVERY**

FILED
JUL 18 4 11:41 PM
CLERK OF COURT
LEXINGTON, SC

This matter comes before the Court by way of Applicant's Motion for Leave to Conduct Discovery filed June 1, 2016. Applicant's discovery motion is without merit and should be denied without a hearing.

I.

The Uniform Post Conviction Procedure Act comprehends and takes the place of the statutory writ of habeas corpus found in S.C. Code Ann. Sec. 17-17-10 (1985), *et seq.*, under which this action has been filed. *See* S.C. Code Ann. Sec. 17-27-20(b). The Uniform Post-Conviction Procedure Act does not allow for discovery in a non-capital post-conviction relief case without good cause and order of the circuit court permitting discovery requests. S.C. Code Ann. § 17-27-150(A) states:

A party in a non-capital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.

The conviction being challenged by Applicant in this action arises from a non-capital offense.

II.

First, Applicant has failed to state a specific reason for requesting to invoke the discovery process. Respondent submits that it has given opposing counsel every document within its custody and control, including the clerk's records,¹ SCDC records, and the PCR application. Respondent does not have custody or control over the Solicitor's file or the Richland County Sheriff's Department records or any other records from the trial not mentioned above.

III.

Furthermore, discovery should not be permitted because Applicant has not made the requisite showing of good cause. Applicant's grounds for discovery involve nothing more than speculation about what he might find and where he might find it. Such speculation cannot support a finding of good cause. *See, e.g., Strickler v. Greene*, 527 U.S. 263, 286, 119 S.Ct. 1936, 1950-1950 (1999) ("Mere speculation that some exculpatory material may have been withheld is unlikely to establish good cause for a discovery request on collateral review.") On information and belief, Applicant has not provided a showing of good cause.

IV.

Respondent therefore objects to the Motion for Discovery and requests the Court deny Applicant's Motion.

¹ Trial exhibits will be requested from the Clerk's Office and will be submitted to opposing counsel upon receipt.

WHEREFORE, the State requests that this Court deny the Motion for Leave to Conduct Discovery.

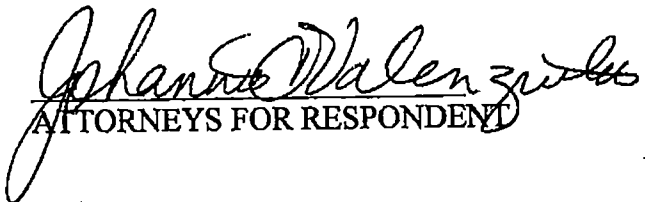
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

BY:


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

14 July, 2016.

FILED
JUL 18 A 11:42
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

2015-CP-32-1993

ANDREW E. TORRENCE, #346350,
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 to Motion for Discovery** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tricia Blanchette, Esquire
PO Box 12725
Columbia, SC 29211

DATED this 14th day of July, 2016.


Deonna Rogers, Legal Assistant
For Respondent

FILED
JUL 18 A 11:42
DETTA A. VANDERHOEG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2015-CP-32-1993

2015 SEP 22 PM 2:16

Andrew E. Torrence, Jr., 346350,)
Applicant,)

v.)

State of South Carolina,)
Respondent,)

ORDER AUTHORIZING DISCOVERY

ORIGINAL

This matter comes before the Court by way of an Application for Post Conviction Relief filed on June 1, 2015. On June 14, 2016, Applicant through counsel filed a Motion for Discovery. The State submitted a Return to Motion for Discovery on or about July 14, 2016. A motion hearing was conducted at the Lexington County Courthouse on August 3, 2016 in front of the Honorable Edward W. Miller. Applicant was present and represented by Tricia A. Blanchette, Esquire. Johanna C. Valenzuela, Senior Assistant Deputy Attorney General, appeared on behalf of the State.

At the motion hearing and by way of the written motion, counsel explained that she reviewed and obtained copies of trial and appellate counsel's file. Thereafter, she provided and reviewed the copied file with Applicant. After reviewing and discussing the case documents provided, it was apparent that a request for discovery was needed to properly prepare Applicant's case for an evidentiary hearing and to determine what witnesses are necessary to be called at an evidentiary hearing. Additionally, a request for discovery was needed due to the utilization of expert(s) and a private investigator. To ensure that Applicant and counsel have the case materials needed to properly prepare his case for an evidentiary hearing, counsel moved this Court for the opportunity to issue subpoenas to the appropriate people, offices or agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-27-150(a) (2008) limited

to those files/materials that were subject to discovery during the underlying criminal proceeding:

1. Authorization to issue a subpoena to Richland County Sheriff's Department for any and all records stemming from any calls made from and responded to at the Rush's (located at 2640 Broad River Road, Columbia, SC 29210) during Applicant's shift hours on September 27-28, 2008.
2. A copy of all audio and video recordings and 911 records that were subject to discovery prior to the underlying trial from the Lexington County Solicitor's Office and if not available from the Solicitor's Office, from the Lexington County Sheriff's Department.
3. A copy of all trial exhibits, including audio and video recordings, from the Lexington County Clerk of Court.

Applicant further requested the opportunity for his counsel, private investigator and expert(s) to review any and all requested materials that cannot be copied or provided to counsel.

Respondent noted that 911 calls were part of the trial record and argued there was no good cause for records from the Rush's when Applicant was captured on camera committing the shooting and malice was not an element at issue. Counsel for Applicant explained to the Court that she was not asking to go on a fishing expedition, but she needed the opportunity to complete the requested inquiries and obtain the requested items to assist Applicant in determining the legitimacy of allegations to be raised and properly preparing to meet the burden of proof placed on Applicant. Simply put, counsel was making the request to ensure that Applicant obtained "one full bite of the apple."

Based upon a showing of good cause, this Court finds that Applicant's request shall be granted in part as addressed below to ensure that Applicant, through counsel, can properly prepare his Application for an evidentiary hearing. Therefore, Applicant, through counsel, shall be allowed to issue subpoenas to the appropriate people, offices or

agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-27-150(a) (2008):

1. From the Richland County Sheriff's Department, any and all records stemming from any calls made from and responded to at the Rush's (located at 2640 Broad River Road, Columbia, SC 29210) during Applicant's shift hours on September 27-28, 2008.
2. Applicant's counsel must review the trial exhibits and provide a list of all audio and video recordings, to include 911 calls or 911 records, that are part of the trial exhibits to the Solicitor's Office. Thereafter, the Lexington County Solicitor's Office shall provide any audio or video recordings, to include 911 calls or 911 records, in its possession that were not included as trial exhibits.
3. A copy of the trial exhibits from the Lexington County Clerk of Court.

This Court further grants Applicant's request for his counsel, private investigator and/or experts to review any and all requested materials that cannot be copied or provided to counsel. This Court finds that Applicant, through counsel, should provide Respondent with all discovery received pursuant to this Order. This Court further finds that if a party fails to comply or does not have a file or requested item to produce, a written explanation must be provided for the failure to produce said file or item to Applicant's counsel.

IT IS THEREFORE ORDERED:

1. That Counsel for Applicant is permitted to serve a subpoena and/or submit a written request, along with a copy of this Order, upon the above listed agencies or entities for the production of the above listed items.
2. That any parties in receipt of a subpoena pursuant to this Order may file a timely objection, which will be addressed by this Court.

AND, IT IS SO ORDERED this 15 day of September, 2016.

Miller, South Carolina

Edward W. Miller
Honorable Edward W. Miller
Presiding Circuit Court Judge

2016 SEP 22 PM 2:16
CLERK OF COURT
LEXIS-NEXIS

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1993

2016 SEP 22 PM 2:16
Andrew E. Torrence, Jr., #346350,)

EE Applicant,)
v. CLERK OF COURT)
LEXINGTON)

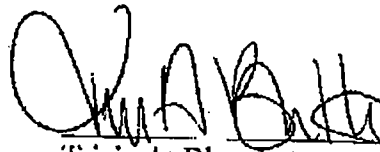
CERTIFICATE OF SERVICE

ORIGINAL

State of South Carolina,)
Respondent,)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the United States Mail this 21st day of September 2016, a copy of an Order for Discovery to Johanna C. Valenzuela of the Attorney General's Office, at:

Office of the Attorney General
Att: Johanna C. Valenzuela, Sr. Ast. Deputy AG
P.O. Box 11549
Columbia, SC 29211-1549



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

September 21, 2016

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-32-01993

RETURN

Respondent.

I.

897

A timely notice of appeal was filed on applicant's behalf. (Attachment 3). Blake Hewitt, Esquire, represented applicant. The Court of Appeals affirmed applicant's convictions and sentence. (Attachment 3); *see also State v. Torrence*, 2013-UP-152 (S.C. Ct. App. filed Apr. 10, 2013). Applicant petitioned the South Carolina Supreme Court for writ of certiorari which was denied on November 7, 2014. (Attachment 3).

II.

In his current application, applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel:
 - a. "Failure to properly prepare Applicant prior to trial;"
 - b. "Failure to call witnesses and utilize evidence;"
2. Ineffective Assistance of Appellate Counsel:
 - a. "Failure to raise all meritorious issues on appeal."

Respondent denies applicant is entitled to relief on any of these claims. Any claims not specifically enumerated in the application or amendments will be opposed by respondent at the evidentiary hearing.

Attached to this return and incorporated herein are:

1. Records from the South Carolina Department of Corrections;
2. The trial transcript dated May 31 2011 and June 3, 2011;
3. Direct appeal orders and other documents;
4. Lexington County Clerk of Court's records; and,
5. Applicant's PCR application.

Respondent intends to amend this return upon receipt of the amended application and reserves the right to further amend the return upon receipt of any additional relevant materials, such as expert reports.

III.

Respondent submits that applicant's claims of ineffective assistance of counsel are

without merit. In a PCR action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where applicant alleges ineffective assistance of trial counsel, he must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceedings "cannot be relied upon as having produced a just result." *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The court strongly presumes trial counsel rendered adequate assistance and exercised reasonable professional judgment. *Id.* at 442, 334 S.E.2d at 814. The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating claims of ineffective assistance of trial counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* at 117, 386 S.E.2d at 625. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* at 117, 386 S.E.2d at 625 (citing *Strickland*, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, at 117-18, 386 S.E.2d at 625.

Respondent submits applicant cannot satisfy either requirement of the *Strickland* test. First, the application lacks sufficient facts to determine the exact nature of the claims. However, regarding applicant's first claim for relief, respondent notes the record reflects any deficiency in

preparing applicant for trial was likely cured by the trial court's colloquy prior to applicant's testimony. *See e.g., Bennett v. State*, 371 S.C. 198, 205 n. 6, 638 S.E.2d 673, 676 n. 6 (2006) ("[E]ven where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant about the sentencing range."). The court told applicant it was his decision to testify, allowed applicant to ask questions about the possibility of impeachment on his past criminal history, and gave him additional time to discuss with trial counsel his decision to testify. (Attachment 2, pp.450-59). Next, the record directly refutes applicant's second claim that counsel failed to utilize evidence and call witnesses as counsel, in fact, called witnesses who presented evidence of applicant's injuries from the night of the incident and the drugs found in the victim's system. (Attachment 2, pp.419-36). Respondent submits applicant cannot prove counsel was deficient under *Strickland*.

However, the allegations of ineffective assistance of trial counsel probably raise questions of fact the record does not conclusively refute. Accordingly, respondent requests an evidentiary hearing to fully resolve these issues. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also raises ineffective assistance of appellate counsel. Respondent contends this allegation is without merit, and applicant's appellate counsel provided representation within the range of competence required as demonstrated by the brief and reply brief filed with the Court of Appeals raising meritorious issues, and the subsequent petition to the Supreme Court. (Attachment 3).

A defendant is constitutionally entitled to the effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387 (1985). Appellate counsel must provide effective assistance but

need not raise every non-frivolous issue presented by the record. *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). Appellate counsel has a professional duty to choose among potential issues according to their merit. *Jones v. Barnes*, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. *Griffin v. Aiken*, 775 F.2d 1226 (4th Cir. 1985). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Gray v. Greer*, 800 F.2d 664 (7th Cir. 1986).

Respondent submits applicant did not provide sufficient information regarding his ineffective assistance of appellate counsel claim, and respondent is unable to adequately respond. See S.C. Code Ann. § 17-27-50 (2003) (providing PCR applicants must "specifically set forth the grounds upon which the application is based, and clearly state the facts within the personal knowledge of the applicant"). Regardless, respondent submits applicant cannot satisfy either requirement of the *Strickland* test with regard to the claim. However, the claim probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. *Sharper, supra*.

V.

