

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Orangeburg County

Honorable Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE MOSES,

APPELLANT

APPELLATE CASE NO 2020-000093

APPENDIX

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1 IN HER TESTIMONY THE INJURIES TO THE FINGERS AND THE
2 ARMS SHE SAID WERE DEFENSE WOUNDS. AGAIN, I SUBMIT,
3 THAT'S CONSISTENT WITH MR. MOSES'S TESTIMONY ABOUT THERE
4 BEING A STRUGGLE BETWEEN THE TWO OF THEM, AND BEING, TO
5 THE FINGERS AND ARMS, THAT HE PUNCHED DOWN ON HIM TO TRY
6 TO GET HIM TO DROP HIS WEAPON. SHE DID TESTIFY THAT
7 THERE WAS A SMALL AMOUNT OF COCAINE AND COCAINE
8 BYPRODUCT IN MR. LIVINGSTON'S SYSTEM, AGAIN CONSISTENT
9 WITH THE FACT THAT THIS WAS A DRUG HOUSE, THAT THERE
10 WERE DRUGS BEING USED THERE, DRUGS BEING SOLD THERE.
11 AND SHE DID TESTIFY THAT THAT COCAINE WAS USED CLOSE TO
12 THE TIME OF DEATH. SHE ALSO TESTIFIED AS TO THE
13 BLOCKAGES TO THE, BOTH LEFT AND RIGHT ARTERIES IN MR.
14 LIVINGSTON. AGAIN, SHE SAID THE LACERATION TO THE
15 FOREHEAD COULD HAVE BEEN FALLING FROM THE CHAIR OR
16 FALLING INTO A CHAIR. AGAIN, SHE HAD NO FIRST HAND
17 KNOWLEDGE ABOUT WHAT HAPPENED, SHE WAS SIMPLY DEALING
18 WITH THE BODY AFTER.

19 WE HAD A BRIEF TESTIMONY FROM LINDA
20 GAHNI. SHE BASICALLY PUTS MR. MOSES'S CAR AT MR.
21 CONNER'S HOUSE SOMEWHERE AROUND THREE O'CLOCK IN THE
22 MORNING, AGAIN CONSISTENT WITH NOT ONLY MR. MOSES BUT OF
23 MR. CONNER. WE'RE NOT DENYING HIS CAR WAS THERE, WE
24 WENT THERE.

25 NOW WE GET TO DR. MILLS'S TESTIMONY,

1 THAT WAS THE DNA EXPERT. OKAY. AGAIN, I REMIND YOU
2 THAT SHE SAID SHE CAN TELL WHO LEFT DNA EVIDENCE BEHIND,
3 BUT NOT WHEN IT WAS LEFT. SHE TESTIFIED THAT SHE GOT
4 BLOOD STANDARDS FROM BOTH MR. LIVINGSTON AND MR. MOSES,
5 AND THAT SHE EXAMINED THE KNIFE BLADE, IT WAS NEGATIVE
6 FOR ANY KIND OF BLOOD. SHE ALSO EXAMINED THE KNIFE
7 HANDLE, THAT WAS POSITIVE FOR BLOOD, BUT IT WAS OF MORE
8 THAN ONE PERSON. THE VICTIM COULD NOT BE EXCLUDED, WHICH
9 MEANS IT COULD OR COULD NOT HAVE BEEN, BUT DEFINITELY,
10 MR. MOSES'S DNA WAS NOT THERE. YOU HEARD HER TESTIMONY
11 THAT OF ALL THE EVIDENTIARY ITEMS THAT SHE LOOKED AT,
12 THERE WAS NO DNA FROM MR. MOSES. THE NEXT THING SHE
13 TESTIFIED ABOUT WAS THE LIGHT SWITCH. AGAIN, THAT WAS
14 POSITIVE FOR BLOOD. WHEN THEY DID THE DNA ANALYSIS IT
15 CONSISTED OF A MIXTURE, THE MAJOR CONTRIBUTOR TO THAT
16 MIXTURE BEING AN UNIDENTIFIED MALE, AGAIN, NOT MR.
17 MOSES. SHE ALSO TESTIFIED THAT SHE ANALYZED THE SWABS
18 THAT WERE TAKEN FROM MR. MOSES'S VEHICLE. SHE TOLD YOU
19 THAT SHE COULDN'T GET A PROFILE FROM WHAT THEY HAD
20 SUPPLIED HER WITH, BUT NOT ONLY THAT, SHE COULDN'T EVEN
21 TELL IF IT WAS BLOOD. SO, THERE'S NO EVIDENCE THERE WAS
22 ANY BLOOD, WHICH THE STATE OBVIOUSLY IS TRYING TO INFER,
23 THERE'S NO EVIDENCE OF THAT, LADIES AND GENTLEMEN. AS
24 TO THE JEAN SHORTS, YES, MR. LIVINGSTON'S DNA WAS ON
25 THOSE SHORTS. IT IS CONSISTENT WITH MR. MOSES'S STORY

1 THAT THERE WAS A STRUGGLE BETWEEN THE TWO OF THEM, AND
2 THAT'S HOW THE BLOOD GOT THERE.

3 THE NEXT WITNESS TO TESTIFY WAS
4 OFFICER SHUMPERT. HE IS THE ONE YOU WILL REMEMBER WHO
5 BROUGHT MR. MOSES FROM HIS PLACE OF EMPLOYMENT AT SOUTH
6 CAROLINA STATE TO THE LAW ENFORCEMENT COMPLEX FOR
7 QUESTIONING. AT FIRST, HIS TESTIMONY WAS AT FIRST MR.
8 MOSES SAID HE DIDN'T KNOW ANYTHING ABOUT ANYTHING. MR.
9 MOSES TOLD YOU, AT THAT POINT IN TIME HE DIDN'T EVEN
10 KNOW WHY HE WAS PICKED UP FOR QUESTIONING. WHAT WAS HE
11 GOING TO TELL THEM? OFFICER SHUMPERT IS THE ONE THAT
12 FOUND THE JEANS. AGAIN, MR. MOSES ADMITS THAT THOSE
13 JEANS WERE HIS, HE ADMITS HE PUT THEM THERE. YOU HEARD
14 HIM ON THE STAND, THERE'S NO SURPRISE THERE. HE'S ALSO
15 THE ONE THAT, ALONG WITH OFFICER RODRIGUEZ, INTERVIEWED
16 HIM THE NEXT DAY. BUT AGAIN I REMIND YOU, OFFICER
17 SHUMPERT HAD ABSOLUTELY NO FIRST HAND KNOWLEDGE ABOUT
18 WHAT HAPPENED THAT NIGHT. HE DOESN'T KNOW WHAT WENT ON
19 IN THAT TRAILER ON THAT SEPTEMBER NIGHT.

