

# VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

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S.C. Supreme Court

HERMAN DONALD MCKNIGHT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212305

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## APPENDIX

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**INDEX**

|                                                 |     |
|-------------------------------------------------|-----|
| INDEX.....                                      | i   |
| TRIAL TRANSCRIPT.....                           | 1   |
| INDICTMENT .....                                | 614 |
| SENTENCING SHEETS .....                         | 615 |
| APPLICATION FOR POST-CONVICTION RELIEF .....    | 621 |
| RETURN .....                                    | 633 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT ..... | 638 |
| ORDER OF DISMISSAL .....                        | 678 |

## DW - H. MCKNIGHT - CROSS

- 1 A Whoever rolled him there that's where he died.
- 2 Q Well, somebody had to roll him or he had to roll himself
- 3 from here to here, right? You didn't roll him?
- 4 A Not, he didn't roll -- he didn't roll himself with him
- 5 dead. He was dead right here.
- 6 Q And you didn't roll him?
- 7 A No, I sure didn't.
- 8 Q You went out and sat in the truck?
- 9 A I went out the truck where Joe was. I put the gun behind
- 10 the seat and I sit down beside Joe and told him that he was
- 11 shot. Joe asked me what happened.
- 12 Q You didn't think anyone else was in the house?
- 13 A I don't know where the people went.
- 14 Q But you didn't see anybody? No one else ---
- 15 A Not after the first shot was fired, no.
- 16 Q Not after the first shot was fired. Everybody just pssh,
- 17 gone?
- 18 A They went somewhere. I don't know where they went.
- 19 Q All right. Mr. McKnight.
- 20 A Yes, sir.
- 21 Q Mr. Suggs asked you if you felt responsible for your
- 22 daughter's death.
- 23 A I feel bad, yeah.
- 24 Q And you said you did.
- 25 A Yeah, she's got ---

## DW - H. MCKNIGHT - CROSS

1 Q Is the way I understood it; is that right?

2 A Sir?

3 Q The way I -- Mr. Suggs asked you if you felt responsible  
4 for your daughter Donna's death.

5 A Yeah.

6 Q And the way I understood your answer was that you did, am  
7 I correct?

8 A If I hadn't asked her to clean out my freezer she might  
9 still be alive.

10 Q Well, do you feel responsible for Stewart's death?

11 A I sure do. If I hadn't have carried the gun in the house  
12 Stewart would have still be alive. I am -- I feel real  
13 terrible about it, but I can't draw back time. I can do --  
14 finish out my life the best of my knowledge. I gave my  
15 heart to Christ in jail.

16 Q I appreciate that, Mr. McKnight, and that's the only place  
17 any of us can get forgiveness. But let me ask you this,  
18 and this is my last question. Guns and alcohol just don't  
19 mix, do they?

20 A I wouldn't think so, no.

21 THE COURT: Anything on redirect?

22 MR. SUGGS: Oh, yes, sir.

23 THE WITNESS: I would also like to say that I ---

24 THE COURT: Hold on. You can only respond in answering  
25 questions, sir. You can't just talk from the witness stand. You

## DW - H. MCKNIGHT - REDIRECT

1 can answer questions and I'll allow you to explain your answer  
2 but you have to be in response to a question.

3 THE WITNESS: Yes, sir.

4 **REDIRECT EXAMINATION**

5 **BY MR. SUGGS:**

6 Q Tell us how you truly feel about Stewart's death.

7 A Would you speak up a little bit?

8 Q How do you truly feel about Stewart's death?

9 A I feel awful.

10 Q Have you -- go ahead.

11 A And I feel for the parents of Stewart; they're good people.

12 Q You know you've hurt a lot of people?

13 A I sure did.

14 Q How have you -- how have you been able to deal with that?

15 A It's hard. I can only deal through Christ.

16 Q And you feel responsible for Stewart's death; don't you?

17 A I feel terrible.

18 Q You feel responsible; is that right?

19 A Yes, and if I could correct it I would.

20 Q You feel responsible for Jeanette Floyd's injuries too?

21 A Yes, I sure do. Ms. Jeanette is a good woman and her  
22 husband is a good man.

23 Q Thank you. Nothing further.

24 THE COURT: All right. Thank you, sir. You may step  
25 down.

## DW - H. MCKNIGHT - REDIRECT

1 MR. SUGGS: Defense rests, Judge.

2 THE COURT: All right. Let me get y'all to come on up  
3 just a second please.

4 (WHEREUPON, counsel approached the Bench for an off-the-record  
5 discussion.)

6 THE COURT: Ladies and gentlemen, if you would, ask  
7 you to step into your jury room while I take up a matter with the  
8 attorneys. Now the Defense has rested so you've heard from the  
9 State, you've heard from Defense, but it is still not proper to  
10 have any discussions about the case because we still haven't  
11 heard the closing arguments from the lawyers and I still haven't  
12 charged you on the law so please continue to not have discussion  
13 about the case but this will be a short break. I'll bring you  
14 right back out.

15 (WHEREUPON, the jury was removed from the  
16 courtroom at 12:28 p.m., and the following proceedings  
17 commenced in open court.)

18 THE COURT: All right. Can we do these motions or do  
19 you need to go and we'll start back.

20 MR. SUGGS: He has his own motion first.

21 MR. CLEMENTS: Your Honor, I think if his motions  
22 aren't real long I'm good for that.

23 THE COURT: I'll entertain your motions and then I'll  
24 let him take his motion.

25 MR. SUGGS: Thank you, Your Honor. Judge, we again

1 move for directed verdict on in this case all counts in the  
2 indictment, Judge, and we would not make a directed verdict on  
3 the count of discharging a firearm at this time. But on the  
4 other three we would, Judge. Murder and assault and battery with  
5 intent to kill both contain an element of malice, and Judge,  
6 based upon the testimony presented from both the State and the  
7 Defense there was never any, never any testimony that there was  
8 any hatred or ill will directed against either Jeanette Floyd or  
9 Stewart Floyd by Mr. McKnight and vice versa. Judge, without  
10 testimony of malice, hatred, ill will, black heartedness,  
11 wickedness, that sort of thing, the State has not proved the  
12 element of malice with regard to murder or assault and battery  
13 with intent to kill and ask for directed verdict on those two  
14 counts.

15 In addition, Judge, both of those counts are considered  
16 violent crimes by our legislature; and if the Court grants a  
17 motion for directed verdict on those two counts of the indictment  
18 then there leaves no count in the indictment left that could be  
19 considered a violent offense for purposes of sustaining or  
20 overruling a motion for directed verdict on the weapons charge.

21 THE COURT: All right. I'm going to deny your motion.  
22 Mr. Suggs, I was looking at the law regarding malice; and as you  
23 know, malice can be either expressed malice or inferred malice.  
24 And I think there is testimony -- again, it's an issue, fact  
25 issue that I think the jury has to decide. By the defendant's

1 own he told the victim that he was going to shoot him and he was  
2 going -- and if you believe that version, that that's the mildest  
3 version, or if you believe the testimony of another State's  
4 witness who said he was going to blow his GD MF'ing head off.  
5 Whichever one you choose to believe that still is expressed  
6 malice, and then of course malice can also be inferred from  
7 conduct showing disregard for human life. And when you shoot a  
8 gun in the direction of an individual and then take a loaded gun  
9 and point it and present it at an individual I believe that also  
10 is conduct where a jury may infer malice. My point is, I think  
11 that the -- that it's a fact question that the jury, I think  
12 there is evidence where a jury could find that, and I'm going to  
13 respectfully deny your motion.

14 MR. SUGGS: All right, Judge. I understand that you  
15 don't want to take the position making a comment on the facts  
16 and---

17 THE COURT: I'm not. I'm just saying that I think  
18 there's facts in the record whereby a jury may could find.

19 MR. SUGGS: Yes, sir.

20 THE COURT: They may not, but there's at least evidence  
21 in the record that whereby a jury could find depending on how  
22 they view the facts so.

23 MR. SUGGS: Yes, sir, Your Honor.

24 MR. CLEMENTS: Yes, Your Honor.

25 THE COURT: Anything further at this time?

1 MR. SUGGS: Not from the Defense, Judge.

2 THE COURT: All right. We'll take a short, just a  
3 short recess if anyone needs to use the restroom, whatever, then  
4 we'll reconvene. Five or ten minutes.

5 (WHEREUPON, a recess was taken from the proceedings.)

6 THE COURT: Mr. Propps, ask the members of the jury to  
7 join us please.

8 (WHEREUPON, the jury was returned to the courtroom at  
9 approximately 12:58 p.m., and the following proceedings commenced  
10 in open court.)

11 THE COURT: Ladies and gentlemen, the lawyers have come  
12 to your aid. I'm told that your food is here; and instead of  
13 plowing through and taking another witness here that we need to  
14 do, they have implored me that not to let your food get cold. So  
15 having said that, we are going to take the lunch break. Now  
16 they're going to bring your food up. Here's what I'm going to do  
17 because I know you deal with cabin fever back there sometimes.  
18 I'm going to give you -- let you eat your food. And then if  
19 there are any of you that would like to go down stairs and just  
20 go out on the little veranda there, get outside in the fresh air  
21 allow you to do that. Now because we're at the stage of trial  
22 that we are at I can't just let you freely go on your own. So I  
23 have to send a deputy with you and you have to go in a group. It  
24 doesn't have to be maybe all at one time, but there is going to  
25 be some restriction to that and you need to stay together. So

1 having said that I'm going to now excuse you to go back into your  
2 jury room while they bring you your food. And then after you've  
3 finished eating those who would like to go out and stretch your  
4 legs and walk outside for a little bit I'm going to give you that  
5 opportunity to do that and we'll send a couple of deputies down  
6 with you, okay.

7 Now of course it's important during this time as it is  
8 every time that you're outside the jury, outside the courtroom,  
9 that you have no conversation about the case. Just enjoy your  
10 lunch and, again, the deputy will work with you on those of you  
11 that would like to step outside. There is an area that -- for  
12 those of you that wish to slowly commit suicide -- there is an  
13 area for smoking. I don't mean to be critical, but if any of you  
14 do smoke you know, they can take you to that area if you wish to  
15 do that. Those of you that done there's plenty of room to stay  
16 away from that and just be out. So if you would, go back to jury  
17 room and they'll bring you your food.

18 (WHEREUPON, the jury was removed from the  
19 courtroom at 12:57 p.m., and the following proceedings  
20 commenced in open court.)

21 THE COURT: Okay. What I suspect those of you that  
22 want to go out and grab something to eat, I do not expect that we  
23 would start back before 2:00 so if anyone who wants to be back  
24 before we start if you're back, you know, by 2:00 then you'll be  
25 safe on that. With regards to the attorneys, sometime before the

1 end of the lunch break, say a quarter to two or whatever, I'd  
2 like for us to get back together so we can discuss the charge and  
3 try to get it in a final form so if y'all would get with me some  
4 time, like I say, a quarter to two or whatever we'll do that.  
5 All right, so we'll be in recess until two.

6 (WHEREUPON, a lunch break was taken.)

7 THE COURT: I know, Solicitor, that you do have some  
8 reply testimony; is that correct, sir?

9 MR. CLEMENTS: Your Honor, yes, sir.

10 THE COURT: All right. But before we go into that if  
11 the jury while they're still out because what I'd like to do is  
12 I'd like to go with the conclusion of that I would like to go  
13 ahead and move on into the closing argument so let me go ahead  
14 and take up the charging issues at this point. I indicated to  
15 you guys, and I did, Mr. Suggs, my understanding is you would  
16 like a charge on accident which I didn't have in that original  
17 draft I gave you and I'm going to include that so that will be in  
18 there. So at this point, now with regards to the charge of  
19 murder and any lesser included offense.

20 MR. SUGGS: Yes, Your Honor. We would request -- we  
21 request a charge on the lesser included offenses of both  
22 voluntary manslaughter and involuntary manslaughter. And Judge,  
23 would we be able to get a copy of your charge on accident so that  
24 we can review prior to the closing arguments?

25 THE COURT: Yeah.

1 MR. SUGGS: Yes, sir, thank you.

2 THE COURT: I'll do that.

3 MR. SUGGS: Did you want to hear arguments on the  
4 reason for the charge or requests to charge?

5 THE COURT: Well, I want to hear from the State with  
6 regards to whether there's an objection or not to that.

7 MR. SUGGS: Yes, sir.

8 MR. CLEMENTS: I apologize, Your Honor, I was  
9 confirming with my investigator. Did he ask about the charge of  
10 accident? Is that what he just asked about?

11 THE COURT: He asked about the charge of accident, and  
12 I told him I thought that was appropriate on the evidence that  
13 was before the Court.

14 MR. CLEMENTS: Yes, sir.

15 THE COURT: And that I would charge that, but he's also  
16 requested a charge of both voluntary and involuntary  
17 manslaughter.

18 MR. CLEMENTS: Your Honor, I absolutely think  
19 involuntary manslaughter is not an appropriate charge. I think  
20 the charges to the jury got to be based on facts and evidence. I  
21 don't think there's any facts in evidence that he shot Stewart  
22 Floyd while he was engaged in a lawful act; that had reckless  
23 disregard. I think he was engaged in unlawful act that rose to a  
24 level of felony, Your Honor, pointing and presenting a firearm.  
25 Even if he wasn't charged or indicted for that act he was still

1 engaged in that act of pointing and presenting a firearm, which  
2 is a felony. I don't believe he's entitled to involuntary  
3 manslaughter charges as a result of that. And I believe in all  
4 the facts even taken in a light most favorable to the defendant  
5 don't provide for a charge of involuntary manslaughter.

6 THE COURT: All right. I'm going to -- Mr. Suggs, I'm  
7 going to charge accident as I indicated. I don't think the State  
8 has any issue with that. I'm going to charge voluntary  
9 manslaughter. I'm not going to charge involuntary manslaughter.  
10 I think the Solicitor is correct. I don't think you have to  
11 necessarily be charged with the activity to have been engaged in  
12 an unlawful activity that rises to the level of a felony. And  
13 obviously he's charged with discharging a firearm into a  
14 dwelling, which that in and of itself is a felony. I realize you  
15 have your position that if he's -- it's not illegal to discharge  
16 a firearm into your own house. I'm not aware that the statute  
17 limits that. However, you also, even though not charged, the  
18 evidence is beyond any, the evidence before the Court, the only  
19 evidence before the Court is that he did in fact point that  
20 shotgun at the victim which that would be a felony. It's not --  
21 involuntary is not appropriate under those circumstances so I  
22 will charge voluntary but I will not charge involuntary. And I  
23 will charge accident. Is there anything else from the Defense?

24 MR. SUGGS: Only Judge, would you allow me to be heard  
25 on the involuntary for the record, Judge?

1 THE COURT: Sure.

2 MR. SUGGS: Or would you not? Okay. Well, Judge, I  
3 understand the Court's ruling and I respect it, Your Honor.  
4 First of all, I would say that. I do believe that there is  
5 evidence to support a charge of involuntary manslaughter. There  
6 is case law out there which says that to constitute involuntary  
7 manslaughter there must be a finding of criminal negligence or  
8 recklessness. I think that based upon the facts as they have  
9 come out from at least from the Defense perspective that there is  
10 enough evidence that the jury could possibly conclude that  
11 Mr. McKnight was reckless and criminally negligent in his actions  
12 that night with that firearm and that as result of his actions  
13 Stewart Floyd was accidentally or unfortunately killed.

14 Judge, in addition there is case law to support the  
15 charge where there is a struggle over a weapon, State versus --  
16 State versus Casey I believe is the -- I'll find it shortly,  
17 Judge. But I believe it's State versus Casey holds that struggle  
18 over a weapon that involuntary manslaughter could be a charge  
19 submitted to the jury based upon that. Getting into those other  
20 reasons, Judge, the action has not -- has gotten to be one not to  
21 have, not of malice, but also an unlawful act not tending to  
22 cause death or serious bodily injury or a lawful act -- excuse  
23 me, I think I got that backwards, Judge.

24 THE COURT: No, you're right.

25 MR. SUGGS: I was right?

1 THE COURT: An unlawful activity not naturally tending  
2 to to cause death or bodily injury.

3 MR. SUGGS: Right.

4 THE COURT: Or while engaged in a lawful activity with  
5 reckless disregard for the safety of others.

6 MR. SUGGS: Yes, sir. And I don't know, I think it  
7 might could be argued that discharging a firearm into their own  
8 house, at least if the defendant thinks that he has some  
9 ownership in the house, may not necessarily be unlawful. And I  
10 obviously don't know that, Judge. The statute is silent on  
11 discharging a firearm into a dwelling, whether if it's your  
12 dwelling or you think it's your right dwelling it's not unlawful  
13 to do that. Judge, I simply don't know. I just put that on the  
14 record as a possibility that maybe he was engaged in a lawful act  
15 at the time.

16 THE COURT: All right. As I indicated -- and I'm  
17 somewhat familiar with the case you're referring to about the  
18 struggle with a weapon.

19 MR. SUGGS: Yes, sir, I'll find it.

20 THE COURT: But in this case, again, although maybe not  
21 charged we have -- it's clear that he was engaged in an unlawful  
22 activity by pointing and presenting a firearm which is a felony  
23 and then as well as...

24 MR. SUGGS: I have the case, Judge.

25 THE COURT: All right. You got that cite for me?

1 MR. SUGGS: Yes, sir. It's 305 South Carolina 445.

2 THE COURT: 445.

3 MR. SUGGS: Yes, sir.

4 THE COURT: Okay, great, thank you.

5 MR. SUGGS: It also states that in order to eliminate  
6 or not charge the lesser included offenses of manslaughter for  
7 murder there has to be absolutely no evidence whatsoever to  
8 support that charge and so I just throw that out as an extra  
9 argument.

10 THE COURT: All right, sir. In reading the statute,  
11 and you're correct, the statute is silent as to that. It simply  
12 states it is unlawful for a person to discharge or cause to be  
13 discharged unlawfully firearms at or into a dwelling house, other  
14 building, structure, or enclosure regularly occupied by persons.  
15 It doesn't provide any caveat that you can do it into your own  
16 home.

17 MR. SUGGS: It just says unlawfully and it makes you  
18 think that's kind of an exception. You know, if it says you  
19 can't do it unlawfully which makes me think that maybe you can do  
20 it lawfully.

21 THE COURT: Well, lawfully would be for example if  
22 someone broke into your home and was ---

23 MR. SUGGS: That's possible, yes, sir.

24 THE COURT: ---assaulted you you could lawfully  
25 discharge one at that point.

1 MR. SUGGS: You wouldn't want to be arrested with a  
2 burglar.

3 THE COURT: That's correct. All right. Well, your  
4 exception is certainly noted for the record, Mr. Suggs.

5 MR. SUGGS: Thank you, Judge.

6 THE COURT: Anything else, Mr. Suggs?

7 MR. SUGGS: No, sir, Your Honor.

8 THE COURT: Solicitor, and I'm still on charge now,  
9 anything other than what we just discussed?

10 MR. CLEMENTS: Did I understand you to say you are  
11 going to charge voluntary manslaughter?

12 THE COURT: I'm going to charge voluntary. I'm not  
13 going to charge involuntary.

14 MR. CLEMENTS: Well, Your Honor, I -- I'm not sure  
15 there's evidence of legal provocation but just I won't object.

16 THE COURT: All right, sir.

17 MR. SUGGS: On the voluntary.

18 THE COURT: All right. Then we're ready for the jury  
19 and, Solicitor, we'll recognize you for your rely witness.

20 Ask the members of the jury to join us please.

21 (WHEREUPON, the jury was returned to the courtroom at  
22 approximately 3:00 p.m., and the following proceedings commenced  
23 in open court.)

24 THE COURT: All right. Ladies and gentlemen, as you  
25 recall the Defense has rested and at this time we recognize Mr.

1 Clements for any reply testimony that the State may have.

2 MR. CLEMENTS: Thank you, Your Honor. Your Honor, if  
3 it please the Court we call Mr. Nikki Jarrett Kinney up.

4 THE COURT: Mr. Kinney, if you'll please come forward.

5 THE DEPUTY CLERK OF COURT: If you will, sir, go to the  
6 witness stand. Stop right there. Place your left hand on the  
7 Bible, raise your right hand.

8 WHEREUPON,

9 NIKKI JARETT KINNEY,  
10 having been duly sworn by the Deputy Clerk of Court,  
11 testified as follows:

12 THE DEPUTY CLERK OF COURT: Please be seated and state  
13 your full name for the record.

14 THE WITNESS: Nikki Jarrett Kinney.

15 DIRECT EXAMINATION

16 BY MR. CLEMENTS:

17 Q Mr. Kinney, if you would scoot up close to that microphone  
18 one more time and state your name over that microphone  
19 please.

20 A Nikki Jarrett Kinney.

21 Q All right. I'm going to ask you to speak up loudly so all  
22 these jurors can hear you and so the court reporter can  
23 take down everything you say, okay?

24 A Yes, sir.

25 Q All right. Mr. Kinney, tell us briefly who your family

## SW - N. KINNEY - DIRECT

1 members are and who you're kin to involved in this  
2 situation.

3 A My mother Teresa Kinney. My grandparents would be Jeanette  
4 Floyd and Lilton Floyd, my uncle Stewart Floyd, Jay Floyd.

5 Q What's Jay Floyd to you?

6 A He is my cousin, Stewart's son.

7 Q Okay.

8 A All right. Kelly Floyd, that's my uncle. Ian Kinney,  
9 that's my baby brother. Linda Jean McKnight, that'd be my  
10 aunt. And Sharon Floyd, that'd be another aunt.

11 Q By marriage?

12 A Yes, sir.

13 Q Okay.

14 A That's it.

15 Q How about Donna Floyd?

16 A Yes, sir. Donna Floyd would be my aunt too.

17 Q Okay. And did you go to her visitation at the funeral home  
18 in Lake City?

19 A Yes, sir.

20 Q Did you come back to the house?

21 A Yes, sir.

22 Q When you got to the house were most of the family members  
23 there?

24 A Yes, sir.

25 Q Were you in the kitchen?

## SW - N. KINNEY - DIRECT

- 1 A Yeah, yes, sir.
- 2 Q Do you know Donnie McKnight?
- 3 A Yes, sir.
- 4 Q Did you see Donnie McKnight?
- 5 A Yes, sir.
- 6 Q Did you hear Donnie McKnight make any threats to anyone?
- 7 A Yes, sir.
- 8 Q To whom?
- 9 A My uncle Stewart.
- 10 Q Your uncle Stewart? Okay. Did you see Donnie McKnight
- 11 leave?
- 12 A Yes, sir.
- 13 Q After he left what did you do?
- 14 A I just hung back to see what was going to happen, you know.
- 15 Q Okay. Did you see anyone go out the front door?
- 16 A Yes, sir, Mr. Glen Lee.
- 17 Q Glen Lee?
- 18 A Yeah.
- 19 Q Who went out behind him?
- 20 A Me and my uncle Kelly Floyd.
- 21 Q How close behind Mr. Lee?
- 22 A Steps.
- 23 Q Where did you see Mr. Lee go?
- 24 A Out the front door.
- 25 Q And where did he go after he went out the front door?

## SW - N. KINNEY - DIRECT

- 1 A He went to his vehicle which was parked a few feet away  
2 from the front door.
- 3 Q Was anyone in that vehicle?
- 4 A Yes, sir, his wife.
- 5 Q What's her name?
- 6 A I think it's Eliz -- I know her by Wonkie.
- 7 Q Wonkie?
- 8 A Yes, sir.
- 9 Q You ever heard Mary Lee, Mary Elizabeth Lee be her name?
- 10 A I do now.
- 11 Q Okay. Well, you just knew her as Wonkie?
- 12 A Yes, sir.
- 13 Q You see her in the car?
- 14 A Yes, sir, she was in the car.
- 15 Q All right. You and Kelly, y'all stop on the porch or keep  
16 going behind Mr. Lee?
- 17 A We stopped on the porch and he walked on out the yard to  
18 the vehicle.
- 19 Q Okay. Then what did you and Kelly do?
- 20 A Well, once he got in the truck with Ms. Elizabeth he was  
21 telling her what was going on and everything and I seen,  
22 you know, they were okay so. We were standing on the front  
23 porch, you know, looking around to see if, you know, if  
24 anybody seen, if we seen him.
- 25 Q See if you saw who? Mr. McKnight?

## SW - N. KINNEY - DIRECT

- 1 A Yes, sir.
- 2 Q All right. Did y'all stay on the front porch?
- 3 A For a second, yes, sir.
- 4 Q For just a second?
- 5 A Yes, sir.
- 6 Q Where's the front door at the front porch?
- 7 A Right here.
- 8 Q Okay. After y'all left the front porch what did you do?
- 9 A We left the front porch and kind of eased up. We were kind
- 10 of close to the house eased up to this corner to look
- 11 towards the back yard to see, you know, if they were coming
- 12 around the front or what, you know.
- 13 Q Mr. McKnight?
- 14 A Yes, sir.
- 15 Q Okay. Did you see anybody?
- 16 A No.
- 17 Q What did you do next?
- 18 A We kind of stayed close to the house right here because I
- 19 didn't know where they were, but I figured they went up to
- 20 one of the houses right next to there so we stayed up close
- 21 to the house right there, was looking this way to see if
- 22 they were coming back across the yard or where, you know,
- 23 just see where they were.
- 24 Q So you were kind of up against the wall ---
- 25 A Yes, sir.

## SW - N. KINNEY - DIRECT

- 1 Q ---of the house?
- 2 A Yes, sir.
- 3 Q Kind of hiding sort of?
- 4 A Yes, sir.
- 5 Q All right. Then what did you do?
- 6 A We got I say a little bit past halfway down the wall.
- 7 Q Which wall?
- 8 A This would be this wall right here.
- 9 Q Okay.
- 10 A Looking back in the back yard.
- 11 Q Okay.
- 12 A Didn't see anybody and then I heard some kicking on the
- 13 back door so, you know, I didn't know what to think so I
- 14 stood, I paused for a second. Then I heard it -- I heard
- 15 it come open because I heard him kick it and it made a
- 16 completely different sound. I knew it swung open, you
- 17 know.
- 18 Q Yeah.
- 19 A And I ---
- 20 Q Were there any windows on the side of the house?
- 21 A No, not on the side of the house.
- 22 Q Okay, all right.
- 23 A And I heard it come open so I stopped for a second and then
- 24 I heard a shot. And whenever I heard the shot I heard my
- 25 grandmother scream. She just hollered, you know, ---

SW - N. KINNEY - DIRECT

- 1 Q From the inside to the outside, you could hear that?
- 2 A Yeah, I could hear that. And so we started running back to
- 3 the front. And as we were coming around the front I told
- 4 Glen Lee and his wife that, you know, that they were
- 5 shooting or whatever.
- 6 Q You ran over to the car?
- 7 A No, I run by.
- 8 Q By the car?
- 9 A Run by the car to the front door because it was right
- 10 there, it was pretty close to the front to the porch. I
- 11 told them what was going on, and I just kind of slowed down
- 12 as I was telling them and I could -- there was a window
- 13 right here that you could see into the kitchen. You could
- 14 see the back door from the window.
- 15 Q Okay.
- 16 A And as I was running by I was telling them, you know, what
- 17 was going on, told them he was shooting and I seen my
- 18 grandmother shaking her hand through the window here.
- 19 Q Did you go back inside?
- 20 A Yes, sir. We went up on the porch and went back inside.
- 21 Q During this time did you ever see Ian run out?
- 22 A No, sir.
- 23 Q Did Ian come outside?
- 24 A No, sir, I didn't see him.
- 25 Q All right. So it was just you and Kelly Floyd?