Each and every allegation contained within the application which has not previously been expressly admitted, qualified, or explained is hereby denied.

VI.

WHEREFORE, having made its return, respondent requests an evidentiary hearing be held on the issues of ineffective assistance of counsel and ineffective assistance of appellate counsel.

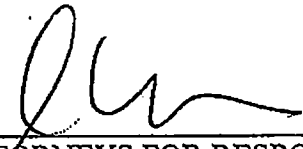
Respectfully submitted,

ALAN WILSON
Attorney General

DON ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General
S.C. Bar No. 101477

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-6305

July 12, 2017.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-32-1993

2017 JUL 17 PM 4:21

ANDREW E. TORRENCE, JR., #346350,

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

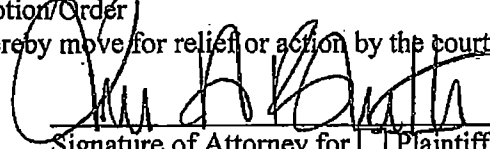
vs.

Plaintiff
J. A. M. CONER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA

Defendant.

COPY

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 2147, Columbia, SC 29070 Phone: 803-908-3266 Fax: _____ E-mail: blanchettelaw@gmail.com Other: _____		Defendant's Attorney: Sherrie Butterbaugh, Bar No. _____ Address: PO Box 11549, Columbia, SC 29211 Phone: 803-734-3737 Fax: _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Amendment to PCR Application Estimated Time Needed: Full day Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☐ Defendant July 13, 2017 Date submitted			
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

FILED
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1993

2017 JUL 17 PM 4:21
Andrew E. Torrence, Jr., #346350,)

Applicant,
v. LISA M. GOMER
CLERK OF COURT
LEXINGTON SC)

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

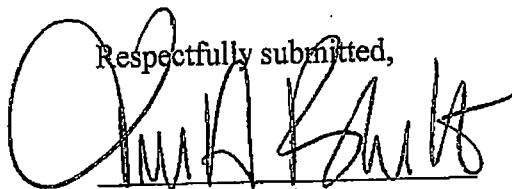
State of South Carolina,)
Respondent,)

This matter comes before the Court by way of an Application for Post Conviction Relief filed on June 1, 2015. By and through his undersigned counsel, Applicant would move to amend his Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel regarding Applicant's mental health:
 - a. Trial counsel was ineffective for failing to properly utilize mental health experts prior to and during trial.
 - b. Trial counsel was ineffective for failing to develop a mental health defense and/or utilize experts in mitigation in a plea.
 - c. Trial counsel was ineffective for utilizing Applicant as a witness at trial without a mental health expert.
2. Trial counsel was ineffective for failing to prepare and investigate prior to trial. Specifically, but not limited to:
 - a. Trial counsel was ineffective for failing to obtain the incident report and/or video surveillance from Applicant's place of employment to refute and/or impeach the State's witnesses regarding Applicant's whereabouts during the hours prior to the shooting at issue.
 - b. Alternatively, prosecutorial misconduct if said report was available or known to the prosecution and not turned over to the defense.

3. Ineffective assistance of counsel for the handling of the defense prior to and during trial:
- a. Trial counsel was ineffective for failing to question and/or obtain additional video footage from the scene.
 - b. Trial counsel was ineffective for failing to properly prepare to utilize the in car video at trial.
 - c. Trial counsel was ineffective for failing to fully cross-examine the State's witnesses at trial.
 - d. Trial counsel was ineffective for failing to address the matter of bias at trial.
 - e. Trial counsel was ineffective for failing to obtain an accident and involuntary manslaughter jury charge.
4. Trial counsel was ineffective for failing to properly address the issues of docket manipulation and the use of Applicant's prior conviction at trial.
5. Appellate counsel was ineffective for, but not limited to, the following:
- a. Failing to raise all meritorious issues on appeal:
 - i. The trial court's denial of the defense's request to question Mr. Narang about the aggressive nature of the victim. Transcript p. 201.
 - ii. Trial counsel's arguments regarding the issues of docket manipulation and the use of Applicant's prior conviction. Transcript pp. 451-64.
 - iii. The trial court's denial of the directed verdict motion. Transcript p. 408-10.
 - iv. Trial court's denial of the admission of the in car video. Transcript pp. 440-43, 460, 584-86.
 - v. Trial court's refusal to charge accident. Transcript pp. 616-617.
 - vi. Trial counsel's objection to the State's closing argument. Transcript pp. 678.
6. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

Respectfully submitted,



Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

July 13, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1993

Andrew E. Torrence, Jr., #346350,)
Applicant,)

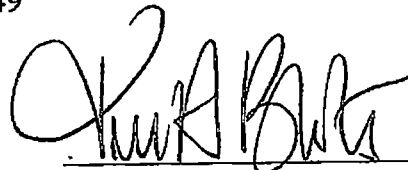
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent,)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I place in the United States mail this 13th day of July 2017 an Amendment to Application for Post Conviction Relief to Sherrie Butterbaugh of the Attorney General's Office, at:

Office of the Attorney General
Att: Sherrie Butterbaugh, Ast. AG
P.O. Box 11549
Columbia, SC 29211-1549



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

July 13, 2017

ORIGINAL

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)
2017 AUG 11 PM 1:37 IN THE ELEVENTH JUDICIAL CIRCUIT

LISA M. COMER
CLERK OF COURT
Andrew E. Torrence, Jr., #01690 OF COURT
Applicant, LEXINGTON SC)

C/A No. 2015-CP-32-1993

vs.)

State of South Carolina,)

ORDER FOR RELEASE OF ALL
MEDICAL RECORDS

Respondent.)
_____)

Respondent has requested this Court issue an order directing the South Carolina Department of Corrections ("SCDC") to copy and release any and all medical records for Applicant, including mental health records (including notes and original records in addition to computer summaries) to counsel for Respondent. Respondent acknowledges privacy concerns over medical records and the restrictions on dissemination of privileged information under both state and federal law. However, Respondent submits, because Applicant has alleged in his post-conviction relief ("PCR") action that trial counsel was ineffective in failing to properly utilize mental health experts to develop a mental health defense and/or utilize experts in mitigation, it is necessary for counsel for Respondent receive and review the records. Respondent submits release of the records is necessary to properly and fully prepare for its response to the claims and for the hearing. This Court agrees.

This Court finds, upon good cause shown, that the disclosures are necessary for the proceedings and that failure to disclose would be contrary to the public interest and fundamental fairness as Applicant's functioning and mental limitations, if any, are at issue in the action. See S.C. Code §§ 19-11-95 and 44-22-100; *see also State v. Terry*, 339 S.C. 352, 529 S.E.2d 274 (2000).

Applicant has been given notice Respondent is seeking these records and consented to

their release as indicated by his signature on this order.

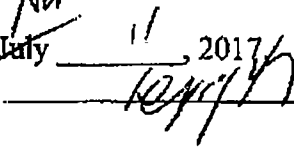
IT IS THEREFORE ORDERED:

1. That any privacy privilege or concern – state, federal, statutory or otherwise, and specifically including the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") – associated with the release of medical and mental health records is subordinate and must give way to ensure fairness and completeness in the evaluation of Applicant's claims;
2. That SCDC shall release any and all records, including medical and mental health records (including notes and original records in addition to computer summaries) for and/or related to Applicant to the Attorney General's Office;
3. That the Attorney General's Office shall provide a copy of those records to Applicant's counsel;
4. That the attorneys of the Attorney General's Office representing Respondent in the above captioned action shall be allowed to review those records and utilize the records in preparing their response to Applicant's PCR claims and for the evidentiary hearing.

IT IS SO ORDERED.



The Honorable R. Knox McMahon
Circuit Court Judge


July 11, 2017

_____, South Carolina.

Applicant has notice Respondent is seeking the release of his medical records and consents to their release.

 Jr.

Andrew E. Torrence, Jr.
Applicant

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1993

Andrew E. Torrence, Jr., #346350,)
Applicant,)

v.)

MOTION FOR CONTINUANCE

State of South Carolina,)
Respondent,)

This matter comes before the Court by way of an Application for Post Conviction Relief filed on June 1, 2015. On July 12, 2017, the State submitted a Return. Prior to receipt on July 13, 2017, Applicant, through counsel, submitted an Amendment to his Application for Post Conviction Relief, which addressed ineffective assistance of trial and appellate counsel, as follows:

1. Ineffective assistance of trial counsel regarding Applicant's mental health:
 - a. Trial counsel was ineffective for failing to properly utilize mental health experts prior to and during trial.
 - b. Trial counsel was ineffective for failing to develop a mental health defense and/or utilize experts in mitigation in a plea.
 - c. Trial counsel was ineffective for utilizing Applicant as a witness at trial without a mental health expert.
2. Trial counsel was ineffective for failing to prepare and investigate prior to trial. Specifically, but not limited to:
 - a. Trial counsel was ineffective for failing to obtain the incident report and/or video surveillance from Applicant's place of employment to refute and/or impeach the State's witnesses regarding Applicant's whereabouts during the hours prior to the shooting at issue.
 - b. Alternatively, prosecutorial misconduct if said report was available or known to the prosecution and not turned over to the defense.

2018 MAR 26 AM 9:42
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

FILED

3. Ineffective assistance of counsel for the handling of the defense prior to and during trial:
 - a. Trial counsel was ineffective for failing to question and/or obtain additional video footage from the scene.
 - b. Trial counsel was ineffective for failing to properly prepare to utilize the in car video at trial.
 - c. Trial counsel was ineffective for failing to fully cross-examine the State's witnesses at trial.
 - d. Trial counsel was ineffective for failing to address the matter of bias at trial.
 - e. Trial counsel was ineffective for failing to obtain an accident and involuntary manslaughter jury charge.
4. Trial counsel was ineffective for failing to properly address the issues of docket manipulation and the use of Applicant's prior conviction at trial.
5. Appellate counsel was ineffective for, but not limited to, the following:
 - a. Failing to raise all meritorious issues on appeal:
 - i. The trial court's denial of the defense's request to question Mr. Narang about the aggressive nature of the victim. Transcript p. 201.
 - ii. Trial counsel's arguments regarding the issues of docket manipulation and the use of Applicant's prior conviction. Transcript pp. 451-64.
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 - iv. Trial court's denial of the admission of the in car video. Transcript pp. 440-43, 460, 584-86.
 - v. Trial court's refusal to charge accident. Transcript pp. 616-617.
 - vi. Trial counsel's objection to the State's closing argument. Transcript pp. 678.
6. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

Thereafter, Applicant's case was set for an evidentiary hearing on August 7, 2017. The State sought and obtained a continuance and a Consent Order for Release of all Medical Records. The case has been set for an evidentiary hearing on April 16, 2018. Upon receipt of an email roster, Applicant's counsel informed the State that a continuance would be sought on several grounds, which are as follows:

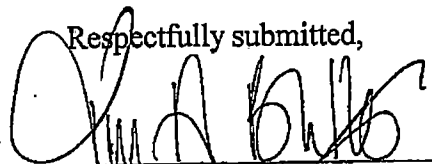
1. Dr. Donna Schwartz Maddox has been retained and evaluated Applicant, along with Dr. Tora Brawley. Applicant has been diagnosed as suffering from active "psychosis."

Counsel met with Applicant at Perry Correctional Institution on February 27, 2018 in anticipation of the April term. Shortly thereafter, Applicant was moved to Lieber Correctional Institution. Counsel is concerned that the movement of Applicant by SCDC has caused Applicant great distress and worsened his mental state to the point that he cannot actively assist counsel in preparing his PCR Application. This concern has been shared with the Attorney General's Office.

2. Following the additional medical records obtained by court order, Dr. Donna Schwartz Maddox has not issued a formal report. Counsel cannot finalize all allegations or provide the State with notice until this report is received. Furthermore, Dr. Donna Schwartz-Maddox is a primary witness and will be needed at length. She is under subpoena for a SVP trial in Aiken on April 16, 2018.
3. Counsel estimates the hearing may take up to two days. Counsel's final witness will be appellate counsel Blake Hewitt, Esquire. Mr. Hewitt has informed counsel that he is scheduled for appellate oral arguments on April 17 & 18, 2018.
4. Due to the conflict of Dr. Donna Schwartz-Maddox, counsel has not attempted to place any lay witnesses under subpoena, so no further conflicts have been discovered at this juncture.
5. Counsel will be out of the State from April 1-8, 2018.

Applicant, through counsel, is not making this request for the purposes of delay, but solely to ensure that Applicant's case is properly presented. Applicant's counsel has not previously requested a formal continuance. Applicant requests that the matter be set for a date certain, with adequate notice, so all witnesses and experts can be placed under subpoena and Applicant's mental state and ability to assist counsel can be properly addressed. As a result, Applicant requests that the evidentiary hearing set for April 16, 2018 be continued and the matter set for a date certain.