20 NEXT WAS OFFICER RODRIGUEZ. HE
21 TESTIFIED TO YOU THAT HE WAS PRESENT WHEN THE, WHEN MR.
22 MOSES GAVE HIS WRITTEN STATEMENT. IN FACT, HE SAID THAT
23 THE DEFENDANT WANTED HIM TO WRITE IT. NOT ONLY THAT,
24 THAT MR. MOSES RATHER THAT HE WROTE IT. DOES THAT MAKES
25 SENSE, LADIES AND GENTLEMEN? YOU HEARD THE TESTIMONY,

1 MR. MOSES WAS BROUGHT TO OFFICER RODRIGUEZ IN CHAINS AND
2 A BELL CHAIN WITH A BLACK BOX. IT WOULD BE DARN NEAR
3 IMPOSSIBLE TO PHYSICALLY WRITE A STATEMENT UNDER THOSE
4 CONDITIONS. YOU JUST CAN'T DO IT. RATHER HE WROTE IT,
5 I SUBMIT TO YOU IT WASN'T MUCH OF A CHOICE, HE WAS NOT
6 ABLE PHYSICALLY TO WRITE IT, RODRIGUEZ HAD TO WRITE IT
7 FOR HIM. OFFICER RODRIGUEZ SAID THAT HE DIDN'T NOTICE
8 ANY INJURIES FROM POTENTIALLY A DOG ATTACKING HIM.
9 THERE'S NO TESTIMONY THAT HE BOTHERED TO LOOK EITHER,
10 AND AT THAT POINT IN TIME MR. MOSES WOULD HAVE HAD PANTS
11 ON. HIS TESTIMONY WAS THAT THE DOG WAS TRYING TO BITE
12 HIS FEET AND HIS LEGS, AND THAT'S WHERE HE WAS
13 SCRATCHED. OFFICER RODRIGUEZ TESTIFIED TO YOU THAT HE
14 DID NOT CHANGE ANY WORDS, THAT HE WROTE DOWN EXACTLY
15 WHAT MR. MOSES TOLD HIM. I ASK YOU TO LOOK AT THAT
16 STATEMENT AND TO LOOK AT HOW IT IS PHRASED, ESPECIALLY
17 THE VERY LAST OF THE STATEMENT WHERE IT SAYS ABOUT A
18 BROWN IN COLOR STICK. I SUBMIT TO YOU, LADIES AND
19 GENTLEMEN, NORMAL PEOPLE DON'T TALK THAT WAY. IT'S A
20 BROWN STICK, IT'S A TAN STICK, IT'S NOT A BROWN IN COLOR
21 STICK, THAT'S COP SPEAK, THAT'S HOW THEY WRITE THEIR
22 REPORTS, AND THE GIST OF WHAT MR. MOSES TOLD HIM MAY BE
23 IN THAT STATEMENT, BUT IT IS NOT A VERBATIM RENDERING OF
24 WHAT MR. MOSES TOLD HIM. OFFICER RODRIGUEZ ADMITTED TO
25 YOU THAT THEY HAD THE ABILITY TO RECORD WHAT WAS GOING

1 ON WHEN MR. MOSES GAVE HIS STATEMENT, BUT THEY DIDN'T.
2 IT WOULD HAVE BEEN VERY EASY TO JUST GET A TAPE RECORDER
3 OR A VIDEO CAMERA, SLAP IT ON, AND THERE WOULD BE NO
4 QUESTION AS TO EXACTLY WHAT WAS SAID, BUT THEY DIDN'T DO
5 THAT. HE ALSO TESTIFIED THAT MR. -- HE DIDN'T REMEMBER
6 MR. MOSES BEING IN LEG IRONS OR CUFFS. DOES THAT MAKE
7 SENSE, LADIES AND GENTLEMEN? WE'VE GOT A MAN THAT'S
8 ACCUSED OF MURDER AND THEY'RE GOING TO TRANSPORT HIM
9 FROM ONE PLACE TO THE OTHER UNCHAINED AND UNSHACKLED?
10 IT DOESN'T MAKE ANY SENSE. HE ALSO TESTIFIED THAT HE
11 WAS NOT SURE WHETHER OR NOT MR. MOSES HAD PUT ON WEIGHT
12 SINCE HE WAS ARRESTED BY IN O-SIX. MR. MOSES HAS
13 SUBMITTED TO YOU THAT HE'S GAINED A CONSIDERABLE AMOUNT
14 OF WEIGHT IN THE LAST TWO YEARS. HE IS NOT PHYSICALLY
15 THE SAME PERSON THAT HE WAS IN SEPTEMBER, TWO THOUSAND
16 AND SIX. AGAIN, OFFICER RODRIGUEZ HAD NO FIRST HAND
17 KNOWLEDGE OF WHAT WENT ON THAT NIGHT IN SEPTEMBER OF O-
18 SIX.

19 WE, WE WOULD SUBMIT TO YOU THAT THE
20 STATEMENT THAT MR. MOSES GAVE TO A LARGE EXTENT WAS HIM
21 TRUTHFULLY TRYING TO TELL WHAT WENT ON. I WOULD ASK YOU
22 TO TAKE THAT STATEMENT WITHIN CONTEXT, HOWEVER, AND TO
23 PUT THAT TOGETHER WITH THE TESTIMONY THAT HE GAVE YOU ON
24 THE STAND. HE TOLD YOU WHAT HAPPENED THAT NIGHT.
25 UNFORTUNATELY, HE IS THE ONLY ONE THAT CAN TELL YOU WHAT

1 HAPPENED THAT NIGHT. HE TESTIFIED TO YOU THAT HE DID
2 NOT SEE YVETTE GIVE MR. LIVINGSTON MR. ROBINSON'S KEYS
3 OR MONEY. TO HIS KNOWLEDGE THAT EXCHANGE NEVER TOOK
4 PLACE. HE ADMITTED THAT HE HAD HAD NO PROBLEM, OR NO
5 MAJOR PROBLEM WITH THAT ROTTWEILER DOG BEFORE, BUT HE
6 ALSO SAID THAT USUALLY WHEN HE WENT OVER THERE HE STAYED
7 VERY BRIEFLY, HE WAS IN AND OUT, THE COUPLE OF TIMES
8 THAT THE DOG HAD BEEN CHAINED UP OUTSIDE HE DID BARK
9 VIGOROUSLY AT HIM, AND THAT DOG HAD NEVER BEEN COMMANDED
10 BEFORE TO ATTACK HIM. THIS WAS THE FIRST TIME THAT THAT
11 HAD HAPPENED. MR. MOSES TOLD YOU THAT HE WAS WAITING ON
12 GEORGE. GEORGE DIDN'T COME. AT THAT POINT, AFTER
13 YVETTE LINGUARD LEAVES, THE CONVERSATION TURNS TO DRUGS,
14 AND I WILL TELL YOU THAT, I'M NOT HERE TO TELL YOU THAT
15 MR. MOSES IS A SAINT. HE SAT ON THAT STAND, HE TOLD YOU
16 THAT HE'S INVOLVED IN SOME DRUG ACTIVITY, BUT AS WAS
17 PRETTY MUCH THE PEOPLE AT THAT HOUSE. I WOULD ASK YOU
18 TO UNDERSTAND THAT BECAUSE HE MIGHT DO DRUGS, THAT DOES
19 NOT MEAN HE COMMITTED A MURDER. THERE'S NO TESTIMONY
20 FROM ANYBODY THAT THERE WAS ANY KIND OF BAD BLOOD OR
21 ANIMOSITY BETWEEN MR. LIVINGSTON OR MR. MOSES THAT WOULD
22 PROVOKE, YOU KNOW, HE DIDN'T GO THERE WITH THE INTENT TO
23 HARM MR. LIVINGSTON. IT WAS MR. LIVINGSTON WHO PICKED
24 UP THE STICK FIRST AND STRUCK MR. MOSES. MR. MOSES
25 ADMITTED TO YOU THAT AT SOME POINT IN THE KITCHEN HE SAW