## SW - N. KINNEY - DIRECT

- 1 A Yes, sir.
- 2 Q Did you ever hear another shot?
- 3 A Not until -- I seen the second shot whenever I come through
- 4 the front door.
- 5 Q Y'all came back through the front door?
- 6 A Yes, sir.
- 7 Q You and Kelly both?
- 8 A Yes, sir. He was right behind me.
- 9 Q All right. And you saw the second shot?
- 10 A Yes, sir, I did.
- 11 Q What did you see?
- 12 A Time as the door swung open like this I stepped up into the
- 13 house and the first step almost time as the door opened I
- 14 seen Donald McKnight shoot my uncle.
- 15 Q Did you get in a fight after that?
- 16 A Yes, sir. I went over there as soon as I could get to him.
- 17 By the time that I got from the front door to Donnie my
- 18 grandfather, which was sitting in the dining room, he had
- 19 spun around and grabbed the gun and him -- Donnie and my
- 20 grandfather and my grandmother, they all had their hands on
- 21 the gun and it was pointed straight up in the air. And
- 22 when I got there I jumped on Donnie and tried to get the
- 23 gun away. As soon as I jumped on him he let go of the gun
- 24 and ---
- 25 Q Did you hit him?

SW - N. KINNEY - DIRECT

- 1 A Yes, sir, I did.
- 2 Q Hit him several times?
- 3 A I hit him one time and he fell. Whenever he fell I went to
- 4 hit him again, and before I could hit him the second time a
- 5 chair come across mine and my grandfather's back.
- 6 Q Okay, all right. You know what happened to the gun?
- 7 A I didn't see the gun after I hit Donnie.
- 8 Q Okay. And you never saw Ian run outside?
- 9 A Whenever the chair come across my back I turned around and
- 10 started fighting Joe, Joseph McKnight -- we call him Joe.
- 11 Q Joe McKnight or Joe Clarke?
- 12 A Joe Clarke, that's right, I'm sorry. And as soon as I
- 13 started fighting him -- he's a big man -- and I was
- 14 hollering for my brother, screaming for my brother to come
- 15 in there and a few -- it wasn't but a few moments after I
- 16 hollered my brother's name he come in there and we, you
- 17 know ---
- 18 Q Did y'all wind up outside fighting?
- 19 A I didn't. Me and Joe, all -- we -- only time we was
- 20 fighting was in the inside.
- 21 Q Okay, all right. But other people -- to your knowledge did
- 22 other people go outside fighting or you don't know?
- 23 A I know that Donnie ended up outside. I don't know how he
- 24 ended up out there.
- 25 Q Okay.

## SW - N. KINNEY - DIRECT

- 1 A I never seen him leave or anything, never seen him, you  
2 know.
- 3 Q It's your testimony it was you that ran by Mary Lee's car  
4 and told her?
- 5 A Yes, sir, I was telling what was going on.
- 6 Q And all during that time you never saw Ian out there?
- 7 A No, sir.
- 8 Q Please answer any questions Mr. Suggs has got. Oh, I'm  
9 sorry, he wants me to ask you this. Now how old are you?
- 10 A I'm 23.
- 11 Q 23?
- 12 A Yes, sir.
- 13 Q And what do you do for a living?
- 14 A I'm a steel erector.
- 15 Q And do you have a family?
- 16 A Yes, sir.
- 17 Q Who are they?
- 18 A My girlfriend is Ashley Baggett and my son, he's two years  
19 old. His name is Dillon Kinney.
- 20 Q They live with you?
- 21 A Yes, sir.
- 22 Q Were they present there that night too?
- 23 A Yes, sir.
- 24 Q Okay. Have you been in trouble with the law before?
- 25 A Yes, sir.

SW - N. KINNEY - DIRECT

- 1 Q How old were you when you first got in trouble?
- 2 A 17.
- 3 Q All right. And you had multiple counts of breaking and
- 4 entering into automobiles; is that right?
- 5 A Yes, sir.
- 6 Q And assault on school employee?
- 7 A Yes, sir.
- 8 Q Grand larceny and petit larcenies?
- 9 A Yes, sir.
- 10 Q You did youthful offender for those?
- 11 A Yes, sir.
- 12 Q And along with a burglary second?
- 13 A Yes, sir.
- 14 Q Breaking entering a railroad car?
- 15 A Yes, sir.
- 16 Q And you had disorderly conduct?
- 17 A Yes, sir.
- 18 Q All right. Have you been in any trouble since 2004?
- 19 A Let me see, I was released in 2003 and a few weeks after
- 20 that I was -- I got locked up for disorderly conduct.
- 21 Q Have you been in any trouble since then?
- 22 A No, sir.
- 23 Q Trying to keep your life straight now?
- 24 A Yes, sir.
- 25 Q Please answer any questions Ms. Suggs may have.

## SW - N. KINNEY - CROSS

**CROSS-EXAMINATION****BY MR. SUGGS:**

- 1  
2  
3 Q Hey, Mr. Kinney, just a few questions. Were you at the  
4 funeral home?  
5 A Ms. Donna Floyd's funeral?  
6 Q Yes, sir.  
7 A Yes, sir.  
8 Q Brockington.  
9 A Yes, sir.  
10 Q You were? Okay. And after that you went straight to the  
11 house on 52?  
12 A Yes, sir.  
13 Q Okay. Who did you go with?  
14 A Me and my girlfriend and my son.  
15 Q Ashley Baggett?  
16 A Yes.  
17 Q And how old is your son?  
18 A Two year old.  
19 Q All right. And you saw Robert Jackson Clarke and Donnie in  
20 the house when you got there or ---  
21 A Yeah.  
22 Q ---did they come up after you got there?  
23 A Afterwards. Funeral was afterwards.  
24 Q They weren't drinking in the house, were they?  
25 A Not that I had seen.

## SW - N. KINNEY - CROSS

- 1 Q Okay. And you say that Joe left -- well, Robert Jackson  
2 Clarke, they call him Joe; is that right?
- 3 A Yes, sir.
- 4 Q That's how you knew him. He left first; didn't he?
- 5 A Uh-huh.
- 6 Q Is that a yes?
- 7 A Yes, sir.
- 8 Q Okay. And you heard, you say you heard conversation  
9 between Donnie, hear conversation between Donnie and your  
10 uncle Stewart?
- 11 A Yes, sir.
- 12 Q Okay. It was a threat delivered; is that right?
- 13 A Yes, sir.
- 14 Q But you didn't think anything of it, did you?
- 15 A Well, I don't know this man, you know.
- 16 Q Well, do you remember giving a statement to Investigator  
17 Barry Prosser on August the 27th, 2007?
- 18 A Yes, sir.
- 19 Q And that was five days after the incident; is that right?
- 20 A I'm not sure how many days.
- 21 Q It was on the 22nd, wasn't it, that this occurred?
- 22 A Yes, sir, 22nd.
- 23 Q So that's five days, yes.
- 24 A Okay.
- 25 Q Is that right?

## SW - N. KINNEY - CROSS

1 A Yes, sir.

2 Q Thank you. Do you remember what you told Investigator  
3 Prosser after he asked you about the threat that Donnie  
4 conveyed to Stewart, your impressions of that?

5 A Do I remember what I told him?

6 Q What you told the investigator?

7 A What the threat was?

8 Q No, what your impressions of the threat was, how you felt  
9 about it, how you took it personally?

10 A Yes, sir.

11 Q What did you say, do you remember?

12 A I told him I really didn't know what to think. I don't  
13 know this man, you know.

14 Q All right. Well, didn't you say I was standing there but I  
15 didn't pay attention? Did you ever tell him that?

16 A No, not that recall.

17 Q Okay:

18 MR. SUGGS: Can I mark this as just for identification  
19 please, Madam Court Reporter.

20 (WHEREUPON, Defendant's Exhibit No. 8 was marked for  
21 identification only.)

22 BY MR. SUGGS:

23 Q I may refer to this Defense Exhibit Number 8 just for  
24 identification. I may refer to it from time to time during  
25 your testimony. Is that okay with you?

## SW - N. KINNEY - CROSS

1 A Yes, sir.

2 Q You can read and write, okay, right?

3 A Yes, sir.

4 Q All right, thank you. After you told Investigator Prosser  
5 what Donnie had said to your uncle, would you read this  
6 response, what your response was starting right here?

7 A I didn't pay, I didn't pay any attention.

8 Q Okay, all right. And you meant that in the sense you  
9 didn't think much of the threat; is that right?

10 A Yes, sir.

11 Q Okay. And you testified -- or excuse me, you made a  
12 statement to Investigator Prosser that you thought or that  
13 you knew that all the other people who were in the back  
14 room heard this threat as well; is that correct?

15 A I believe they did. It was loud enough.

16 Q Okay. But you also stated they were all in the back room  
17 with the door closed playing the XBOX at the time; is that  
18 right?

19 A Yes, sir. The door opened and shut at times but it was  
20 mainly closed.

21 Q But you were assuming that they heard the threat; is that  
22 right?

23 A Yes, sir.

24 Q You weren't sure they did; is that correct?

25 A That's correct.

## SW - N. KINNEY - CROSS

1 Q Okay. Now at some point after Donnie left the house and  
2 that was after he delivered the threat to Stewart, right?

3 A Uh-huh.

4 Q You have to answer, son, because the court reporter, I'm  
5 sorry.

6 A Yes.

7 Q You walked out the front door, is that your testimony, you  
8 and ---

9 A Yes, sir.

10 Q ---Kelly Floyd?

11 A Yes, sir.

12 Q All right. And that's your uncle?

13 A Yes, sir.

14 Q All right. Y'all walked out the front door and walked all  
15 the way around to the corner here of the house?

16 A Yes, sir.

17 Q And at some point the furthest position you were on this  
18 side of the house before you turned around and went back  
19 was where? Can you point that out?

20 A It was around half way. I can't remember exactly how far  
21 but it was, you know, just enough, just far enough that I  
22 could see into the backyard of the house next door.

23 Q And you could see Mr. McKnight's car in the back or his  
24 truck, or was it too dark?

25 A I remember a white Thunderbird there and I believe that's

## SW - N. KINNEY - CROSS

- 1           it.
- 2    Q    You remember a blue truck?
- 3    A    No, I don't.
- 4    Q    That's fine, son, it doesn't matter. So you feel like --
- 5           and I'm not trying to put words in your mouth, okay. All
- 6           right. You feel like you were probably about halfway on
- 7           this side of the house about as far as you got ---
- 8    A    Yes, sir.
- 9    Q    ---that night? Okay. And at some point you heard the back
- 10           door it sounded to you like it'd been kicked in?
- 11   A    I heard one, maybe two kicks, and then I heard a completely
- 12           different sound, sounded like the door swung open and hit
- 13           something behind it.
- 14   Q    All right. Were you -- you didn't see that door ---
- 15   A    No, sir.
- 16   Q    ---kicked open, you just assumed it was kicked open; is
- 17           that right?
- 18   A    Yes, sir.
- 19   Q    Okay. Now you said in your statement that you heard him
- 20           kicking on the door. You're referring to Donnie?
- 21   A    I didn't know who it was. I didn't see anybody.
- 22   Q    Well, you said "him". I'm assuming you knew who it was.
- 23           You heard him kicking on the door.
- 24   A    I might have said him but I don't know who it was.
- 25   Q    All right. And the door flung open is what you said. You

## SW - N. KINNEY - CROSS

- 1           just ---
- 2    A       Sounded like it.
- 3    Q       It sounded like it?
- 4    A       Yes, sir.
- 5    Q       But you didn't see it?
- 6    A       No, sir.
- 7    Q       All right. Then you heard a shot?
- 8    A       Yes, sir.
- 9    Q       Okay. And were you still pretty much about the same spot
- 10           on that side of the house? In other words, about the
- 11           furthest, about the furthest point that you went about
- 12           halfway were you still about there when you heard the shot?
- 13   A       No, sir, I wasn't.
- 14   Q       Where were you?
- 15   A       When I heard the back door being kicked on I knew that they
- 16           were back there. You know, all I was trying to do is see
- 17           where they were. And we -- me and my uncle Kelly turned
- 18           around, and we started walking next to front and then I
- 19           heard the shot and then we started running. By the time
- 20           the shot was there, I don't know, we was -- I don't --
- 21           right there we had ---
- 22   Q       Y'all hadn't made ---
- 23   A       ---passed the corner.
- 24   Q       And y'all hadn't made the turn yet ---
- 25   A       No, sir.

## SW - N. KINNEY - CROSS

- 1 Q ---when the shot rang out?
- 2 A No, sir.
- 3 Q Okay. So you heard the shot and so you kind of increased
- 4 your pace a little bit, right?
- 5 A Yes, sir.
- 6 Q Okay. Now you knew the shot was coming from the back door;
- 7 is that right?
- 8 A Yes, sir.
- 9 Q Well, I mean, you heard the door being kicked open ---
- 10 A Kicked in and shot immediately afterwards and I just
- 11 assumed it was at the back door.
- 12 Q Well, if you heard the kick and you knew it was the back
- 13 door the next door you heard was being shot at you had to
- 14 assume it was the back door too, the other back door, am I
- 15 right?
- 16 A Yes, sir.
- 17 Q So instead of running, instead of running around to the
- 18 rear door which that would have been closer, wouldn't it,
- 19 than running all the around to the front? Am I right? Am
- 20 I wrong?
- 21 A Yeah, but they were back there.
- 22 Q I know that. Is that why you didn't want to go back there?
- 23 A Yeah, that's why I didn't want to go back there.
- 24 Q You didn't want to get shot, did you?
- 25 A Yeah. What would you do?

## SW - N. KINNEY - CROSS

1 Q I don't know what I'd do. I'm asking you.

2 A That's what I'm saying. No, I don't want to go back there.

3 He said he was going to get a gun. I'm not going back

4 there to see if he's got one.

5 Q I don't think I'd go back in the house at all if I heard a

6 gun shot.

7 A Well, the back door was -- I didn't know if he shot the

8 back door open or not. I heard a shot and I run back to

9 the front to go in the house.

10 Q Okay, all right. So instead of going -- but you still went

11 in the house after you heard a gun shot; ---

12 A Yes, sir.

13 Q ---am I right? But you decide to run all the way around to

14 the front instead of going into the back?

15 A Yes, sir.

16 Q But you still would have been in the house a lot quicker if

17 you'd gone that way; wouldn't you?

18 A Yes, sir, I would.

19 Q All right. But you wanted to avoid that; didn't you?

20 A Yeah.

21 Q You didn't want to get back in the house that fast, did

22 you?

23 A Well, I didn't know if they were in the house or not. I

24 knew the door come open, but I didn't know if they had -- I

25 didn't know if they were in the house. I was hoping not so

## SW - N. KINNEY - CROSS

1 I went back in, I, you know ---

2 Q Well, you didn't know what to expect? You didn't know if  
3 you were going to get killed; is that right?

4 A That's right.

5 Q So that adrenaline was really pumping at that point; wasn't  
6 it?

7 A Uh-huh, yes, sir.

8 Q Now what I'm curious about is that after you heard -- it's  
9 just me, maybe I'm wrong but, after you heard that shot  
10 you're kind of walking back, you and Kelly.

11 A Yes, sir.

12 Q You heard that shot then you kind of double step to get  
13 around the corner faster, didn't go that way, we  
14 established that. Went this way, but you had time to stop  
15 and talk with Mr. and Mrs. Lee about what you thought was  
16 going to go -- what's going on in there before you went to  
17 the door; is that right?

18 A No, I slowed down, faced them, and told them that I heard a  
19 shot in the back. They were shooting in the back or  
20 shooting at the back door or whatever and I ---

21 Q And they were out here in the yard; weren't they?

22 A Yes, sir, they were sitting in the vehicle.

23 MR. CLEMENTS: Your Honor, if he would let the witness  
24 finish his statement.

25 THE COURT: All right. Ask the question and let him

## SW - N. KINNEY - CROSS

1 finish his answer.

2 BY MR. SUGGS:

3 Q Go ahead, sir.

4 A Whenever we come around I slowed down, you know, to make  
5 sure I could tell them what was going on and whenever I  
6 told them I turned and looked and I could see through the  
7 window, the front -- that's in the front of the house.

8 Q Uh-huh.

9 A And I could see my grandmother shaking her hand.

10 Q Okay. So you could see -- you were right there and you  
11 were able to see your grandmama shaking her hand and also  
12 talked to the Lees before you went to the front door?

13 A I told them they were shooting.

14 Q Okay, right, but you had time to do that?

15 A As I was going by, yes, sir.

16 Q Okay, that's fine. Went to the front door and it was  
17 locked; wasn't it?

18 A I don't know if it was locked or jammed or what, but I know  
19 I couldn't get in it and I tried ---

20 Q How long did you try to get in?

21 A It wasn't too much. I felt it and it was locked and I  
22 think I kicked it or it came open somehow. I got through  
23 the door.

24 Q All right. Was Kelly with you?

25 A He was right behind me.

## SW - N KINNEY - CROSS

- 1 Q Y'all were right behind. Y'all were both trying to get in  
2 the front door; weren't you?
- 3 A Yes, sir.
- 4 Q And it was locked or it was closed but it would not open;  
5 is that right?
- 6 A Yes, sir.
- 7 Q All right. So you kicked it open; didn't you?
- 8 A I think I did, yes, sir.
- 9 Q You told the Investigator you kicked the door open, right?
- 10 A I'm more than sure that I did.
- 11 Q How many times did you kick it?
- 12 A Once, twice.
- 13 Q Did Kelly help you kick it?
- 14 A I don't remember. He was standing behind me at the time.  
15 Maybe he did.
- 16 Q You don't remember?
- 17 A No, sir.
- 18 Q A lot going on in your mind; wasn't there?
- 19 A Well, it was what happened next that I really wasn't  
20 thinking about at the time.
- 21 Q All right. But you were trying to, trying to kick in the  
22 door but you didn't know what Kelly was doing?
- 23 A He was right -- I knew he was behind me.
- 24 Q You didn't know if he was helping you kick is my question.
- 25 A No.

## SW - N. KINNEY - CROSS

- 1 Q And you remember telling Investigator Prosser that the door  
2 was locked, the front door was locked?
- 3 A Yes, sir.
- 4 Q Okay. So that's right; isn't it?
- 5 A Yes, sir.
- 6 Q You remember telling that's why it was off the hinges. I  
7 kicked it off the hinges, you remember saying that?
- 8 A No, sir.
- 9 Q I show you the State's exhibit. And you're testifying for  
10 the State's, it's one of y'all's exhibits, number 33. Is  
11 that the front door you're talking about? That's taken  
12 from the lower room.
- 13 A Is this -- or on here are you talking about this door  
14 that's being shot in or this door right here?
- 15 Q The one you just had your finger on.
- 16 A No, sir.
- 17 Q Isn't that the door you said you kicked open, you kicked  
18 off the hinge?
- 19 A Oh, yes, sir.
- 20 Q Well, it's not off the hinges, is it?
- 21 A Well, maybe I didn't stop to check to see if it was off the  
22 hinges; it was an expression.
- 23 Q Oh, okay, so ---
- 24 A As in I kicked it off the hinges and then ---
- 25 Q So what you ---

SW - N KINNEY - CROSS

1 A ---I kicked it hard and tried to get it open.

2 Q Just an expression, okay.

3 A Yes, sir.

4 Q So what you're saying in your statement, what you're saying  
5 now could be expressions not what we're really talking  
6 about, you know what we're really talking about?

7 A Yes, sir.

8 MR. SUGGS: Publish, Judge?

9 THE COURT: Yes, sir.

10 BY MR. SUGGS:

11 Q Now you said that you -- when the door swung open you  
12 watched, you watched Donnie shoot your uncle Stewart; is  
13 that right?

14 A Yes, sir.

15 Q Okay. And you say your grandmama, she was draped across  
16 your uncle. Is that position she was in, or did I  
17 misunderstand?

18 A Yes, sir, she was -- she was trying to cover him.

19 Q How was she laid across him?

20 A She was laid -- he was bent down in his chair and she was,  
21 I guess, she was just draped. I mean, how -- she was just  
22 laid across him trying to cover, trying to keep Donnie from  
23 shooting him.

24 Q And you say Donnie shot him ---

25 A Yes, sir.

## SW - N. KINNEY - CROSS

- 1 Q ---with your grandmama laying across him?
- 2 A Yes, sir.
- 3 Q Do you know your grandmother wasn't injured by that shot,
- 4 was she?
- 5 A No, not that shot.
- 6 Q Okay. How do you suppose she wasn't injured draped across
- 7 your uncle's legs or wherever she was, why she wasn't
- 8 injured by a shotgun blast?
- 9 A Because he was a foot away and where he shot Stewart at she
- 10 wasn't covering?
- 11 Q She wasn't covering.
- 12 A No.
- 13 Q And her back was to Donnie; is that right?
- 14 A No, sir. She was in front of Stewart. She was -- Donnie
- 15 was on the side where the door, where the front door was,
- 16 whenever he shot Stewart. And she was, I guess, covering
- 17 the front of him or the other side of him I guess you'd
- 18 say. The front -- she wasn't on the same side that Donnie
- 19 was on. She was laid across him, the front of him.
- 20 Q Okay. But she wasn't -- she wasn't hit?
- 21 A No. She wasn't hit by that shot, no.
- 22 Q Okay. And you didn't hear any conversation between Stewart
- 23 or Donnie just prior to what you say you witnessed?
- 24 A You talking about before he left or whenever he come back?
- 25 Q No, when the shot happened?

SW - N. KINNEY - CROSS

- 1 A No, he shot -- he shot Stewart and then he said now I'm  
2 going to kill all of y'all.
- 3 Q So that was his words?
- 4 A Yes, sir.
- 5 Q But you were at some point you were hit by a chair. Is  
6 that your testimony?
- 7 A Yes, sir.
- 8 Q All right. And your grandfather was also hit with a chair?
- 9 A Yes, sir, we were side by side.
- 10 Q Mr. Clarke hit y'all in the back with a chair, the same  
11 chair?
- 12 A Yes, sir.
- 13 Q Okay. One time, two times?
- 14 A One time.
- 15 Q Okay. And your grandfather just had open heart surgery;  
16 didn't he?
- 17 A Yes, sir.
- 18 Q Did you go to the hospital ---
- 19 A That night?
- 20 Q Yeah.
- 21 A No. I went to ---
- 22 Q Did your grandfather?
- 23 A You mean was I admitted ---
- 24 Q For treatment?
- 25 A ---to the hospital?

## SW - N. KINNEY - CROSS

1 Q Did you go for treatment any time?

2 A No.

3 Q Did you get medical treatment?

4 A No, sir.

5 Q How about your grandfather, did he go for treatment?

6 A I don't remember. I don't think he did. I didn't see him.

7 I got there later. I didn't get there the same time

8 everybody else did.

9 Q Now how many times did you see Donnie -- you say you saw  
10 Donnie shot, shoot Stewart. How many times did you see him  
11 shoot Stewart?

12 A Well, you know, I thought I seen him shoot him twice  
13 because whenever Donnie came through the door whenever I  
14 come -- when the door swung open Donnie looked like he had  
15 -- was standing in front almost in front of Stewart and he  
16 had the gun on one side of him. But then he pulled the gun  
17 and stepped at the same time. When he did he shot him in  
18 the other side. When he stepped around the side. He  
19 looked like he had stuck the gun in Stewart and pulled away  
20 and moved to the other side and shot him.

21 Q But that night and then really five days later when you  
22 talked to Investigator Prosser you stated that Donnie had  
23 shot your uncle twice; isn't that right?

24 A Yes, sir.

25 Q You did; didn't you?

## SW - N. KINNEY - CROSS

1 A Yes, sir.

2 Q But you know better now, right?

3 A Well, it keeps coming, I mean, stuff plays out a little bit  
4 clearer, you know, one day at the time.

5 Q Sure.

6 A It's ---

7 Q So it's clearer today than it was yesterday ---

8 A Yes, sir.

9 Q ---for you?

10 A Yes, sir, I had a hard time.

11 Q I understand, I'm sorry. Now you got arrested that night;  
12 didn't you?

13 A Yes, sir.

14 Q As you were beating up on Mr. McKnight; is that right?

15 A Yes, sir.

16 Q And officers took you to ---

17 MR. CLEMENTS: Your Honor, I would object to the  
18 relevance of that, what happened after---

19 THE COURT: Sustained.

20 MR. CLEMENTS: ---after the shooting.

21 MR. SUGGS: All right. Thank you, Judge.

22 BY MR. SUGGS:

23 Q Well, let's not talk about that. Let's talk about you --  
24 that's not the first time you've been arrested, is it?

25 A No, sir.

## SW - N. KINNEY - CROSS

- 1 Q Okay. Mr. Solicitor said you have been convicted of  
2 multiple counts of breaking and entering of a motor  
3 vehicle; is that right?
- 4 A Yes, sir.
- 5 Q But he didn't say it was 17 counts, did he?
- 6 A I don't think he said any amount.
- 7 Q Well it was; wasn't it?
- 8 A I'm not even sure.
- 9 Q Well, if I told you 17 counts ---
- 10 A I'd probably believe you.
- 11 Q Would you agree with that?
- 12 A I'd probably believe you. I know it's a lot.
- 13 Q All right. And two counts of burglary second degree,  
14 breaking into houses and buildings; is that right?
- 15 A Yes, sir.
- 16 Q Okay. And two counts of grand larceny. Isn't that  
17 stealing?
- 18 A Yes, sir.
- 19 Q And then later on about a year later didn't you have four  
20 more counts of breaking and entering a motor vehicle?
- 21 A No, not that I can -- no.
- 22 Q Not in 2003?
- 23 A Four more counts of breaking entering a motor vehicle?
- 24 Q Yes.
- 25 A No, sir, I've never -- I hadn't been charged with anything

## SW - N KINNEY - CROSS

1 else after that.