Respectfully submitted,



Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

March 26, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1993

Andrew E. Torrence, Jr., #346350,)
Applicant,)

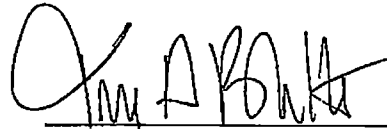
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent,)
_____)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I place in the United States mail this 26th day of March 2018 a Motion for Continuance to Anthony Mabry of the Attorney General's Office, at:

Office of the Attorney General
Att: Anthony Mabry, Ast. AG
P.O. Box 11549
Columbia, SC 29211-1549



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

March 26, 2018

FILED
2018 MAR 26 AM 9:42
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1993

Andrew E. Torrence, Jr., #346350,)
Applicant,)

v.)

State of South Carolina,)
Respondent,)

MOTION

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

2018 APR -2 PM 4:28

FILED

This matter comes before the Court by way of an Application for Post Conviction Relief filed on June 1, 2015. On July 12, 2017, the State submitted a Return. Prior to receipt on July 13, 2017, Applicant, through counsel, submitted an Amendment to his Application for Post Conviction Relief, which addressed ineffective assistance of trial and appellate counsel, as follows:

1. Ineffective assistance of trial counsel regarding Applicant's mental health:
 - a. Trial counsel was ineffective for failing to properly utilize mental health experts prior to and during trial.
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 - b. Alternatively, prosecutorial misconduct if said report was available or known to the prosecution and not turned over to the defense.

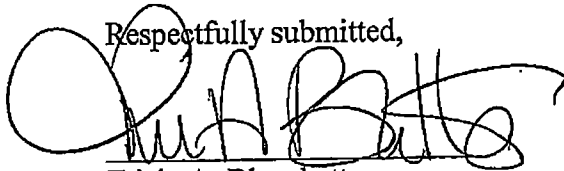
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 - v. Trial court's refusal to charge accident. Transcript pp. 616-617.
 - vi. Trial counsel's objection to the State's closing argument. Transcript pp. 678.
6. Pursuant to Rule 15(b), SCRCPP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

Thereafter, Applicant's case was set for an evidentiary hearing on August 7, 2017. The State sought and obtained a continuance and a Consent Order for Release of all Medical Records. The case has been set for an evidentiary hearing on April 16, 2018.

On March 26, 2018, Applicant, through counsel, filed a Motion for Continuance on several grounds. Thereafter, counsel for both parties conducted extensive discussions regarding the case. As a result of a mutual agreement that the hearing set for April 16, 2018 will solely be a motion hearing, Applicant, through counsel, withdraws the formal motion for a continuance

since the matter is rendered moot by the mutual agreement. Furthermore, counsel requests, as has been agreed to by opposing counsel, that the matters of Applicant's competency to take the stand, deadlines for expert(s) reports and the scheduling of a two day evidentiary hearing for a date certain be addressed at the motion hearing scheduled for April 16, 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tricia A. Blanchette', written over a horizontal line.

Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

March 30, 2018

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1993

Andrew E. Torrence, Jr., #346350,)
Applicant,)

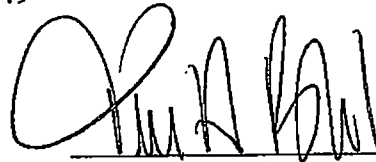
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent,)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I place in the United States mail this 30th day of March 2018 a Motion to Anthony Mabry of the Attorney General's Office, at:

Office of the Attorney General
Att: Anthony Mabry, Ast. AG
P.O. Box 11549
Columbia, SC 29211-1549



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

LISA M. COMER
CLERK OF COURT
LEXINGTON, SC

2018 APR -2 PM 4:21

FILED

March 30, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1993

Andrew E. Torrence, Jr., #346350,)
Applicant,)

v.)

State of South Carolina,)
Respondent,)

ORDER FOR CONTINUANCE

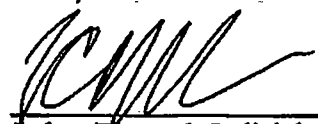
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

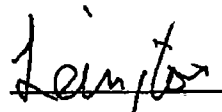
2018 APR -2 PM 4:19

FILED

This matter comes before the Court by way of an Application for Post Conviction Relief filed on June 1, 2015. On July 12, 2017, the State submitted a Return. On July 13, 2017, Applicant, through counsel, submitted an Amendment to his Application for Post Conviction Relief. An evidentiary hearing has been set for April 16, 2018. Applicant, through counsel, has requested a continuance. Based upon a showing of good cause, this Court orders that the evidentiary hearing set for April 16, 2018 shall be continued and the matter shall be set for a date certain.

AND, IT IS SO ORDERED.


Judge, Eleventh Judicial Circuit
CAJ 2154

 SC
March 28, 2018

1 State of South Carolina)
 2 County of Lexington)
 3 Andrew E. Torrence,)
 4 Applicant/Plaintiff,)
 5 vs.)
 6 State of South Carolina,)
 7 Respondent/Defendant.)
 8 _____)

In the Court
 Of Common Pleas
 Case No.: 2015-CP-32-01993

Transcript of Record

April 16, 2018

Lexington, South Carolina

BEFORE:

The Honorable William A. McKinnon, Judge

APPEARANCES:

Tricia A. Blanchette, Esquire
 Attorney for the Applicant/Plaintiff

Sherrie Butterbaugh, Assistant Attorney General
 Attorney for the Respondent/Defendant

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EXHIBITS

11			
12	NO. DESCRIPTION	ID	EVDS.
13	NONE		
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1 Thereupon, the following proceedings were had,

2 THE COURT: What is the motion we are hearing today?

3 MS. BUTTERBAUGH: Do you want to do it?

4 MS. BLANCHETTE: Your Honor, this is Tricia
5 Blanchette here on behalf of Andrew Torrence. Case
6 number 2015-CP-32-1993. I can kind of give you a brief
7 overview, Your Honor, and then if you have any questions,
8 I'll be happy to fill in with more information but this
9 case has had a bit of a complicated procedural history
10 and we have had a number of different parties
11 representing the State in this case. At one juncture
12 Joanna Valenzuela was the head of the PCR division. She
13 was representing the State.

14 We did a discovery motion. We went through the
15 discovery process. Thereafter, and I hope I'm using the
16 term right, the Capital Litigation Department took over
17 the Eleventh Circuit and opposing counsel here requested
18 that I consent to them obtaining all of my client's
19 medical and mental health records because at that point
20 we were prepared to go forward in August of 2017. With
21 my client's permission I consented to that. We obtained
22 those records and then she turned those records over to
23 me.

24 Since that time we have just been working on trying
25 to get this scheduled and going through a number of

1 issues. The primary issue is Mr. Torrence has been
2 evaluated by Dr. Donna Maddox who is here in the
3 courtroom with us today and Dr. Tora Brolly. At this
4 time I do have Dr. Tora Brolly's report which I have
5 turned over to the State but Dr. Maddox has not finalized
6 her report my understanding is for several reasons. Once
7 we got all those additional records, she reviewed those
8 and now a new issue of competency has come to the table.

9 Today was originally scheduled for an evidentiary
10 hearing. I moved back on March 26th for it to be
11 continued for several reasons one of which was Dr. Maddox
12 was under subpoena for an SVP trial. Second reason was
13 that my client had moved from Perry to Lieber and I had
14 gone to meet with him at Perry. We were preparing well
15 for the hearing. I went to see him at Lieber and he was
16 just not in the same mental state that he had been in at
17 Perry.

18 I think on the motion for continuance, I have it in
19 front of me here, I have listed five or six different
20 issues.

21 THE COURT: Okay. What we are here on is your
22 motion for continuance?

23 MS. BLANCHETTE: No, Your Honor. Actually Judge
24 McMahon granted that on March 28th, 2018 but in continued
25 discussions with Anthony Mabry and Melody Brown who were

1 kind of running point for the State at that point we
2 thought it would be best to come in front of Your Honor
3 to put a number of matters on the record to make sure
4 this case moves forward and to possibly get it set for a
5 date certain. So, Your Honor, I think the best way to
6 term what we're doing here today is more of a scheduling
7 conference.

8 THE COURT: Okay.

9 MS. BLANCHETTE: The other matter that we would like
10 if Your Honor would let us address is in my discussions
11 with Anthony Mabry I indicated that I did not intent to
12 put my client on the stand and I handed you Council
13 versus State. Yes. Council versus State and I did not
14 intend to ask for a continuance because of my client's
15 inability to help or take the stand. I intended to
16 present all of the issues that are in the amendment
17 either through trial counsel, his mother, appellate
18 counsel or my experts so I did not see the need to call
19 my client to the stand. At that point Anthony Mabry
20 indicated to me that the State would call him to the
21 stand. So then the issue rose up as to whether or not he
22 would be competent to take the stand at the PCR hearing
23 and so Dr. Donna Maddox is here today and we ask that
24 Your Honor allow her to briefly evaluate him and then put
25 on the record for us matters related to his competency to

1 take the stand at the evidentiary hearing and to assist
2 at the evidentiary hearing.

3 THE COURT: Okay.

4 MS. BLANCHETTE: As I said, that's a lot of
5 information and I'm very familiar with it.

6 THE COURT: I'm with you. Basically this is a
7 scheduling conference.

8 MS. BLANCHETTE: Essentially, Your Honor. Yes.

9 MS. BUTTERBAUGH: Yes.

10 THE COURT: Okay. But you want him to be evaluated
11 as we sit here today. Like how long will that take?

12 MS. BLANCHETTE: She told me it would take
13 approximately ten minutes if they could have a room to do
14 that evaluation.

15 THE COURT: Okay. And then that evaluation will be
16 to determine whether he is competent to take the stand in
17 the later evidentiary hearing that we are going to
18 schedule today?

19 MS. BLANCHETTE: That is my understanding. She will
20 address his competency.

21 MS. BUTTERBAUGH: Yes. For purposes of PCR, Your
22 Honor.

23 THE COURT: Okay. What is the standard of
24 competency to take the stand in a PCR hearing? Is it the
25 same in --

1 MS. BLANCHETTE: I mean, I think that the Council
2 case is the most on point that I could find. All the
3 cases deal with death penalty cases and it's the ability
4 to assist counsel and that's why I handed that up. I
5 don't know if the State has something further that's more
6 on point.

7 MS. BUTTERBAUGH: No.

8 MS. BLANCHETTE: But Council is where our court has
9 addressed it and then in the underlying case that they
10 talk about the standard of Council. There was a
11 companion Council case for lack of better words. But Dr.
12 Donna Maddox was the expert in the Council case and so,
13 Your Honor, I will defer to her as I think that she will
14 be able to explain when asked about her findings and the
15 standard itself. I will defer to her expertise in that
16 area.

17 THE COURT: Okay. So is that step one for today?
18 Like take a recess for your client to be evaluated?

19 MS. BLANCHETTE: That is, Your Honor, unless we
20 wanted to put just some brief scheduling issues on the
21 record.

22 THE COURT: Whatever you ladies prefer.

23 MS. BUTTERBAUGH: Yes. Let's do that. Also, I
24 would like to say that I don't want necessarily, you
25 know, putting on the record because it might be that, you

1 know, down the road we might need to do another
2 evaluation I guess to determine whether or not, you know,
3 Mr. Torrence is competent to assist with the PCR. So,
4 you know, putting it on the record today I think this
5 would be today whether or not he's competent.

6 THE COURT: Is that a benefit? Clearly we can let
7 her do the examination and she can write a report but is
8 it of any benefit if I put on the record that as of today
9 April 16th he's competent or is not competent whatever?

10 MS. BLANCHETTE: Your Honor, the benefit that I see
11 is that we have it on the record versus waiting for her
12 to issue a report so if the State felt the need to get
13 their own expert or we could determine then how we need
14 to move forward once we have it stated on the record was
15 the reason in wanting to do that.

16 THE COURT: Okay. Aren't I jumping the gun though
17 if the State hasn't had a chance to have their own expert
18 evaluate him?

19 MS. BLANCHETTE: When I was discussing the case with
20 Melody Brown and Anthony Mabry I asked about that that
21 today we also put on the record if the State intended to
22 have an expert because with it being scheduled for today
23 one of my questions was you have got all of these
24 records. Do you all intend to call an expert? That's an
25 unknown for me at this time so I think that maybe she

1 could better answer that, Your Honor.