1 A KNIFE, HE GRABBED IT BECAUSE HE WAS TRYING TO DEFEND
2 HIMSELF AGAINST NOT ONLY MR. LIVINGSTON ARMED WITH THAT
3 STICK, BUT WITH A LARGE ROTTWEILER DOG THAT WAS BEING
4 TOLD TO ATTACK HIM. MR. MOSES TOLD YOU HE WAS SWINGING,
5 JUST KIND OF FLAILING AWAY TRYING TO KEEP BOTH THE DOG
6 AND MR. LIVINGSTON AWAY FROM HIM. HE TESTIFIED TO YOU
7 THAT IN, IN, DURING THAT SCUFFLE HE FELL OVER -- THE
8 BOTH OF THEM FELL OVER TABLES AND CHAIRS, THAT'S
9 CONSISTENT WITH THE PIECES THAT YOU WILL SEE, ALSO
10 CONSISTENT WITH THERE NOT BEING ANY FINGERPRINTS OR ANY
11 KIND OF DNA EVIDENCE ON THEM. MR. MOSES TOLD YOU HE
12 DIDN'T KNOW IF HE HAD INJURED THE DOG. HE WASN'T
13 STICKING AROUND TO TRY TO CHECK THE DOG FOR INJURIES, HE
14 WAS TRYING AT THAT POINT TO KEEP THE DOG FROM HURTING
15 HIM AND TO GET OUT OF THERE. AS MR. MOSES SAID, MR.
16 LIVINGSTON WAS TELLING THAT DOG TO KILL ME. MR. MOSES'S
17 TESTIMONY ALSO WAS THAT WHEN MR. LIVINGSTON DECIDED THAT
18 THE TRADE THAT THEY HAD COME TO AN AGREEMENT ABOUT, THAT
19 HE DECIDED THAT THAT WAS NOT FAIR, THAT HE EVEN OFFERED
20 TO TRY TO APPEASE MR. LIVINGSTON BY TRYING TO GIVE HIM
21 SOME MONEY. HIS TESTIMONY WAS THAT THAT WAS NOT WHAT
22 MR. LIVINGSTON WANTED, HE WANTED MORE CRACK COCAINE. HE
23 KNOCKED THAT LITTLE BIT OF MONEY OUT OF MR. MOSES'S
24 HAND. THE MONEY, I SUBMIT TO YOU, THAT MR. MOSES PICKED
25 UP AS HE SAID BY THE DOOR, OR TOWARD THE, IN THE

1 KITCHEN, ON THE KITCHEN FLOOR, WAS HIS OWN MONEY. IT WAS
2 THE MONEY THAT MR. LIVINGSTON DIDN'T WANT IN LIEU OF, HE
3 WANTED MORE CRACK COCAINE. NOW, HE ADMITTED TO YOU THAT
4 HE WENT TO MR. CONNER'S THAT NIGHT. HE EVEN ADMITTED TO
5 YOU TO USING THE PHRASE TO MR. CONNER THAT HE WAS GOING
6 ON A MISSION. YEAH, HE WAS GOING TO THE CAR WASH
7 BECAUSE HE COULDN'T, HE WAS TRYING TO ASSESS HIS CUTS
8 AND SCRAPES AND BRUISES AND THE EXTENT OF HIS CLOTHING,
9 AND HE WENT TO THE CAR WASH WHERE THERE WAS BETTER
10 LIGHTING SO HE COULD SEE WHAT WAS GOING ON. AS MR.
11 CONNER'S TESTIMONY WAS, HE CAME BACK A VERY SHORT TIME
12 LATER.

13 AGAIN, I TOLD YOU ON EARLIER THIS
14 WEEK THAT THIS IS A TRAGEDY FOR MR. LIVINGSTON'S FAMILY,
15 WE DO NOT DIMINISH THE LOSS. BUT I DON'T, AGAIN, YOU
16 MUST TAKE THINGS IN CONTEXT. I BELIEVE THE STATE IS
17 GOING TO USE ONE OF THE STATEMENTS THAT MR. MOSES MADE
18 WHEN HE SAID HE WAS NOT CONCERNED WITH HOW BAD I HURT
19 HIM, I WAS JUST SCARED. I DON'T BELIEVE THAT THAT
20 EQUATES INTO, HE DIDN'T CARE IF MR. LIVINGSTON WAS HURT,
21 IT WAS TAKEN IN CONTEXT, THEY WERE HAVING A STRUGGLE, HE
22 WAS TRYING TO GET AWAY FROM MR. LIVINGSTON AND A HUGE
23 DOG, AND IT WAS NOT, HE WAS NOT AT THAT POINT IN TIME
24 ABLE TO ASSESS, IT WAS TOO MUCH GOING ON, HE WASN'T
25 GOING TO ASSESS MR. LIVINGSTON'S INJURIES. HE WASN'T

1 INDIFFERENT, HE WAS JUST TRYING TO GET OUT OF THERE.
2 AGAIN, MR. MOSES ADMITTED TO LEAVING THE SHORTS, HE TOLD
3 YOU THERE WAS NO TRASH CAN, HE STUCK THEM IN THE BRICK.
4 IF HE WAS TRYING TO, QUOTE, QUOTE, HIDE EVIDENCE, THERE
5 CERTAINLY COULD HAVE BEEN A BETTER WAY OR A MORE
6 CONCEALED PLACE. OFFICER SHUMPERT, EXCUSE ME, COMES,
7 AND OFFICER GREEN, THEY COME TO THE HOUSE AND SHUMPERT
8 SEE IT AFTER A CURSORY INSPECTION INSIDE THE HOUSE, AND
9 WHEN HE COMES OUTSIDE HE SEES THEM TUCKED IN THE BRICK.
10 IT'S NOT LIKE THEY WERE HIDDEN. IF HE WAS REALLY TRYING
11 TO HIDE EVIDENCE HE COULD HAVE COME UP WITH A MORE
12 CREATIVE WAY AND SOMETHING THAT WOULDN'T HAVE BEEN SO
13 EASILY FOUND.

14 AGAIN, I WOULD ASK YOU TO LOOK AT
15 THE STATEMENT. IT IS SIMILAR TO HIS TESTIMONY, BUT
16 AGAIN, YOU HAVE TO TAKE THAT IN CONTEXT. MR. MOSES'S
17 TESTIMONY WAS THAT HE DID NOT TAKE FIFTY DOLLARS IN A
18 PLASTIC BAGGIE, HE TOOK THE MONEY THAT WAS KNOCKED OUT
19 OF HIS HAND THAT HE TRIED TO OFFER TO MR. LIVINGSTON.
20 HIS TESTIMONY WAS HE HAD NO INTENTION OF STABBING MR.
21 LIVINGSTON, HE WAS TRYING TO KEEP HIM AWAY. HE HAD NO
22 INTENTION OF BEATING MR. LIVINGSTON, MR. LIVINGSTON WAS
23 HOLDING ONTO HIS LEG, TELLING THE DOG TO KILL HIM, HE
24 WAS SIMPLY TRYING TO DEFEND HIMSELF, TRYING TO WARD OFF
25 THAT ATTACK.