2 Q You mentioned some other things too. I don't remember what  
3 they were. Was it petit larceny, I think, Mr. Solicitor  
4 mentioned that. Is that right?

5 A Yes, sir.

6 Q And also something about -- and I'm really not sure what  
7 this is, breaking and entering or throwing things at railroad  
8 cars. You got that, right?

9 A Undoubtedly I do.

10 Q Well, I'm asking you.

11 A Well, I can explain the situation.

12 Q You don't have to explain it. I'm just curious about it,  
13 if it -- it either is or it isn't.

14 MR. CLEMENTS: Your Honor, I object. If he asks a  
15 question I think the witness has an opportunity to respond to  
16 explain if he wishes to.

17 MR. SUGGS: Well, I didn't want to go into, you know,  
18 it's not necessary.

19 THE COURT: And it's improper to do so. We're not  
20 going to go into that.

21 MR. SUGGS: I think so too, yes, sir.

22 BY MR. SUGGS:

23 Q All right. But you would agree that you have a criminal  
24 record in this state for many, many charges; is that right,  
25 son?

## SW - N. KINNEY - REDIRECT

1 A Yes, sir.

2 Q All right. Thank you. Nothing further.

3 **REDIRECT EXAMINATION**

4 **BY MR. CLEMENTS:**

5 Q Mr. Kinney, Mr. Suggs is asking you about running back in  
6 that house when shooting is going on. Was your baby in  
7 there?

8 A Yes, sir.

9 Q Were you concerned about the welfare of your baby?

10 A Very concerned.

11 Q And you told Investigator Prosser you thought you saw him  
12 shoot twice, but how many shots did you hear and did you  
13 tell Mr. Prosser you heard when you gave that interview?

14 A I heard two shots. I heard one whenever I was outside when  
15 he shot through the back door and I heard the other shot  
16 whenever I saw him shoot him in the side.

17 Q Thank you, sir.

18 **RECROSS - EXAMINATION**

19 **BY MR. SUGGS:**

20 Q You were concerned about your baby in the house and Ashley  
21 Baggett, your fiance?

22 A Yes, sir.

23 Q But you took the long way around; didn't you?

24 A I didn't know if they got in the back door or not.

25 Q You were concerned about them, right?

## SW - N. KINNEY - RECROSS

1 A Yes, sir.

2 THE COURT: Thank you, sir. You may step down.

3 MR. CLEMENTS: Your Honor, the other witnesses we had  
4 would be cumulative so that's it.

5 THE COURT: All right. Now ladies and gentlemen, the  
6 State's concluded any reply testimony that they had -- and let me  
7 get the lawyers step up here real quick. I just thought of  
8 something.

9 (WHEREUPON, counsel approached the Bench for an on-the-record  
10 discussion.)

11 THE COURT: We're at the close of the case. I took up  
12 motions regarding directed verdict, things of that nature and  
13 ruled on those. The State put up one witness in reply.

14 And Mr. Suggs, you're renewing those motions that you  
15 made at the close of the trial?

16 MR. SUGGS: I am, sir.

17 THE COURT: All right.

18 MR. CLEMENTS: Same grounds?

19 THE COURT: On the same grounds?

20 MR. SUGGS: Same grounds, yes, sir.

21 THE COURT: And there was no additional testimony?

22 MR. SUGGS: No, sir.

23 THE COURT: All right. I respectfully deny those  
24 motions and then we'll proceed at this point to the closing  
25 arguments.

1 MR. SUGGS: Can we get the charge on accident that  
2 you're going to use.

3 THE COURT: Yeah, you can.

4 (End of on-the-record Bench discussion.)

5 THE COURT: All right. Ladies and gentlemen of the  
6 jury, I just wanted to clear up some matters with the attorneys.  
7 We are now ready at the stage of the trial where you're close to  
8 being able to deliberate. You have heard all the evidence in  
9 this case. It is now we've reached the opportunity for the  
10 attorneys to address you with what is called their closing  
11 arguments. Closing arguments sometimes are called final  
12 summation, is their opportunity to talk to you about what they  
13 believe the facts in this case have shown. Just as I indicated  
14 and told you at the beginning of this trial that their opening  
15 statements are not evidence. Closing arguments or final  
16 summation is not evidence either. In other words, all of the  
17 evidence in this case is in. What the attorneys say to you is  
18 not evidence, but it is important that you give them your  
19 attention. At the close of their arguments I will then come up  
20 and I will provide you with the law that you're to apply to the  
21 facts as you find those facts to be. So having said that, at  
22 this time I would recognize the attorneys for their final  
23 summation or closing arguments.

24 Mr. Suggs.

25 MR. SUGGS: Your Honor, is Mr. Clements going to open

1 on the law?

2 THE COURT: Are you going to require -- all right.

3 MR. CLEMENTS: Your Honor, I waive that, just do it all  
4 one time; I'd rather do that.

5 THE COURT: Mr. Suggs, any objection to waiving that?

6 MR. SUGGS: No, sir. Can I find something real quick.  
7 I was kind of counting on him going first.

8 THE COURT: You take your time and find what you need  
9 to find. That's not a problem.

10 MR. SUGGS: Unless he wants to go ahead and do it while  
11 I'm looking.

12 MR. CLEMENTS: Your Honor, while he's looking, if the  
13 family members that didn't get called on reply, they were all out  
14 there in case we had to call them, come in the back door real  
15 quick.

16 THE COURT: And if you would, I'm sure the bailiffs are  
17 aware of it, go ahead and let them in. It's okay for them to  
18 come in but once you begin argument doors will be locked.

19 MR. CLEMENTS: Yeah.

20 (Pause.)

21 THE COURT: Ms. Joe, when we begin if you would, ma'am,  
22 please make sure that no one else comes in or goes out, all  
23 right?

24 THE BAILIFF: Yes, sir.

25 THE COURT: All right, Mr. Suggs, you may proceed.

1 MR. SUGGS: Thank you, Judge. Thank you, ladies and  
2 gentlemen for listening to all the evidence that's been presented  
3 during the trial of this case. You know, I looked over here  
4 several times during the presentation of the evidence to see if  
5 you folks were paying attention, and the only time I saw folks  
6 acting like they were nodding off is when Mr. Clements introduced  
7 about 65 photographs into evidence and at one time and I was  
8 sitting over there and I think I nodded off myself. Aside from  
9 that everybody has been paying very close attention to facts and  
10 the testimony on behalf of Mr. McKnight. I appreciate that very  
11 much. I'm going to try to be short. One thing about closing  
12 arguments is that it gives the lawyer an opportunity to argue  
13 about what the evidence is and also what the law is as well. But  
14 you know, the judge is the finder of the law. He gives you the  
15 law that you must follow, and you know, even though I may argue  
16 some points of law I'll try to make it consistent with what the  
17 judge is going to give you but of course if I say something about  
18 the law that's different than what the judge tells you of course  
19 you got to listen to him and not to me. Same with the facts, if  
20 I have to tell you something about the facts that you don't  
21 remember then you take your version of the facts over mine. But  
22 in any event, the judge finds the law, he gives you the law. You  
23 have to follow it. Even if you don't like you've still got to  
24 follow it; you have no choice in the matter. And as far as the  
25 facts are concerned the judge can't change the facts in how you

1 think about those facts; the facts are yours. Whatever you think  
2 about the facts that's it. Nobody can change or add to it or  
3 take away from it. That's all your own personal venue. Now if  
4 at the time of deliberation when you get back there and you take  
5 the facts, you take the law that the judge gives you, and applies  
6 it -- you apply to the facts that you've heard, you, sometimes  
7 you might come up short. You might be thinking, well, you know,  
8 I need some more facts, I need something else to help kind of tie  
9 this together. Well, can't do it. You can't come out and ask  
10 for any facts. You have to just deal with the facts that have  
11 been given because the testimony is closed. You come back out  
12 review the facts that have already been brought out that you  
13 might have forgotten about or somebody might say, I remember  
14 this, but no, no, and somebody says, no, that's not how it was.  
15 You can come out and get that straight. So you can review old  
16 stuff, can't bring anything new.

17 The indictment is a four count indictment. It's just a  
18 charging paper. It's what the State of South Carolina is  
19 attempting to prove. It doesn't mean that it's evidence because  
20 it's not. It's just administrative. It's to show you what the  
21 charges are, and the charges are assault and battery with intent  
22 to kill. Count one, count two murder, count three discharging at  
23 or into a dwelling house, building or structure. And count four  
24 possession of a weapon during the commission of a violent crime.  
25 Now the judge is going to also give you some other maybe what's

1 called, we call lesser included offenses. They're not on this  
2 indictment but he will give you the lesser included offenses in  
3 addition to these so you can kind of pick and choose what you  
4 think is more appropriate. Because if you just had all of this  
5 and nothing else you might go back there and say, well, none of  
6 this fits. So he'll give you other, not counts of the indictment  
7 because they're not indicted charges, but give you other law and  
8 you decide, well, maybe this is more appropriate than this to  
9 apply to the facts so you'll get to that and you'll know what I'm  
10 talking about when it happens.

11 Now I want to try and help you if I can. A lot of you  
12 are saying, okay, here it comes. This snake oil salesman is  
13 about to sell me something. But this is what I think. And of  
14 course, you don't have to take what I think is serious any more  
15 than anybody on the street but this is what I think about the  
16 case, honestly. And I'll take them out of order. But count  
17 three, discharging a firearm into a dwelling house. There ain't  
18 no question in anybody's mind, shouldn't be, that Donnie McKnight  
19 fired a gun in this house. Now whether it was his house, whether  
20 it was somebody else's house, whether it was part his and part  
21 somebody else, you know, I don't really think that makes a lot of  
22 difference. I think -- obviously I don't think the statute  
23 mentions anything like that, but he fired the weapon or shotgun  
24 into the house. We all know that so I think you probably more or  
25 less made up your mind at this point even without hearing all the

1 arguments that he's guilty of that charge. So I wanted to put  
2 that before you right away. This other charge, count four,  
3 possession of a weapon during the commission of a violent crime,  
4 that's kind of an unusual statute. You can find him guilty of  
5 that or not guilty of that depending on whether you find him  
6 guilty or not guilty of a crime of violence. Murder is a crime  
7 of violence. So if you found him guilty of murder then  
8 possession of a weapon during the commission of a crime of  
9 violence you can find him guilty of that too because they go  
10 together. But if you found him guilty of a crime that's not a  
11 crime of violence then you would not necessarily convict him on  
12 possession of a weapon during the commission of a crime of  
13 violence because there's no way to hook it to the other charge  
14 'cause that charge would not exist. Assault and battery with  
15 intent to kill, that's counts one in the indictment. That is  
16 under Section 16-36-20 of our code and 16-160, like the  
17 legislature couldn't make up their mind. It's under two sections  
18 or it's addressed in two sections, and it was called a general  
19 intent crime which means that proof of assault and battery with  
20 intent to kill requires only a general intent to kill someone.  
21 It's not a specific intent crime that you specifically intended  
22 to kill someone; that's not necessary. But one of the elements  
23 of assault and battery with intent to kill is what's called an  
24 element of malice, okay. And the judge is going to instruct  
25 about this a little bit later. But in order for you to convict

1 someone of any charge -- doesn't matter whether here or somewhere  
2 else -- the State has the burden of proving all the elements of  
3 that particular offense beyond a reasonable doubt. If they miss  
4 proving an element of a certain offense you got to find that that  
5 person not guilty of that offense. Different offenses have  
6 different elements. Different offenses have different numbers of  
7 elements. One of the elements of assault and battery with intent  
8 to kill is malice. And malice is, well, it's hatred. Malice is  
9 hatred. You hate someone so you want to do them harm. It is ill  
10 will. It's wickedness; it's hostility. If you hate someone then  
11 you have malice towards them. And if you don't have hatred or  
12 malice then you can't be charged or convicted of assault and  
13 battery with intent to kill. It might be something else. It  
14 might be assault and battery of a high and aggravated nature or  
15 something like that. That doesn't require malice. It just means  
16 that you hurt somebody with the circumstance of aggravation like  
17 you had a weapon and they were, but there's no hatred or malice  
18 there. So you can convict on something like assault and battery  
19 of a high and aggravated nature which is a lesser or lower  
20 offense of assault and battery with intent to kill.

21 Now murder is the most serious charge in the  
22 indictment. Murder is killing someone with malice aforethought  
23 so it has an element of malice also. If you kill someone and you  
24 mean to kill them and you hate them, you have hostility and ill  
25 will, wickedness, black heartedness, and you want to kill that

1 person, that is murder. That's pure and simple; that's what it  
2 is. But if you don't have the malice or the hatred you don't  
3 have -- you don't have murder. But you might have something  
4 else. You might have what's called manslaughter. That's a  
5 lesser included offense of murder. Murder is up here;  
6 manslaughter is right underneath. Okay? And that's killing  
7 someone without malice. That's killing someone without hatred or  
8 hostility. That's killing someone in the heat of passion upon  
9 sufficient legal provocation. You mad, you upset, you're angry,  
10 some circumstance has set you off and you get a weapon or you get  
11 something and you kill somebody. That's voluntary manslaughter.  
12 And that's, that's not -- that's -- it's the same thing as murder  
13 except there's no hatred, there's no malice. So that's something  
14 to think about. The judge is going to charge you on that as  
15 well. So you're free to convict on murder. You're free to  
16 convict on voluntary manslaughter but not both. You're free to  
17 convict on assault and battery with intent to kill or assault and  
18 battery of high and aggravated nature, but not both. Free to  
19 convict on discharging a firearm into a dwelling, and you're free  
20 to convict on possession of a weapon during the commission of a  
21 crime of violence if you find a crime of violence is something  
22 else you convicted him on so that's how that works. Or you're  
23 free to convict him of nothing; it's up to you.

24 Now I think the best way -- and I'm going to just talk  
25 about the evidence for just a few minutes and then I'm going to

1 sit down. I made the main points I wanted to. And sometimes I  
2 think people listen to the first part of what you say and the  
3 last part of what you say and stuff in the middle just kind of  
4 gets washed out and I'm that way too so I'll try to be brief.  
5 But I just want to talk about my client Donnie just a minute.  
6 Donnie's had a lot of tragedies in his lifetime and the funny  
7 thing is all of them seemed to have happened during the month of  
8 August for some reason. You know, the deaths of his family  
9 members, he had his daughter die, Donna. That was the whole  
10 start of this. She died August of last year. And you know, he  
11 feels like that he's to blame for her death. And I don't know  
12 how -- I don't know how I would feel if I had a child that died  
13 and I felt that I was responsible for that child's death. I  
14 don't know how I could deal with it. It would be pretty  
15 unbearable. Bad enough when one dies and you outlive a child but  
16 to think that it maybe somehow you were responsible for a child  
17 dying, probably more than most people could bear. Donnie felt  
18 like that maybe he was responsible because he asked her to help  
19 him do a task, and it wasn't along after that that she had attack  
20 of some kind and died a few days later. Going to the funeral  
21 home, you know, he was there. His best friend Jack Matthews died  
22 also in August, laid up in the funeral home at the same time.  
23 How would that strike you? It would hurt you bad and it hurt  
24 Donnie bad. He lost his mother to cancer. He lost his father to  
25 tuberculosis, died in a Columbia sanitarium when he was 14 years

1 old, had to stop to go to work sharecropping with his momma and  
2 his other brother Ronnie. Had to quit school in the eighth grade  
3 to support the family. His brother Ronnie died in an accident  
4 when he was 21 years old; they were very close. Just all kinds  
5 of people that are important to Donnie died in the month of  
6 August so when all this happened -- and you have to think, when  
7 August rolls around every year you got to think I'm just going to  
8 stay in bed this whole month because of what's happened to me in  
9 the past. He was depressed, he was grieved, he was angry, maybe  
10 not so much at anybody particular but angry probably with  
11 himself. He goes, leaves the funeral home. He's been drinking.  
12 People drink when they're depressed. That's a bad thing to do  
13 because alcohol is a depressant, just makes it worse, it makes it  
14 worse. Makes you feel better for a little while but after a  
15 while you're worse than you were because you're not able to cope  
16 and deal with things. He goes to the house where they have the  
17 food laid out so people can visit and that sort of thing and the  
18 house that he more or less, you know, remodeled and helped work  
19 on and raised kids there and lived there with his wife and his  
20 children, house that he thought belonged to him. Felt  
21 emotionally attached to the house. And then Stewart, who he  
22 loved, his son-in-law, comments to him he's not going to allow  
23 anybody to drink in the house. And I understand that. I mean,  
24 it's a wake, you know, it's probably appropriate to say that.  
25 But Donnie took that the wrong way and got angry and made

1 threats. And he walked out and he got a gun and came back, and  
2 you know the rest.

3           You know, I think Donnie, what he was planning on doing  
4 when he was going to go in there -- and I knew this before he  
5 even testified. He shot. The door was locked, he got mad so he  
6 kicked it open. The next door was locked so he shot it. There  
7 was nobody standing there he could really see. He felt it was  
8 safe to do that. It was a stupid thing to do because, you know,  
9 there's people in the house, you know. People in the house, you  
10 don't know where they are. You don't know where children are;  
11 they might be under the door, you don't know. But he didn't see  
12 anybody so he felt that it was safe to shoot the lock off and he  
13 aimed down at the lock so it wouldn't hit anybody and shot it  
14 open. Went in, had a confrontation with Stewart, put the gun  
15 down. He said Stewart grabbed the gun and it went off. And I  
16 think what he was going to do I think he was going to go in there  
17 and raise Cain with Stewart. That's what I think he was going to  
18 do. I don't think he had any intent on shooting that man. I  
19 don't think he did and he went in there and did it. And that's  
20 for you to decide. You can decide whether that constitutes  
21 voluntary manslaughter, heat of passion upon sufficient legal  
22 provocation, or you can decide whether that's murder. That's up  
23 to you.

24           Now there's one other thing the judge is going to  
25 charge and it's what's called a defense of accident. And what

1 that means is that if somebody accidentally kills someone else  
2 then they're not guilty of murder and they're not guilty of  
3 voluntary manslaughter. I kind of think that that's a  
4 possibility, but I really feel probably it's more of a  
5 manslaughter case than a murder case and probably more of a  
6 voluntary manslaughter case than an accident case. But I think  
7 it's more of an accident case than a murder case. It's a weird  
8 kind of thing that you have to think about back there. You have  
9 to juggle all these facts in your mind and try to pidgeon hole  
10 these facts into the law that the judge will give you and find  
11 out what fits the best and then you'll know. But y'all have to  
12 agree. You all have to agree and that's going to make it hard  
13 'cause you might all go back there, all 12 of you might have a  
14 different idea of what is appropriate. But you all have to come  
15 to the same conclusion about what's appropriate or you can't  
16 deliver a verdict; it's got to be unanimous.

17 Now I want to talk about the witnesses for just a  
18 second. We know what Donnie said. You know what he said  
19 happened. But you know, there aren't really any witnesses to  
20 this that saw what happened that I would consider believable  
21 'cause you have to consider what's believable and what's  
22 credible. You know, Linda McKnight testified, and that was his  
23 daughter, she was in the back room when she heard the shots or  
24 she had been in the bathroom at one point. She was in the  
25 bathroom and I think she said she went into this bedroom and she

1 was in the bathroom both shots were fired so she didn't see  
2 anything as I recall. Lilton Floyd said that he was about right  
3 here and he couldn't see anything. He says it occurred right  
4 here and he was there so he couldn't see anything. Sharon Floyd,  
5 I think she said she was in one of the back bedrooms; she didn't  
6 see anything. Ian Kinney said that he was standing right here,  
7 the young boy, but he was very inconsistent about his statement  
8 to you and his statement to Barry Prosser, which is a few days  
9 after the incident occurred. He said he closed his eyes but then  
10 he said he opened his eyes, but then he said he closed his eyes.  
11 And then Mary Lee testified, well, he couldn't have been there at  
12 all 'cause he was out of there in the yard when this second shot  
13 went off so there's no way he could see anything. And then  
14 Jeanette Floyd, bless her heart, she said she was laying across  
15 Stewart when Stewart was shot so her back -- either her head was  
16 down or her back was to Donnie, one or two, but she didn't see  
17 the shot. And how in the world did she not get hit if she was  
18 laying across Stewart? That's the thing that concerns me.  
19 Because it's really not forensically or scientifically possible  
20 for based upon what forensic expert said. You can go back and  
21 visit that testimony if you want, but in order for that to happen  
22 and her not to get hit that gun would have had to almost been  
23 right up on Stewart's body. And it couldn't have been on  
24 Stewart's body because there were no burn marks on the body.  
25 There were no soot marks; there was no stippling. There was no

1 evidence of the shirt. I never even saw the shirt. Where's the  
2 shirt? Shirt would have told us something; it wasn't there. So  
3 in order for her not to be hit and laying across him it would  
4 have had to have been right up to his body. There would have  
5 been even a mark where the gun imprint would be on his and there  
6 wasn't any. But if it was back further, wouldn't the pellets on  
7 a sawed-off shotgun, don't they spread out because you got a  
8 shorter barrel so when it comes out of the barrel it's spreading  
9 out faster and she would have been hit with some debris. I think  
10 so. And but she testified that the only injury she received was  
11 from the first shot and that was at the door and she only injured  
12 her elbow and the little tip of the finger. I'm so glad. That  
13 shows -- I mean, she wasn't seriously hurt. She didn't even go  
14 take the ambulance to the hospital; somebody took her there. But  
15 if she'd have been laying across Stewart she'd had a hole in her  
16 too; I am convinced.

17                   Nikki Kinney, bring him up in here on reply. You know,  
18 I don't know a thing about his testimony. I think it's all  
19 self-serving to me. You know, he's related to Stewart.  
20 Obviously he's Stewart's nephew as are all the people that  
21 testified with the exception I think of Linda McKnight are  
22 related to the Floyds. This is a Floyd clan coming in here and  
23 testifying is what it is. It's all Floyds coming in here. And  
24 you know, Nikki got, you know, it's up to you to believe what he  
25 says. I find it kind of hard to believe that he would be over

1 here when he hears the first shot, comes around the house, didn't  
2 go in the back door 'cause that's where he knew the shot came  
3 from. Could have gone to the back door, got there a whole lot  
4 faster. Goes around the front, has time to look through this  
5 window here and see his grandmama and also has time to talk with  
6 the Lees and has time to kick in this door, try to kick it in  
7 twice. He said he kicked it a couple of times, kicked it off the  
8 hinges he said. Well, it wasn't off the hinges. And getting  
9 there enough time to see the second shot. I just don't think he  
10 had enough time to get out there, to get back in the house to see  
11 that house. And you have to wonder whether to believe him. You  
12 know, he's got -- been in trouble with the law an awful lot. I  
13 think that should affect his veracity and his truthfulness and  
14 that sort of thing. He's -- 17 counts of breaking and entering  
15 into motor vehicles; two counts of grand larceny, that's  
16 stealing; two counts of burglary, going into somebody's house.  
17 See, I'm not trying to beat him up. I'm just trying to tell you  
18 that you have to look at whether these witnesses are believable  
19 or not. And that's hard to believe somebody tell you something  
20 if they have a real long record like that. You just have to take  
21 it with a grain of salt is all I'm saying. The other thing, you  
22 know, Lilton Floyd said there was this big fight and he took the  
23 gun and he knocked out Donnie's teeth in the house. Set of teeth  
24 laying out there in the front yard. And that kind of was curious  
25 to me. What are his teeth doing out in the front yard? He says

1 he knocked them out. I mean, was he trying to, you know, I mean,  
2 trying to pump himself up a little bit? I don't know. But he  
3 knocked his teeth out. I knocked his teeth out. I welled away  
4 at him, knocked his teeth out. And you know, I have trouble  
5 believing that 70 something year old man had open heart surgery a  
6 few months ago going to be able to wrestle away a gun from  
7 somebody and knock their teeth out. I just have some problems  
8 with that, believing that. And you know, Mr. Clements is going  
9 to come in here and say, well, you know, there's no way that --  
10 there's no way that Donnie is right and that that shooting  
11 occurred there because all the blood was right there, you know.  
12 And I wondered about that too and about, you know, the steel shot  
13 casing being right here and the bird shot casing being right  
14 there or wherever they were depending on which order was fired.  
15 This was fired first. Whether it came out over here or over  
16 there and whether it's on the door. You know, this whole scene  
17 is completely contaminated. You know, after all this happened,  
18 golly, you know, talk about the roucous that went on in there.  
19 People fighting and people throwing stuff and screaming and  
20 chairs being broken over people's heads, things being kicked  
21 around, blood being stepped in and stomped all over the place.  
22 And then EMS comes over and they do their thing and then the fire  
23 department comes over and does their thing. And lord knows how  
24 many people had their hands on evidence, things that were kicked  
25 around and moved around and wiped up or cleaned up before the

1 police finally got there and put the tape up. So you know, I  
2 don't take, you know, I understand the scene and everything and  
3 where stuff was found but I wouldn't necessarily conclude without  
4 question that everything is in the spot that it was in right  
5 after this happened. I mean, you can't believe that. Things  
6 have got to have been moved around either intentionally or by  
7 accident.

8           You know, Donnie made the statement to the police too  
9 and Mr. Clements questioned him about that. I'm just about  
10 finished, about five more minutes. You know, saying he didn't  
11 remember much of what went on that night, and I mean, I don't --  
12 I don't disagree. I mean, this happened, what, 10, 11:00 at  
13 night, something like that. And they took a statement from him  
14 about 3:00 in the afternoon the next day. What are we talking  
15 about, you know, it's not very many hours. And he's just been in  
16 the hospital and probably has been under the influence of some  
17 drugs, you know, painkillers and things I would think and just  
18 got the tar beat out of him. You know what, he probably deserved  
19 it. Probably deserved getting the tar beat out of him for what  
20 he did. And I'm not showing you these to say, you know, you  
21 ought to feel sorry for him. He probably should have gotten  
22 beaten up. He did. And he got beat up. But you know, it's hard  
23 to think that anybody would be totally all there together to give  
24 a statement to the police about what happened the night before  
25 after you been drinking and after you had the heck beat out of

1 you and after you've been in the hospital and, not a whole lot so  
2 I don't put too much into that.