2 MS. BUTTERBAUGH: Our intention, you know, as of
3 right now is we want to see Dr. Maddox's report from her
4 review of the medical records that we requested and the
5 reason that we requested the medical records was because
6 some of the allegations that were raised in the PCR
7 application dealt with mental health at the time of the
8 incident and at the time so that was why we requested the
9 medical records. So, you know, it really just depends on
10 what Dr. Maddox's report says.

11 THE COURT: Does Dr. Maddox have -- My understanding
12 was the report is not yet ready.

13 MS. BUTTERBAUGH: Correct. So we're at such the
14 preliminary stage of, you know, the preliminary stage I
15 think of this, of the -- I can't think of the word I'm
16 looking for. We're such at the beginning stages of kind
17 of discovery of what we're looking for and so we might
18 not need to call an expert, you know, or even consult
19 with an expert. It just depends on what the report says
20 which we do not have today. Yes.

21 THE COURT: It seems then it's premature for me to
22 issue a ruling on competency.

23 MS. BLANCHETTE: Yes, Your Honor. Maybe I should
24 clarify. I agree with Your Honor. When I talked with
25 Dr. Maddox this morning, she said she could put her

1 findings on the record so then the State could evaluate
2 what they need to do next. I am not specifically looking
3 for a ruling from Your Honor, just more of this being a
4 status conference where this is the status of what our
5 mental health expert has found regarding competency so
6 the State can proceed. And then also if Your Honor would
7 be agreeable I would like to set a date that Dr. Maddox
8 has to do a full report and then a date that the State
9 either has to reveal any experts and do any responsive
10 report so then we can get this case scheduled and have
11 all the specifics ironed out regarding mental health.

12 THE COURT: Ms. Butterbaugh, any objection to that?

13 MS. BUTTERBAUGH: No objection because that's kind
14 of what we were looking for.

15 THE COURT: Okay. Let's do that then. We'll take a
16 recess and we'll have 15 minutes. Is that sufficient?
17 Okay. Security issues. Is there a place that he can be
18 taken securely where Dr. Maddox can interview him? We'll
19 take a recess and we'll say 11:00.

20 MS. BLANCHETTE: Thank you, Your Honor.

21 MS. BUTTERBAUGH: Thank you.

22 (Short recess.)

23 BAILIFF: All rise.

24 THE COURT: Please be seated. Did we have
25 sufficient time to get the examination done?

1 MS. BLANCHETTE: We did, Your Honor, and we
2 appreciate your patience. This is somewhat of a unique
3 scenario here today. We request at this time that we can
4 consult with you briefly in chambers before we go back on
5 the record.

6 THE COURT: Sure. Certainly. Court will be in
7 recess.

8 (Short recess.)

9 BAILIFF: All rise.

10 THE COURT: Please be seated.

11 MS. BLANCHETT: Thank you, Your Honor. Tricia
12 Blanchette. We're back on the record in Andrew Torrence
13 versus State. During the recess Dr. Donna Maddox was
14 able to do an evaluation addressing Mr. Torrence's
15 competency and I am prepared to call her to the stand
16 just to briefly address that evaluation at this time.

17 THE COURT: Okay.

18 MS. BLANCHETTE: I call Dr. Donna Maddox to the
19 stand.

20 Thereupon,

21 DONNA MADDOX, M.D.

22 after having been first duly sworn, testified as follows,

23 DIRECT EXAMINATION

24 BY MS. BLANCHETTE:

25 Q. Can you please state your name for the record.

1 A. Yes. I'm Donna, middle name Schwartz,
2 S-c-h-w-a-r-t-z, last name Maddox, M-a-d-d-o-x.

3 Q. Dr. Maddox, can you just briefly explain to us the
4 degrees that you hold?

5 A. Yes. I'm licensed to practice medicine in South
6 Carolina so I have a doctorate of medicine and I completed
7 medical school in 1989 and I'm also licensed to practice
8 medicine in Georgia.

9 Q. Okay. Can you tell us as far as your employment
10 history where you have served in your capacity as a doctor?

11 A. Yes. Your Honor, I completed residency at South
12 Carolina in the Department of Mental Health in general
13 psychiatry. I finished that in 1993 and then I took an
14 additional year of study. I completed a fellowship in
15 forensic psychiatry and I finished that in the Department of
16 Mental Health in 1994. From 1994 until 1997 I worked at the
17 Department of Mental Health and there I conducted court
18 ordered competency to stand trial and criminal responsibility
19 evaluations. The next 17 years I worked at the University of
20 South Carolina School of Medicine here in Columbia and there I
21 mainly was a forensic psychiatrist. I engaged in a practice
22 of forensic psychiatry. I worked at the South Carolina
23 Department of Corrections. I worked at the South Carolina
24 Department of Juvenile Justice. I worked with the Sexually
25 Violent Predator Treatment Program. I also taught. I ran a

1 private outpatient practice and also a full-time forensic
2 practice. The last eight years I finished up at the
3 Department of Mental Health and I retired from Patrick B.
4 Harris Psychiatric Hospital actually two weeks ago and so now
5 I'm just engaged in full time private practice of forensic
6 psychiatry.

7 Q. Have you been qualified as an expert in the area of
8 forensic psychiatry?

9 A. I have.

10 Q. Approximately how many times do you think you have
11 been qualified in South Carolina in State and Federal Court?

12 A. Over 700 times.

13 MS. BLANCHETTE: Your Honor, at this time I would
14 offer Dr. Maddox as an expert in the area of forensic
15 psychiatry.

16 THE COURT: Are you board-certified?

17 THE WITNESS: No longer, Your Honor. For 20 years I
18 was and my boards just ended in December of 2016 and as
19 part of a revolt and probably not wanting to take them
20 again I did not recertify but I remain eligible.

21 THE COURT: Okay. Any objection, Ms. Butterbaugh?

22 MS. BUTTERBAUGH: No, Your Honor.

23 THE COURT: All right.

24 BY MS. BLANCHETTE:

25 Q. Dr. Maddox, you had the opportunity to meet with Mr.

1 Torrence back at the time that he had been charged originally
2 in this case; is that correct?

3 A. Yes.

4 Q. And then you met with him again at my request in
5 2016?

6 A. That is correct.

7 Q. And then you had the opportunity to meet with him
8 again today?

9 A. Yes.

10 Q. I would like to ask you to briefly explain to the
11 Court your findings as a result of your meeting with Mr.
12 Torrence today.

13 A. Yes. Similar to 2016 Mr. Torrence has consistently
14 told me that he has a remote neuro monitoring system that is
15 controlling him. It does things. For example, it will
16 control his motor movements. It controls what he says. When
17 he is trying to attend to conversation or talk, he reports
18 that there will often be voices that are saying things to him
19 that upset him, that trigger him. They direct what he says.
20 He reports that these, this problem bothers him most of the
21 day. He reports that the original onset, he believes the NSA
22 may have something to do with this implant and he's not really
23 sure what their motives are but it definitely controls him.
24 He would like to not have this happen to him anymore. In
25 terms of his being able to testify it's my opinion to a

1 reasonable degree of medical certainty he's not competent to
2 testify. That standard is you have to know the difference
3 between a truth and a lie and his belief system are very fixed
4 and it's very strong and he is very frightened of others
5 motives. He thinks that there's a whole conspiracy. He's not
6 really sure why but that the court as well as myself and even
7 family members are somehow involved in this system that's
8 controlling his actions, controlling his words and controlling
9 his thoughts.

10 Q. Was Mr. Torrence cooperative when you met with him
11 today?

12 A. Oh, yes. He was able to -- He's got a lot to say.
13 He's got a lot of concern about what's going on with him. At
14 times it's hard to direct him. It's hard to have him stop
15 because he is very anxious and he wants people to understand
16 what's going on and what the government has done to his
17 brain.

18 Q. Was this consistent with the information that he
19 provided to you when you met with him in 2016?

20 A. It was. He also has very specific beliefs. He does
21 not believe that the victim in this case is dead. He believes
22 that that's also part of the NSA system that's monitoring him
23 so he's not sure of that. He also, Your Honor, his father has
24 allegedly died and he's not sure that his father is dead
25 either. He thinks his father and mother may have something to

1 do with this system as well.

2 Q. Do you have any concerns regarding either where your
3 evaluation took place or his cooperation regarding your
4 findings and the accuracy of those findings?

5 A. No. We were next door, Your Honor, in the courtroom
6 in the back and he was able to attend. There was a little bit
7 of distraction in the room but he was able to pay attention
8 and we were able to get that information.

9 Q. Dr. Maddox, is there anything else you would like to
10 inform the Court of today?

11 A. Yes. Just one finding. Your Honor, I have been
12 reviewing the Department of Corrections records and they have
13 diagnosed him with malingering. The feigning of psychotic
14 symptoms and it is absolutely my opinion that he is not
15 feigning any of these symptoms at all and because of that he
16 is not being treated in the Department of Corrections for
17 those symptoms that he has. He's receiving anti-depressants.
18 He's treated for hypertension with a number of medications and
19 he's treated for high cholesterol but he's not receiving
20 treatments that would help him not be controlled and the
21 symptoms that he's reporting.

22 THE COURT: Thank you, doctor. Ms. Butterbaugh, any
23 questions?

24 MS. BUTTERBAUGH: Just one.

25

1 CROSS EXAMINATION

2 BY MS. BUTTERBAUGH:

3 Q. Is it your opinion that he is treatable for what you
4 have diagnosed him for?

5 A. Yes.

6 Q. So with treatment would he be able to then regain
7 competency to testify?

8 A. It would be hard to know but it's certainly worth
9 trying. What happens is, Ms. Butterbaugh, the longer that
10 someone goes on with these symptoms without treatment
11 sometimes it becomes more treatment resistant but there's a
12 number of things that I think are in his favor. He's not
13 using drugs or alcohol anymore. He's in a controlled
14 environment so it's certainly worth a try. You know, I don't
15 know but it certainly -- We have newer medicines now that I
16 think would give me some hope.

17 MS. BUTTERBAUGH: Thank you.

18 THE COURT: Anything else?

19 MS. BLANCHETTE: Your Honor, I have nothing further
20 of this witness.

21 THE COURT: Okay. Thank you both and it's my
22 understanding from the chambers the Court will enter an
23 order as soon as Dr. Maddox submits a report within 30
24 days and then the case will be set for trial, a true date
25 set for trial by the chief administrative judge.

1 MS. BLANCHETTE: That is correct, Your Honor.

2 MS. BUTTERBAUGH: That is correct.

3 THE COURT: As soon as we leave the bench we'll get
4 that Form 4 done.

5 MS. BLANCHETTE: Thank you, Your Honor.

6 MS. BUTTERBAUGH: Thank you, Your Honor.

7 THE COURT: Court will be in recess until 9:30 a.m.
8 tomorrow.

9 WHEREUPON, THE HEARING WAS CONCLUDED.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 16th day of April, 2018.

11 I FURTHER CERTIFY that the forgoing 18 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 11th day of September, 2018.

17

18

19

20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.

23

24

25

CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

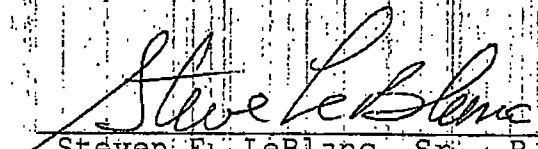
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Lexington County, this 11th day of September, 2018.


Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1993

Andrew E. Torrence, Jr., #346350,)
Applicant,)

v.)

State of South Carolina,)
Respondent,)

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

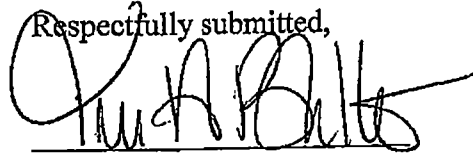
This matter comes before the Court by way of an Application for Post Conviction Relief filed on June 1, 2015. By and through his undersigned counsel, Applicant would move to amend his Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:

1. Ineffective assistance of trial counsel regarding Applicant's mental health:
 - a. Trial counsel was ineffective for failing to properly utilize mental health experts prior to and during trial.
 - b. Trial counsel was ineffective for failing to develop a mental health defense and/or utilize experts in mitigation in a plea and/or trial.
 - c. Trial counsel was ineffective for utilizing Applicant as a witness at trial without a mental health expert.
2. Trial counsel was ineffective for failing to prepare and investigate prior to trial. Specifically, but not limited to:
 - a. Trial counsel was ineffective for failing to obtain the incident report and/or video surveillance from Applicant's place of employment to refute and/or impeach the State's witnesses regarding Applicant's whereabouts during the hours prior to the shooting at issue.
 - b. Alternatively, prosecutorial misconduct if said report was available or known to the prosecution and not turned over to the defense.