1 WE SUBMIT TO YOU THAT THERE IS NO
2 EVIDENCE OF ARMED ROBBERY IN THIS CASE. THERE'S NO
3 EVIDENCE THAT HE TOOK ANY PROPERTY OF MR. LIVINGSTON,
4 THERE IS NO EVIDENCE THAT HE WAS EVEN ARMED AT THE TIME,
5 IF THEY'RE GOING TO ARGUE THE MONEY, IF HE WAS EVEN
6 ARMED AT THAT TIME WITH ANYTHING. AND CERTAINLY, NOT
7 THE KNIFE, THE KNIFE HAD BEEN KNOCKED OUT OF HIS HAND
8 EARLIER. IT SIMPLY DOES NOT MEET THE ELEMENTS OF ARMED
9 ROBBERY.

10 AS TO THE MURDER, WE SUBMIT TO YOU
11 THAT HE DID NOT, THAT MR. LIVINGSTON DID NOT DIE OF
12 MURDER AT MR. MOSES'S HAND. THERE WAS NO MALICE
13 AFORETHOUGHT, THERE WAS NO BAD BLOOD, MR. MOSES GOT IN
14 A SITUATION WHEN MR. LIVINGSTON ATTACKED HIM FIRST, HE
15 DEFENDED HIMSELF. HE DID NOT BRING ON THE DIFFICULTY,
16 HE WAS AFRAID FOR HIS LIFE. THERE IS A ROTTWEILER WITH
17 A MAN TELLING THAT ROTTWEILER, WHO DOES WHAT HE DOES ON
18 COMMAND, TELLING HIM TO KILL OR TO, YES, TO KILL MR.
19 MOSES. HE DEFENDED HIMSELF THE ONLY WAY HE KNEW HOW.
20 HE TRIED TO GET TO THE DOOR, YOU'VE HEARD THE TESTIMONY,
21 HE USED THE CHAIRS TO TRY TO KEEP THEM BACK AS HE GOT
22 OUT OF THERE. HE GOT AWAY FROM THERE AS QUICKLY AS HE
23 COULD, HE RETREATED AS QUICKLY AS HE COULD. THAT WAS
24 THE ONLY WAY HE KNEW. I SUBMIT TO YOU, LADIES AND
25 GENTLEMEN, THAT ANY REASONABLE PERSON WOULD HAVE BEEN

1 AFRAID OF THAT ROTTWEILER DOG.

2 MR. MOSES STILL SITS HERE AN
3 INNOCENT MAN UNTIL AND UNLESS WHEN Y'ALL GO BACK AND
4 REVIEW ALL THE TESTIMONY, ALL OF YOU AGREE THAT THE
5 STATE HAS MET ITS BURDEN, THEN HE REMAINS AN INNOCENT
6 MAN. I APPRECIATE YOU WAITING TODAY AND UNDERSTANDING
7 THE BIG PICTURE. NOW YOU'VE HAD THE BIG PICTURE. I
8 SUBMIT TO YOU THAT THE STATE HAS NOT MET THEIR BURDEN OF
9 PROOF, MR. MOSES SIMPLY ACTED IN SELF DEFENSE. IT IS A
10 TRAGEDY THAT MR. LIVINGSTON IS NOT HERE, BUT MR. MOSES
11 DID NOT MURDER MR. LIVINGSTON. HE ACTED IN SELF DEFENSE,
12 HE DEFENDED HIMSELF AND THEN LEFT THE PREMISES. WE ASK
13 YOU TO RETURN A VERDICT THAT SPEAKS THE TRUTH. WE THINK,
14 WE SUBMIT TO YOU THAT WHEN YOU REVIEW ALL THE EVIDENCE,
15 WHEN YOU LOOK AT EVERYTHING TOGETHER, THAT YOU WILL FIND
16 A VERDICT THAT SPEAKS THE TRUTH. MR. MOSES IS NOT GUILTY
17 OF ARMED ROBBERY AND HE'S NOT GUILTY OF MURDER.

18 THANK YOU.

19 THE COURT: THANK YOU, MA'AM.

20 MR. SORENSON.

21 SOLICITOR SORENSON: MAY IT PLEASE
22 THE COURT.

23 FINAL CLOSING ARGUMENT BY SOLICITOR SORENSON

24 LADIES AND GENTLEMEN, A MAN'S HOME
25 IS OFTEN SAID AS HIS CASTLE. IT SHOULD BE THE ONE PLACE

1 THAT WE ALL SHOULD BE ABLE TO FEEL SAFE FROM ALL THE
2 EVILS IN THE OUTSIDE WORLD. SEPTEMBER TWENTY-NINTH, TWO
3 THOUSAND AND SIX, FIFTY-SEVEN YEAR OLD HARRY LIVINGSTON
4 MET SOME OF THOSE EVILS INSIDE THE WALLS OF HIS CASTLE.
5 HE WAS LEFT TO DIE ON HIS KITCHEN FLOOR, BEAT ABOUT THE
6 HEAD MULTIPLE TIMES, OVER SIX TIMES HE WAS STRUCK IN THE
7 HEAD, STABBED FOUR TIMES, STRUCK IN HIS UPPER CHEST,
8 STRUCK ABOUT HIS ARMS, DEFENSIVE WOUNDS ABOUT HIS HANDS,
9 ARMS AND WRISTS, LEFT TO DIE ON THAT KITCHEN FLOOR BY
10 THAT MAN, GEORGE MOSES. BUT WE'RE SUPPOSED TO BELIEVE,
11 LADIES AND GENTLEMEN, THAT HE DIDN'T HURT HIM THAT BAD,
12 THAT HE DIDN'T HURT HIM THAT BAD, WE JUST GOT IN A
13 LITTLE FIGHT, WE JUST GOT IN A LITTLE FIGHT. LADIES AND
14 GENTLEMEN, HE BRUTALLY BEAT HARRY LIVINGSTON AND LEFT
15 HIM TO DIE ON THAT KITCHEN FLOOR.

16 NOW, I WANT TO TALK TO YOU, LADIES
17 AND GENTLEMEN, AND THE WAY I WOULD LIKE TO DO IT IS KIND
18 OF BREAK IT INTO TWO PARTS. I WANT TO TALK TO YOU
19 INITIALLY ABOUT THE FACTS THAT I SUBMIT TO YOU CONVICT
20 GEORGE MOSES BEYOND ANY DOUBT, BEYOND ANY DOUBT,
21 NOTWITHSTANDING EVEN ANY OF THE STATEMENTS THAT HE HAS
22 GIVEN. THEN I WANT TO COME BACK AND TALK TO YOU A
23 LITTLE BIT ABOUT HOW INCREDIBLE HIS STORIES THAT HE HAS
24 GIVEN NOT ONLY TO LAW ENFORCEMENT BUT TO YOU IN THIS
25 COURTROOM ARE.