3 All I want to say, ladies and gentlemen, is I don't --  
4 I don't believe this is assault and battery with intent to kill.  
5 He didn't mean to. He wasn't trying to kill Mrs. Floyd. I think  
6 we all know that. He was trying to get into the house and she  
7 got hit by the debris, by the shots that scattered in the house.  
8 That's what happened. So I think he's guilty of assault and  
9 battery of a high and aggravated nature. That's what I think  
10 he's guilty of, and I would ask you to consider that. I don't  
11 think he's guilty of murder. I don't think he intended on  
12 killing Stewart. I think it's just a combination of alcohol and  
13 grief that kind of just, and anger too, kind of bubbled over and  
14 did something stupid. He's going to regret it the rest of his  
15 life, rest of his life. But he loved Stewart, he loved Stewart  
16 and Stewart loved him. Nobody, nobody who testified today,  
17 yesterday, or the day before said anything that Stewart and  
18 Donnie did not like each other. Did anybody do that? I did not  
19 hear that from anybody. Donnie helped him as a carpenter.  
20 Stewart helped him as a mechanic. He loved Stewart even though  
21 that he and his wife were separated -- he and his daughter were  
22 separated. He loved Stewart; Stewart loved him. I don't think  
23 there's malice there. He didn't mean to kill him; he was upset.  
24 He's probably guilty of manslaughter. Discharging a firearm and  
25 weapons charge, that's up to you to decide. But he's got --

1 Donnie's got his own ghosts to deal with now. You know, he's 63  
2 years old. He has to accept the consequences of what he did, and  
3 he has accepted that. It's up to you now to pass judgment on  
4 him, to take the facts as you heard them and decide. Twelve of  
5 his peers from Florence County who knew nothing about this case,  
6 to know everything about it now, know more about it now than  
7 anybody else in the whole county. Please talk about it with all  
8 your friends later on tonight when you get out of here hopefully,  
9 and tell them that we passed judgment on a man today and we felt  
10 that this was the appropriate -- this was -- these were the  
11 appropriate charges to do it on. Thank you very much.

12 THE COURT: Thank you, Mr. Suggs.

13 MR. CLEMENTS: Mr. Suggs, Your Honor.

14 THE COURT: Yes, sir.

15 MR. CLEMENTS: Ladies and gentlemen of the jury, when I  
16 went to law school, took the trial advocacy course, one of my  
17 professors said, Ed, if you want to be a trial lawyer, when you  
18 go to trial if you have the facts you argue the facts. If you  
19 got the law on your side you argue the law. I said, what if you  
20 ain't got neither one of them. He said then you just better blow  
21 smoke. Let me tell you, ladies and gentlemen of the jury, I  
22 don't know if I even need to stand up here and do this. One of  
23 the things that I looked forward to when I was in law school was  
24 trying a case and doing closing argument, getting up and just  
25 talking about the facts and being real impassioned, explaining

1 what happened and paint that picture and say how it all went  
2 down. I don't need -- I don't believe I need to do that with  
3 y'all. Y'all know -- y'all have heard all the evidence. And  
4 Mr. Suggs don't want you to consider what the evidence is, says  
5 all that was changed around, moved around, and witnesses aren't  
6 credible. Well, according to Mr. McKnight he came in here, fired  
7 that gun in that door and, poof, it went from 10 to 15 people in  
8 that house to two, just like that, him and his victim Stewart.  
9 Everybody else was gone. And he talked about how he shot him and  
10 said oh, mercy, and walked back out to his truck and put his gun  
11 back in the truck and sat there with Joe. And a couple of people  
12 came up; he couldn't identify them. He thought they were law  
13 enforcement so he was going to give them the gun, and they yanked  
14 him out and beat him. And then all this conspiracy came about  
15 evidently because the gun ended back in the back bedroom covered  
16 up by a pillow by Ms. Sharon Floyd and then they gave it to the  
17 deputy and they ended up dragging him to the front yard. Then  
18 they went in there and busted up chairs and busted up china  
19 cabinet and moved everything around so it looked like there was a  
20 big fight instead of in the house instead of at his truck. Now  
21 y'all know that doesn't make any sense whatsoever. Doesn't make  
22 any. It's just unbelievable. But he says he went there and he  
23 didn't intend to do anything, you know. He was just going to go  
24 over there and tell Stewart you're not going to tell me what to  
25 do. With a sawed-off shotgun in his hand and Stewart grabbed it

1 and pulled it to himself and it just accidentally went off.  
2 Well, ladies and gentlemen, if he did that and he pulled that gun  
3 to him and it accidentally went off, then why did the pathologist  
4 say that shot was in the side moving from back to the front.  
5 Mr. Suggs wants to make a big issue about how Jeanette Floyd  
6 wasn't injured from that blast if she was draped over Stewart.  
7 Well, you heard the testimony from the pathologist and from  
8 Mr. Whitler. That shot came out, all those things were  
9 compacted; and the wadding, he was so close to Stewart that the  
10 wadding went into him and was retrieved from his heart. There's  
11 the wadding right there. State's Exhibit Number 9. And all  
12 these pellets, all the bird shot all went in right there  
13 together, boom. If Mr. Suggs is right and Mrs. Floyd should have  
14 been injured by that shot then those shots would have spread out  
15 and he'd have had all kind of wounds instead of one big hole  
16 where he was blown open, right? So Mrs. Floyd was trying to  
17 protect her son as best as she could. And Donnie got there close  
18 enough with this gun, got close enough to blow a hole in him.

19 Let's look at the other evidence and see if it makes  
20 sense. Your Honor, since this lock has been put on may I have  
21 permission to remove this exhibit from the box.

22 THE COURT: Yes, sir. Don't point it at anybody.

23 MR. CLEMENTS: Sir?

24 THE COURT: Just don't point it at anybody.

25 MR. CLEMENTS: I won't. Well, anyway, you see this

1 weapon. Mr. McKnight says it was for snakes. Certainly isn't  
2 for hunting. You can look at that and see. And if he was  
3 holding on to it he was holding on to it here at the grip and so  
4 somebody else could have grabbed it, point it up, whether they  
5 were old or not. Well, Mr. Floyd looked like he still had had  
6 plenty of fight left in him. Mr. Suggs called him a 70 something  
7 year old man. I think he said he was 60 something, maybe a  
8 couple of years, two or three years older than Mr. McKnight, a  
9 lot bigger than Mr. McKnight. Even if he had had surgery eight  
10 months before, he grabbed that barrel, held it up in the air and  
11 they wrestled for it. Mr. McKnight came in -- and I told you to  
12 bring your common sense, remember, in opening statement, what  
13 makes sense, common sense. He came in, kicked this door in, shot  
14 through this door. And you know it had to be steel shot because  
15 that's what was retrieved in the kitchen. Steel shot came from  
16 State's Exhibit 3 Mr. Whitler said. And that shell Corporal  
17 Clendenin said was found over here. I don't know if he came  
18 through here, came in through here and ejected it and came around  
19 this way or not but the shoot -- but that came from here after  
20 shooting through that door. And then State's Exhibit 4, which  
21 Agent Whitler said was consistent with being shot by State's  
22 Exhibit 2, but he couldn't tell that for sure. He could tell  
23 State's Exhibit 3 absolutely was shot by State's Exhibit 2. This  
24 was found right over close to where Mr. Floyd's body fell out of  
25 his wheelchair right there. You see the pictures. Mr. McKnight

1 says that Stewart way over here when he came through the door.  
2 You know, if that is true he's trying to get away. But if that  
3 happened, where is the blood there? It would be massive amounts  
4 of blood because they said, if you remember the testimony, blood  
5 was pouring out of him. And as soon as he'd had been shot with  
6 all that shot going in his heart and through his lungs and they  
7 said lung tissue was going out, there'd have been copious amount  
8 of blood there. That's a new word I learned. There'd have been  
9 a whole lot of blood right there but it was right there. That's  
10 where he was shot, just where the witnesses said.

11 The judge is going to charge you on the law. I'm  
12 going to wind this up real quick, ladies and gentlemen. This  
13 might be the shortest closing argument I've ever done. But the  
14 judge is going to charge you on the law of accident so he's going  
15 to say if the defendant was acting lawfully and that reasonable  
16 care was used by the defendant in the handling of the weapon then  
17 he -- it will be an accident. Was the defendant acting lawfully  
18 storming in on a house full of people with a sawed-off shotgun  
19 angry and drunk? No, he wasn't acting lawfully. Blasted his way  
20 in. Even if he thought it was his house that didn't give him a  
21 right to do that. For example, if a person is lawfully armed in  
22 self-defense and the gun accidentally discharges then the defense  
23 of accident would apply. Accident does not apply here, ladies  
24 and gentlemen. This was no accident. It was not an accident if  
25 it was caused by the negligence or carelessness on the part of

1 the defendant and the handling of the weapon or by unlawful  
2 activity by the defendant. Accident is out the window, and he  
3 wasn't acting lawfully at the very beginning when he discharged  
4 the firearm into the house. And Mr. Suggs admitted to that right  
5 out.

6 Now I want to talk you briefly about the most  
7 important thing in this case as far as the charges first, and  
8 that's murder. Murder is when you kill somebody with malice.  
9 The judge is going to tell you what malice is. Malice is when  
10 you have ill will, hatred for another person, and it can be  
11 expressed or it can be inferred. Expressed malice is shown when  
12 a person speaks words which express hatred or ill will for  
13 another or when the person prepared beforehand to do the act  
14 which was later accomplished. Let me ask you, you think it shows  
15 malice if you say I'm going to get my gun and I'm going to blow  
16 your MF'ing GD brains out. I submit to you that is expressed  
17 malice. And then you prepare beforehand to do the act which is  
18 later accomplished. You go to your car, you get your sawed-off  
19 shotgun, you come back, you kick the door in where everybody was  
20 scared, the ones that knew you enough like your daughter to lock  
21 the door and start calling 9-1-1. But you kick your way in,  
22 blast your way in and go to your victim you intended to get  
23 first. The first person he was going to get was Stewart. And  
24 then said I'm going to kill all you SOB's in this house before  
25 they took the gun from him. That is expressed malice, ladies and

1 gentlemen, absolutely.

2 Malice can also be inferred from conduct showing a  
3 total disregard for human life. Inferred malice may also arise  
4 when the deed is done with a deadly weapon. Anybody think this  
5 is a deadly weapon? What you think? That's malice, ladies and  
6 gentlemen, expressed and implied. If you got malice, guess what,  
7 you don't have manslaughter; you got murder. If you got malice,  
8 guess what, you don't have assault and battery of a high and  
9 aggravated nature; you got assault and battery with intent to  
10 kill. And Mr. Suggs told you the truth. Assault and battery  
11 with intent to kill, that is not a specific intent; that's a  
12 general intent crime. He didn't specifically have to intend to  
13 kill Mrs. Jeanette Floyd. He knew because it was a half glass  
14 door that she was standing there holding that doorknob saying.  
15 Donnie, you can't come here with that gun. The hell I'm not, and  
16 he shoots right there knowing it's going to go through that door,  
17 knowing it's going to hit her if she doesn't move out the way and  
18 anybody else that's behind her. So that's definitely the general  
19 intent when he fires that weapon through that door. So you got  
20 malice both places.

21 Now let me talk to you a little more about voluntary  
22 manslaughter. The judge is going to tell you voluntary  
23 manslaughter is different than murder. Murder is killing  
24 somebody with malice aforethought. And I think he had malice  
25 aforethought because he made a threat, went all the way out to

1 his car and got his weapon and came back. Had plenty of time to  
2 cool off, and he was just in the heat of passion. He could have  
3 cooled off and said, wait a minute, you know, I'm just mad, I'm  
4 upset, I'm drunk, I don't have to do this. He didn't cool off.  
5 He's gonna tell you that voluntary manslaughter -- Judge Russo  
6 is -- is the killing of another human being in the heat of  
7 passion with legal provocation. Sudden heat of passion must be  
8 the type that would make an ordinary person unable to coolly  
9 reflect on his actions and would produce an uncontrollable  
10 impulse to do violence. And you know, you got to look at all  
11 these things in law what a reasonable person would do. Now  
12 Mr. Suggs and myself, we presented y'all as jurors because we  
13 believe y'all to be reasonable people. Now you as reasonable  
14 people if somebody told you, hey, come on, you know, we're here  
15 to honor Donna, we're going to put her in the ground tomorrow, we  
16 don't feel like it, partying and drinking, go somewhere else to  
17 do that. You know, I love you, but don't do that. You think  
18 that is going to produce an uncontrollable impulse to do  
19 violence. As a reasonable person do you believe that? The judge  
20 is also going to tell you that words alone, however vulgar or  
21 insulting, and I submit that the words Stewart said weren't  
22 vulgar and were not insulting. But nevertheless, if they were,  
23 mere words are not enough to be legal provocation where death is  
24 caused by the use of a deadly weapon. Words have to be  
25 accompanied by some overt threatening act which could have

1 produced the heat of passion. Stewart's in a wheelchair. What  
2 kind of threat could he be to Donnie McKnight, particularly when  
3 Donnie is armed with a sawed-off shotgun. There's no legal  
4 provocation. There's nothing sufficient to have the heat of  
5 passion. This is not voluntary manslaughter. This is just flat  
6 out murder, ladies and gentlemen. You know, feeling sorry or  
7 feeling bad for someone has absolutely nothing to do with what  
8 the facts are. And I'm going tell you right now I feel bad for  
9 Donnie McKnight because he lost his daughter and I feel bad that  
10 he's had tragedies and had a hard life. But you know what,  
11 ladies and gentlemen, who hasn't had some tragedies in their  
12 life? Who hadn't had some tough times to deal with? Does that  
13 give you the right if somebody says something you don't like to  
14 go get your sawed-off shotgun and come back and blow their MF'ing  
15 GD brains out? No, it does not. No, it does not. He said he  
16 needed an uplifting hand. And Donnie -- and Donnie didn't get an  
17 uplifting hand from Stewart. You know what, he was grieving so  
18 much about Donna and caring so much about somebody besides  
19 himself you think he thought a second about his grandson Jay who  
20 just lost his momma and he said I felt responsible for Donna's  
21 death because I had her help me clean out my freezer and she had  
22 a heart attack and she died and I feel responsible for her death,  
23 I feel responsible for taking my grandson's mother away. Well,  
24 how about taking his grandson's father away within days, within a  
25 couple of days by shooting him at point blank range with a

1 sawed-off shotgun. I asked him if he felt responsible for  
2 Stewart's death and he said he did. He said he can't take it  
3 back; he wished he could change it. I believe Mr. McKnight does  
4 wish he could change it, but ladies and gentlemen, he can't. And  
5 he is responsible for Stewart's death and he is responsible for  
6 shooting Mr. Jeanette Floyd. Thank goodness she moved enough out  
7 the way that it only got her in the hand and in the arm. Weigh  
8 the facts the way you take them, not the way I say they are, not  
9 the way Mr. Suggs says they are and take the law the way the  
10 judge says it is and apply that law to the facts and reach a  
11 verdict that tells the truth and come back and say, Mr. Donnie  
12 McKnight, this is a senseless and tragic thing and we hold you  
13 accountable. We find you guilty beyond a reasonable doubt of the  
14 murder of Wendell Stewart Floyd and we find you guilty beyond a  
15 reasonable doubt for assault and battery with intent to kill of  
16 Jeanette Floyd. And those are two violent crimes. And so find  
17 him guilty also beyond a reasonable doubt of possession of a  
18 weapon during the commission of a violent crime and for  
19 discharging a firearm into a dwelling. The facts are the facts  
20 are the facts; they're inescapable. You know what makes sense;  
21 you know what's credible. There's no other explanation other  
22 than Mr. McKnight just got ticked off and that guns and alcohol  
23 don't mix and I think the law of voluntary intoxication is not a  
24 defense. And he had enough time to cool off, but he wasn't even  
25 legally provoked in the first place. He walked to his car pretty

1 quick according to some witnesses, got his gun, came back, and  
2 had to work to get himself into that house and commit this  
3 heinous, senseless crime. And did he get beat afterwards? Yes,  
4 he did, but that's -- what do you expect. Kill a man in a  
5 wheelchair with a shotgun.

6 Ladies and gentlemen of the jury, I leave  
7 Mr. McKnight and the honor of our law in your good hands. It's  
8 not my job to seek convictions. My job is to seek justice. I  
9 believe justice requires nothing but a finding of guilt, murder,  
10 and the other charges. It's in your good hands. Thank you.

11 THE COURT: Thank you, Solicitor. Ladies and  
12 gentlemen, I'm going to come around where you are. I come around  
13 here, ladies and gentlemen, to give you the charge on the law for  
14 a couple of reasons. The first being that when we started this  
15 trial, as I told you before, you are the judges of the facts of  
16 this case. I'm not to have anything to do with that. That is  
17 solely your decision to make on what the true facts are. And so,  
18 in this area that I sometimes refer to as the arena, where the  
19 lawyers work, where they do their job of presenting you the  
20 evidence of the case it's appropriate for me to go out of the  
21 way, for me to be just not here. But we've reached the portion  
22 of this trial that we're in this together, you as the judges of  
23 the facts and me as the judge of the law, so it's appropriate for  
24 me to come down and be with you to do that. The other reason is  
25 just not nearly as legal. It's just simply a lot more friendly

1 to talk to people face to face rather than from up there. Before  
2 I became a circuit court judge the gentleman who I succeeded in  
3 this job, Judge Jim Brogdon, he was the first judge I saw that  
4 would come down and give the charge to the jury face-to-face as  
5 I've always observed the judge up there doing it when I was  
6 practicing law and I thought when I saw Judge Brogdon do that I  
7 thought, you know, dog gone, that's just friendly, that's the way  
8 you should talk to people, not up there. And so when I had the  
9 opportunity and was blessed with the opportunity to do this job I  
10 thought that's, you know, you copy good people and he's a good  
11 man and so I copy this from him, come down here and talk to you.

12 I'm now going to charge you on the law which you are to  
13 apply to the facts as you find them to be. Now I'm going to send  
14 back into the jury room when you go back to deliberate, I'm going  
15 to send this notebook back so you're going to have exactly what  
16 I'm giving you right now should you need that. But if you would,  
17 please listen carefully as I give you the law. Madam forelady,  
18 and ladies and gentlemen of the jury, you have heard the evidence  
19 and the arguments from both parties in this case. I will now  
20 explain to you the law which applies to this action. The  
21 indictment charges the defendant Herman Donald McKnight with the  
22 charges of murder, assault and battery with intent to kill,  
23 discharging a firearm at or into a dwelling, building, or  
24 structure, and possession of a weapon during the commission of a  
25 violent crime. I remind you that the fact that a defendant was

1 arrested, charged, and indicted in this case is not evidence in  
2 this case and cannot be considered by you as evidence of guilt in  
3 this case. Nor does it create any presumption or inference of  
4 guilt. The indictment is simply the formal written instrument  
5 which contains the charges made against the defendant. It is the  
6 formal document by which this case is brought into this court.  
7 The defendant has pled not guilty to this indictment and these  
8 charges and that plea puts the burden on the State to prove the  
9 defendant guilty. The person charged with committing a criminal  
10 offense in South Carolina is never required to prove him or  
11 herself innocent. I charge you that it is an important rule of  
12 law that the defendant in a criminal trial, no matter what the  
13 seriousness of the charge may be, will always be presumed to be  
14 innocent of the crime for which the indictment was issued unless  
15 that guilt has been proven by evidence satisfying you of that  
16 guilt beyond a reasonable doubt. This presumption of innocence  
17 does not end when you begin your deliberations, but it  
18 accompanies the defendant throughout the trial until you reach a  
19 verdict of guilt based on evidence satisfying you of that guilt  
20 beyond a reasonable doubt. The presumption of innocence is like  
21 a robe of righteousness that is placed about the shoulders of the  
22 defendant which remains with the defendant until it has been  
23 stripped from the defendant by evidence satisfying you of the  
24 defendant's guilt beyond a reasonable doubt. The presumption of  
25 innocence is not a mere legal theory; it is not just a legal

1 phrase. It is a substantial right to which every defendant is  
2 entitled unless you, the jury, are satisfied from the evidence of  
3 the defendant's guilt beyond a reasonable doubt.

4 Now what is a reasonable doubt in the law? A  
5 reasonable doubt is the kind of doubt that would cause a  
6 reasonable person to hesitate to act. The State has the burden  
7 of proving the defendant guilty beyond a reasonable doubt. Some  
8 of you may have served as jurors in civil cases where you were  
9 told that it is only necessary to prove that a fact is more  
10 likely true than not true such as by the greater weight or  
11 preponderance of the evidence. In criminal cases the State's  
12 proof must be more powerful than that. It must be beyond a  
13 reasonable doubt. Proof beyond a reasonable doubt is proof that  
14 leaves you firmly convinced of the defendant's guilt. There are  
15 very few things in this world that we know with absolute  
16 certainty. And in criminal cases the law does not require proof  
17 that overcomes every possible doubt. If based on your  
18 consideration of the evidence you are firmly convinced that the  
19 defendant is guilty of the crimes charged you must find the  
20 defendant guilty. On the other hand, if you think there's a real  
21 possibility that the defendant is not guilty then you must give  
22 the defendant the benefit of that doubt and find him not guilty.  
23 I remind you that during this trial you and I have had duties  
24 that we're required to perform. As the trial judge it is my  
25 responsibility to preside over the trial of this case and to also

1 have the duty to rule on the admissibility of evidence which has  
2 been offered during this trial. You are to consider only the  
3 competent evidence that is before you. If there was any  
4 testimony ordered stricken from the record in this case during  
5 this trial you must disregard that testimony. You are to  
6 consider only the testimony which has been presented from the  
7 witness stand, any exhibits which may have been made a part of  
8 the record in this case and any stipulations of counsel. I have  
9 the additional duty to charge you the law applicable to this  
10 case. As the presiding judge I am the sole judge of the law in  
11 this case and it is your duty as jurors to accept and apply the  
12 law as I now state it to you. If you already had any ideas to  
13 what the law is or what the law ought to be and it does not agree  
14 with what I now tell you the law is you must abandon your idea  
15 because you are sworn to accept the law and apply the law as  
16 exactly as I state it to you. In every case tried in this court  
17 before a jury the jury becomes the sole and the exclusive judge  
18 of the facts of a case. A trial judge cannot intimate, state,  
19 comment on, or make any statement to a trial jury about the facts  
20 of a case since you, the jury, are the sole judges of the facts  
21 in the case. You are not to infer from what I have said during  
22 the progress of this trial in ruling upon the admissibility of  
23 evidence or otherwise or anything that I say now during the  
24 course of this instruction to you that I have any opinion about  
25 the facts of this case. The law does not allow me to have an

1 opinion about the facts. This is a matter solely for you, the  
2 jury, to determine. As jurors it is your duty to determine the  
3 effect, value, weight, and truth of the evidence that is  
4 presented to you during this trial.

5 Now there's two types of evidence which are generally  
6 presented during the course of a trial. There's direct evidence  
7 and there's circumstantial evidence. Direct evidence is the  
8 testimony of a person who claims to have actual knowledge of a  
9 fact such as an eyewitness. It is evidence which immediately  
10 establishes the main fact to be proven. Circumstantial evidence  
11 is proof of a chain of facts and circumstances that indicates the  
12 existence of a fact. It is evidence which immediately  
13 establishes collateral facts from which the main fact can be  
14 inferred. Circumstantial evidence is based on inference and not  
15 only personal knowledge or observation. Now ladies and  
16 gentlemen, the law makes absolutely no distinction between the  
17 weight or the value to be given to either direct or  
18 circumstantial evidence. Nor is there a greater degree of -- nor  
19 is there a greater degree of certainty required of circumstantial  
20 evidence than that of direct evidence. You should weigh all the  
21 evidence in this case and after weighing all of the evidence if  
22 you're not convinced of the guilt of the defendant beyond a  
23 reasonable doubt you must find the defendant not guilty. If on  
24 the other hand, after weighing all of the evidence you are  
25 convinced of the guilt of the defendant beyond a reasonable doubt

1 you must then find the defendant guilty. Necessarily, you must  
2 determine the credibility of the witnesses who have testified in  
3 this case. Credibility simply means believability. It becomes  
4 your duty as jurors to analyze and to evaluate the evidence and  
5 to determine which evidence convinces you of its truth. In  
6 evaluating eyewitness testimony you should remember that the  
7 State must prove the identity of the defendant as the person who  
8 committed the crime beyond a reasonable doubt. In determining  
9 the believability of the witnesses who have testified in the case  
10 you may believe one witness over several or several witnesses  
11 over one. You may believe a part of a witness' testimony and  
12 reject the remaining part of that testimony. You may believe the  
13 testimony of a witness in its entirety or reject the testimony of  
14 a witness in its entirety. You may consider whether any witness  
15 has exhibited to you any interest, bias, prejudice, or other  
16 motive in this case. You may also consider the appearance and  
17 the manner of a witness while on the witness stand.

18 Now the testimony of a police officer is not entitled  
19 to more weight than that of any other witness. You are the sole  
20 judges of the credibility of a witness, and you are not to give  
21 more credence to a police officer's testimony solely because he  
22 or she is a police officer. Rather, you should judge an  
23 officer's testimony by the same standards that you apply to other  
24 witnesses. The rules of evidence ordinarily do not permit  
25 witnesses to testify to their opinions or conclusions. An

1 exception to this rule exists for witnesses that we call expert  
2 witnesses. A person who by education and experience has become  
3 an expert in some art, science, profession, or calling may state  
4 an opinion as to the relevant and material matter in which the  
5 witness claims to be an expert and may also state the reasons for  
6 that opinion. You should consider any expert opinion received in  
7 evidence in this case and like any other evidence give it the  
8 weight you think it deserves. If you decide that the opinion of  
9 an expert witness is not based on sufficient education and  
10 experience or if you conclude that the reasons given in support  
11 of the opinion are not sound, or that the opinion is outweighed  
12 by the evidence, by other evidence, you may disregard that  
13 opinion in its entirety. An expert witness's testimony is to be  
14 given no greater weight than any other witness simply because  
15 that witness is an expert. Further, you're not required to  
16 accept the expert's opinion even though it's not contradicted.  
17 There is one indictment in this case, but there are four charges.  
18 Now each charge is a separate crime. You must consider each  
19 charge separately. That is, you must decide separately what the  
20 evidence in this case shows about each crime that is being  
21 charged. Your decision on one charge should not affect your  
22 decision on another charge. You take each charge on its own  
23 merit.