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CLERK OF COURT
LEXINGTON SC

3. Ineffective assistance of counsel for the handling of the defense prior to and during trial:
 - a. Trial counsel was ineffective for failing to question and/or obtain additional video footage from the scene.
 - b. Trial counsel was ineffective for failing to properly prepare to utilize the in car video at trial.
 - c. Trial counsel was ineffective for failing to fully cross-examine the State's witnesses at trial.
 - d. Trial counsel was ineffective for failing to address the matter of bias at trial.
 - e. Trial counsel was ineffective for failing to ensure that the court gave a curative instruction following his objection to the State's closing argument. Transcript p. 678, 680-82. Additionally, ineffective assistance for not making an objection to the Solicitor's characterization of the victim as a "hero." Transcript p. 579, 678.
 - f. Trial counsel was ineffective regarding the Court's charge, for the following but not limited to:
 - 1) for failing to obtain an accident and involuntary manslaughter charge;
 - 2) for failing to object to the contemptuous language charge;
 - 3) for failing to request a more detailed charge on citizen's arrest; and
 - 4) for failing to request a jury charge on the difference between "acting lawfully" and being "lawfully armed in self-defense."
4. Trial counsel was ineffective for failing to properly address the issues of docket manipulation and the use of Applicant's prior conviction at trial.
5. Appellate counsel was ineffective for, but not limited to, the following:
 - a. Failing to raise all meritorious issues on appeal:
 - i. The trial court's denial of the defense's request to question Mr. Narang about the aggressive nature of the victim. Transcript p. 201.
 - ii. Trial counsel's arguments regarding the issues of docket manipulation and the use of Applicant's prior conviction. Transcript pp. 451-64.
 - iii. The trial court's denial of the directed verdict motion. Transcript p. 408-10.
 - iv. Trial court's denial of the admission of the in car video. Transcript pp. 440-43, 460, 584-86.
 - v. Trial court's refusal to charge accident. Transcript pp. 616-617.
 - vi. Trial counsel's motions and arguments regarding prosecutorial misconduct.
6. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

Respectfully submitted,



Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

October 26, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-32-1993

Andrew E. Torrence, Jr., #346350,)
Applicant,)

v.)

State of South Carolina,)
Respondent,)

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I place in the United States mail this 26th day of October 2018 an Amendment to Application for Post Conviction Relief to Kelly Oppenheimer of the Attorney General's Office, at:

Office of the Attorney General
Att: Kelly Oppenheimer, Ast. AG
P.O. Box 11549
Columbia, SC 29211-1549



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

October 26 2018

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2018 OCT 26 PM 3:01
CLERK OF COURT
LEXINGTON SC

State of South Carolina
County of Lexington

Court of Common Pleas

Andrew E. Torrence	)	
	)	
Applicant,	)	Transcript of Record
v.	)	2015-CP-32-01993
	)	
State of South Carolina	)	
	)	
<u>Respondent.</u>	)	

November 5 - 6, 2018
Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod, IV, Judge.

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

Tricia Blanchette, Esquire
Attorney for the Applicant

Kelly Oppenheimer, Esquire
Sherrie Butterbaugh, Esquire
Attorneys for the Respondent

Bethanie K. Creppon
Circuit Court Reporter

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P R O C E E D I N G S

* * *

THE COURT: We're here this morning in the matter of postconviction relief application of Andrew Torrence.

MS. OPPENHEIMER: Yes, Your Honor. May it please the Court, Your Honor. This is Andrew E. Torrence, Jr. vs. the State of South Carolina, Docket No. 2015-CP-32-01993. During its August 2010 term, the Lexington County Grand Jury indicted Applicant for murder. Thereafter, during its May 2011 term, the grand jury indicted Applicant for possession of a weapon during the commission of a violent crime and carrying a pistol or firearm onto the premises of a business, selling alcoholic liquors, beers, or wines for on-premises consumption. Wayne H. Floyd represented him on these charges.

On May 31st through June 3rd, 2011, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. The jury convicted Applicant as indicted for the weapons charges and of the lesser included offense of voluntary manslaughter. Judge McMahon sentenced Applicant to a term of imprisonment of 25 years for voluntary manslaughter

1 and five years each for the weapons charges. The
2 sentences were to be served concurrently.

3 On June 8th, 2011, Applicant moved for a new
4 trial and for reconsideration of his sentence.
5 Judge McMahon denied the motion for a new trial and
6 the motion for reconsideration of the 25-year
7 sentence, but amended Applicant's sentence with
8 respect to the possession of a firearm on the
9 premises of a business selling alcohol for
10 on-premises consumption from five years to three
11 years.

12 Applicant filed a timely notice of appeal and
13 Blake Hewitt perfected an appeal on Applicant's
14 behalf. On appeal, he raised the following issue:
15 Quote, whether Applicant was entitled to a charge on
16 involuntary manslaughter when he admitted
17 intentionally firing his weapon while other
18 circumstances indicated that he did not intend to
19 inflict serious injury or death, end quote.

20 Following briefing and oral argument, the Court
21 of Appeals affirmed Applicant's conviction and
22 sentence by unpublished opinion finding Applicant
23 was not entitled to a charge on involuntary
24 manslaughter as there was no evidence Applicant did
25 not intentionally fire his gun at the victim.

1 The Court of Appeals further found the factual
2 scenario in this case did not fall within either
3 prong of involuntary manslaughter because, one,
4 firing a gun is considered as conduct naturally
5 tending to cause death or great bodily harm and,
6 two, Applicant was not acting lawfully by
7 brandishing a gun in a bar.

8 Applicant petitioned for rehearing, which was
9 denied on May 8th of 2013, and then he petitioned
10 the South Carolina Supreme Court for writ of
11 certiorari, which was denied on November 7th, 2014.
12 The remittitur was issued on November 17th, 2014.

13 On June 1st, 2015, Applicant filed an
14 application for postconviction relief alleging
15 ineffective assistance of counsel and ineffective
16 assistance of appellate counsel. The State made its
17 return on July 12th, 2017 requesting an evidentiary
18 hearing be held.

19 Thereafter, on July 13th, 2017, through his
20 counsel, he amended his application to include the
21 following allegations: Ineffective assistance of
22 counsel for failing to properly utilize mental
23 health experts prior to and during trial, failing to
24 develop a mental health defense and/or utilize
25 experts in mitigation and plea, utilizing Applicant

1 as a witness at trial without a mental health
2 expert, failing to prepare and investigate prior to
3 trial, failing to obtain the incident report and/or
4 video surveillance from Applicant's place of
5 employment to refute and/or impeach the State's
6 witnesses regarding Applicant's whereabouts during
7 the hours prior to the shooting; also, in the
8 alternative, prosecutorial misconduct if the report
9 was available or known to the prosecution and not
10 turned over, ineffective assistance of counsel for
11 failing to question and/or obtain additional video
12 footage from the scene, failing to properly prepare
13 to utilize the in-car video at trial, failing to
14 fully cross-examine the State's witnesses, failing
15 to address the matter of bias, failing to obtain an
16 accident, involuntary manslaughter jury charge, and
17 failing to properly address the issues of docket
18 manipulation and the use of Applicant's prior
19 conviction at trial.

20 He also alleged ineffective assistance of
21 appellate counsel for failing to raise all
22 meritorious issues on appeal including the Court's
23 denial of Applicant's request to question Mr. Nurang
24 about the aggressive nature of the victim, counsel's
25 arguments regarding the issues of docket

1 manipulation and the use of Applicant's prior
2 conviction, the Court's denial of the directed
3 verdict motion, the Court's denial of the admission
4 of the in-car video, the Court's refusal to charge
5 accident, and counsel's objection to the State's
6 closing argument.

7 On October 26th, 2018, Applicant again amended
8 his application through counsel, which included
9 additional allegations of ineffective assistance of
10 counsel for failing to ensure the Court gave a
11 curative instruction following the objection of the
12 State's closing argument, not making an objection to
13 the Solicitor's characterization of the victim as a
14 hero, failing to object to the contemptuous language
15 charge, failing to request a more detailed charge on
16 citizen's arrest, and failing to request a jury
17 charge on the difference between acting lawfully and
18 being lawfully armed in self-defense.

19 Applicant also raised an additional allegation
20 of ineffective assistance of appellate counsel for
21 failing to raise the issue of trial counsel's
22 motions and arguments regarding prosecutorial
23 misconduct.

24 Applicant is represented by Tricia Blanchette;
25 both she and Mr. Torrence are present. And at this

1 time, Your Honor, the State would move to dismiss
2 the allegation of ineffective assistance of counsel
3 for failing to obtain a charge on involuntary
4 manslaughter. This issue was already raised before
5 both the circuit courts and the appellate courts.

6 The appellate court specifically found that he
7 was not entitled to an involuntary charge based on
8 the evidence and the facts presented at trial, so
9 we'd move to dismiss that allegation.

10 THE COURT: Ms. Blanchette?

11 MS. BLANCHETTE: Yes, Your Honor. Would you
12 like me to respond to the dismissal first?

13 THE COURT: Sure.

14 MS. BLANCHETTE: Your Honor, I would say that
15 at this point, it is not moot for summary dismissal.
16 We intend to offer testimony and evidence on that
17 issue through both trial counsel and appellate
18 counsel. If after we rest -- I know the State, at
19 that point, believes it's proper for a directed
20 verdict, but I ask that you give us the opportunity
21 to present testimony on that issue first.

22 THE COURT: The motion will be denied on the
23 dismissal.

24 MR. BLANCHETTE: Your Honor, just to add to the
25 procedural history offered by the State, I would

1 like to put in the record, as a matter of reference,
2 there is a transcript from a proceeding held in
3 front of the Honorable William A. McKinnon on April
4 16th, 2018 in this case.

5 At that time, there were some motions and
6 scheduling matters discussed as well as Dr. Donna
7 Maddox testified regarding Mr. Torrence's
8 competency. It's my understanding Your Honor has
9 received a copy of that transcript and I've also
10 provided that to the State. And I ask that that be
11 made part of the record by reference in this case.

12 THE COURT: So ordered.

13 MS. BLANCHETTE: Your Honor, as further
14 housekeeping matters, at this time, it's my
15 understanding the State will stipulate to the
16 admission of an exhibit, which is an incident detail
17 report and supporting exhibits, and I'd like to move
18 those into the record at this time.

19 THE COURT: The State has stipulated?

20 MS. OPPENHEIMER: Yes, Your Honor.

21 THE COURT: Very well.

22 MS. BLANCHETTE: And, Your Honor, may I
23 approach?

24 THE COURT: Yes, ma'am.

25 MS. BLANCHETTE: Those would be an incident

1 detail report that is marked as Plaintiff's Exhibit
2 1, a packet of documents that begins with a letter
3 dated June 15th, 2017, which is whereby I subpoenaed
4 and communicated with the Columbia City Clerk and
5 Richland County Sheriff's Department to obtain the
6 incident detail report.

7 Plaintiff's Exhibit 3 would be a letter
8 received from Britton All who was legal counsel for
9 Richland County Sheriff's Department directing me on
10 how to obtain the incident report. And then the
11 final document, which would already be part of the
12 record in this case, Applicant's No. 4, would be a
13 copy of the discovery order allowing me to undertake
14 the discovery to obtain the incident report. So
15 those have been premarked as Applicant's 1 through
16 4.

17 THE COURT: All right.

18 MS. BLANCHETTE: Your Honor, I have a copy of
19 those for you if you'd like that.

20 THE COURT: Yes. Thank you.

21 MS. BLANCHETTE: Your Honor, I'm handing up 1
22 through 4.

23 THE COURT: Thank you.

24 (Applicant's Exhibit Nos. 1 through 4 admitted
25 into evidence.)

1 MS. BLANCHETTE: I will also provide a copy to
2 the State.

3 Your Honor, the State has already provided the
4 lengthy procedural history. If you have any
5 questions or would like any further information, I'm
6 happy to answer those at this time. Your Honor has
7 a copy of the amendment as well.

8 The first issue would be the mental health
9 issue that we would go into. And on that, I do have
10 a copy of Council vs. State, along with about 15
11 additional cases that just touch on the different
12 issues that we will be discussing today. I
13 typically hand those up at the end of the case, but
14 since this is a lengthy case, I was prepared to hand
15 those up now if you'd like. I do have my own little
16 personal sticky notes just indicating the cases that
17 go with mental health and the different categories.
18 I provided a list to the State along with the
19 categories of the cases.