1 WHAT I WANT TO DO IS, I'LL JUST KIND
2 OF START OFF BY TALKING ABOUT A KIND OF A LITTLE TIME
3 LINE. WE'LL START AT TWO:THIRTY IN THE MORNING OR SO,
4 OR A LITTLE BEFORE TWO:THIRTY IN THE MORNING, AT [REDACTED]
5 [REDACTED] AULTMAN. WE'VE PATRICIA OWENS COMES TO PICK
6 UP HER NIECE, YVETTE LINGUARD. REMEMBER, WHEN THEY
7 LEAVE, THEY LEAVE THAT MAN, GEORGE MOSES, AND THE
8 VICTIM, NOBODY ELSE THERE. BUT LET ME ASK YOU THIS,
9 LADIES AND GENTLEMEN, YOU KNOW, HE TESTIFIED, AND I'M
10 GOING TO PROBABLY TALK A LITTLE BIT ABOUT HIS TESTIMONY,
11 KIND OF MIXED IN HERE, HE TESTIFIED THAT HE HAD BEEN TO
12 THAT TRAILER OVER A HUNDRED TIMES, OVER A HUNDRED TIMES,
13 BUT NEVER STAYED MORE THAN A COUPLE OF MINUTES, NEVER
14 STAYED FOR MORE THAN A COUPLE OF MINUTES. HE WENT THERE
15 TO BUY DRUGS, HE DIDN'T GO THERE TO SOCIALIZE. WHAT
16 MADE THIS NIGHT DIFFERENT? WHAT MADE THIS NIGHT, THIS
17 EARLY MORNING DIFFERENT? HE WANTS YOU TO BELIEVE THAT
18 THEY TOLD HIM -- THAT HE WENT TO THAT TRAILER LOOKING
19 FOR GEORGE ROBINSON AND THAT THEY TOLD HIM THAT HE'LL BE
20 RIGHT BACK, AND THAT'S THE REASON HE HUNG AROUND, THAT'S
21 THE REASON HE HUNG AROUND. WELL, THAT DOESN'T MAKE
22 SENSE, LADIES AND GENTLEMEN, BECAUSE THEY KNEW THAT
23 GEORGE ROBINSON WAS IN JAIL. HE WASN'T COMING RIGHT
24 BACK, HE WASN'T COMING RIGHT BACK. SO, IF HE GOES OVER
25 THERE FOR THE PURPOSE OF BUYING DRUGS WHY IS HE STILL

1 THERE? BECAUSE HE'S UP TO NO GOOD, THAT'S WHY HE'S
2 STILL THERE. IF HE WAS THERE TO BUY DRUGS HE WOULD HAVE
3 BOUGHT DRUGS AND BEEN OUT OF THERE LONG BEFORE PATRICIA
4 OWENS CAME BACK TO PICK UP YVETTE. WHAT HE WAS DOING
5 WAS WAITING FOR THEM TO LEAVE, WAITING FOR THEM TO
6 LEAVE, BECAUSE THE THING, LADIES AND GENTLEMEN, ABOUT
7 VIOLENT CRIMES, ARMED ROBBERIES, HOMICIDES, RAPES,
8 BURGLARIES, THINGS LIKE THAT, PEOPLE DON'T DO THEM OUT
9 IN BROAD DAYLIGHT IN FRONT OF WITNESSES. THEY'RE CRIMES
10 OF ISOLATION, THE THINGS THAT PEOPLE DO WHEN NO ONE CAN
11 SEE THEM. THAT'S WHAT HE WAITED FOR. IF YOU NOTICE,
12 ACCORDING TO HIS TESTIMONY THE WHOLE ALTERCATION THAT
13 OCCURRED HAPPENED RIGHT AFTER YVETTE AND PATRICIA -- I
14 MEAN, HE HAD BEEN THERE FOR FORTY-FIVE MINUTES ACCORDING
15 TO HIS TESTIMONY, AND I THINK A LITTLE LONGER THAN THAT
16 ACCORDING YVETTE. BUT SUDDENLY THIS ALTERCATION OCCURS
17 THE MINUTE THEY LEAVE. THAT'S BECAUSE HE NOW KNOWS
18 THERE ARE NO WITNESSES TO WHAT HAPPENED, AND I'M GOING
19 TO TALK TO YOU ABOUT WHY THAT'S SIGNIFICANT IN A MINUTE.
20 BUT THEY LEAVE AT ABOUT TWO:THIRTY IN THE MORNING.
21 ALRIGHT, AND HERE, IT'S SUCH A MINOR DETAIL, BUT I
22 SUBMIT TO YOU IT'S THE WITNESS AND THE PIECE OF EVIDENCE
23 THAT ENDED UP CHANGING THE WHOLE COURSE OF WHAT HE HAD
24 TO COME UP WITH IN HIS MIND TO TRY TO EXPLAIN WHAT
25 HAPPENED IN THAT TRAILER. LINDA GAHNI, OKAY, HIS FORMER

1 GIRLFRIEND, DRIVING HOME THAT NIGHT ABOUT THREE O'CLOCK
2 OR SO IN THE MORNING, SEES HIS CAR AT JEFFREY CONNER'S
3 HOUSE. THAT LITTLE PIECE OF EVIDENCE THAT ALMOST DIDN'T
4 EVEN MAKE IT TO THE SHERIFF'S OFFICE. IF IT WASN'T FOR
5 THE FACT THAT SHE TAGGED ALONG WITH HER SISTER WHEN SHE
6 WAS GOING IN THERE TO GIVE A STATEMENT, THE SHERIFF'S
7 OFFICE MAY NEVER HAVE LEARNED ABOUT THAT. HE WAS
8 COUNTING ON THAT THAT NIGHT. THAT'S WHY HE WENT TO
9 JEFFREY CONNER'S HOUSE, HIS BUDDY, HIS SMOKING BUDDY,
10 HIS DOPING BUDDY. HE KNEW JEFFREY CONNER WASN'T GOING
11 TO CALL THE POLICE ON HIM. BUT I SUBMIT TO YOU, HE
12 THOUGHT HE WAS SAFE WHEN HE WAS HIDING THOSE BLOODY
13 SHORTS BACK ON THAT BACK PORCH AT THREE, THREE:THIRTY IN
14 THE MORNING. I SUBMIT TO YOU, AND I'M GOING TO TALK TO
15 YOU ABOUT THIS IN A LITTLE WHILE, BUT WHEN HE WAS
16 ARRESTED LATER ON THAT MORNING, HE INITIALLY TELLS THEM,
17 I DON'T KNOW WHAT YOU'RE TALKING ABOUT, HE STILL THOUGHT
18 HE WAS OKAY. AT THAT POINT IN TIME THE ONLY THING HE
19 THINKS IS OUT THERE, HE KNOWS THERE'S A WITNESS THAT PUT
20 ME AT THE TRAILER, BUT I MEAN, IT DOESN'T PUT ME DOING
21 ANYTHING. THEY'RE NOT GOING TO FIND THE BLOODY CLOTHES
22 BECAUSE THERE'S ABSOLUTELY NO REASON FOR THE POLICE TO
23 KNOW ABOUT JEFFREY CONNER'S HOUSE, BUT FOR THAT LITTLE
24 MINUTE DETAIL THAT HE DIDN'T KNOW ABOUT, THAT HIS EX-
25 GIRLFRIEND HAPPENED TO SEE HIS CAR THAT NIGHT AND JUST