24 Now the defendant is charged with the crime of murder.  
25 The State must prove beyond a reasonable doubt that the defendant

1 killed another person with malice aforethought. Malice is  
2 hatred, ill will, or hostility toward another person. It is the  
3 intentional doing of a wrongful act without just cause or excuse  
4 and with the intent to inflict an injury or under circumstances  
5 that the law will infer an evil intent. Malice aforethought does  
6 not require that malice exists for any particular time before the  
7 act is committed, but malice must exist in the mind of the  
8 defendant just before and at the time that the act is committed.  
9 Therefore, there must be a combination of the previous evil  
10 intent and the act. Malice aforethought may be expressed or  
11 inferred. These terms expressed and inferred do not mean  
12 different kinds of malice but merely the manner in which the  
13 malice may be shown to exist. That is, either by direct evidence  
14 or by inference from the facts and circumstances which are  
15 proved. Expressed malice is shown when a person speaks words  
16 which express hatred or ill will for another or when the person  
17 prepared beforehand to do the act which was later accomplished.  
18 For example, lying in wait for a person or any other acts of  
19 preparation going to show the deed -- that the deed was within  
20 the defendant's mind would be expressed malice. Malice may be  
21 inferred from conduct showing a total disregard for human life.  
22 Inferred malice may also arise when the deed is done with a  
23 deadly weapon. A deadly weapon is any article, instrument, or  
24 substance which is likely to cause death or great bodily harm.  
25 Whether an instrument has been used as a deadly weapon depends on

1 the facts and circumstances of each case. The following are  
2 examples of instruments which may be deadly weapons: A pistol, a  
3 shotgun, a rifle, a dirk, a dagger, a knife, a slingshot, metal  
4 knuckles, a razor, gasoline, firework or Molotov cocktail, and  
5 lighter fluid. A gun may be a deadly weapon even if it is not  
6 operating.

7           Now if you find that the State has failed to prove  
8 beyond a reasonable doubt that the Defendant committed murder you  
9 may consider whether the State has proved beyond a reasonable  
10 doubt that the defendant committed voluntary manslaughter. To  
11 prove voluntary manslaughter the State must prove beyond a  
12 reasonable doubt that the defendant took the life of another in  
13 the sudden heat of passion based on sufficient legal provocation.  
14 Both heat of passion and sufficient legal provocation must be  
15 present at the time of the killing to constitute voluntary  
16 manslaughter. Sudden heat of passion may for a time affect a  
17 person's self-control and temporarily disturb a person's reason.  
18 The sudden heat of passion must be the type that would make an  
19 ordinary person unable to coolly reflect on his actions and would  
20 produce an uncontrollable impulse to do violence. Sufficient  
21 legal provocation must be the type that would make a person of  
22 ordinary reason and caution become enraged and to lose control  
23 temporarily. The provocation needed for voluntary manslaughter  
24 must come from some act of or related to the victim. Words  
25 alone, however vulgar or insulting, are not enough to be legal

1 provocation. Where death is caused by the use of a deadly weapon  
2 the words must be accompanied by some overt threatening act which  
3 could have produced the heat of passion. The exercise of a legal  
4 right no matter how offensive it is to another is never  
5 sufficient legal provocation for voluntary manslaughter. In  
6 the -- if the heat of passion had cooled or if there was enough  
7 time between the provocation, if any, and the killing for the  
8 passion to -- of a reasonable person to cool, then the killing  
9 would not be voluntary manslaughter. In deciding whether the  
10 reasonable person would have had enough time to cool off you  
11 should consider all of the circumstances surrounding the killing.  
12 You may consider the nature of the provocation, if any, the  
13 defendant's mental and physical state and the circumstances and  
14 relationships between the parties.

15           Now the defendant has also been charged with assault  
16 and battery with intent to kill. In order to prove assault and  
17 battery with intent to kill the State must prove beyond a  
18 reasonable doubt that the defendant committed an unlawful act of  
19 a violent nature to the person of another with malice  
20 aforethought. An assault occurs when a person unlawfully  
21 attempts or offers to commit a violent injury upon another person  
22 and had the present ability to complete the attempted injury. An  
23 assault is the intentional creation of a reasonable fear of  
24 immediate bodily harm. It is not necessary that the attempted  
25 injury or harm actually takes place. For example, if I walk up

1 to you and when we are within an arms reach I draw back to hit  
2 you, that is an assault. A battery is the unlawful touching of  
3 another person by a person who has committed the assault. An  
4 unlawful touching can be caused by a part of the accused's body  
5 or by any object the accused puts in motion. A battery is the  
6 completion of the assault by using or applying force to another  
7 person, however slight, in a rude, angry, or resentful manner  
8 without legal justification for doing so. Using my earlier  
9 example, if I carry through the assault by actually hitting you  
10 then that is a battery. Earlier in the charge when I charged you  
11 on the elements of murder I defined malice aforethought. That  
12 same definition for malice aforethought that I gave to you in the  
13 murder charge applies to the element of malice aforethought in  
14 the assault and battery with intent to kill. If facts are proved  
15 beyond a reasonable doubt sufficient to raise an inference of  
16 malice to your satisfaction this inference would be simply an  
17 evidentiary fact to be considered by you along with other  
18 evidence in the case and you may give it the weight that you  
19 decide or you think it should receive.

20 A specific intent to kill is not an element of assault  
21 and battery with intent to kill, but there must be a general  
22 intent to commit serious bodily injury. Intent means intending  
23 the result which actually occurs, not accidentally or  
24 involuntary. Intent may be shown by acts and conduct of the  
25 defendant and other circumstances from which you may naturally

1 and reasonably infer intent. Evidence of the character of the  
2 assault, the character of the instrument used, the manner in  
3 which it was used, the purpose to be accomplished, and the  
4 resulting wounds or injuries may all be considered in determining  
5 the intent with which the assault was committed. Intent may be  
6 inferred when it is demonstrated that the defendant voluntarily  
7 and willfully commits an act the natural tendency of which is to  
8 destroy another person's life. Now if you find that the State  
9 has not proven that the defendant is guilty of assault and  
10 battery with intent to kill you must then determine whether the  
11 State has proved that the defendant is guilty of assault and  
12 battery of a high and aggravated nature. Assault and battery of  
13 a high and aggravated nature includes all of the elements of  
14 assault and battery with intent to kill except the malice  
15 aforethought. In addition the State must prove beyond a  
16 reasonable doubt an aggravating circumstance. Circumstances of  
17 aggravation include the use of a deadly weapon, the intent to  
18 commit a felony, the infliction of serious bodily injury, a great  
19 disparity between the ages or the physical conditions of the  
20 parties, a difference in the genders of the parties, the taking  
21 of indecent liberties or familiarities with a female through the  
22 use of force, the purposeful infliction of shame and disgrace,  
23 and the resistance of lawful authorities. These are only  
24 examples of circumstances of aggravation.

25 Now the charge of discharging a firearm into a

1 dwelling, building, or structure, the law is that it is unlawful  
2 for a person to discharge or cause to be discharged unlawfully  
3 firearms at or into a dwelling, house, other building, structure  
4 or enclosure regularly occupied by persons. Lastly, the  
5 defendant is charged with charge of possession of a weapon during  
6 the commission of a violent crime. The State must prove beyond a  
7 reasonable doubt that the defendant was in possession of a  
8 firearm or visibly displayed what appeared to be a firearm during  
9 the commission of a violent crime. A firearm means any machine  
10 gun, automatic rifle, revolver, pistol, or any weapon which is  
11 designed to or may be readily converted to expel a projectile.  
12 In order to find a defendant guilty of possession of a weapon  
13 during the commission of a violent crime you must first find the  
14 defendant is guilty of either committing a violent crime or  
15 attempting to commit a criminal crime. Under South Carolina law  
16 murder is a violent crime.

17           Now the defendant has raised the defense of accident.  
18 An act may be excused on the ground of accident if it is shown  
19 that the act was unintentional, that the defendant was acting  
20 lawfully, and that reasonable care is used by the defendant in  
21 the handling of a weapon. For example, if a person is lawfully  
22 armed in self-defense and the gun accidentally discharges the  
23 defense of accident would apply. The burden is on the State to  
24 prove beyond a reasonable doubt that the act was not an accident  
25 but was caused by the negligence or carelessness on the part of

1 the defendant in the handling of a dangerous instrumentality or  
2 by the unlawful activity of the defendant.

3 Now Madam Forelady and members of the jury, as you  
4 retire to begin your deliberations I wish to express the hope  
5 that each of you will be mindful of the importance of your  
6 responsibility. You're not called to serve upon as jurors very  
7 often, and the proper performance of your duty requires each of  
8 you to reach the height of freeing your mind of all improper  
9 influences. You and I are acting for the community and that is  
10 why we must see to it that this trial is fair and that the  
11 verdict is just. You have observed that the presiding officer of  
12 this court is always addressed as Your Honor. The reason is not  
13 because of the person wearing this robe but that this Court is  
14 entrusted with the honor of this community, the honor of this  
15 State, and the honor of this country in seeking that every case  
16 that is tried here receives fair and impartial justice. Now you,  
17 the jury, you take into your care the preservation of the honor  
18 of this community, the honor of the state, and the honor of this  
19 country. Do not get the idea that I'm trying to intimate to you  
20 how I think you should decide this case. As I've already told  
21 you under the laws of the State of South Carolina you, the jury,  
22 are the sole judges of all questions of fact in this case and it  
23 would be highly improper for me to influence you in the  
24 performance of that duty. But as the presiding officer of this  
25 court I am vitally concerned that whatever your verdict is,

1 whatever you find, will be the result of your going into the jury  
2 room, confining your deliberations to the evidence and to the law  
3 that you have heard in this courtroom weighing it fairly and  
4 impartially as I have confidence that you will do. Everyone in  
5 this case is entitled to justice, both the State and the  
6 Defendant. All are entitled to justice, nothing more, nothing  
7 less. Your verdict in this case cannot be based on sympathy,  
8 passion, prejudice, or emotion, or some other consideration  
9 that's not found in the evidence. The Court is of the confirmed  
10 opinion that whatever verdict you reach will be the result of you  
11 going into your jury room weighing the facts, applying the law,  
12 and that your verdict that you reach will present truth and  
13 justice for all the parties in this case.

14 And remember, Madam Forelady, the verdict of the jury  
15 must be unanimous. All of you must agree on the verdict. I'm  
16 gonna go over with you right now the possible forms of the  
17 verdict, and it's pretty self-explanatory but -- and I'll -- and  
18 the verdict form will be in the front cover of this notebook when  
19 you get the exhibits back there. It's fairly simple and I've  
20 listed them in the order that they appear on the indictment. And  
21 so as to count one, assault and battery with intent to kill, it  
22 is: We, the jury, find the defendant Herman Donald McKnight, and  
23 there are four options there. You'll only find one of these --  
24 one, okay. Either not guilty or guilty of assault and battery  
25 with intent to kill, or not guilty, or guilty of assault and

1 battery of a high and aggravated nature. So you'll consider  
2 those four and you'll mark whichever you feel is appropriate in  
3 the case. As to count two, which is the charge of murder: we,  
4 the jury, find the defendant Herman Donald McKnight -- again,  
5 there are four options that are listed there and you will only  
6 select one of those options and they are either that he is guilty  
7 or not guilty of murder, or guilty or not guilty of voluntary  
8 manslaughter. Count three is discharging a firearm into a  
9 dwelling, building, or structure. And again, your options are in  
10 this case two options and that is is he -- he's either not guilty  
11 or guilty of discharging a firearm into a dwelling. And count  
12 four, possession of a weapon during the commission of a violent  
13 crime: We, the jury, find the defendant -- let's see, there's an  
14 error on there; I'll have to correct that -- Herman Donald  
15 McKnight, either guilty or not guilty of possession of a weapon  
16 during the commission of a violent crime. All of your verdicts  
17 on these counts must be unanimous and you'll consider all four  
18 counts, Madam Forelady.

19 Now I'm going to send you to your jury room and what  
20 I'm going to ask you to do maybe for the last time is not have  
21 any conversation about the case yet. I'm going to send you back  
22 and I'm going to talk to the attorneys to make sure that I  
23 haven't omitted anything or left anything out. If I have I'll  
24 bring you back out and I'll make that correction. If not, I'll  
25 gather all of the evidence that we have and we'll send it back

1 you. Madam Forelady, when you receive the evidence and this  
2 folder that's your cue that deliberations can begin. All right.  
3 So if you'd please step back to your jury room and I'll confer  
4 with the attorneys.

5 (WHEREUPON, the jury was removed from the  
6 courtroom at 5:04 p.m., and the following proceedings  
7 commenced in open court.)

8 THE COURT: All right. Any objections or exceptions to  
9 the charge that the Court has given the jury? From the State?

10 MR. CLEMENTS: Your Honor, just when you told them in  
11 your charge that murder is a violent crime, also Your Honor, I  
12 think voluntary manslaughter and assault and battery with intent  
13 to kill are violent crimes as well.

14 MR. SUGGS: Page 20, Judge.

15 THE COURT: You're correct.

16 MR. CLEMENTS: And Your Honor, on the verdict form, I  
17 was listening close; I might have missed it but I don't know if  
18 it was clear to them that they don't consider voluntary  
19 manslaughter unless they find him not guilty of murder and they  
20 don't consider assault and battery of a high and aggravated  
21 nature unless they find him not guilty of assault and battery  
22 with intent to kill.

23 THE COURT: Okay. Well, I've got those four forms of  
24 verdict. I told them there are four forms of verdict; they're  
25 only to consider one. But do you want me to instruct that they

1 can only go to the lesser ---

2 MR. CLEMENTS: Yes, sir.

3 THE COURT: ---if they find -- if they don't find for  
4 the ---

5 MR. CLEMENTS: Yes, sir, because they could say we only  
6 consider one and they could say, well, we find not guilty of  
7 murder and not consider the other two on the lesser or for the  
8 assault and battery with intent to kill.

9 THE COURT: Okay. I understand; you're exactly right.

10 MR. SUGGS: Well, Judge, I don't know that that's  
11 necessary. I think you were clear on the verdict form they've  
12 got on murder they've got four choices and got the voluntary  
13 manslaughter in there with that too. Same with assault and  
14 battery intent to kill and aggravated assault; it's all there. I  
15 don't know if you need to go into jump through some hoop before  
16 they get to the lesser charge.

17 THE COURT: Well, I said in the charge if I'm not  
18 mistaken, if you find that the State has failed to prove beyond a  
19 reasonable doubt that defendant committed murder then you may  
20 consider voluntary manslaughter. And then at the end of the  
21 assault and battery with intent to kill, when I went into assault  
22 and battery of high and aggravated nature I again said if you  
23 find the State has not proven that defendant is guilty of assault  
24 and battery with intent to kill then you must determine whether  
25 or not.

1 MR. SUGGS: That's fine, Judge.

2 MR. CLEMENTS: I concur with that, Your Honor, that was  
3 your charge. I just didn't want the verdict form to confuse  
4 them.

5 THE COURT: Be inconsistent with that?

6 MR. CLEMENTS: Yes, sir.

7 THE COURT: I'll correct that.

8 MR. CLEMENTS: Thank you, Your Honor.

9 MR. SUGGS: And I agree with Mr. Clements on the  
10 identification of those other crimes as violent crimes. I was  
11 going to point that out because I didn't want to probably lock  
12 myself into the conviction on that charge but I didn't want them  
13 to think that they couldn't also convict him of that if they  
14 didn't convict him of murder.

15 THE COURT: Okay, all right. All right. And I'll make  
16 that correction. Anything else?

17 MR. SUGGS: No, sir.

18 MR. CLEMENTS: Not from the State, Your Honor.

19 THE COURT: Would y'all please -- I know there are a  
20 lot of pictures and stuff. Please go through and make sure that  
21 all the exhibits are together.

22 (WHEREUPON, a recess was taken from the proceedings.)

23 THE COURT: Mr. Propps, ask the members of the jury, if  
24 they would, to join us.

25

1 (WHEREUPON, the jury was returned to the courtroom at  
2 approximately 5:12 p.m., and the following proceedings commenced  
3 in open court.)

4 THE COURT: Ladies and gentlemen, there is a -- one  
5 correction I need to make on the charge very brief. When I  
6 charged you on the possession of a weapon during the commission  
7 of a violent crime the last section of that charge I read to you  
8 that under South Carolina law that murder was considered a  
9 violent crime. In this case there are numerous charges, and so I  
10 do -- I charge that you that under South Carolina law depending  
11 on your finding of the facts that murder, voluntary manslaughter,  
12 and assault and battery of a high -- excuse me, assault and  
13 battery with intent to kill are all considered violent crimes  
14 under South Carolina law. So for your information. Those are  
15 considered violent crimes under South Carolina law. And of  
16 course, whatever you find from the facts to do what's relevant.  
17 The other thing I want to clarify and I stated it in the charges  
18 but I don't think I made it very clear when I was going over the  
19 verdict form. With regards to assault and battery with intent to  
20 kill and the murder count there are four options there, as I did  
21 tell you. As I said it in the charge you'll consider the murder  
22 charge. If you find that the State has not proven that charge  
23 beyond a reasonable doubt then you would consider whether or not  
24 the State has proven voluntary manslaughter beyond a reasonable  
25 doubt. With assault and battery with intent to kill you will

1 consider if the State has proven that charge beyond a reasonable  
2 doubt; and if not, you will then consider whether they have  
3 proven assault and battery of a high and aggravated nature beyond  
4 a reasonable doubt. So you would -- and that's in the body of  
5 the charge but I just want to make that clear when you consider  
6 the forms of the verdict. You'll consider the greater offense  
7 and then you'll consider the lesser offense if you find the State  
8 has not proven the greater offense, okay. So having -- oh, and  
9 there's one last thing.

10 The weapon that is admitted into evidence -- it is in  
11 evidence -- however, even though there's a gun lock on it I'm not  
12 permitted to allow a deadly weapon to go back to the jury room.  
13 If you feel the need to view, if you feel that you need to  
14 examine that I'm happy to allow you do that but you'll just need  
15 to do it out here, okay. So if you find that there's a need to  
16 examine the weapon closer in assisting you with your  
17 deliberations, just knock on the door, let me know, I'll bring  
18 you back out here and I'll allow you to do that. Everything else  
19 will come back with you so if you would, Madam Forelady, take the  
20 jury back into the room and when you get all of this stuff and  
21 that will be your queue to begin.

22 (WHEREUPON, the jury was removed from the  
23 courtroom at 5:15 p.m., and the following proceedings  
24 commenced in open court.)

25 THE COURT: All right. Any objections or exceptions

1 from the State regarding Court's instruction?

2 MR. CLEMENTS: No, sir, Your Honor.

3 THE COURT: Anything from Defense?

4 MR. SUGGS: No, sir, we're ready to send it to the  
5 jury.

6 THE COURT: Mr. Propps, if you would, sir.

7 (Jury began its deliberations at 5:17 p.m. )

8 THE COURT: Mr. McDowell and Mr. Gandy, guys, y'all are  
9 -- I use a lot of sports metaphors. Y'all are like the guys --  
10 y'all have practiced all week, you've sweated just like everybody  
11 else and now here it is Saturday afternoon we're getting ready to  
12 kick off and the coach is going to tell you that you can't play.  
13 And I'm sorry to do that. But I do want to thank you for your  
14 service and let me -- if you'd try to understand it appears that  
15 everyone is healthy and fine and can go forward. But oftentimes,  
16 and it happens more often than you think, one of the main jurors  
17 on the panel for whatever reason can't continue. So it's  
18 important that you sit, that you hear all the evidence, and that  
19 you hear all of the arguments because if something came up and  
20 one of those individuals could not continue then you'd have to  
21 step in, and of course you would have needed to hear it. So but  
22 it does appear that everyone is healthy and able to proceed so  
23 I'm going to excuse you from your service.

24 (Alternates were excused and court was in recess.)

25 THE COURT: All right. Ladies and gentlemen, I've been

1 instructed or informed by Mr. Propps that the jury indicated they  
2 have reached a verdict. I sit here as you do and I have no idea  
3 what the verdict is. But I want to say this, and I say it kind  
4 of as a warning and kind of just to give people a heads-up. I  
5 don't tolerate any outbursts in the courtroom regardless of what  
6 the verdict is, and the reason for that is, and I understand as  
7 much as anybody that these are emotional situations and I respect  
8 that, but I respect that and so I tell you that if you feel that  
9 you cannot control your emotions then you need to step out of the  
10 courtroom while I accept the verdict. If you can't do that  
11 you're going to run afoul of my order and you're going to be  
12 facing a possible contempt charge. I don't want to do that.  
13 I've never had to do it; I don't want to be associated with it.  
14 But the reason I say this is this, whether you agree with the  
15 jury's verdict or not these 12 people deserve our respect of  
16 receiving their verdict in a professional manner and so that's  
17 what I'm asking you to do. I'm not asking you to separate  
18 yourself from your emotions. I'm just asking you to control them  
19 at least while the jury is present just out of respect for the  
20 panel. And again, you should respect the jury even if you may  
21 not agree with them. So please, if you would, if you think  
22 you're going to have a problem, and again, I don't know what that  
23 verdict is, but if you think you may have a problem please step  
24 out. But if you remain, please also accept the jury's verdict in  
25 a professional manner. All right. Having said that, Mr. Propps,

1 if you would. Is the State ready to receive the verdict?

2 MR. CLEMENTS: We are, Your Honor.

3 THE COURT: Defense ready?

4 MR. SUGGS: Yes, we are, Judge.

5 (WHEREUPON, the jury was returned to the courtroom at  
6 approximately 5:58 p.m., and the following proceedings commenced  
7 in open court.)

8 THE COURT: All right. Madam Forelady, has the jury  
9 reached a unanimous verdict on all counts?

10 THE FORELADY: Yes, sir.

11 THE COURT: Thank you, ma'am. If you would please pass  
12 that to Ms. O'Hara. Thank you.

13 All right. If you'd publish the jury's verdict.

14 THE DEPUTY CLERK OF COURT: State of South Carolina  
15 versus Herman Donald McKnight, indictment 2008-GS-21-714. As to  
16 count number one assault and battery with intent to kill, guilty  
17 of assault and battery of a high and aggravated nature. As to  
18 count number two, murder: We, the jury, find the defendant  
19 Herman Donald McKnight guilty of murder. As to count number  
20 three, discharging a firearm into a dwelling, building, or  
21 structure: We, the jury, find the defendant Herman Donald  
22 McKnight guilty of discharging a firearm at or into dwelling,  
23 building, or structures. As to count number four, possession of  
24 a weapon during commission of a crime of violence: We, the jury,  
25 find defendant Herman Donald McKnight guilty of possession of a

1 weapon during the commission of a crime of violence. Signed  
2 Brandy Montgomery, forelady, dated June 27th, 2008. Members of  
3 the jury, if this is your verdict please raise your right hand.

4 (All jurors responded by raising their hand.)

5 THE COURT: All right, thank you. Any polling?

6 MR. SUGGS: Yes, sir, Your Honor, if you please.

7 THE COURT: Mrs. O'Hara, if you would.

8 THE DEPUTY CLERK OF COURT: Members of the jury, I'm  
9 going to ask you two questions. Please respond to each of my  
10 questions. Marvin Moses, was this your verdict then, is it still  
11 your verdict now?

12 JUROR MOSES: Yes, ma'am.

13 THE DEPUTY CLERK OF COURT: Aleise McElveen, is this  
14 your verdict then, is it still your verdict now?

15 JUROR MCELVEEN: Yes.

16 THE DEPUTY CLERK OF COURT: Mary Fowler, is this your  
17 verdict then, is it still your verdict now?

18 JUROR FOWLER: Yes.

19 THE DEPUTY CLERK OF COURT: Leon Wilson, is this your  
20 verdict then, is it still your verdict now?

21 JUROR WILSON: Yes.

22 THE DEPUTY CLERK OF COURT: Whitney Oxner.

23 JUROR OXNER: Yes.

24 THE DEPUTY CLERK OF COURT: Is this your verdict then,  
25 is it still your verdict now?

1 JUROR OXNER: Yes.

2 THE DEPUTY CLERK OF COURT: Angela Jenkins, is this  
3 your verdict then, is it still your verdict now?

4 JUROR JENKINS: Yes.

5 THE DEPUTY CLERK OF COURT: Harriett Allen, is this  
6 your verdict then, is it still your verdict now?

7 JUROR ALLEN: Yes.

8 THE DEPUTY CLERK OF COURT: Francis Allen, is this  
9 your verdict then, is it still your verdict now?

10 JUROR FRANCIS ALLEN: Yes.

11 THE DEPUTY CLERK OF COURT: Vicki Warren, is this your  
12 verdict then, is it still your verdict now?

13 JUROR WARREN: Yes.

14 THE DEPUTY CLERK OF COURT: Brandy Montgomery.

15 THE COURT: Now, Ma'am, is it your verdict then, is it  
16 still your verdict now? Yes.

17 THE DEPUTY CLERK OF COURT: Katina Leseigne, is this  
18 your verdict then, is it still your verdict now?

19 JUROR LESEGNE: Yes.

20 THE DEPUTY CLERK OF COURT: Teresa McCall, is this your  
21 verdict then, is it still your verdict now?

22 JUROR MCCALL: Yes.

23 THE DEPUTY CLERK OF COURT: That's all.

24 THE COURT: All right. Ladies and gentlemen of the  
25 jury, thank you for your service this week. I hope your

1 experience this week has been a positive experience with the  
2 judicial system. I appreciate your service. It's a wonderful  
3 system of justice that we have when we can allow our peers,  
4 members of the community to decide these issues. I want to thank  
5 you for your service this week. It goes without saying that this  
6 concludes your service for this week. In just a moment I'm  
7 going to proceed to sentencing. Those of you who wish to stay  
8 for that are welcome to do that. I'm gonna ask you, if you  
9 would, to go out this door so Ms. O'Hara can give you those  
10 excuses if you need them, and then if you wish to stay you can  
11 come back around and come in the back door. Or if you wish to  
12 leave you're certainly free to go so thank you, ladies and  
13 gentlemen.

14 (WHEREUPON, the jury was removed from the  
15 courtroom at 6:04 p.m., and the following proceedings  
16 commenced in open court.)

17 THE COURT: All right. Do you need any time to prepare  
18 sentencing sheets, Solicitor?

19 MR. CLEMENTS: I have them right here, Your Honor.

20 MR. SUGGS: Posttrial motions, Judge?

21 THE COURT: I'm just going to have them pass those up,  
22 then I'm going to recognize you for any motions we have. All  
23 right, Mr. Suggs, more than happy to entertain any motions that  
24 you have at this time, sir.

25 MR. SUGGS: Thank you, Your Honor. Your Honor, we

1 recognize the jury's verdict. At this time, Your Honor, we would  
2 motion -- we would argue royal, Judge, motion for new trial based  
3 upon the Court's response to all our objections made during the  
4 course of the trial, Judge, that were overruled including but not  
5 limited to, Judge, the following errors of law as we see it,  
6 Judge.