20 But in mentioning Council vs. State, I would
21 just like to put on the record that, at this time,
22 under the Council standard, I'm not asking for a
23 continuance on any fact-based issues due to my
24 client's incompetence, which we will address through
25 the proper experts. But if it does come to a point

1 in this proceeding where I may need to do that, I
2 just ask for the Court's indulgence as I may have to
3 discuss that or that may be kind of an ongoing
4 matter I have to address throughout the course of
5 this hearing.

6 THE COURT: All right. Thank you.

7 MS. BLANCHETTE: Your Honor, may I approach?

8 THE COURT: Yes, ma'am.

9 MS. BLANCHETTE: And, Your Honor, should I
10 continue to ask to approach?

11 THE COURT: No, ma'am.

12 MS. BLANCHETTE: And, Your Honor, unless
13 there's any further information that I can provide,
14 I am prepared to call my first witness at this time.

15 THE COURT: You're certainly welcome to make
16 any sort of overview, but you're more than welcome
17 to go ahead and call your first witness as well.

18 MS. BLANCHETTE: Your Honor, I can just give
19 you kind of a small lay of the land since we all
20 know this might be a lengthy hearing.

21 Like I said, we'll first be addressing the
22 mental health issue, and I intend to call Dr. Tora
23 Brawley as well as Dr. Donna Maddox. I do not
24 intend to call my client as a witness today. Based
25 upon their expert findings, it's my understanding he

1 is incompetent to take the stand. It is also my
2 understanding at this juncture that the State does
3 not intend to call him. If they do intend to call
4 him, I will need the assistance of Dr. Donna Maddox.
5 And for scheduling purposes, it's my understanding
6 that she does need to leave for a flight for another
7 case at 3:00 p.m. today.

8 Your Honor, after I call the experts, I intend
9 to call Wayne Floyd, who was trial counsel in this
10 case. I will go through all of the issues listed in
11 the amendment with Mr. Floyd. Thereafter, I will
12 call Pete Skidmore, who is a private investigator
13 who's been retained to assist in this PCR action.
14 Then I will call Ms. Brenda Torrence, who is the
15 Applicant's mother. And then my final witness will
16 be Blake Hewitt, who was appellate counsel.

17 Mr. Hewitt is currently preparing for an oral
18 argument that I believe is tomorrow, so he's on
19 standby so that he can be at his office preparing
20 for that oral argument.

21 THE COURT: Understood.

22 MS. BLANCHETTE: I'm prepared to call Dr. Tora
23 Brawley at this time.

24 THE COURT: Proceed, please.

25 TORA BRAWLEY

1 being first duly sworn, testified as follows:

2 THE WITNESS: I do.

3 DIRECT EXAMINATION

4 BY MS. BLANCHETTE:

5 Q. Can you please state your full name for the
6 record.

7 A. Tora Brawley.

8 Q. And what is your educational background?

9 A. I have a Bachelor's Degree in psychology from
10 the University of Texas, I have a Masters and a
11 Ph.D. from California School of Professional
12 Psychology, I have predoctoral internship at Baylor
13 College of Medicine, and a postdoctoral fellowship
14 at Duke University Medical Center.

15 Q. Do you hold any licenses relevant to the field
16 of psychology?

17 A. I do. I'm currently licensed in the State of
18 South Carolina. I've previously been licensed in
19 Texas, North Carolina, and have held a temporary
20 license in Mississippi.

21 Q. And is your proper title, Doctor, Dr. Brawley?

22 A. Yes.

23 MS. BLANCHETTE: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes, ma'am.

1 BY MS. BLANCHETTE:

2 Q. Dr. Brawley, can you identify what this appears
3 to be for the record, please?

4 A. That's my curriculum vitae.

5 MS. BLANCHETTE: Your Honor, at this time, I
6 would move to admit Dr. Brawley's curriculum vitae,
7 which has previously been provided to the State, as
8 Applicant's No. 5.

9 MS. OPPENHEIMER: No objection, Your Honor.

10 THE COURT: Admitted without objection.

11 (Applicant's Exhibit No. 5 admitted into
12 evidence.)

13 BY MS. BLANCHETTE:

14 Q. Dr. Brawley, as reflected on your curriculum
15 vitae, how long have you practiced in the area of
16 neuropsychology?

17 A. That's been my entire practice. I was first
18 licensed in 1993 -- I'm sorry. That's incorrect.
19 After I finished my fellowship, then we moved here.
20 And I was licensed first in Texas, and the Texas
21 license was 1993 to 2012. So I've been practicing
22 neuropsychology as a licensed psychologist since
23 that time. I've been administering these tests
24 since 1986 when I worked as a technician at Baylor
25 College of Medicine.

1 Q. What is the current nature of your practice?

2 A. I'm in private practice and doing primarily
3 forensic neuropsychology, mostly criminal. I do
4 some workers' comp and, occasionally, a civil case.

5 Q. And approximately how many patients have you
6 conducted neuropsychological evaluations on since
7 you became licensed?

8 A. Over a thousand.

9 Q. Have you previously testified as an expert in
10 neuropsychology?

11 A. I have.

12 Q. How many times, approximately?

13 A. Over 40 times.

14 Q. And what is the typical area of qualification
15 that you have as an expert?

16 A. Neuropsychology.

17 Q. How many times were you permitted to give
18 expert testimony in the area of neuropsychology?

19 A. Over 40.

20 Q. And in what courts have you done that?

21 A. Here in South Carolina in civil and federal and
22 criminal. I've also testified in criminal courts in
23 Texas and North Carolina and Arizona.

24 MS. BLANCHETTE: Your Honor, based upon her
25 testimony and the curriculum vitae that's been

1 admitted into evidence, I would move to admit her as
2 an expert in the field of neuropsychology at this
3 time.

4 THE COURT: Anything from the State?

5 MS. OPPENHEIMER: No additional questions, Your
6 Honor, and no objection.

7 THE COURT: All right. Dr. Brawley will be
8 qualified as an expert in neuropsychology.

9 BY MS. BLANCHETTE:

10 Q. Dr. Brawley, could you first explain for us
11 briefly, what is neuropsychology?

12 A. Neuropsychology is the study of brain behavior
13 relationships. Where an MRI gives a picture of the
14 brain, these particular tests tells how different
15 areas of the brain are functioning. We look at
16 things like memory, attention, concentration,
17 language, motor function, et cetera.

18 Q. How is neuropsychology different from other
19 areas of psychology, such as clinical psychology?

20 A. Clinical psychology, they're dealing more with
21 psychological problems. Neuropsychology, we're
22 looking at brain function and the way the brain
23 functions and has an effect on behavior.

24 Q. And in this case, were you asked to conduct a
25 neuropsychological evaluation on Mr. Torrence, the

1 Applicant?

2 A. I was.

3 Q. Who asked you to do that evaluation and why?

4 A. The evaluation was requested by Dr. Maddox.
5 She had evaluated the patient and wanted to assess
6 his cognitive functioning.

7 Q. And did you prepare a report of your evaluation
8 in this case?

9 A. I did.

10 Q. Dr. Brawley, can you identify what this appears
11 to be for the record.

12 A. That is my report.

13 MS. BLANCHETTE: Your Honor, at this time, I
14 would move Dr. Brawley's report, which has
15 previously been provided to the State, as
16 Applicant's No. 6.

17 MS. OPPENHEIMER: Your Honor, the State
18 objects. This is hearsay. In Allegro, Inc. vs.
19 Scully, cite 409 S.C. 392, the Court found that the
20 admission of the report itself, simply because the
21 expert used it in forming his expert opinion, was in
22 error. The court noted that rule 703 does not allow
23 the admission of hearsay evidence simply because an
24 expert used it in forming his or her opinion. The
25 rule only provides the expert can give an opinion

1 based on facts or data that were not admitted into
2 evidence. So we would object based on hearsay
3 grounds.

4 THE COURT: Any response?

5 MS. BLANCHETTE: Your Honor, I believe the
6 report is admissible. I have no issue if the Court
7 does not want it admitted. I will just question her
8 regarding her report.

9 THE COURT: All right. Then we'll proceed with
10 just having her read her report into the record.

11 MS. OPPENHEIMER: That's fine, Your Honor.

12 THE COURT: Well, essentially.

13 BY MS. BLANCHETTE:

14 Q. Dr. Brawley, as part of your evaluation of
15 Mr. Torrence, did you conduct a clinical interview?

16 A. I did.

17 Q. And during this interview, what did
18 Mr. Torrence report to you about his cognitive
19 state?

20 A. He is reporting -- I initially asked him if
21 he's -- tell him why I'm there, that I'm here to
22 look at memory, attention, ask him if he's having
23 any problems in that area. And he said, yes, that
24 he was under remote neuromonitoring and that this
25 was affecting the way he was thinking. He says that

1 this causes him -- the quote was, they're doing
2 inserts on me right now. And he says that would
3 cause him to lose concentration. He also reported
4 problems with memory loss, word-finding
5 difficulties, forgetting recent conversations, and
6 repeating himself.

7 Q. During this interview, if you did not address
8 it, what did Mr. Torrence report to you about his
9 cognitive state?

10 A. Just what we just talked about, that it was
11 being affected by the remote neuromonitoring.

12 Q. Did he give you any other difficulties that he
13 was having at that time?

14 A. He says he's also -- he was reporting weight
15 gain, an increase in irritability, decreased
16 frustration, and tolerance. He stated because of
17 the RNM, the remote neuromonitoring, he's jumpier
18 and paranoid. And he also added that -- and the
19 quote was, supposedly my dad is dead, but Mom has
20 lied for years. So he was concerned about that.

21 Q. After obtaining this information and making
22 those observations, did you administer a battery of
23 psychological tests on Mr. Torrence?

24 A. I did.

25 Q. And what were the results of those tests, if

1 you can take us through those?

2 A. Sure. He had on overall full-scale IQ of 86,
3 which is in the low average range. I did attest
4 adult reading, which is just supposed to estimate
5 their premorbid, meaning before, level IQ to see if
6 there's been a decline. And that test put him at a
7 full scale of 111. So that would be suggestive of a
8 decline in overall intellectual functioning. I gave
9 him the repeatable battery for the assessment of
10 neuropsychological status.

11 On immediate verbal learning, he was severely
12 impaired at the first percentile, which means out of
13 100 people his same age. If you're at the first
14 percentile, then 99 percent of those people are
15 going to do better. If you're at the 50th
16 percentile, then you're right smack dab in the
17 middle.

18 So first percentile for immediate verbal. His
19 immediate verbal memory for prose passage, I read
20 him a short story, then repeated it. He was at
21 sixth percentile. His delayed recall for that prose
22 passage was severely impaired when I came back --
23 and I didn't tell him I was going to come back in 20
24 minutes -- and asked him to recall that from memory.
25 He was at the first percentile when I did that.

1 His ability to copy a complex figure was
2 severely impaired at the first percentile. His
3 delayed recall of that figure 20 minutes later was
4 severely impaired at the first percentile. And his
5 verbal fluency for a category, name as many fruits
6 and vegetables as you can in one minute, that was
7 severely impaired at the first percentile.

8 His speed and accuracy of mental tracking was
9 also severely impaired. His finger tapping, his
10 manual speed, which is mediated by the prefrontal
11 cortex, was severely impaired at the second
12 percentile on the right and the first percentile on
13 the left. His dexterity was borderline at the ninth
14 and seventh percentile.

15 And I also gave tested effort because my tests
16 are very dependent on how much effort they're
17 putting forth. So I look -- it's called the test of
18 memory malingering. And he performed perfectly
19 within normal limits on that. He was not
20 exaggerating, he was not malingering. There were no
21 inconsistencies noted on testing, so he was good
22 with that as far as validity of the test results.

23 Q. Now, if you've already addressed this, please
24 feel free to let me know. But, specifically, what
25 do these tests measure? Did you address those in

1 going through the tests?

2 A. They measure different areas of brain function.
3 You know, verbal memory is mediated by your left
4 temporal lobe, visual memory by your right temporal
5 lobe. So all of these different areas assess
6 different areas of brain function.

7 Q. Do you -- did you find that you got valid
8 results from the test that you administered?

9 A. Yes. You look for several things throughout.
10 You look for consistency. Are they missing easy
11 questions? Getting hard ones? But then you also
12 give a test of malingering.

13 The forced choice test, it looks difficult.
14 You tell them I'm going to make you remember 50
15 things. You look at 50 pictures and then you go
16 back and give them a choice of two. So it seems
17 like a difficult task and then you come back 20
18 minutes later and do the same thing without telling
19 them. It's very well-normed. And he performed
20 within normal limits on that test.