1 HAPPENED, I MEAN, AGAIN, JUST A STROKE OF LUCK, THE
2 THINGS END UP TURNING THE COURSE OF AN INVESTIGATION.

3 LET ME TALK ABOUT JEFFREY CONNER.
4 AS I SAID, YOU KNOW, I MEAN, HE, HE DIDN'T WORRY ABOUT
5 HIM CALLING THE POLICE ON HIM. OBVIOUSLY, WHEN THE
6 POLICE SHOWED UP AT JEFFREY'S HOUSE, I MEAN, HE, YOU
7 KNOW, HE HAD TO TELL ON HIS BUDDY THEN, I MEAN, THAT HE
8 HAD BEEN BY THERE THE NIGHT BEFORE, BECAUSE HE'S GOT A
9 PAIR OF BLOODY SHORTS FROM A HOMICIDE SITTING STUFFED IN
10 HIS BACK PORCH. OKAY. AND THE THING ABOUT THIS, YOU
11 KNOW, MS. HINDS TALKS ABOUT, YOU KNOW, THAT WELL, I
12 MEAN, HE WASN'T TRYING TO HIDE THEM, YOU KNOW, JUST
13 THERE WAS NO TRASH CAN SO HE DIDN'T WANT TO LEAVE THEM
14 LYING AROUND. REMEMBER, THIS IS THE HOUSE THAT THERE'S
15 NO ELECTRICITY, IT'S THREE SOMETHING THE MORNING, I
16 MEAN, THAT'S A PRETTY GOOD JOB FINDING WHERE HE PUT
17 THEM. I MEAN, THAT'S HIDING THEM, LADIES AND GENTLEMEN.
18 YET AGAIN, ON THE BACK PORCH OF THE HOUSE THAT'S GOT
19 ABSOLUTELY NO CONNECTION TO THE HOMICIDE. THEY'RE
20 TRYING TO TELL YOU THAT HE WASN'T TRYING TO HIDE THOSE
21 BLOOD SHORTS. BUT WHAT DOES MR. CONNER TELLS US, YOU
22 KNOW, THAT HAPPENED AT THREE OR SO IN THE MORNING?
23 ALRIGHT. HE COMES BY, SEES HIM THE FIRST TIME A LITTLE
24 AFTER THREE, AROUND THREE O'CLOCK, GOING ON A MISSION,
25 GOING ON A MISSION. NOW, I DON'T THINK THAT'S WHEN HE

1 WENT BACK AND KILLED THE VICTIM, HE HAD ALREADY KILLED
2 HIM BY THAT POINT IN TIME. OKAY. I DON'T KNOW IF HE
3 WAS GOING TO BUY DRUGS WITH THE MONEY HE HAD STOLEN, I
4 MEAN, I DON'T BELIEVE THAT HE'S GOING DOWN THERE TO
5 CHECK OUT HIS CLOTHING AT THE CAR WASH DOWN THE STREET.
6 YOU KNOW, IF THAT WAS HIS CONCERN, IF THAT WAS HIS
7 CONCERN THAT MORNING, THAT I NEED TO GET THIS BLOODY
8 CLOTHES OFF OF ME, I MEAN, I NEED TO WASH UP, I NEED TO
9 CLEAN UP, WHY WOULD YOU DRIVE TO A HOUSE WHERE YOU KNOW
10 THERE'S NO ELECTRICITY, AND YOU KNOW THERE'S NO RUNNING
11 WATER? THAT MAKES NO SENSE, YOU GO RIGHT TO THE CAR
12 WASH OR YOU GO HOME. YOU KNOW, IF YOU FELT YOU DIDN'T
13 DO ANYTHING WRONG YOU GO HOME, PUT YOUR CLOTHES IN THE
14 WASHING MACHINE, WHAT MOST PEOPLE NORMALLY DO WITH THEIR
15 DIRTY CLOTHES, INSTEAD OF HIDING THEM AND BURNING THEM.
16 THEN HE COMES BACK, THEN HE COMES BACK, GOES RIGHT TO
17 THE BACK, AND I SUBMIT TO YOU, THAT'S WHEN HE HIDES
18 THESE IN THERE, THAT'S WHEN HE HIDES THESE IN THERE, BUT
19 HE SMART ENOUGH TO KNOW, THAT, YOU KNOW, JUST IN CASE
20 THEY GET FOUND AT SOME POINT IN TIME, YOU KNOW, I CAN'T
21 BE LEAVING, I CAN'T BE LEAVING MY PAY STUB IN THE
22 POCKET. SO, HE TAKES THAT OUT, AND THAT SHOWS THAT
23 HE'S, I MEAN, HE'S, THE WHEELS ARE TURNING UP HERE A
24 LITTLE BIT. HE TAKES THAT OUT, MAKES THE MISTAKE OF
25 LEAVING IT SITTING AT JEFFREY CONNER'S ON HIS TABLE,

1 THOUGH, AFTER THEY HAD GOT DONE SMOKING, SMOKING THEIR
2 COOLIES. BUT HOW IS HE ACTING, HOW DOES JEFFREY CONNER
3 SAY THE DEFENDANT IS ACTING? THAT HE'S QUIET, PARANOID
4 ACTING. I SUBMIT TO YOU, YOU KNOW, THAT'S PRETTY
5 REASONABLE FOR SOMEBODY THAT JUST BRUTALLY BEAT THE
6 DAYLIGHTS OUT OF SOMEBODY AND LEFT THEM TO DIE ON THEIR
7 KITCHEN FLOOR. YOU KNOW, HE SHOULD BE PRETTY PARANOID
8 ACTING AT THAT POINT IN TIME. YOU KNOW, THE ADRENALIN
9 RUSH HAD STARTED TO WEAR OFF.

10 BUT WHO DO WE HEAR FROM NEXT? MR.
11 BOWMAN, ABOUT FIVE:THIRTY IN THE MORNING. WE KNOW AT
12 THAT POINT IN TIME THE VICTIM'S BEEN DEAD FOR A COUPLE
13 OF HOURS. HE FINDS THE VICTIM, CONTACTS LAW ENFORCEMENT.
14 I CAN'T EVEN BEGIN TO UNDERSTAND THE WAY SOME PEOPLE
15 THINK SOMETIMES, I MEAN, WHY HE WOULD GO GET THE
16 BROTHER. BUT, YOU KNOW, IT WASN'T FOR THEM TO COME BACK
17 AND TAKE STUFF OUT OF THE TRAILER, BECAUSE THEY CALLED
18 THE POLICE, SO THE POLICE ACTUALLY ARRIVED BEFORE THEY
19 GET THERE. SO, YOU KNOW, UNTIL FACED WITH THAT
20 DECISION, I MEAN, I GUESS YOU NEVER QUITE KNOW WHAT
21 SOMEBODY'S GOING TO, THEIR FIRST REACTION IS GOING TO
22 BE, MAYBE GO GET FAMILY MEMBERS IS A REASONABLE
23 RESPONSE, I DON'T KNOW.