7 THE COURT : Yes, sir.

8 MR. SUGGS: Our motion for continuance which was denied  
9 by the Court based upon what we feel to be the State's violation  
10 of Rule 5 of South Carolina rules of criminal procedure in as  
11 much as the submissions of the rule of the material substance to  
12 that rule were received -- not received in a timely fashion.  
13 Particularly Judge, the toxicology report and other documentation  
14 which I brought to the Court's attention during the pretrial  
15 motions in this case. In addition, Judge, the failure to grant a  
16 directed verdict to the defendant on the charges of assault and  
17 battery with intent to kill and murder inasmuch as the State, we  
18 feel, was not able to prove malice on the part of the defendant  
19 which is a necessary element of these charges and also failing to  
20 grant directed verdict on the count of possession of a weapon  
21 during the commission of a crime of violence inasmuch as those  
22 other two charges, assault and battery with intent to kill and  
23 the murder charges, both being crimes of violence which should  
24 have been subject to a directed verdict from the Court which  
25 would have eliminated that other count of discharging -- excuse

1 me, possession of a weapon during the commission of a violent  
2 crime. Also, Judge, the Court's rejection of our request to  
3 charge involuntary manslaughter which we felt that the facts in  
4 this case did support the charge and of course our -- any other  
5 objections that were made, Judge, we would ask the Court to  
6 recognize those.

7 THE COURT: All right. Mr. Suggs, I'm going to  
8 respectfully deny those motions.

9 MR. SUGGS: Yes, sir.

10 THE COURT: Regards to the continuance and Rule 5  
11 requests and that motion involving that after discussing with  
12 everyone the situation I didn't feel there was any prejudice to  
13 the Defense that, and the State did, in fact, produce those items  
14 from what I could gather when they received them. With regards  
15 to toxicology report, that was also an item that would have been  
16 available to the Defense pursuant to your own subpoena that  
17 wasn't under the control, sole control of the Solicitor's Office.  
18 With regards to the failure to state, failure to prove malice and  
19 directed verdict the Court felt there was ample evidence in the  
20 record whereby a jury could find malice. Whether they would or  
21 not, of course, is the jury's call and they did, in fact, find  
22 that. And so I think the evidence was available for them to find  
23 that if they chose to having in their view of the evidence. And  
24 then with regards to the charge of involuntary manslaughter as I  
25 indicated earlier did not think it was an appropriate charge

1 based on that facts that were before the Court and that -- that  
2 the conduct, all of the evidence in the case indicated that the  
3 conduct of the defendant was that he was in the process of or in  
4 the commission of crimes that are considered felonies under our  
5 law and therefore would not be available, the charge of voluntary  
6 manslaughter would not be appropriate in those instances. And  
7 all those having been covered in the record earlier I do  
8 respectfully deny your motions. Is there anything further, Mr.  
9 Suggs?

10 MR. SUGGS: No, Your Honor.

11 THE COURT: All right. Are you ready to proceed to  
12 sentencing, sir?

13 MR. SUGGS: Yes, sir.

14 THE COURT: All right. Solicitor, I'll recognize the  
15 State with regards to if you have anything regarding sentencing.

16 MR. CLEMENTS: Thank you. Please the Court, Your  
17 Honor, you've heard all the facts. The only thing I can say is  
18 this is one of the most, if not the most senseless killings I've  
19 ever seen. Your Honor, I don't know if Mr. and Mrs. Floyd wish  
20 to speak or address the Court; but if they do, Your Honor, I ask  
21 that you hear from them. And Your Honor, Mrs. Teresa Kinney, the  
22 sister of the deceased, says she would like to speak speaking for  
23 the entire family. She is talking for the entire family, Your  
24 Honor.

25 MS. KINNEY: Hello, I'm Teresa Kinney. I'm Stewart

1     Floyd's sister. I'm speaking and thanking everybody for what  
2     they have done. And he's taken something that all of us miss  
3     awful and can never have back again. We were all a very close  
4     family, both sides, and he's put a wedge in there. I don't know  
5     if we'll ever be able to get back but we still love each other.  
6     And I don't know if there's ever enough to replace what he's  
7     taken. And I appreciate whatever you can do.

8             THE COURT:   Thank you, Ma'am.

9             MR. SUGGS:   Come around, Judge?

10            THE COURT:   Yes, sir, please. I would just be happy to  
11     hear from you, sir, and then anyone else who wish to speak.

12            MR. SUGGS:   Judge, I don't know that that's necessary  
13     in this case, Judge. We are familiar with the penalty in South  
14     Carolina for murder, Judge. There's only -- if somebody is  
15     convicted of murder there's only three possible punishments.  
16     It's the death penalty; of course, this is not one of those  
17     cases. It's minimum 30 years on up to life in prison, and I  
18     don't think there are any other penalties for murder that I'm  
19     aware of, Judge, so I know your hands are tied with regard to  
20     that. You can't sentence less than the minimum which is 30  
21     years, Judge.

22            THE COURT:   Yes, sir.

23            MR. SUGGS:   We also know that that particular offense  
24     is not subject to the 85 percent no parole rule. It's, as I  
25     understand, the statute is day for day so in South Carolina 30

1 years means 30 years. Judge, he is 63 years old. He's in poor  
2 health. His life expectancy is probably within the range of ten  
3 years would be my best guess, his also, Judge. I think 30 years  
4 sentence is about the same as life in prison. I think it's six  
5 of one and half a dozen on the other for practical purposes.  
6 Judge, I would ask the Court to consider a time served sentence  
7 on the assault and battery high and aggravated nature. He has  
8 been in jail 311 days since the offense occurred and also the  
9 same with the discharging a firearm into a dwelling, Your Honor.  
10 And to what extent you can during the commission of -- possession  
11 of weapon during the commission of a violent crime I think that  
12 might be subsumed by the murder of count in the indictment,  
13 Judge, and towards that end in terms of sentencing that could, I  
14 think, some benefit at least on paper for him if that sentence  
15 comes at the end of the other, other counts that are sentenced I  
16 believe. But I would ask for that, Judge, and I would ask for  
17 minimum sentence on the murder.

18 MR. CLEMENTS: Your Honor, I think the possession of  
19 weapon during commission of a violent crime is only subsumed by a  
20 life sentence.

21 THE COURT: That's right.

22 Mr. McKnight, you have anything you wish to tell the  
23 Court, sir?

24 THE DEFENDANT: Sir, I know you're elected for your  
25 wisdom and knowledge. I don't know any word to say but I'm sorry

1 and I'm sure you've heard that a bunch of times but I mean it  
2 from the bottom of my heart.

3 THE COURT: All right, sir.

4 MR. SUGGS: Thank you for allowing him to speak, Judge.

5 THE COURT: Certainly. I, you know, a lot of times  
6 after you sit through a trial you begin a trial with a lot of  
7 questions and then by the time you get to the end you kind of  
8 have those questions answered most of the time. This is strange  
9 because there's a question in my mind that has never been  
10 answered and that is that there had to have been something, some  
11 undercurrent that never came out during the trial, something that  
12 would cause someone who was simply told to leave the house if you  
13 want a drink to set somebody off with this type of rage that is  
14 completely inconsistent with the testimony that everybody loves  
15 everybody. It's just -- this is one of the most senseless, not  
16 that any murder makes sense, but this one I can't seem to wrap my  
17 mind around and understand how a family that on the surface does  
18 seem to be close can have this much hate and this much -- I'm  
19 going to use the term in the law, malice, for somebody.  
20 Mr. Suggs, I know in your motion that you made that the State did  
21 not show malice. I think there was more malice shown in this  
22 case than I think I've seen in a murder case in a long time.

23 MR. SUGGS: I think I know the answer to your question,  
24 Judge.

25 THE COURT: Well, it never came out in the trial and

1 it's not necessary for me to have the answer. It's just there's  
2 something here that never came out in this trial that all I can  
3 imagine.

4 MR. SUGGS: Yes, sir. You're concerned about the  
5 inconsistency between both of the family members and this kind of  
6 action.

7 THE COURT: Well, I understand grief. I've gone  
8 through it. I've lost a loved one to cancer after a mighty  
9 struggle to live. I've lost my father. I've watched my mother  
10 decay into a state that she doesn't recognize me, her own son. I  
11 mean, I understand grief and I understand all of that. But this  
12 is a rage that I can't define to ---

13 MR. SUGGS: My dad told me one time, Judge, and I'm  
14 quoting a wise man and I'll say it. My father, he said that hate  
15 is not the opposite of love. Hate is part of love. What's  
16 opposite of love is indifference. If you're indifferent to  
17 someone that's on the other end of the spectrum of love. Hate is  
18 right there in the middle, and sometimes you can hate somebody  
19 and love them at the same time. And Judge ---

20 THE COURT: And I don't totally disagree with that but  
21 I don't know that you can act on that hate and take a life and  
22 say you still love them.

23 MR. SUGGS: There is no explanation.

24 THE COURT: There is none. And again, I'm not asking  
25 for one. I just -- it's just, and you know, Mr. McKnight said

1 something on the stand that might very well just explain it all  
2 and that is that it had no -- he had no explanation for it  
3 either. It's just -- with regards to 2008-GS-21-714 regarding  
4 count one, the assault and battery of a high and aggravated  
5 nature, the sentence of the Court is that you be committed to the  
6 State Department of Corrections for a period of ten years. With  
7 regards to count three, for discharging of a firearm into a  
8 dwelling the sentence of the Court is that you be committed to  
9 the State Department of Corrections for a period of ten years.  
10 On count two, the charge of murder, it is the sentence of the  
11 Court that you be committed to the State Department of  
12 Corrections for the remainder of your life. That would subsume  
13 the possession of a weapon during the commission of a violent  
14 crime and so the Court would not sentence under that conviction.  
15 These are obviously all -- not obviously, they're all to run  
16 concurrent.

17 MR. SUGGS: Judge, is the firing weapon into a  
18 dwelling, is that five or ten? I thought it was five.

19 THE COURT: It's ten.

20 MR. SUGGS: Is it ten?

21 THE COURT: I think it's ten but I'll run all  
22 concurrent.

23 MR. SUGGS: Yes, sir.

24

25

\*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

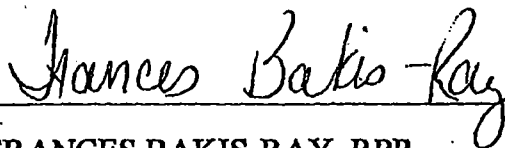
## 1 CERTIFICATE OF REPORTER

2  
3  
4 STATE OF SOUTH CAROLINA)  
5 COUNTY OF FLORENCE }

6  
7 I, FRANCES BAKIS-RAY, Registered Professional Reporter  
8 (RPR), court reporter for the State of South Carolina, Twelfth  
9 Judicial Circuit, do hereby certify that the foregoing proceeding  
10 is a stenographic report and was transcribed through  
11 computer-aided transcription; that the foregoing transcript  
12 contains a true record of the proceedings.

13 I further certify that I am neither counsel for, nor  
14 related to nor employed by any of the parties connected to the  
15 action, nor am I financially interested in the action.

16 Witness my hand at Florence, South Carolina, this  
17 14h day of January, 2009.

18  
19  
20 

21 FRANCES BAKIS-RAY, RPR  
22 My Commission Expires: 9-13-2014  
23  
24  
25

WITNESSES  
LT. BRETT CAMP FCSO

Prosser

PROS: ELC

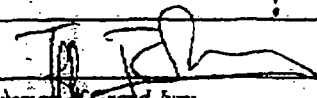
D/O: 08-22-2007

ARREST WARRANT NO.

K272025 (1); K272024 (2); K272026 (3);

K272027 (4).

ACTION OF GRAND JURY

  
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2008-GS-21-00117

The State of South Carolina,

County of FLORENCE

ELC

COURT OF GENERAL SESSIONS

MARCH TERM 2008

THE STATE

vs.

HERMAN DONALD MCKNIGHT

Indictment for

ASSAULT AND BATTERY

WITH INTENT TO KILL,

MURDER,

DISCHARGING FIREARM AT OR INTO

A DWELLING

AND

POSSESSION OF WEAPON DURING

COMMISSION OF VIOLENT CRIME

FILED  
2008 MAR -6 PM 3:05  
CORINNE REEL-SHEARIN  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

## INDICTMENT FOR

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )

ASSAULT AND BATTERY WITH INTENT TO KILL,  
 MURDER, DISCHARGING FIREARM AT OR INTO A  
 DWELLING AND POSSESSION OF WEAPON DURING  
 COMMISSION OF VIOLENT CRIME

At a Court of General Sessions, convened on MARCH 06, 2008, the Grand Jurors of FLORENCE

County present upon their oath:

**COUNT ONE - ASSAULT AND BATTERY WITH INTENT TO KILL**

That HERMAN DONALD MCKNIGHT did in FLORENCE County on or about August 22, 2007, violate Sections 16-03-0620, 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did with malice aforethought, commit an assault and battery upon Jeanette Floyd, by shooting her with a shotgun, with the intent to kill the said Jeanette Floyd.

**COUNT TWO - MURDER**

That HERMAN DONALD MCKNIGHT did in FLORENCE County on or about August 22, 2007, violate Sections 16-03-0010, 0020 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did feloniously, wilfully and with malice aforethought kill one Wendell Stewart Floyd, by means of shooting him with a shotgun, and that the said Wendell Stewart Floyd did die as a proximate result thereof.

**COUNT THREE - DISCHARGING FIREARM AT OR INTO A DWELLING HOUSE,  
 BUILDING OR STRUCTURE**

That HERMAN DONALD MCKNIGHT did in FLORENCE County on or about August 22, 2007, violate Section 16-23-0440 of the Code of Laws of South Carolina (1976), as amended, in that he did wilfully and unlawfully discharge, or cause to be discharged, a firearm, to wit: a shotgun, at or into the dwelling house, other building, structure, or enclosure that is regularly occupied by persons, to wit: the residence at [REDACTED].

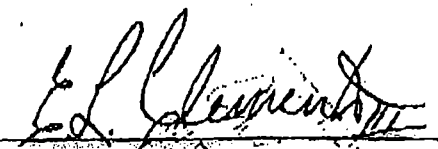
CLERK OF COURT, C.P. & G.S.  
 FLORENCE COUNTY, S.C.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL, MURDER, DISCHARGING FIREARM AT OR INTO A DWELL AND POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME WITH THE AFORESAID NAME(S) OF HERMAN DONALD MCKNIGHT SHOWN THEREON:

**COUNT FOUR - POSSESSION OF WEAPON DURING  
THE COMMISSION OF A VIOLENT CRIME**

That HERMAN DONALD MCKNIGHT did in FLORENCE County on or about August 22, 2007, violate Section 16-23-0490 of the Code of Laws of South Carolina (1976), as amended, in that he was in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a shotgun, during the commission of a violent crime, to wit: Murder and/or Assault and Battery With Intent to Kill.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
SOLICITOR  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

*copy unless life sentence*

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE  
STATE

INDICTMENT/CASE#

2008 -GS- 21 - 714

AKA:

AW#: 5-272027

Race: \_\_\_\_\_

Sex: \_\_\_\_\_

Age: \_\_\_\_\_

Date of Offense: 8-22-07

DOB: \_\_\_\_\_

SS#: \_\_\_\_\_

S.C. Code §: 16-23-490CDR Code #: 1245

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_

SID# \_\_\_\_\_

## SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: POS. WEAPON DURING COMMISSION OF A VIOLENT CRIMEIn violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # \_\_\_\_\_☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ \$17-25-(CSC w/minor 1<sup>st</sup> or Lowd Act)The charge is: ☒ Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of \_\_\_\_\_ days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

Obtain GED ☐☐ set by SCDPPPS \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

Recipient: \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐

\*Fine:

\$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ \_\_\_\_\_

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

\$56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

\$35.13 (Public Def/Prob) \$500 \$ \_\_\_\_\_

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ \_\_\_\_\_

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

\$50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

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, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21141Sentence Date: 6-27-08

Clerk of Court/ Deputy Clerk

Court Reporter: F. J. Jay

30 yrs. of MCD

617

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE  
STATE

HERMAN DONALD MCKNIGHT

AKA: \_\_\_\_\_  
Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_  
DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
DL# \_\_\_\_\_ SID# \_\_\_\_\_

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS  
TO: MURDER

In violation of § 16-3-10 + 16-3-20 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)  
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature]

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,  
which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State  
Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment.

Payment Terms: \_\_\_\_\_

☐ set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

|                                        |         |                  |
|----------------------------------------|---------|------------------|
| *Fine:                                 | \$      |                  |
| § 14-1-206 (Assessments 107.5%)        | \$      |                  |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ <u>100.00</u> |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$               |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$               |
| § 35.13 (Public Def/Prob)              | \$500   | \$               |
| § 73.3, 1B TP (Law Enforce. Funding)   | \$25    | \$ <u>25.00</u>  |
| § 33.7, 1B TP (Drug Court Surcharge)   | \$100   | \$               |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$               |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$               |
| 3% to County (if paid in installments) | \$      | \$               |
| TOTAL                                  | \$      | \$ <u>25.00</u>  |

[Signature]  
Clerk of Court Deputy Clerk

Court Reporter: F. R. K. - Ray

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008 -GS- 21 - 714

A/W#: K-272024

Date of Offense: 8-22-07

S.C. Code §: 16-3-10 + 16-3-20

CDR Code #: 0116

SENTENCE SHEET

CERTIFIED: A TRUE COPY  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.  
[Signature]

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/§ 35.13 TP  
☐ Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]

Judge Code: 21141

Sentence Date: 6-27-08

0 to 10 days

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE  
STATEINDICTMENT/CASE#: 2008 GS- 21 714HERMAN DONALD MCKNIGHTA/W#: K-272026

AKA: \_\_\_\_\_

Date of Offense: 8-22-07

Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_

S.C. Code §: 16-23-440

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

CDR Code #: 0053

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_ SID# \_\_\_\_\_

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: DISCHARGING FIREARM INTO A DWELLINGin violation of 16-23-440 of the S.C. Code of Laws, bearing CDR Code # 0052☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1<sup>st</sup> or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,  
which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

☐ set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

|                                        |         |                  |
|----------------------------------------|---------|------------------|
| *Fine:                                 | \$      | _____            |
| §14-1-206 (Assessments 107.5%)         | \$      | _____            |
| §14-1-211(A)(1) (Conv. Surcharge)      | \$100   | \$ <u>100.00</u> |
| §14-1-211(A)(2) (DUI Surcharge)        | \$100   | \$ _____         |
| §56-5-2995 (DUI Assessment)            | \$12    | \$ _____         |
| §35.13 (Public Def/Prob)               | \$500   | \$ _____         |
| §73.3, 1B TP (Law Enforce. Funding)    | \$25    | \$ <u>25.00</u>  |
| §33.7, 1B TP (Drug Court Surcharge)    | \$100   | \$ _____         |
| §50-21-114(BUI Breath Test Fee)        | \$50    | \$ _____         |
| §56-5-2942(J) (Vehicle Assessment)     | \$40/ea | \$ _____         |
| 3% to County (if paid in installments) | \$      | \$ _____         |
| TOTAL                                  | \$      | \$ <u>125.00</u> |

Clerk of Court/ Deputy Clerk

Court Reporter: A. Dula Ray

PRESIDING JUDGE

Judge Code: 211411Sentence Date: 6-27-08

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE  
STATEHERMAN DONALD MCKNIGHT VSAKA: \_\_\_\_\_  
Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Age: \_\_\_\_\_  
DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
DL# \_\_\_\_\_ SID# \_\_\_\_\_In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS,  
TO: ABEYANin violation of COMMON LAW of the S.C. Code of Laws, bearing CDR Code # 0013☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant Initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: \_\_\_\_\_

Solicitor \_\_\_\_\_ Defendant \_\_\_\_\_ Attorney for Defendant \_\_\_\_\_  
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,  
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

☐ set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

|                                        |                  |
|----------------------------------------|------------------|
| *Fine:                                 | \$               |
| §14-1-206 (Assessments 107.5%)         | \$               |
| §14-1-211(A)(1) (Conv. Surcharge)      | \$100            |
| §14-1-211(A)(2) (DUI Surcharge)        | \$100            |
| §56-5-2995 (DUI Assessment)            | \$12             |
| §35.13 (Public Def/Prob)               | \$500            |
| §73.3, 1B TP (Law Enforce. Funding)    | \$25             |
| §33.7, 1B TP (Drug Court Surcharge)    | \$100            |
| §50-21-114(BUI Breath Test Fee)        | \$50             |
| §56-5-2942(J) (Vehicle Assessment)     | \$40/ea          |
| 3% to County (if paid in installments) | \$               |
| TOTAL                                  | \$ <u>125.00</u> |

Clerk of Court/Deputy Clerk  
Court Reporter: F. Diller Ray

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2000 GS- 21 214AW#: K-272025Date of Offense: 8-22-07S.C. Code §: 16-23-620CDR Code #: 0014

## SENTENCE SHEET

CERTIFIED: A TRUE COPY  
Clerk of Court C.P. & G.S.  
FLORENCE COUNTY, S.C.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, \$35/13 TP☐ Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE L. H. H.Judge Code: 211411Sentence Date: 6-27-08

FORM 5  
FILED

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

2011 AUG 18 PM 2:34 IN THE COURT OF COMMON PLEAS

Herman Donald McKnight, 132919

Full name and prison number (if any) of Applicant.

CONNIE REED-SHEARIN  
CCCP & GS

FLORENCE COUNTY, SC

2011. C.P. 21-2219

v.

State of South Carolina

CERTIFIED: A TRUE COPY

Connie Reed Shearin  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, Bishopville, SC.
2. Name and location of Court which imposed sentence General Sessions Court, Florence, SC
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Indictment No: 2008-GS-21-00714 ] ASSAULT & BATTERY w/ INTENT TO KILL;
  - (b) MURDER; DISCHARGING FIREARM AT OR INTO A DWELLING; POSSESSION OF
  - (c) WEAPON DURING COMMISSION OF VIOLENT CRIME
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) June 25-27, 2008 - the jury found McKnight guilty as charged, with the
  - (b) exception of McKnight's charge for ABWIK, for which the jury found him  
guilty of the lesser offense of ABHAN. The Court sentenced him to life  
imprisonment for murder, and concurrent sentences of ten years for  
ABHAN and discharging a firearm into a dwelling.

Revised 3/2003

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty NO
- (b) after a plea of not guilty YES
- (c) after a plea of nolo contendere NO
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. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. Filed June 17, 2011
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No: 2011-UP-303
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(10a) Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, §§ 3 and 14 of the South Carolina Constitution.

(10b) SEE ATTACHED

[10c] SEE ATTACHED

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

(a) SEE ATTACHED

(b) SEE ATTACHED

(c) SEE ATTACHED

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

(a) any petition in a State Court under South Carolina Law? NONE

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NONE

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NONE

(d) any other petitions, motions or applications in this or any other Court? NONE

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

(a) the specific nature thereof:

i. N/A

ii.

iii.

iv.

(b) the name and location of the Court in which each was filed:

i. N/A

ii.

iii.

iv.

(c) the disposition thereof:

i. N/A

ii.

iii.

iv. \_\_\_\_\_  
 (d) the date of each such disposition:

i. N/A \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A \_\_\_\_\_

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?

NONE

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. N/A \_\_\_\_\_

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) Claims incorporated within (10) above are cognizable

(b) claims for Post-Conviction Relief.

(c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

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

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. B. Scott Suggs, Esq., Florence County Public Defender
  - ii. Robert M. Dudek, Esq., SC Commission on Indigent Defense
  - iii. Applicant, PRO SE.
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
  - ii. Direct Appeal
  - iii. Application for Post-Conviction Relief

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

New Trial

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

NO

STATE OF SOUTH CAROLINA )

VERIFICATION

County of FLORENCE )

Herman Donald McKnight,

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Herman Donald McKnight  
HERMAN DONALD MCKNIGHT

APPLICANT

SWORN to and subscribed before me this 17  
day of Aug., 2011.

[Signature] (L.S.)  
Notary Public

My Commission Expires: 5-16-17

FILED  
AUG 18 PM 2:35  
COMM-FEL-SHEARIN  
CCCC & GS  
FLORENCE COUNTY, SC

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

Herman Donald McKnight,

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Herman Donald McKnight  
Applicant

SWORN or affirmed to and subscribed before me this

17 day of Aug, 2011

[Signature]  
Notary Public

My Commission Expires: 5-15-17

**FILED**  
2011 AUG 18 PM 2:35  
CORRIE BELL-SEARIN  
CLERK OF SUPERIOR COURT  
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS  
FOR THE TWELFTH JUDICIAL CIRCUIT

HERMAN DONALD McKNIGHT, 132919,

Applicant,

-vs-

STATE OF SOUTH CAROLINA,

Respondent.

CIVIL ACTION NUMBER

( TO BE ASSIGNED BY THE CLERK )

ATTACHED TO THE APPLICANT'S  
POST-CONVICTION RELIEF  
APPLICATION

FILED  
2011 AUG 18 PM 2:35  
CORRIE REEL-SHEARIN  
CLERK  
FLORENCE COUNTY, SC

[11a]: SUPPORTING FACTS:..... Trial counsel's stewardship during applicant's trial was both unreasonable and prejudicial. SEE: STRICKLAND -vs- WASHINGTON, 466 U.S. 668 (1984). Counsel's acts and/or omissions included, but not limited to, the following:

1.] Counsel failed to move before the Court, prior to the jury being sworn, for a MOTION TO QUASH the Indictment -- due to the Indictment failed to indicate a date in which the Indictment was allegedly TRUE BILL for General Sessions Court. SEE: INDICTMENT NO: 2008-GS-21-00714 "STATE -vs- HERMAN DONALD McKNIGHT."

A.] It would be highly unreasonable and very prejudicial to "assume" that the Indictment, which incorporated four separate criminal offenses, against the applicant, was:

- 1.] first presented to the Grand Jury; then,
- 2.] the State presented their evidence and testimony; then,
- 3.] the jurors deliberated and returned to Circuit Court to

publish their findings; and,

- 4.] then the Indictment was filed with the Office of the Clerk, for the twelfth judicial circuit

ALL TAKING PLACE ON THE SAME DAY (emphasis added)

SEE: S.C. Code Ann. § 14-9-210 and ARTICLE 1, § 3 of the South Carolina Constitution.