21 Q. And in summary, what were your findings
22 regarding Mr. Torrence?

23 A. In summary, he's having moderate to severe
24 deficits in several cognitive domains, which is
25 suggestive of brain organicity. He's also reporting

1 some unusual symptoms that I talked about, as well
2 as some vegetative symptoms. So I recommended that
3 he may benefit from a full neurological evaluation.

4 Q. Who did you provide these results to besides
5 myself that I then turned over to the State?

6 A. Dr. Maddox.

7 Q. Why do you communicate with her regarding these
8 tests and the results that you found?

9 A. Well, she's the one who requested the tests. I
10 kind of consider her like the quarterback. She
11 calls the plays and she gets the information that
12 she needs. If she needs blood work, she orders
13 blood work; if she needs an MRI, she orders an MRI,
14 and then she takes all of this information together
15 and formulates that in her final opinion.

16 Q. If you haven't already, can you summarize your
17 findings regarding his neuropsychological
18 functioning as far as your findings and then what
19 was shared with Dr. Maddox?

20 A. Just what I said before, that he was having
21 moderate to severe deficits in several cognitive
22 domains, suggestive of brain organicity.

23 Q. And what does the term suggestive of brain
24 organicity mean for someone who is not as educated
25 as you are?

1 A. That it appears that there may be some areas of
2 brain damage or areas of the brain that aren't
3 working as well as they should.

4 Q. And did you -- is there anything further from
5 your previous testing, your testing when you met
6 with him at the correctional institution, that you
7 would like to share?

8 A. No.

9 Q. And did you have the opportunity to meet with
10 Mr. Torrence this morning?

11 A. I did.

12 Q. And what was the purpose in meeting with him
13 this morning?

14 A. Dr. Maddox asked me to do -- because on my
15 tests I look for malingering of cognitive, whether
16 they're faking memory, Mr. Torrence, Dr. Maddox told
17 me, has been diagnosed with malingering of psychotic
18 symptoms in the past, so she wanted me to give a
19 test that was specific to look and see if there were
20 malingering -- if he was malingering psychotic
21 symptoms. So I administered that measure this
22 morning.

23 Q. What were your findings on that test?

24 A. He did not. They look to see if he has any
25 primary scales that are in the probable malingering

1 range or the definite malingering range, and he did
2 not have any scales in either of those areas.

3 Q. And if this is more appropriate for Dr. Maddox
4 to answer, please let me know. But can you explain
5 to us what malingering means.

6 A. Malingering just means you're exaggerating or
7 feigning symptoms, you're making things up, or
8 you're maybe making something that you have seen a
9 little bit worse or a lot worse, depending.

10 Q. And your findings were negative as far as
11 malingering with Mr. Torrence?

12 A. Correct.

13 Q. Is there anything else regarding your
14 interaction and the test that you did this morning
15 with Mr. Torrence that you would like to add?

16 A. No.

17 Q. Dr. Brawley, if you had been contacted by Wayne
18 Floyd or Dr. Maddox back in 2011 when this case was
19 preparing to go to trial, would you have been
20 willing to be involved in the capacity that you have
21 for this PCR hearing?

22 MS. OPPENHEIMER: Objection, Your Honor;
23 speculation.

24 THE COURT: Overruled.

25 You can answer the question.

1 THE WITNESS: Yes.

2 MS. BLANCHETTE: Your Honor, if I could beg the
3 Court's indulgence one moment?

4 THE COURT: Sure.

5 (Brief pause in the proceedings.)

6 BY MS. BLANCHETTE:

7 Q. Dr. Brawley, on the current test that you did,
8 would you have been able to date back and determine
9 if those deficits were present at the time of the
10 crime?

11 A. Are you talking about the neuropsychological?

12 Q. Yes.

13 A. Not the one from this morning?

14 Q. Correct; the prior tests that you did.

15 A. Yes. It's highly likely that, yes, those were
16 present at the time. He has -- he had -- he had a
17 history of several concussions as well as spinal
18 meningitis, so, certainly, those could have impacted
19 brain function.

20 Q. Based upon that question, is there anything
21 further you'd like to add regarding your findings?

22 A. No.

23 MS. BLANCHETTE: Your Honor, I have no further
24 questions of this witness.

25 THE COURT: Please answer any questions the

1 State may have.

2 CROSS-EXAMINATION

3 BY MS. OPPENHEIMER:

4 Q. Good morning, Dr. Brawley.

5 A. Good morning.

6 Q. You can't say to a reasonable degree of medical
7 certainty that he did exhibit these deficits at the
8 time of the crime, correct?

9 A. That's correct.

10 Q. And these are only things that could have
11 contributed to deficits, right, the concussions, the
12 meningitis?

13 A. Correct.

14 Q. But you can't say that they definitely did
15 contribute, correct?

16 A. That's correct.

17 Q. And do you have a baseline for what his
18 functioning was?

19 A. The best way that we can -- no. I don't have
20 any previous testing, but there are certain areas of
21 functioning that are considered crystallized,
22 meaning they hold through early dementia or head
23 injuries and things like that. And one of those is
24 the test that I mentioned where -- is the reading
25 adult -- Wechsler Test of Adult Reading.

1 Q. And you only performed IQ and memory tests,
2 correct?

3 A. No, that's not correct.

4 Q. I apologize. Will you explain again what tests
5 you performed?

6 A. I gave him the Wechsler Adult Intelligence
7 Scale - Fourth. And I give that not because I want
8 an IQ, but because it's got ten different subtests
9 that look at different areas of the brain. I gave
10 him the adult reading test. I gave him the
11 repeatable battery for the assessment of
12 neuropsychological status. And that has verbal
13 learning, verbal memory; it has visual spacial
14 skills functioning with the figure copy, has
15 judgment of line orientation; it has picture naming,
16 it has a verbal fluency test in it.

17 I also gave him a verbal series attention test
18 and I gave him short category test booklet format; I
19 gave him a finger-tapping test, which is a motor
20 test; I gave him a group pegboard, which looks at
21 manual dexterity; I gave him trailmaking part A,
22 trailmaking part B, and the test on malingering.

23 Q. Is it fair to say that all these tests were to
24 determine whether or not he suffers from frontal
25 lobe damage?

1 A. Frontal lobe is only one part of the brain that
2 I look at. The memory test, as I mentioned earlier,
3 memory is usually mediated by the temporal lobes.
4 Motor functioning is frontal parietal area.

5 Q. But you did not perform any psychological test,
6 correct?

7 A. That's correct.

8 Q. And you didn't ask anyone else to perform any
9 psychological testing?

10 A. That's correct.

11 Q. And when did Dr. Maddox request that you
12 perform these tests?

13 A. In 2016. I believe the initial request was on
14 February 19.

15 Q. And that was well after the trial, right?

16 A. I'm not sure of the date of the trial.

17 Q. The trial was in 2011?

18 A. Yes.

19 Q. So this would be after the trial?

20 A. Correct.

21 Q. Is it possible that he could have been declined
22 in functioning since being in prison?

23 A. I usually do not see that. Usually they get
24 better in prison because they're in a structured
25 environment, they're getting three squares a day.

1 It's usually just the opposite. They either
2 stabilize or get a little bit better. It's highly,
3 highly unusual that they decline, unless they've
4 been in fights or, you know, had some kind of injury
5 or illness.

6 Q. And you said that he has an IQ of 86, correct?

7 A. Correct.

8 Q. And would you agree that about 66 percent of
9 people are between the range of a 90 to 110?

10 A. Approximately, yes.

11 Q. And that about 95 percent of people would be
12 between 80 and 120?

13 A. That's correct.

14 Q. So he is still functioning with an IQ of 86,
15 correct?

16 A. Yes.

17 Q. And someone with an IQ of 86 can know the
18 difference between right and wrong, correct?

19 A. That's correct.

20 Q. And they can know the difference between a
21 truth and a lie?

22 A. Correct.

23 Q. And they can also make decisions for
24 themselves, correct?

25 A. Yes.

1 Q. And his working memory was average, right?

2 A. On the index scores, working memory was
3 average. And what loads onto that are -- there are
4 two subtests on the way that load onto that,
5 particular working memory, and I believe it's digit
6 span -- yeah, digit span and math skills. So that's
7 not memory like you're thinking memory, like memory
8 for a story or memory for things; that's can you say
9 a series of numbers, repeat them back to me, and
10 doing some math word problems. Math word problems
11 are what load onto the working memory score.

12 Q. And his verbal comprehension was also average,
13 correct?

14 A. That's correct.

15 Q. Wouldn't that indicate that he understands what
16 he is being asked?

17 A. Yes.

18 Q. And he also reads well, correct?

19 A. Yes.

20 Q. Are you aware that prior to this incident, he
21 was employed as an armed security guard and had to
22 go through extensive SLED training?

23 A. Yes.

24 Q. Would a person at his level of functioning be
25 able to go through that training?

1 A. I don't know what that training consists of.

2 Q. And are you aware of any of his behavior that
3 he has exhibited while in SCDC?

4 A. No.

5 MS. OPPENHEIMER: Beg the Court's indulgence.

6 BY MS. OPPENHEIMER:

7 Q. And you performed this test for malingering
8 this morning, correct?

9 A. Yes.

10 Q. You have no information before this morning
11 about whether or not he was malingering, correct?

12 A. That's correct.

13 Q. And you said that he may be suffering from
14 organicity of the brain?

15 A. Correct.

16 Q. Isn't it true that someone who has organicity
17 reports olfactory and visual hallucinations, not
18 auditory hallucinations?

19 A. No.

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

21 No further questions, Your Honor.

22 THE COURT: Redirect?

23 MS. BLANCHETTE: No, Your Honor.

24 THE COURT: All right.

25 Doctor, you may step down.

1 THE WITNESS: May I be excused?

2 THE COURT: I believe that is okay.

3 MS. OPPENHEIMER: No objection from the State,
4 Your Honor.

5 THE COURT: You're free to go.

6 MS. BLANCHETTE: Your Honor, may we approach
7 briefly?

8 THE COURT: Sure.

9 (Sidebar conference.)

10 MS. BLANCHETTE: Your Honor, I would call
11 Dr. Donna Maddox to the stand.

12 DONNA MADDOX

13 being first duly sworn, testified as follows:

14 THE WITNESS: I do.

15 DIRECT EXAMINATION

16 BY MS. BLANCHETTE:

17 Q. Can you please state your name.

18 A. Donna, middle name Schwartz --

19 S-C-H-W-A-R-T-Z -- last name Maddox -- M-A-D-D-O-X.

20 Q. Dr. Maddox, I apologize I'm shuffling papers
21 here. I'm going to hand you this. If you can,
22 identify what this appears to be for the record,
23 please.

24 A. This is the most recent copy of my curriculum
25 vitae.

1 MS. BLANCHETTE: Your Honor, at this time I'd
2 move to admit Dr. Schwartz Maddox's curriculum vitae
3 that's previously been provided to the State as
4 Applicant's No. 7.

5 MS. OPPENHEIMER: No objection, Your Honor.

6 THE COURT: Applicant's Exhibit 7 without
7 objection.

8 (Applicant's Exhibit No. 7 admitted into
9 evidence.)

10 BY MS. BLANCHETTE:

11 Q. Dr. Maddox, if you could, just briefly describe
12 for us your education.

13 A. Sure. I graduated from Furman University in
14 1985 with a Bachelor of Arts Degree in psychology.
15 I graduated from medical school in 1989 from the
16 University of South Carolina School of Medicine here
17 in Columbia. I finished a residency in general
18 psychiatry in 1993, and that was sponsored by the
19 University of South Carolina in the department of
20 mental health. And then I completed an additional
21 year in fellowship in forensic psychiatry at the
22 department of mental health at USC in 1994. I'm
23 licensed to practice medicine in South Carolina and
24 Georgia.

25 Q. And, Dr. Maddox, what is the current position

1 you've held as well as prior positions that you've
2 held in the recent years?

3 A. I'm presently engaged in the full-time practice
4 of forensic psychiatry. I retired August of 2016
5 from the State of South Carolina from 28 years of
6 service at the University of South Carolina School
7 of Medicine in the department of mental health.
8 When I finished residency, I worked at mental health
9 for a few years. There, I conducted competency to
10 stand trial and criminal responsibility evaluations.
11 And then I worked at the insanity acuity unit for a
12 number of years. Then I went over to the University
13 of South Carolina School of Medicine for
14 approximately 17 years.

15 And I finished up my career at the department
16 of mental health actually treating patients. I
17 worked four years at Bryan Psychiatric Hospital and
18 I worked as a psychiatrist there. And then I
19 finished my career at Patrick Harris. I moved to
20 Anderson six years ago and I was the psychiatric
21 service chief there and ran a unit, 45-bed unit with
22 females.