24 BUT LAW ENFORCEMENT SHOWS UP THERE
25 THAT MORNING, AND SECURES THE SCENE. OKAY. LIEUTENANT

1 JENKINS TESTIFIED, AND THIS IS IMPORTANT ABOUT THAT DOG.
2 OKAY. A LARGE ROTTWEILER, BUT YOU KNOW, THE SIZE OF THE
3 DOG ISN'T ALWAYS WHAT'S IMPORTANT. I MEAN, YOU KNOW IT
4 CAN BE INTIMIDATING BUT THAT DOESN'T MEAN THAT JUST
5 BECAUSE THE DOG'S A BIG DOG THE DOG IS VIOLENT AND
6 VICIOUS OR BITES. HE TOLD YOU THE DOG WAS DOCILE
7 ACTING. AND THERE ARE NOW A WHOLE BOAT LOAD OF
8 STRANGERS WITH GUNS GOING INTO THAT TRAILER, AND THE DOG
9 ISN'T BARKING, IT ISN'T JUMPING AT THEM TRYING TO BITE
10 THEM, THE DOG IS DOCILE ACTING. BUT MORE IMPORTANTLY,
11 THE DOG DOESN'T HAVE ANY INJURIES, IT DOESN'T HAVE AN
12 INJURIES. IT DOESN'T HAVE ANY BLOOD ON HIM, IT ISN'T
13 CUT, ISN'T HURT.

14 AND HE TELLS YOU ABOUT THE KITCHEN,
15 ABOUT THE KITCHEN, AND I'M GOING TO GET BACK TO THIS IN
16 A SECOND. BUT FROM THE DOOR YOU COULD SEE THE VICTIM,
17 IT SHOULD HAVE BEEN THE VIEW BASICALLY THROUGH THE
18 TRIANGLE GLASS IN THE DOOR THAT MR. BOWMAN WOULD HAVE
19 HAD. HE TELLS YOU ABOUT THE OVERTURNED TABLE, THE
20 OVERTURNED CHAIRS, ITEMS STREWN ALL OVER THE FLOOR. IT
21 SHOWS YOU HOW VIOLENT THAT STRUGGLE, HOW VIOLENTLY, I
22 SUBMIT TO YOU, HARRY LIVINGSTON WAS FIGHTING FOR HIS
23 LIFE THAT MORNING.

24 THEY THEN BEGIN, YOU KNOW, THEY CALL
25 STATE LAW ENFORCEMENT OUT TO COME PROCESS THE SCENE,

1 COLLECT EVIDENCE. THEY THEN BEGIN INTERVIEWING
2 WITNESSES. THEY LEARN ABOUT YVETTE LINGUARD WHO THEN
3 GIVES THEM THE NAME OF GEORGE MOSES, THE LAST PERSON
4 THAT ANYBODY HAS SEEN WITH THE VICTIM. THEY TALKED TO
5 HER AUNT, PATRICIA OWENS, WHO CORROBORATES THAT. AND AS
6 I TOLD YOU, THAT'S WHEN THEY LEARNED ABOUT LINDA, WHICH
7 I SUBMIT TO YOU, IS THE BREAK THEY NEEDED THAT GAVE THEM
8 THE CORROBORATING EVIDENCE THAT THEY THEN COULD GO AT
9 THE DEFENDANT THE SECOND TIME THEY TALKED TO HIM. AND
10 THEY GO TO MR. CONNER'S HOUSE.

11 AND THEN THE LAST KIND OF WITNESS I
12 WANT TO TALK ABOUT AS FAR AS THE STATE'S WITNESSES IS
13 THE PATHOLOGIST, DR. ROSS. OKAY. NO DOUBT ABOUT IT, NO
14 DOUBT ABOUT IT, THIS WASN'T AN ACCIDENT. THAT DIDN'T
15 COME FROM ACCIDENTALLY HITTING A TABLE, THAT'S NOT HOW
16 THAT HAPPENS. OKAY. YOU REMEMBER THE INJURIES SHE
17 DESCRIBED TO YOU, FOUR STAB WOUNDS, FOUR STAB WOUNDS
18 THAT HAPPENED AT THE MOST FIVE, TEN MINUTES BEFORE ALL
19 OF THAT BLUNT TRAUMA TO HIS HEAD. BLOWS CONSISTENT WITH
20 A FIST STRIKING HIS EYE, STRIKING HIS CHEEK, STRIKING
21 HIS CHIN, A ROD LIKE INSTRUMENT BEATING HIM ABOUT HIS
22 HEAD SO SEVERELY THAT IT CAUSED HIS BRAIN BASICALLY TO
23 TELL HIS BODY, HIS HEART TO STOP BEATING AND FOR HIS
24 LUNGS TO STOP BREATHING. REMEMBER WHAT SHE SAID, THAT
25 HE WOULD HAVE LOST CONSCIOUSNESS WITHIN SECONDS OF THAT

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1 VIOLENT BEATING TO THE HEAD, WITHIN SECONDS. SO,
2 THERE'S NO WAY WHEN THAT MAN WALKED OUT OF THAT TRAILER
3 THAT NIGHT, HARRY LIVINGSTON WAS ON THAT FLOOR ALIVE AND
4 LOOKING AT HIM, LIKE NO BIG DEAL, JUST A LITTLE FIGHT.
5 THERE'S NO WAY THAT HAPPENED. I SUBMIT TO YOU, LADIES
6 AND GENTLEMEN, IT DOESN'T GET ANY MORE MALICIOUS.
7 REMEMBER THAT TERM FROM THE DEFINITION OF MURDER,
8 MALICE? IT DOESN'T GET ANY MORE MALICIOUS THAN THIS.
9 THIS IS NOT SELF-DEFENSE, LADIES AND GENTLEMEN, I SUBMIT
10 TO YOU, THIS ISN'T VOLUNTARY MANSLAUGHTER, THIS ISN'T IN
11 A HEAT OF PASSION. IT DOESN'T GET ANY MORE MALICIOUS.

12 I SUBMIT TO YOU, IF YOU LOOK AT ALL
13 THAT, IF WE STOP RIGHT THERE, YOU KNOW, IF HE NEVER
14 TALKED TO THE POLICE, IF THE ONLY STORY HE EVER GAVE
15 WAS THAT FIRST ONE, I DON'T KNOW WHAT YOU'RE TALKING
16 ABOUT, AND IT ENDED RIGHT THERE, I SUBMIT WHEN YOU GO
17 BACK TO THAT JURY ROOM AND YOU LOOK AT IT YOU'LL HAVE NO
18 CHOICE, THERE'S NO DOUBT, NO DOUBT OF HIS GUILT.
19 MURDER, ARMED ROBBERY. BUT AS I TOLD YOU EARLIER,
20 LADIES AND GENTLEMEN, YOU KNOW, WHEN HE TAKES THE STAND
21 AND TESTIFIES HE BECOMES SUBJECT TO THAT SAME SCRUTINY,
22 THAT SAME SCRUTINY AS ANY OTHER WITNESS. SO, NOW I WANT
23 TO TALK TO YOU A FEW MINUTES ABOUT THOSE STORIES, THOSE
24 STORIES THAT HE'S GIVEN YOU.