- 2.] Counsel failed to put forth a diligent effort to prepare an adequate defense for his client -- claiming, but not limited to, the following:

- A.] did not receive Discovery until five to six weeks prior to trial. SEE: Trial Trans. Page 25, lines 7-12; whereby, the Rules mandated thirty (30) days after written request; and,
- B.] failed to adequately review this Discovery with defendant. SEE: Trial Trans. Page 25, lines 14-15; and,
- C.] made prejudicial comments before the jury in his opening statement. SEE: Trial Trans. Page 56, lines 2-7; and
- D.] failed to provide the Court with any Mental Competence Report to establish the defendant's ability of understanding and acting with discretion in ordinary affairs of life. CONLEY -vs- NAILOR, 118 U.S. 127, 5 S.Ct. 1001; and,
- E.] claiming counsel's case load prevented him from

adequately putting forth the necessary time to prepare a defense -- given the nature and seriousness of the alleged criminal charges. SEE: Trial Trans. Page 25, lines 12-22; and,

F.] additional Discovery was withheld by the State until the day before trial; (e.g. Medical Records of the victim; 9-1-1 Tapes; Toxicology Reports of the victim, etc. etc.); SEE: Trial Trans. Page 26, lines 4-15; and,

G.] was not afforded adequate time;... nor did counsel take the appropriate steps to secure Expert Witnesses, relevant to the above mention Reports -- given the nature of drugs found in the victim's system. SEE: Trail Trans. Page 27, lines 3-22; and,

H.] failed to establish, throughout the trial, Mr. McKnight's legal rights to the residence (family home), and the threat that was imposed on him of loosing his home to the Stewart family. REVIEW: Trial Trans. Page 176, line 22 thru Page 179, line 22.

This was the family home of Mr. McKnight and his late wife, where they raised their three daughters.

[10b]: Applicant was denied the right to a fair and impartial trial as guaranteed by the Fourteenth Amendment of the United States Constitution; and, by ARTICLE 1, § 3 and § 14 of the South Carolina Constitution.

[11b]: SUPPORTING FACTS:..... Trial Judge's stewardship during Jury Instruction was unreasonable - bias and prejudicial. Trial Judge's actions included, but not limited to, the following:

1.) The Trial Judge repeatedly stating to the jury:

A.] "the evidence satisfying you" -- instead of -- the evidence mandated by law (elements and conduct) to satisfy the offense charged. SEE: Trial Trans. page 583 line 19 and line 23.

B.] "You are to consider only the competent evidence" SEE Trial Trans. Page 585, lines 2 and 3.

Which has a reasonable understanding to influence a jury in believing -- that the evidence presented by legal authorities is competent evidence.

C.] "Malice may also arise when the deed "is" done with a deadly weapon" SEE: Trial Trans. Page 589, lines 22-23 and Page 590, lines 5-6.

Which has the reasonable probability to influence a normal juror to believe that because the defendant had a shotgun -- then malice was established.

2.] The Trial Judge refuse to instruct the jury on the lesser included offense of Involuntary Manslaughter, where there was evidence the decedent grabbed the gun and that the gun went off accidentally.

A.] Although several witnesses gave "inconsistent testimony" the defendant was still entitled to an instruction on involuntary manslaughter because there was evidence that the decedent, who was being threaten, grabbed the gun and the gun then discharged. Although there was evidence of the defendant recklessly handling the gun, and according to his testimony, "it fired almost immediately." Establishing there was sufficient evidence under the law to establish a reasonable

that such conduct existed.

SEE: Trial Trans. Page 410, lines 1-25 and Page 411, lines 1-24. ALSO REVIEW: STATE -vs- LIGHT, 378 S.C. 641, 664 S.E.2d 465 (2008).

3.) The Trial Judge's "Theatrics" in leaving the Bench and parading in front of the Juror's Box (lawyer area), to deliver the Instructions: SEE: Trial Trans. Page 581. lines 11-24 and Page 595, lines 3-25 thru Page 596, lines 1-4; was bias conduct and prejudicial to the defendant.

A.) This form of conduct, accompanied by the above statements, has the reasonable probability to influence a jury of the Judge's Opinion to convict.

[10c.] THE CUMULATIVE ERROR DOCTRINE.

[11c]: SUPPORTING FACTS:..... Applicant asserts the CUMULATIVE ERROR DOCTRINE provides relief when a combination of errors, each of which may or may not be insignificant by itself; but together, has the collective effect of preventing a party from receiving a fair trial. SEE: STATE -vs- JOHNSON, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999).

Respectfully Submitted

Executed this 16 day  
of August, 2011.

*Herman Donald McKnight*  
Herman Donald McKnight  
SCDC No: 132919  
APPLICANT

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) | C.A. NO. 11-CP-21-2219       |
| COUNTY OF FLORENCE       | ) |                              |
|                          | ) |                              |
| Herman Donald McKnight,  | ) |                              |
| S.C.D.C. No. 132919,     | ) |                              |
|                          | ) |                              |
| Applicant,               | ) | <b>RETURN</b>                |
|                          | ) |                              |
| VS.                      | ) |                              |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |
| _____                    | ) |                              |

In response to the post-conviction relief application filed August 18, 2011, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the March 2008 term of the Florence County Grand Jury for assault and battery with intent to kill (ABWIK), murder, discharging a firearm into a dwelling (discharging), and possession of a weapon during the commission of a violent crime (possession). B. Scott Suggs, Esquire represented Applicant. On June 27, 2008, Applicant was convicted of all charges except that he was convicted of assault and battery of a high and aggravated nature (ABHAN) as a lesser offense of ABWIK. The Honorable Thomas A. Russo sentenced Applicant to life imprisonment for murder, concurrent sentences of ten years imprisonment for ABHAN and discharging, and found the possession of a weapon charged subsumed by the murder conviction.

Applicant appealed his conviction. Applicant was represented on appeal by Robert M. Dudek, Esquire. The conviction was affirmed by the Court of Appeals. *State v. Herman Donald McKnight*, 2011-UP-303 (Ct. App., filed June 17, 2011). The remittitur was issued on July 7, 2011.

For the purpose of this Return, the Respondent attaches and incorporates the Clerk of Court's records, the South Carolina Department of Corrections records, the Court of Appeals' opinion, the remittitur, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully because he received ineffective assistance of counsel. Applicant indicates that the facts supporting his claim are in an attachment to the application. However, the State did not receive any attachment with the application. The failure to set out allegations supporting the claim of ineffective assistance of counsel requires dismissal and the State reserved the right to move to dismiss on such grounds.

## III.

The State submits Applicant's allegation that he received ineffective assistance of counsel is without merit. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must

show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). The State submits that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, *supra*; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

#### IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

#### V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

#### VI.

WHEREFORE, having made Return, the Respondent requests that this Court deny or dismiss

this application.

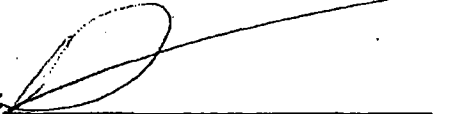
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

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Senior Assistant Attorney General

By: 

**ATTORNEYS FOR RESPONDENT**

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November 15, 2011.

STATE OF SOUTH CAROLINA )

COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS

2011-CP-21-2219

HERMAN DONALD MCKNIGHT, #132919) )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA, )

Respondent. )

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

**Charles T. Brooks, III, Esquire**  
**309 Broad Street**  
**Sumter, SC 29150**

DATED this 15<sup>TH</sup> day of November, 2011.

  
 Norma Bigbee, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

COURT OF COMMON PLEAS

HERMAN DONALD MCKNIGHT )  
132919 )  
PETITIONER, )

v. )

TRANSCRIPT OF RECORD  
11-CP-21-2219

STATE OF SOUTH CAROLINA, )  
RESPONDENT.)

February 01, 2012  
Florence, South Carolina

**B E F O R E :**

THE HONORABLE WILLIAM H. SEALS, JUDGE

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

CHARLES T. BROOKS, III, ESQ.  
Attorney for the Petitioner

DAVID SPENCER, ESQ.  
Attorney for Respondent

FRANCES BAKIS-RAY, RPR  
Circuit Court Reporter

**INDEX**

|                                  | Page |
|----------------------------------|------|
| Procedural history               | 3    |
| Herman McKnight:                 |      |
| Direct examination by Mr. Brooks | 4    |
| Cross-examination by Mr. Spencer | 16   |
| B. Scott Suggs:                  |      |
| Direct examination by Mr. Brooks | 24   |
| Cross-examination by Mr. Spencer | 28   |
| Ruling of the Court              | 39   |

1 MR. SPENCER: Your Honor, the next case I  
2 would call will be Herman McKnight.

3 THE COURT: Mr. Brooks.

4 PETITIONER MCKNIGHT: Do I go up there  
5 now?

6 THE COURT: Wait, hold on one second. Let  
7 me hear from ---

8 MR. SPENCER: And your Honor, just I'll  
9 give you some procedural background. This is  
10 2011-CP-21-2219. Mr. McKnight was indicted for  
11 assault and battery with intent to kill, murder,  
12 discharging a firearm into a dwelling, and  
13 possession of a weapon during the commission of a  
14 violent crime. He was represented by Mr. Scott  
15 Suggs who is here today. He was -- went to trial.  
16 He was convicted on June 27th of 2008 of murder,  
17 assault and battery of a high and aggravated nature  
18 as a lesser offense of the ABWIK charge. And he was  
19 sentenced by Judge Russo to life imprisonment for  
20 murder and a concurrent ten year sentence for ABHAN,  
21 and also he was convicted on the discharging charge  
22 as well and also received a concurrent sentence of  
23 ten years on that and the possession of a weapon  
24 charge was subsumed by the murder conviction.

25 He did appeal his conviction and sentence.

PW - H. MCKNIGHT - DIRECT

1 That was affirmed by the Court of Appeals. The  
2 remittitur was issued in July 7th of 2011.  
3 Mr. McKnight is represented here today by  
4 Mr. Charles Brooks, and I would just ask that  
5 Mr. Brooks set out the allegations for the record.

6 THE COURT: All right, Mr. Brooks.

7 MR. BROOKS: If it please the Court,  
8 Judge, we're ready to begin. My client's  
9 allegations are all in his application.

10 THE COURT: All right. If you'll come on  
11 up.

12 MR. BROOKS: We call Mr. McKnight.

13 THE CLERK OF COURT: If you would, place  
14 your left hand on the Bible and raise your right  
15 hand.

16 PETITIONER MCKNIGHT: Yes, ma'am.

17 WHEREUPON,

18 HERMAN MCKNIGHT,

19 having been duly sworn by the Clerk of Court,

20 testified as follows:

21 THE CLERK OF COURT: Be seated and state  
22 your name for the record.

23 DIRECT EXAMINATION

24 BY MR. BROOKS:

25 Q Mr. McKnight.

PW - H. MCKNIGHT - DIRECT

1 A Yes, sir.

2 Q How are you doing today?

3 A Well, not so good.

4 Q I'll try to talk up so you can hear me.

5 A Yes, sir, I'm hard of hearing.

6 Q And we were talking about this in the back, you  
7 want to tell your story here today, right?

8 A Yes, sir.

9 Q That's the main thing you wanted to do, right?

10 A Yes, sir.

11 Q And you had Mr. Suggs representing you; is that  
12 right?

13 A Yeah, Mr. Suggs represented me.

14 Q Now tell the Court about your case and why you  
15 should get a new trial.

16 A Well, you want me to tell you about coming from  
17 the funeral home?

18 Q Well, I mean, you want a new trial?

19 A Yes, sir, and —

20 Q Why should you get that new trial?

21 A Because it didn't happen the way they said it  
22 did.

23 Q How did it happen?

24 A Okay. My daughter died with a heart attack. She  
25 had went and got drunk the night before, and she was

PW - H. MCKNIGHT - DIRECT

1 taking drugs right along with Stewart. And I asked  
2 her, I said, Donna, will you help me clean my  
3 freezer out, my -- and clean my trailer up I said.  
4 My freezer went off and my meat is ruined, about 50  
5 pounds. And she said, yeah daddy, says as soon as I  
6 feel better. I said okay. And we went over there.  
7 See, my daddy had lung cancer and I was back and  
8 forth with him at the house over there. And anyway,  
9 I took and was -- Donna had cleaned the freezer, and  
10 we back over there at the house and she had to go  
11 fill her Valiums and Xanaxes. She's had lupus. And  
12 we went down there and we come back to the house.  
13 She said, daddy, my chest is hurting. I said, you  
14 want me to run you up to the emergency room? She  
15 said, no, I'm just going to lay here. And I dropped  
16 off asleep. And Steven Parker, her boyfriend, come  
17 in and he took her down to the emergency room and  
18 she had a massive heart attack. And --  
19 Q Now the fact -- get to the other part where the  
20 whole incident happened.  
21 A Well, this is what I'm getting to.  
22 Q Okay, go ahead.  
23 A So she was put on life support, stayed about two  
24 days, they cut her off and she died. They took her  
25 to the funeral home, and I went down there to visit

PW - H. MCKNIGHT - DIRECT

1 her to see her. And coming back Joe Clark, my  
2 brother-in-law, was with me -- well, he was at the  
3 funeral home. So he was drunk and he rode down to  
4 WC's. I said, well, stop by and drink us a beer.  
5 He said, no, I want a mixed drink. I said, you  
6 drunk already, I said well, I'll get you one anyway.  
7 And I got him one, he wanted another one. Said  
8 he/wanted a beer. I said, you want another beer? I  
9 said, drink this beer, Joe, you drunk already, you  
10 got to ride with me anyway. So anyway, we pulls up  
11 in the yard, but he had went to sleep at the bars  
12 but I -- we pulled up in my yard. I said, I woke  
13 him up, I said Joe, go and get you something eat and  
14 you'll feel better. So we went in, and the time as  
15 he walked in the door Stewart jumped on him. And  
16 Stewart was drugged up off the Valium too. It's on  
17 the record there in the papers.

18 MR. SPENCER: Your Honor, may I approach  
19 for a moment.

20 THE COURT: Sure.

21 (WHEREUPON, counsel approached the Bench  
22 for an off-the-record discussion.)

23 THE COURT: All right, let me make one  
24 thing clear, the only person that's going to talk in  
25 this courtroom is going to be me. It's going to be

PW - H. MCKNIGHT - DIRECT

1 that witness right there and these two lawyers,  
2 nobody else. If I hear anything from anybody out  
3 there in the courtroom I'm gonna hold you in  
4 contempt of court and I'm gonna put you in jail for  
5 ten days or you can pay a five thousand dollar fine.  
6 That is your choice. I'm making myself clear. If  
7 you want to talk go right ahead and do it.

8 Go ahead, Mr. Brooks

9 BY MR. BROOKS:

10 Q All right.

11 A I'm getting to it right now.

12 Q Go ahead, Mr. McKnight.

13 A Okay. Stewart, we -- me and Joe went in. And I  
14 told Joe to get him something to eat, and he just  
15 grabbed a biscuit off the table. He was drunk; he  
16 was there. And Stewart jumped on him. I don't know  
17 exactly what they was fussing about, and Joe finally  
18 told him --

19 THE COURT: All right, let me make one  
20 more thing clear. Even though you're not saying  
21 anything I don't want to see any head nodding or  
22 anything. I want no reaction from that audience.  
23 One more time I want you to take them out.

24 THE DEPUTY: Yes, sir.

25 THE COURT: Go ahead.

PW - H. MCKNIGHT - DIRECT

1           THE WITNESS: Any time -- anyway, he was  
2 eating his biscuit, Stewart jumped on him. And Joe  
3 said, well, I can go at the damn house. And so Joe  
4 didn't go to his house. He was locked out of his  
5 house 'cause Kay, the girl that stays with him, had  
6 locked the door. So he went back and got in my  
7 truck and he went to sleep. And I eat me some beans  
8 and rice and, I guess, a piece of chicken, whatever;  
9 I can't remember exactly what all we eat. But I  
10 took -- and Stewart was over there screwed up as I  
11 call it. I said, Stewart, I said, what damn right  
12 is you got to jump on somebody in my house. I said,  
13 get your ass out. He said, you get your damn ass  
14 out. I said, sit there.

15           MR. SPENCER: Your Honor, I object to any  
16 hearsay.

17           THE COURT: Sustained.

18 BY MR. BROOKS:

19 Q Now, Mr. McKnight, instead of talking about what  
20 somebody else said go ahead to what actually  
21 happened.

22 A Well, I thought that's what I was telling you.

23 Q Yeah, but get --

24 A What I'm saying is I told him, I said, you ain't  
25 got no right to tell somebody what to do in my

PW - H. MCKNIGHT - DIRECT

1 house. I said, you get out.

2 Q And what happened next?

3 A And then he told me to get out; and I told him, I  
4 said you sit there you son of a bitch.

5 Q And what happened next?

6 A I went and got my gun out my truck. Joe was  
7 still there passed out. I went in and Mrs. — the  
8 woman right back there, Floyd's momma, she locked  
9 the door. And I had the key in my pocket; I was so  
10 mad I didn't think. I kicked that door, but she had  
11 locked the other one going in the kitchen. So I  
12 shot that door handle, and I blow the 1200-dollars  
13 stove all to piece and the shot bounced on Stewart  
14 and her over there at the end of the bar. She run  
15 down the hall. I took and walked around. There was  
16 case opening just right around the corner there, the  
17 rooms combined. And I — as I was stepping up I put  
18 another shell in the gun. Now I'm gonna tell  
19 Stewart to get out my damn house. And the boy  
20 grabbed the gun before I could — the boy knowed it.  
21 And he — and he reared back like that there. And  
22 when the gun went off it went into his ribs or  
23 somewhere down in there. And he held on that gun  
24 and it pulled him back up straight.

25 Q Okay.

PW - H. MCKNIGHT - DIRECT

1 A But the gun come loose and I, shocked, and a  
2 puddle of blood big around as my head pulled out  
3 that wheelchair down by his legs in that floor and  
4 there was a -- he's got a picture of it too.

5 Q Okay.

6 A And I stood there in shock, and I said, well,  
7 I'll just go out to the truck and sit down and wait  
8 on the law. I went back through the door, opened  
9 the door to the shop, but seem like a handle come  
10 off in my hand.

11 Q Okay.

12 A Now seems like it did. And I went on out and I  
13 sit down in the truck. I stuck my foot -- while I  
14 was there I put another shell in the gun. That's  
15 why there was two cartridges, two cartridges laying  
16 in the floor, and there was a live round in the  
17 barrel and I stuck it behind my seat and I sit down  
18 waiting on the law. And I don't know if that boy's  
19 name Kenny, but they kicked the door that -- but  
20 when they went out they, the door locked them out;  
21 it self-locked him. The house cleared. Kelly's  
22 wife took the children and went in the bath, in the  
23 back room, laid down on the floor. My daughter went  
24 and got in the bath tub. She knowed there's gonna  
25 be trouble. And anyway -- where was I at?

FW - H. MCKNIGHT - DIRECT

1 Q Is that when the police came and got you?

2 A No, sir. Anyway, I went back out to the truck  
3 and I sit down, and I heard him on Joe's side asking  
4 about the gun. And I thought the law -- I said I  
5 got the gun over here. Joe was drunk and (makes  
6 mumbling sound), you know how a drunk is. And  
7 Kelly -- I believe that boy's name Kelly if I ain't  
8 mistaken. I don't know the people, but he stuck his  
9 head around my truck. It might -- I got a camper on  
10 my truck. And I said the gun is here, and I reached  
11 there to get it, you know, I was going to hand it to  
12 him. And he run in to me and we folded my door all  
13 the way around to the fender. I doubt that -- my  
14 truck still sitting somewhere, but I know that door  
15 is ruined. And anyway, they started beating on me  
16 and they jum-- Kelly and the boy that got up there,  
17 said he was in the house and they found out he  
18 wasn't. And the judge asked Mr. Suggs there I  
19 believe, Mr. -- I think that's your name. Asked him  
20 if he wanted to get him for purgery, and they got  
21 around to talking. I don't know how they did it.

22 MR. SPENCER: I object to the hearsay  
23 again.

24 THE COURT: Sustained.

25 THE WITNESS: What was --

PW - H. MCKNIGHT - DIRECT

1 THE COURT: In other words, don't say  
2 anything that somebody else said.

3 THE WITNESS: Okay. I'm lost again.

4 BY MR. BROOKS:

5 Q Well, don't worry about it. Is there anything  
6 else you want to say about Mr. Suggs representing  
7 you?

8 A Well, I don't feel like Mr. -- I believe he's a  
9 good man, but that just, he didn't -- I didn't get  
10 to tell them what I told y'all just now.

11 Q So today you got a chance to tell it all?

12 A Today I got to tell the truth and I just want the  
13 truth to come out.

14 Q Is there anything else about Mr. Suggs'  
15 representation other than he wouldn't let you get to  
16 the truth?

17 A I didn't get to say what I wanted to say.

18 Q Like you said today?

19 A But now when you're on the stand you just answer  
20 questions but.

21 Q Right.

22 A I feel like he could have handled it a different  
23 way, let me tell it about coming from the funeral  
24 home and then jumping on me. He didn't even mention  
25 —

PW - H. MCKNIGHT - DIRECT

1 Q Like I just did?

2 A Yes, sir.

3 Q So I got you — I let you go ahead and just tell  
4 the story.

5 A And tell what happened.

6 Q Okay.

7 A And well, he said he wanted me to get up there,  
8 that the last statement, he wanted me to get up  
9 there and tell how much I thought of Stewart. And I  
10 did love Stewart.

11 Q Okay.

12 A But anyway, I told them that he grabbed the gun.  
13 I did get to say that in court.

14 Q Okay.

15 A But I'd like to say this here also; that's all I  
16 got to say. I'd like to add this, if it's all right  
17 with you, Your Honor. I can't hardly talk. This  
18 money spent on this trial could go to children.

19 MR. SPENCER: Your Honor, I'm not quite  
20 sure what — Your Honor, that's not responsive to  
21 the —

22 THE WITNESS: I would like to finish.

23 MR. SPENCER: Your Honor, I object to a  
24 narrative instruction.

25 THE COURT: All right, sustained. Hold on

PW - H. MCKNIGHT - DIRECT

1 one second. Go ahead and ask your question and  
2 let's see if we can get an answer.

3 BY MR. BROOKS:

4 Q Let me help you out, Mr. McKnight. What you were  
5 talking about is you felt like the State could have  
6 used their resources in other areas; is that right?

7 A That's right.

8 Q And that's the only thing you wanted to say.

9 A But I want the truth to come out.

10 Q And that's the only other thing you want to say  
11 other than —

12 A And I would like to make one more statement about  
13 the 20 years and I got them as a witness. He said  
14 that I could —

15 MR. SPENCER: Your Honor, I object to  
16 hearsay again.

17 MR. BROOKS: Now he say he's talking about  
18 Mr. Suggs now. I think he can get into that.

19 MR. SPENCER: Okay, so Mr. Suggs — that's  
20 fine, I withdraw that.

21 BY MR. BROOKS:

22 Q Are you talking about something Mr. Suggs said?

23 A Yeah, he told me.

24 Q Okay.

25 A He said — that was when we first, he was first

PW - H. MCKNIGHT - CROSS

1 my lawyer, you know. He side 20 years but said, but  
2 20 years is a life sentence to you.

3 Q Okay.

4 A 'Cause I won't do 20 years.

5 Q All right.

6 A But anyway, if I -- the truth comes out and I win  
7 the case, the federal, I'm guilty of the firearm.  
8 That's 15 years.

9 Q I understand.

10 A So if I'd have took the 20 I still got the 5 that  
11 I've already did and I got -- I'll have 15 more. I  
12 can't deny.

13 Q All right. So with that being said, you told  
14 everything about Mr. Suggs you wanted to tell the  
15 judge here today; is that right?

16 A I just don't believe he handled it in the right  
17 way, but I believe he's a good man.

18 Q All right. I'm gonna sit on down and you answer  
19 any questions that this gentleman has for you, okay?

20 A Okay.

21 THE COURT: Mr. Spencer.

22 CROSS-EXAMINATION

23 BY MR. SPENCER:

24 Q Now one thing you mentioned at trial that I think  
25 you left out of today's testimony ---

## PW - H. MCKNIGHT - CROSS

1 A If you will speak up. I'm half deaf in both  
2 ears.

3 Q Sure, I'll gladly do that, Mr. McKnight.

4 A Yes.

5 Q All right, and I'll approach too a little bit.

6 A Yes, sir, if you will.

7 Q Yes, sir, can you hear me now?

8 A Yes, sir.

9 Q All right, very good. One thing that I think you  
10 didn't testify to today but you did testify to at  
11 trial, when you and Stewart had that argument you  
12 told Stewart you were going to kill him, right?

13 A I told him I'd blow his damn brains out if I  
14 ain't mistaken.

15 Q All right. And then you went out to your car,  
16 your truck, excuse me.

17 A Yes.

18 Q Then you grabbed the gun?

19 A Yeah.

20 Q Was that gun already loaded?

21 A I believe it was. I had five or six shells in  
22 it.

23 Q And then you came back?

24 A Yes, sir.

25 Q And then Stewart's dead, right?

PW - H. MCKNIGHT - CROSS

1 A Stewart grabbed the gun, and it went off in his  
2 belly or wherever it was.

3 Q And there were witnesses that testified that they  
4 saw you shoot him?

5 A Yeah, them witnesses are liar. That's why I want  
6 to go to court. I know I won't never get out in 15  
7 years.

8 Q Let me ask you this, there's also witnesses that  
9 testified that after you shot Stewart that you said  
10 you were going to kill all of them.

11 A No, I said no such thing. I don't go around and  
12 shoot people. If Stewart hadn't have grabbed that  
13 gun he'd be here today.

14 Q It's his fault?

15 A He grabbed the gun. If he -- I was going to tell  
16 him, Stewart, get the hell out my house.

17 Q Why didn't you just tell him before you went and  
18 grabbed a gun?

19 A I told him to got out my house start with; he  
20 told me to get out.

21 Q Why didn't you tell the jury you told him to get  
22 out --

23 A Huh?

24 Q --before you went and got the gun?

25 A I told the jury I told him to get out my house.

## PW - H. MCKNIGHT - CROSS

1 Q And what page of the transcript is that?

2 A You -- I've lost you again; I can't hear.

3 Q What page of the transcript does it say that?

4 A I don't know, I -- I'm an 8th grade graduate, I  
5 ain't. It may not be on there where the judge asked  
6 Mr. Suggs he wanted to get him for purgery. The boy  
7 that said he was in the house sent him up, which I  
8 don't want nobody to pull no time. And if the truth  
9 comes out in this case, if I go to court I don't  
10 want nobody to be charged with purgery.