23 Q. And Your Honor as well as the State has a copy
24 of your ten-page curriculum vitae, so I will not go
25 through your different committees, awards and

1 memberships and your publications. But could you
2 tell me, have you been qualified as an expert before
3 in the State of South Carolina?

4 A. I have.

5 Q. And in what area have you been qualified?

6 A. Forensic psychiatry.

7 And sometimes there's a subspeciality, Your
8 Honor. I've testified in sexually violent predator
9 cases, and sometimes I'll be so qualified as an
10 expert in sexual disorders.

11 Q. Do you have any idea how many times you've been
12 qualified as an expert in forensic psychiatry?

13 A. Over 700.

14 Q. And is that both in state and federal court?

15 A. Yes.

16 MS. BLANCHETTE: Your Honor, at this time I
17 would offer Dr. Schwartz-Maddox as an expert in the
18 area of forensic psychiatry.

19 MS. OPPENHEIMER: No further questions and no
20 objection.

21 THE COURT: All right. Dr. Maddox will be
22 qualified as an expert in forensic psychiatry.

23 BY MS. BLANCHETTE:

24 Q. Dr. Maddox, could you explain your recollection
25 of how you first became involved in the case of

1 Andrew Torrence.

2 A. Yes.

3 And, Your Honor, I have to apologize. And I
4 apologize to everyone. I was originally retained,
5 it would have been about 2010. Mr. Floyd called me,
6 Wayne Floyd, and asked me to see Mr. Torrence. And
7 my apology is because I don't have those records
8 from 2010. And I'll explain that, but I apologize.
9 So the dates will be based on my memory.

10 But I evaluated him back in 2010 at the
11 Lexington County Detention Center. I also had
12 spoken with his mother back then and I was -- had
13 completed an evaluation. At that time I had
14 recommended that he have neuropsychological testing,
15 because after speaking with his mother, I was aware
16 that he had a prior history that I considered
17 significant.

18 He had been diagnosed in the past with
19 meningitis and actually had to have serial lumbar
20 punctures that were performed by Dr. Mauldin at
21 Baptist Hospital. He had also -- before his charges
22 he had, he was a pedestrian that was struck by a
23 moving vehicle, a hit-and-run, and according to his
24 mother, had sustained significant head injury at
25 that point.

1 Based on that history base, when I evaluated
2 him back in 2010, I felt that he had symptoms
3 consistent with some organicity, which would have
4 been difficulty with memory, difficulty with his
5 verbal fluency, those sorts of things, so I wanted
6 further testing to delineate that.

7 Q. And who would you have recommended for that
8 further testing or asked to conduct that further
9 testing?

10 A. I did recommend Dr. Brawley.

11 Q. Okay. And were you further contacted or have
12 any further communication, as far as you recall,
13 from Mr. Wayne Floyd, his office, or anyone on
14 behalf of his office?

15 A. I seem to recall one phone conversation
16 discussing my findings and recommendations, and then
17 no further contact.

18 Q. Were you contacted by Mrs. Brenda Torrence, the
19 mother of Andrew Torrence, following his trial in
20 2011?

21 A. Yes.

22 Q. And what do you recall from that phone
23 conversation?

24 A. She asked why I did not testify in his
25 proceedings, and I told her I did not know that his

1 trial had commenced.

2 Q. And there's a couple of moving parts here. If
3 you had known that the trial was commencing, would
4 you have been willing to further assist and/or
5 possibly testify at that trial?

6 A. Absolutely.

7 Q. Before you did that, though, would you have
8 wanted the testing done by Dr. Brawley?

9 A. Correct.

10 Q. And as far as you know and as far as she's
11 testified today, that was not conducted?

12 A. That's correct.

13 Q. So the next step would have been for
14 Dr. Brawley to do the testing that she has now done;
15 is that correct?

16 A. Yes.

17 Q. And then after that, would you have further
18 consulted with Mr. Floyd?

19 A. Yes.

20 Q. Would you have been willing, at that juncture,
21 to assist him either in plea negotiations with the
22 State or as a witness at trial?

23 A. It's my opinion I would have assisted in plea
24 negotiations or, had he been sentenced, I would have
25 gladly performed a pre-sentencing evaluation and

1 testified about his condition to the judge before
2 sentencing.

3 Q. And I'm jumping forward here a little bit
4 because this will bring in your findings. Since
5 we're talking about what you would have been capable
6 of doing at that time, would you also have been
7 willing to offer your findings regarding whether or
8 not Mr. Torrence should take the stand at trial?

9 A. Yes.

10 Q. And we'll get further into that as we go
11 through your findings. I know that you don't have
12 your notes from your prior evaluation and work on
13 the case, but do you recall reviewing the
14 surveillance video in this case?

15 A. I did.

16 Q. And as a result of your present work in the
17 case, you have listed in your report that has been
18 provided to the State approximately 69 items that
19 you've reviewed. Do you mind going through the
20 items that you have reviewed prior to issuing this
21 report and reaching your findings?

22 A. Sure. And I'll -- if it's okay, I'll clarify
23 some of them. I certainly looked at the discovery
24 related to this case and looked at the witness
25 statements. I recall seeing the surveillance video

1 back in 2010 and I watched it. I looked at his
2 neurology clinic notes from 2007, which would have
3 been consistent, Your Honor, with the time that he
4 was getting the serial lumbar punctures.

5 What happened is he had brain swelling. And
6 what they would literally do is take a lumbar
7 puncture and withdraw spinal fluid from his spine to
8 decrease the swelling on his brain. I had those
9 records from 2007. I had his laboratory test from
10 Palmetto Baptist. I had Lexington Medical Center
11 emergency department records from June 26, 2010,
12 which would have been after he was charged.

13 I had various e-mails to -- from -- that were
14 between the attorneys in this case. I had the
15 records of some of the -- the medical records of the
16 victims. I listened to the 911 -- the audio CDs of
17 the 911 calls. I listened to Mr. Torrence's 911
18 call and then the statements of the various
19 witnesses. I also had medical records from
20 Mr. Torrence in 2008 at Lexington.

21 Q. And do those medical records include an MRI of
22 the brain from 2007?

23 A. Yes.

24 Q. And continue. I'm sorry.

25 A. Those are the basic categories. And I also --

1 of course, after I evaluated him, I had the results
2 of Dr. Brawley's testing.

3 Q. And as a result of the State's motion, you also
4 had reviewed a number of medical records that were
5 obtained from his time in SCDC, correct?

6 A. Oh, yes. I'm sorry. Yes. I did review his
7 SCDC, the psychiatric and medical records. Yes.

8 Q. Now, Dr. Maddox, unless there's any further
9 background information you'd like to offer, could
10 you please explain to us the pertinent findings,
11 specifically regarding his history to begin?

12 A. Sure. And I mentioned the most significant
13 ones. He was adopted, so a lot of the history
14 about -- family history was not able to be obtained.
15 I know that in reviewing his medical records from
16 his encephalitis, his mother, Brenda Torrence, she
17 was required or requested to provide some family
18 history when Dr. Mauldin was doing the serial lumbar
19 punctures to see if this was, indeed, some kind of
20 genetic condition or some kind of familial
21 condition.

22 But he was adopted. He had no prior history,
23 Your Honor, of inpatient or outpatient psychiatric
24 treatment until he was confined in the department of
25 corrections, that I could find.

1 And at the time I evaluated him in 2010, there
2 were no symptoms of psychosis. If he were psychotic
3 at that time, I missed it. He did not have any of
4 the symptoms that he presented with when I saw him
5 six years later in 2016.

6 As I had mentioned, his mother -- in addition
7 to the two major brain insults, which would be the
8 encephalitis and meningitis and then him being
9 struck by a car as a pedestrian, his mother also
10 reported that he played defensive -- I think he was
11 a linebacker in high school, so he may have had a
12 number of small hits similar to like Aaron Fernandez
13 and have chronic traumatic encephalopathy. So he
14 had some hits while playing football, but no major
15 losses of consciousness. He was on the defensive
16 line. That would be his significant history.

17 The other thing that's significant is he had
18 significant alcohol abuse. At the time of the
19 crime, he was intoxicated. That would have
20 precluded him from having a guilty but mentally ill
21 defense. He was intoxicated. Even though in my
22 opinion he would have had the underlying brain
23 dysfunction because he was intoxicated at the time,
24 in my opinion it would have precluded a guilty but
25 mentally ill defense.

1 But, anyway, in the department of corrections,
2 what's significant is he became psychotic. And it's
3 consistent with when I saw him in 2016. His mental
4 state had dramatically changed. He had classic
5 symptoms of psychosis. It's called -- there's a --
6 it's a very rare form. It's Schneiderian symptoms
7 of schizophrenia where you have very fixed delusions
8 that other -- if you don't talk about the areas that
9 involve the delusions, the person can carry on a
10 very rational conversation. And those department of
11 corrections records, I looked and they reported --
12 they reported similar symptoms of what he was
13 presenting to me in 2016.

14 Unfortunately, he was seen by Dr. Selman
15 Watson, he's a psychologist I'm familiar with, who
16 administered, correctly so, some malingering tests.
17 And those tests back in 2014, Dr. Watson's opinion
18 was that he was malingering these symptoms. So,
19 unfortunately, he was not treated for psychosis.

20 Over the years, I've seen him in 2016, 2017,
21 I've seen him this year, and he is now receiving
22 treatment for psychosis. He's on the anti-psychotic
23 medication Geodon. He does not know the dose. But
24 that's basically the history of his progression and
25 mental state.

1 Q. And you had mentioned before that prior to his
2 trial, you had interaction with and was retained by
3 Wayne Floyd to do evaluation. You believe you
4 recommended further evaluation by Dr. Brawley, which
5 was not done. Did you also have communication with
6 his appellate law firm, specifically John Delgado or
7 Blake Hewitt?

8 A. I did.

9 Q. Could you please explain that for us?

10 A. Yes. And that's where my records are. What
11 happened was, by the time his case was appealed, I
12 had received a call -- I believe I had a copy of
13 the -- some e-mails I read refreshed my memory.
14 But, evidently, I had a copy of the surveillance
15 tape at the bar and the appellate office needed
16 that. I was in the process of moving to Anderson.

17 I gave Mr. Delgado's office my entire file.
18 They were to copy it and return it to me. And
19 somehow over the years, it got lost in the mix and
20 that's why I don't have the file.

21 But, yes, I was in contact with -- I think John
22 Nichols may have been handling some of that appeal.
23 But I was in contact with his appellate attorneys.

24 Q. And at that time was there any communication
25 from them regarding anything further you needed to

1 do in the case?

2 A. I gave them my chart and never heard from
3 anyone again until you contacted me.

4 Q. Okay. So let's jump forward then to when I
5 contacted you and you evaluated Mr. Torrence in June
6 of 2017. Can you take us through that evaluation?

7 A. Yes. And I actually saw him again, it looks
8 like, in March of 2016. So I saw him March 2016,
9 shortly -- I think Dr. Brawley saw him the next
10 week. So I saw him briefly. He was at Broad River
11 Correctional Institution. Very different
12 presentation than when I had seen him six years
13 earlier, Your Honor. And I hope I will do him
14 justice.

15 In my opinion, he had what's called delusions.
16 And he still endorses the same -- his symptoms have
17 been pretty consistent from 2016, 2017, 2018.

18 Basically, he believes that he's had remote
19 neuromonitoring implanted in his brain. He
20 originally told me that he thought his mom was
21 involved in this. And there's been times they've
22 had a little tenuous relationship.

23 He believed his family may have originally been
24 involved in this to help him stop his alcohol abuse.
25 He said it was helpful at first. He thought the

1 monitoring system was helpful for him, but over the
2 years, it's progressed. It's gotten to the point
3 where he can't concentrate.

4 He reports that he hears up to 20 Ham operators
5 talking to him at one time. He said originally when
6 he would hallucinate, it might be one voice or so,
7 but now there's times where there's up to 20 ham
8 operators talking to him, controlling, telling him
9 what to do. They sometimes tell him to do
10 inappropriate sexual things, which he refrains from
11 doing. He reports that they tell him -- they tell
12 him how to act, make him agitated, make him
13 uncomfortable, they make him irritable, and they
14 affect his ability to function.

15 MS. BLANCHETTE: If I can beg the Court's
16 indulgence.

17 THE COURT: Sure.

18 BY MS. BLANCHETTE:

19 Q. Dr. Maddox, when he discussed with you these
20 issues that he was experiencing regarding the
21 neuromonitoring, did he explain to you that this is
22 some information that's been known for some time,
23 that the government or different people were doing
24 this to individuals?

25 A. Yes.