11 Q And you told Mr. Suggs at one point that you  
12 wanted to plead guilty, right?

13 A No.

14 Q And Mr. Suggs told you you might as well have a  
15 trial ---

16 A No, I got sense enough to know I won't live 20  
17 years.

18 Q All right. So you went to trial and you got a  
19 chance to testify before the jury?

20 A They asked me questions but I didn't get to say  
21 that he snatched the gun till the very last  
22 testimony. Mr. Suggs told me to get up there and  
23 tell how much that I liked Stewart, which I did like  
24 Stewart.

25 Q Right, because the arg-- because what you're

PW - H. MCKNIGHT - CROSS

1 saying is it was just an accident, you never meant  
2 to shoot him?

3 A He grabbed the -- I was -- yeah, he grabbed the  
4 gun. I didn't get to tell him to get on out the  
5 house.

6 Q You just wanted to raise the devil in him, right?

7 A I wanted him to get out my house.

8 Q Isn't that what you said, I was gonna raise the  
9 devil in him?

10 A No, I was gonna tell him to get out my house.

11 Q You weren't -- you didn't testify --

12 A I guess that might be the devil telling get out  
13 my house. That might be raising the devil.

14 Q You testified, I know he thought I was going to  
15 kill him.

16 A I imagine he thought that, and that might be why  
17 he grabbed the gun. That had to be why he grabbed  
18 it. Well, he was drugged up. I don't know if he,  
19 that give him nerve or what.

20 Q And you said, I was gonna raise the devil in him?

21 A I was gonna raise the devil at him.

22 Q Beg the Court's indulgence.

23 THE COURT: Sure.

24 MR. SPENCER: I don't want to get this  
25 wording wrong.

## PW - H. MCKNIGHT - CROSS

1 THE WITNESS: I just want the truth to  
2 come out; that's all I want. If it would help  
3 Mr. and Mrs. Floyd, 15 more years I won't be here,  
4 them either; but we got to go before the real judge  
5 where the truth is.

6 BY MR. SPENCER:

7 Q Well, you're saying that ---

8 A We only try to get the truth here. You ain't  
9 getting all the truth.

10 Q Are you saying Judge Russo wasn't a real judge?

11 A Sir?

12 Q Are you saying Judge Russo wasn't a real judge?

13 A No, I'm not saying he wasn't a real judge.

14 Q And you had a real jury, right?

15 A I believe that judges are elected from the Jesus  
16 Christ, our father, for their wisdom and knowledge.

17 MR. SPENCER: Beg the Court's indulgence.

18 THE WITNESS: I'll say this here ---

19 BY MR. SPENCER:

20 Q Let me ask you this, if I may. And you -- you  
21 were asked, well why couldn't you raise the devil at  
22 him without using a gun. You were asked that  
23 question. You answered ---

24 A He ---

25 Q ---I don't know, I was emotional, under so much

PW - H. MCKNIGHT - CROSS

- 1 pressure till ---
- 2 A Yeah, I had just seen ---
- 3 Q ---my love and hurt turned into anger.
- 4 A ---young-un laying in a casket. And I -- he
- 5 picked a hell of a day to mess with me, but I still
- 6 love Stewart.
- 7 Q And you showed him by grabbing your rifle,
- 8 busting in the house ---
- 9 A That's my house.
- 10 Q ---shooting the lock.
- 11 A And too ---
- 12 Q And sticking a gun in his side?
- 13 A I shot the lock.
- 14 Q And it's his fault it went off?
- 15 A I shot the lock. I figured ---
- 16 Q Is it his fault that it went off?
- 17 A Huh?
- 18 Q Is it his fault it went off?
- 19 A I can't hear you.
- 20 Q Is it his fault that that gun went off?
- 21 A Yeah, he grabbed it. If he hadn't grabbed it
- 22 he'd be here today.
- 23 Q If you'd left your gun in the truck he would be
- 24 here today too; wouldn't he?
- 25 A Yes, he sure would.

## PW - H. MCKNIGHT - CROSS

1 Q And you had a chance to ---

2 A If I let Stewart (inaudible) ---

3 THE COURT REPORTER: Whoa, whoa.

4 THE WITNESS: ---selling (inaudible) ---

5 THE COURT: Hold on.

6 THE COURT REPORTER: One at a time please.

7 THE WITNESS: If I'd let a dope dealer  
8 stay in my house and rob little children of milk and  
9 food, I wouldn't be worth a damn. I don't believe  
10 in that.

11 MR. SPENCER: Thank you, Your Honor. I  
12 have no further questions.

13 THE COURT: Anything further?

14 MR. BROOKS: No, sir.

15 THE COURT: All right, you may step down.

16 THE WITNESS: Yes, sir. Sorry about the  
17 raucous.

18 MR. BROOKS: We will call Mr. Suggs to the  
19 stand.

20 THE CLERK OF COURT: Would you place your  
21 left hand on the Bible and raise your right hand.

22 WHEREUPON,

23 **BARRY SCOTT SUGGS,**  
24 having been duly sworn by the Clerk of Court,  
25 testified as follows:

PW - B. SUGGS - DIRECT

1 THE CLERK OF COURT: State your full name  
2 for the record.

3 THE WITNESS: Barry Scott Suggs.

4 **DIRECT EXAMINATION**

5 BY MR. BROOKS:

6 Q Mr. Suggs.

7 A Yes, sir, Mr. Brooks.

8 Q You represented Mr. McKnight?

9 A Yes, I did.

10 Q Can you give a brief summary of what the State's  
11 case was against him?

12 A Well, first of all it was a 2008 case and not a  
13 2011 case. I think that was announced, the  
14 indictment was announced incorrectly. I was talking  
15 to Mr. Spencer about that. It's 2008.

16 Q Okay.

17 A Well, from the beginning, sort of a synopsis of  
18 what the case is about?

19 Q Briefly.

20 A Briefly, okay. Well, I'll try to be as brief as  
21 possible. First of all, I know that Mr. McKnight  
22 was appointed by -- we were appointed to represent  
23 Mr. McKnight by judge, it looks like Judge Nettles  
24 in, on August the 28th of 2007. And it really, it  
25 really was a very sad, very sad and unfortunate

PW - B. SUGGS - DIRECT

1 story. As I understood it Mr. McKnight — and I  
2 think he's essentially a very, very nice man, and  
3 just had something just, you know, just go out of  
4 control on him.

5 Q Well, let me ask you this.

6 A His daughter had just passed away. I knew, you  
7 know, that was a big part of it.

8 Q Let me ask you this.

9 A Yes, sir.

10 Q You sat here, was what Mr. McKnight testified to,  
11 is that pretty much accurate as far as what the  
12 State's case was?

13 A Well, I mean, I would have to defer to the  
14 transcript on, you know, for absolute correctness in  
15 certainty on the trial and what occurred during the  
16 trial.

17 Q But what you recollect?

18 A Well, I know that his dau-- I know that he loved  
19 his son-in-law, but I also know that he blamed his  
20 son-in-law for his daughter's addiction to opiates  
21 or some sort of drug that she had that addition for.  
22 And he felt very bitter about that and felt that he  
23 was to blame for that ultimately. And I know about  
24 the freezer situation; and as I recall, it was his  
25 freezer that had broken down. And this is kind of

PW - B. SUGGS - DIRECT

1 an important part of the case. His freezer had  
2 broken down some days before, and I think he had  
3 some shrimp or something in the freezer — and I did  
4 not know this, but when shrimp goes back it gives  
5 off a very potent toxin. And I am told that even  
6 the Department of Health and Environmental Control  
7 has to actually get full body suits on to clean  
8 shrimp that has gone bad because of the chance of  
9 being poisoned. And I believe that he had shrimp in  
10 the freezer at the time; and of course, no  
11 protection was used in the cleaning process and it  
12 wasn't long after that that she had to go into the  
13 hospital. Now whether the two are related or not, I  
14 don't know. Whether that has something to do with  
15 his claims that he blamed the victim for his wife's  
16 addic— his daughter's addiction, maybe that had  
17 something to do with it, but I know she ultimately  
18 died a few days later.

19 Q Was there any plea negotiations in this case?

20 A There were, yes, sir. Yes, sir.

21 Q What were they?

22 A I found an actual note in the file from Ed  
23 Clements, and it's not — it's not dated, but it  
24 does reference State versus McKnight, and it says  
25 that he would agree to a voluntary manslaughter for

PW - B. SUGGS - DIRECT

1 a 20 year sentence and that's the best offer that he  
2 can make on the facts. And he had -- he finally had  
3 had gotten all of the family to agree to it. And I  
4 had responded, and of course, I didn't put a date on  
5 it either. I had responded that I appreciated the  
6 offer; but I felt that a 20 year sentence,  
7 negotiated sentence would amount essentially to a  
8 life sentence for this gentleman because of his age  
9 and because of his physical condition. And I don't  
10 recall exactly what his condition was about whether  
11 it's high blood pressure or diabetes or something.  
12 He's got some kind of condition that --

13 Q Combination of them?

14 A Could be. And I was concerned that if he got 20  
15 years, based upon his age, based upon his health,  
16 his poor health, that that would have amounted to he  
17 would have died in prison anyway. Now if we were  
18 talking about a 17, 18 year old boy who had done  
19 something like this, you know, 20 years, you know,  
20 you're gonna be able to get out and still have a  
21 life, you know, under normal circumstances. But for  
22 Mr. McKnight, 20 years would have been life; and so  
23 this wasn't a death penalty case so the worst he  
24 could get would be life in prison. And that's the  
25 same offer that was essentially made by Mr.

## PW - B. SUGGS - CROSS

1 Clements so it was declined. I asked Mr. Clements,  
2 I said, we'd agree to the voluntary but not the  
3 sentence, please allow me to argue that before the  
4 jury and then based upon the circumstance and facts  
5 surrounding the whole incident maybe I could  
6 convince the judge for something less than 20. And  
7 that was my objective.

8 Q And you explained that to Mr. McKnight?

9 A Yes, sir, we went over that.

10 Q Okay, all right. No other questions.

11 THE COURT: Mr. Spencer.

12 **CROSS-EXAMINATION**

13 BY MR. SPENCER:

14 Q Mr. Suggs, what did Mr. McKnight tell you as far  
15 as what happened that night?

16 A Well, you know, obviously the man was aggrieved.  
17 I mean, he was very, very upset because his daughter  
18 had passed away and I felt very sympathetic and very  
19 compassionate to his feelings. But as I understand  
20 the story there was -- there was a visitation at the  
21 funeral home before they had the gathering at the  
22 home, and there may have been some words said at the  
23 visitation or there may have been some observations  
24 made by folks at the visitation that Mr. McKnight  
25 had been drinking, something of that nature. And

## PW -- B. SUGGS -- CROSS

1 then later on the family gathered in the home where  
2 food was prepared, and you know, the sort of things  
3 that you do in a wake. And there was, of course,  
4 the issue of the ownership of the home. And as I  
5 understand it the home where this incident occurred  
6 was where his son-in-law and his daughter were  
7 living, but I think they were -- they may have been  
8 estranged at the time, you know, sort of back and  
9 forth, back and forth, you understand? But it was  
10 Mr. McKnight's contention that the house was the  
11 McKnight family home, that the home belonged to him  
12 and did not belong to the victim, that the victim  
13 was simply allowed to stay there with his daughter.  
14 And whenever he came over I think there was some --  
15 there was some exchange between he and the victim  
16 about, you know, who had the right to tell the other  
17 to leave based upon ownership, based upon occupancy  
18 because he wasn't -- Mr. McKnight wasn't living  
19 there, but he claimed ownership. The victim didn't  
20 own it, but he was occupying it so I think there was  
21 a dispute about that. And I think he got -- he got  
22 riled, Mr. McKnight got riled when -- and sort of  
23 felt affronted when he was told he had to leave what  
24 he perceived to be his own home. And also when he  
25 came in there were folks who testified that when he

PW - B. SUGGS - CROSS

1 came in he was like, well, I'm ready to do some  
2 drinking, I'm ready to do some partying, that kind  
3 of thing. And some of the other folks in the house  
4 were, well you know, this is not an appropriate time  
5 to be, you know, to be drinking alcohol and you  
6 know, maybe that's okay but no rowdiness, no  
7 partying, because this is a wake, this is not a, you  
8 know, this is not a super-bowl party. And I --  
9 those words weren't used; that's just my  
10 interpretation of it but. And then I think when he  
11 was asked to leave and because they didn't want any  
12 drinking, he got very angry and upset and I think he  
13 did -- the testimony shows that he did convey some  
14 threats to the folks inside the house including the  
15 victim that he was going to retrieve a firearm and  
16 he was going to come back and shoot or kill someone.  
17 And you know, sometimes people take these threats  
18 seriously and sometimes they don't. I think in  
19 today's society I think -- I think we should all  
20 take threats like that very seriously with the  
21 violence, level of violence that goes on today but.  
22 One person that I think -- and I don't remember  
23 who -- said it might be a good idea to lock the  
24 door. So when Mr. McKnight left, it's my  
25 understanding he went to his truck. He had a camper

PW - B. SUGGS - CROSS

1 type truck and retrieved the shotgun, and then  
2 somebody -- I don't remember who the lady was, she  
3 went to lock, lock the door that comes into the  
4 kitchen. You see, there's like a mud room here,  
5 right here, and then there's the door that goes to  
6 the outside so there's two doors to get into the  
7 kitchen. First the door that enters into the mud  
8 room or laundry room and then just to the left of  
9 that is the door that goes into the kitchen. Of  
10 course I went out to the scene as I always do.  
11 Every murder case that I've ever handled the last 24  
12 years, I've always gone out to the scene to see for  
13 myself. This is something I never fail to do. And  
14 I met with I think one of his other daughters, I  
15 can't remember, and she sort of showed me around.  
16 But as I understand it he kicked in the door to the  
17 mud room. Now once you're in the mud room, if you  
18 go straight there's no other door. There's like a  
19 dining room area right in front of the mud room and  
20 then to the left is the living room. But instead of  
21 going straight to the dining room and making a left  
22 turn into the living room he immediately made the  
23 left turn from the mud room and shot the door that  
24 goes into the kitchen and I think struck some lady  
25 in the hand who was in the process of locking the

PW - B. SUGGS - CROSS

1 door. And then, as I understand it, he passed  
2 through the kitchen into the living room and then  
3 that's where the victim was in his wheelchair in  
4 that room. So if he'd had gone straight from the  
5 mud room into the dining room he could have taken a  
6 left and been in the living room right there where  
7 the victim was. But instead, he kicked -- he shot  
8 in the door to the kitchen and went around this way  
9 so. But in any event, he confronted the victim and  
10 then shot him. I'm sorry that took so long.

11 Q No, that was very helpful, Mr. Suggs. Beg the  
12 Court's indulgence for a moment.

13 THE COURT: Sure.

14 THE WITNESS: But I know he was beat up  
15 shortly after that. I know that there's some folks  
16 got him outside in the front yard and beat him up  
17 pretty well; and we had some pictures I think that  
18 showed the, you know, the mug shot and some other  
19 things, showed his bruises and stuff.

20 BY MR. SPENCER:

21 Q And is it fair to say there was a dispute whether  
22 he was sitting in his truck -- he had testified that  
23 he was sitting in his truck when, truck afterwards,  
24 when people pulled him out of the truck?

25 A I don't remember that part. I just know that he

PW - B. SUGGS - CROSS

1. was attacked shortly after the shooting; but I don't  
2. know, I don't remember where he was exactly. He  
3. could have been there; I don't know.

4. Q And there was some testimony that there was a  
5. struggle to get the gun away from him right in the

6. ---  
7. A Yeah, but you know ---

8. Q ---kitchen where he was shot?

9. A That didn't come up until way later. I mean, we  
10. -- we started out, I think, on this trial talking  
11. about voluntary and involuntary, and then this thing  
12. about accident sort of came up way late about the  
13. guy grabbing the gun. I mean, that had not even  
14. been mentioned to me that I recall.

15. Q So ---

16. A And so I was confronted then with this, you know,  
17. was it, you know, is this a charge of accident, you  
18. know, that I need to do. But I think, I think to  
19. get a charge of accident I think you've got to show  
20. that you're not engaged in anything that would  
21. amount to a felony. I think that's the way the  
22. statute reads. But then, you know, you have this  
23. argument whether discharging a firearm in your own  
24. home, would that constitute a felony if, you know,  
25. established that it's his home and whether or not

PW - B. SUGGS - CROSS

1 the injury to the woman would be, you know,  
2 considered a felony if it were reduced to aggravated  
3 assault which is a misdemeanor. But you know,  
4 pointing and presenting I think is a felony so I,  
5 you know, he pointed the gun and then -- and then he  
6 said he pulled it away so. I don't know, I think, I  
7 think we got a charge of accident -- I don't  
8 remember -- but I'm not sure all the elements were  
9 there to support it.

10 Q Right.

11 A It came up late I believe.

12 Q So if the transcript reflects that there was a  
13 charge of accident that's consistent with your  
14 recollection of events?

15 A You know, it was like trying to ride three or  
16 four horses at the same time. You know, I usually  
17 don't do that. I usually try to stick with one, you  
18 know, central theme or theory with the jury; but you  
19 know, there's just so many -- there were so many  
20 ways a jury could look at this, you know. They  
21 could look at it as murder, sure. They could look  
22 at it as a voluntary manslaughter, you know, a crime  
23 committed during the heat of passion with sufficient  
24 legal provocation without a sufficient cooling off  
25 period. They could look at it like that because it

PW - B. SUGGS - CROSS

1 happened so fast. Maybe they could have considered  
2 involuntary manslaughter because I think in opening  
3 argument I tried to say it was reckless, negligent  
4 type act on his part. And then when the accident  
5 thing came up, you know, we hear something else so,  
6 you know.

7 MR. SPENCER: And Your Honor, just for the  
8 record, accident was charged— the judge confirmed  
9 he'd charge accident on page 513 of the transcript.  
10 The parties agreed to charge voluntary manslaughter  
11 on 515, and Mr. Suggs sought involuntary  
12 manslaughter and I think that was denied and that's  
13 on page 513 of the transcript. Charges, but I  
14 didn't write specific page numbers for the charges,  
15 but the charges start on page 581 of the transcript.

16 THE WITNESS: It presented the jury, in my  
17 opinion, with a lot of different ways to go; but the  
18 end of the day they saw a man with a shotgun shoot  
19 somebody in a wheelchair. I mean, that's just  
20 basically what it boils down to.

21 BY MR. SPENCER:

22 Q And Mr. McKnight didn't tell you that the victim  
23 pulled the gun towards him until the trial already  
24 began?

25 A I think that was even — that was late during the

PW - B. SUGGS - CROSS

1 trial I believe. I don't even -- I don't remember  
2 even discussing that with him at all before the  
3 trial, but I would defer to whatever the transcript  
4 says. I mean, I don't -- I don't, you know, I'm  
5 telling the truth as best I can remember.

6 MR. SPENCER: Beg the Court's indulgence.

7 THE WITNESS: I just knew that, you know,  
8 a 20 year voluntary would be the same as a life  
9 sentence, and I've been in that position before  
10 where I've had to try cases that where the client  
11 actually wanted to plead guilty but the outcome  
12 would be the same. You got somebody bringing in 500  
13 grams of powder cocaine or base and they're gonna  
14 get 25 or 30 years mandatory if they plead guilty or  
15 25 or 30 mandatory if they go to trial and get  
16 convicted, and they may have a proximity charge  
17 that's dismissed; but generally that runs concurrent  
18 anyway. There's no point, there's no point in  
19 pleading those; you just got to try them. I mean,  
20 the results are the same. If you plead them you've  
21 lost your appellate rights, you've lost your chance  
22 for PCR. If you try them the judge could screw up,  
23 and it could be reversed on appeal. I could screw  
24 up and the man could be entitled to a new trial two  
25 or three four years later, and then when you come

## PW - B. SUGGS - CROSS

1 back some witnesses are dead or they can't be  
2 located or the solicitor doesn't want to re-try it,  
3 then you get a better, you get a better offer or  
4 something. But it just doesn't make sense to plead  
5 somebody to something where the result would be the  
6 same at a trial at worst possible scenario.

7 Q Thank you, Mr. Suggs. I have no further  
8 questions.

9 THE COURT: All right. Anything further,  
10 Mr. Brooks?

11 MR. BROOKS: No other questions, Judge.

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

13 THE WITNESS: Thank you, Judge.

14 THE COURT: Anything further?

15 MR. BROOKS: Judge, that is the  
16 applicant's case. I would just say briefly based on  
17 what my client has testified to, from the transcript  
18 that you have before you, he's entitled to a new  
19 trial and we respectfully ask the Court to grant him  
20 that.

21 THE COURT: Mr. Spencer.

22 MR. SPENCER: Your Honor, I would submit  
23 that his testimony today was far worse than what his  
24 testimony was at trial. I mean, I'm not a  
25 prosecutor, but he blew up on the stand at the end

1 and basically gave me motive as to why he did this,  
2 which is refreshing because that's what's missing  
3 from the — that's about the only thing that was  
4 missing. This was a -- this was an overwhelming  
5 evidence case with witnesses having him — I mean,  
6 he threatened to kill the guy, he comes back and the  
7 guy is dead. And witnesses testifying that they saw  
8 him pull the trigger, two witnesses testifying that  
9 he said he was going to kill everyone.

10 It is a -- Solicitor Clements had said in  
11 the beginning it is perhaps the most pointless case  
12 he had ever had because it just seemed just such a  
13 waste and just such a foolish thing, but I think we  
14 heard actually more motive today than we heard at  
15 trial. His testimony today was actually worse than  
16 it was at trial. Most of the points that he wanted  
17 to get out that he's talking about he got out at  
18 trial, and the jury just didn't buy it. It was  
19 overwhelming evidence, so many witnesses, because he  
20 did this in the middle of a wake and he did it  
21 without ever -- without any intention of getting  
22 away with this. There was not much Mr. Suggs could  
23 do and clear from his testimony he provided very  
24 effective assistance of counsel under extremely  
25 hopeless conditions from his point of view.

1 THE COURT: I'm gonna review the  
2 transcript this afternoon and issue an opinion by  
3 5:00.

4 MR. BROOKS: Thank you, Judge.

5 THE COURT: Thank you.

6 MR. SPENCER: Thank you, Your Honor.

7  
8  
9 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*

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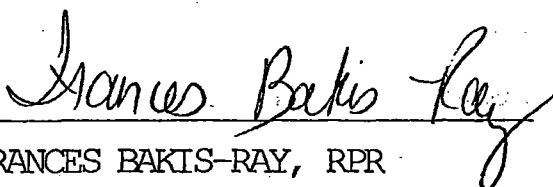
**C E R T I F I C A T E   O F   R E P O R T E R**

STATE OF SOUTH CAROLINA)  
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 10th day of September, 2012.

  
FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS  
C.A. NO. 11-CP-21-2219

COUNTY OF FLORENCE )

Herman Donald McKnight,  
S.C.D.C. No. 132919, )

Applicant, )

**ORDER OF DISMISSAL**

VS. )

State of South Carolina, )

Respondent. )

FILED  
2012 JUN -5 PM 1:17  
CLERK OF COURT  
FLORENCE COUNTY, S.C.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed August 18, 2011. The State made its return on November 15, 2011. An evidentiary hearing into the matter was convened at the Florence County Courthouse on February 1, 2012. Applicant was present and represented by Charles T. Brooks, III, Esquire. The State was represented by David Spencer of the South Carolina Office of the Attorney General. This Court has before it the PCR application and amendment, the State's return, the Clerk of Court's records regarding the subject convictions, and the trial transcript.

#### PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the March 2008 term of the Florence County Grand Jury for assault and battery with intent to kill (ABWIK), murder, discharging a firearm into a dwelling (discharging), and possession of a weapon during the commission of a violent crime (possession). B. Scott Suggs, Esquire represented Applicant. On

June 27, 2008, Applicant was convicted of all charges except that he was convicted of assault and battery of a high and aggravated nature (ABHAN) as a lesser offense of ABWIK. The Honorable Thomas A. Russo sentenced Applicant to life imprisonment for murder, concurrent sentences of ten years imprisonment for ABHAN and discharging a firearm, and found the possession of a weapon charge subsumed by the murder conviction.

Applicant appealed his conviction. Applicant was represented on appeal by Robert M. Dudek, Esquire. The conviction was affirmed by the Court of Appeals. State v. Herman Donald McKnight, 2011-UP-303 (Ct. App., filed June 17, 2011). The remittitur was issued on July 7, 2011.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

#### **Ineffective Assistance of Counsel**

Applicant alleges ineffective assistance of counsel. He alleges his counsel was ineffective because although Applicant testified on his own behalf at trial, he alleges counsel did not allow him to testify to the truth.

The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must

show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

Applicant was convicted for shooting his son-in-law at Applicant's daughter's wake, held at the daughter's house, where the victim also resided. The evidence indicated that the tragic events were triggered when Applicant and his friend arrived at the wake and suggested to start drinking. Evidence at trial was that victim did not consider that appropriate and asked Applicant to leave. Applicant was angered and retrieved his rifle from his vehicle. He broke in the kitchen door as one of the witnesses attempted to lock the door and shot victim, who was wheel-chair bound. Applicant claimed that victim grabbed the gun and it then discharged.

Applicant fails to show counsel's performance was deficient. Applicant testified at his own trial, and he has failed to indicate how counsel prevented Applicant from testifying differently. Furthermore, Applicant testified to his version of events at the PCR hearing. They closely track his trial testimony on most points.

Where his testimony before this Court differs from his trial testimony, it tends to be more inculpatory than helpful. Applicant's PCR testimony makes clearer the animosity he felt towards his victim and the remorse he felt for his daughter's demise. Counsel testified to his understanding of the events surrounding the shooting. Counsel testified that at Applicant's age, even the State's offer of twenty years imprisonment was likely a life sentence. So his advice was to proceed to trial despite the lack of any true defense to the charges. At trial, counsel sought, unsuccessfully, for an involuntary manslaughter charge. This was the issue raised on appeal and affirmed by the Court of Appeals.

This Court simply does not find any point made by Applicant at his PCR hearing to rise to the level sufficient to establish prejudice under Strickland. In finding Applicant has not met his burden of proving prejudice, this Court notes the overwhelming evidence of guilt. This Court further finds that Applicant's testimony lacks credibility. This Court finds counsel's testimony and gives it great weight. This Court finds that Applicant has failed to meet his burden of proof and denies this application.

### CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes

that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

**IT IS THEREFORE ORDERED:**

1. The application for Post-Conviction Relief is denied with prejudice;
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4 day of June, 2012.

  
William H. Seals  
Presiding Judge  
12th Judicial Circuit

Mauion, South Carolina