25 ALRIGHT, THE FIRST THING, ON THE

1 MORNING OF SEPTEMBER TWENTY-NINTH, YOU KNOW, WE'RE
2 TALKING SIX, SEVEN, EIGHT HOURS AT THE MOST AFTER, YOU
3 KNOW, HE'S GIVING THIS STATEMENT AT NINE:THIRTY IN THE
4 MORNING -- NINE:TWENTY IN THE MORNING. SO, YOU KNOW,
5 LESS THAN SEVEN HOURS LATER, LESS THAN SEVEN HOURS
6 LATER, AND HIS STORY IS, THE REASON WHY HE TOLD THE
7 POLICE HE DIDN'T KNOW WHAT THEY WERE TALKING ABOUT WAS,
8 HE DIDN'T KNOW, HE HONESTLY HAD NO EARTHLY IDEA WHY THEY
9 EVEN HAD PICKED HIM UP. ARE YOU TELLING ME HE HAD JUST
10 BEEN INVOLVED LESS THAN SEVEN HOURS LATER IN LEAVING A
11 MAN LOOKING LIKE THIS, AND WE'RE SUPPOSED TO BELIEVE
12 THAT HE HAD ABSOLUTELY NO IDEA WHY THEY WERE TALKING TO
13 HIM, WHY THEY WERE GOING OVER HIS RIGHTS AND ASKING HIM
14 TO GIVE A STATEMENT AT NINE:TWENTY IN THE MORNING ON THE
15 TWENTY-NINTH? DOES THAT APPEAL TO YOUR COMMON SENSE?
16 DOES THAT MAKE ANY SENSE? I SUBMIT TO YOU, LADIES AND
17 GENTLEMEN, WHAT HE THOUGHT AT THAT POINT IN TIME, THAT
18 MORNING, WAS THAT, YET AGAIN, ALL THEY HAVE ON ME IS,
19 THEY'VE GOT SOME LADY THAT SAW ME THERE AT TWO:THIRTY IN
20 THE MORNING. I MEAN, THEY DON'T KNOW ANYTHING ELSE. I
21 HID THE PANTS, I BURNED THE SHIRT, I THREW AWAY THE
22 STICK. ASSUMING, ASSUMING THIS IS THE KNIFE IE USED, I
23 MEAN, THERE'S NO BLOOD, I MEAN, HE WAS STABBED FOUR
24 TIMES, AND THERE'S NO BLOOD ON THE BLADE. SO, ASSUMING
25 THIS IS THE KNIFE, HE CLEANED THE KNIFE OFF, WHICH MIGHT

1 BE WHY HE'S GOT ALL THAT BLOOD ALL OVER THE SHORTS AND
2 BACK HERE AND DOWN HERE, OR IT'S A DIFFERENT KNIFE AND
3 HE TOOK IT WITH HIM ALSO LIKE HE TOOK THE STICK THAT HE
4 CLAIMS THAT HE TOOK WITH HIM AND THREW AWAY, BECAUSE YOU
5 KNOW, THERE'S NO STICK FOUND ANYWHERE AT THE SCENE. SO,
6 HE'S THINKING HE'S FINE RIGHT THERE, YOU KNOW, JUST KEEP
7 MY MOUTH SHUT AND ALL WILL BE WELL. WELL, UNFORTUNATELY
8 FOR HIM, THAT WASN'T THE CASE. AND YOU KNOW, BY THE
9 NEXT DAY WHEN THEY'RE BRINGING HIM BACK OVER FROM THE
10 JAIL AND HE HASN'T GONE HOME YET, YOU KNOW, THOSE THINGS
11 HAD TO CHANGE A LITTLE BIT.

12 YET AGAIN, ON BOTH OF THESE
13 OCCASIONS, LADIES AND GENTLEMEN, YOU'LL HAVE THESE FORMS
14 BACK THERE, YOU CAN READ THEM. THEY WENT OVER THEIR
15 RIGHTS WITH HIM, HE SIGNED AND INITIALED THAT HE
16 UNDERSTOOD HIS RIGHTS, SIGNED AT THE BOTTOM SAYING THAT
17 HE UNDERSTOOD THE RIGHTS, AND THEN SIGNED AT THE BOTTOM
18 THAT HE WISHED TO WAIVE THESE RIGHTS AND TALK. OKAY.
19 THEY DIDN'T PROMISE HIM ANYTHING, DIDN'T THREATEN HIM,
20 DIDN'T COERCE HIM, DIDN'T MAKE HIM TALK, I MEAN, HE
21 COULD HAVE JUST DID THE SAME THING HE DID ON THE TWENTY-
22 NINTH AND SAY, I DON'T HAVE ANYTHING TO SAY. BUT HE
23 CHOSE TO MAKE A STATEMENT. AS I SAID, IT THEN HAS THE
24 SAME SCRUTINY AS ANYTHING ELSE. ALRIGHT. SO, NOW HE'S
25 GOT TO COME UP WITH A STORY BECAUSE, YOU KNOW,

1 OBVIOUSLY, THE PROBLEMS ARE STARTING TO AMASS IN HIS
2 MIND AT THIS POINT IN TIME. YOU KNOW, IT DOESN'T LOOK
3 REAL GOOD, YOU KNOW, LEAVING BEHIND A GUY THAT, YOU
4 KNOW, IT WASN'T LIKE YOU JUST HIT HIM ONE TIME, YOU
5 KNOW, HE'S BEATEN REPEATEDLY ABOUT THE HEAD, PLUS
6 STABBED, IN HIS OWN HOME. I MEAN, IT DOESN'T LOOK GOOD.
7 SO, YOU'VE GOT TO COME UP WITH A STORY. AND THIS IS
8 WHAT WE GET. THIS IS WHAT WE GET, STATE'S EXHIBIT
9 NUMBER THREE, WHICH YOU'RE GOING TO HAVE BACK THERE
10 ALSO. YOU HEARD TWO PEOPLE TESTIFY ABOUT THIS, BOTH
11 LIEUTENANT SHUMPERT AND DETECTIVE RODRIGUEZ, THAT THESE
12 WORDS, WHILE LIEUTENANT -- WHILE DEPUTY RODRIGUEZ MAY
13 HAVE BEEN THE ONE TO WRITE IT, AND HE EXPLAINED TO YOU
14 WHY, I MEAN, HE GAVE HIM THE OPTION, AND I SUBMIT TO
15 YOU, CAN YOU IMAGINE, I MEAN, HE'S GOT TO COME UP IN
16 HERE, FIRST OF ALL, AND BE ABLE TO READ THIS ALSO. SO,
17 YOU KNOW, IN THAT REGARD, I MEAN, AS LONG AS THE
18 DEFENDANT IS GIVEN THE OPPORTUNITY TO GO OVER THE
19 STATEMENT, MAKE ANY CHANGES, AND SIGN IT, I MEAN, IT'S
20 HIS WORDS. AT LEAST NOW WE KNOW THAT THE WITNESS WILL
21 BE ABLE TO READ WHAT'S ON THERE AS OPPOSED TO LEAVING IT
22 UP TO SOMEBODY'S HANDWRITING AND WE HAVE NO EARTHLY IDEA
23 WHAT IT'S GOING TO LOOK LIKE. BUT YOU HEARD FROM TWO
24 EXPERIENCED LAW ENFORCEMENT OFFICERS THAT THOSE WERE THE
25 DEFENDANT'S WORDS. YOU KNOW, IF THEY WANTED TO MAKE UP

1 A STATEMENT, IF THEY WANTED TO MAKE UP A STATEMENT DON'T
2 YOU THINK IT WOULD HAVE BEEN A WHOLE LOT WORSE THAN
3 THAT? I MEAN, I THEY WERE JUST GOING TO MAKE IT UP
4 ENTIRELY AND SOMEHOW FORCE HIM TO SIGN IT? YOU KNOW,
5 WHY EVEN PUT, YOU KNOW, THE VICTIM THREATENING THE
6 DEFENDANT WITH A STICK? I MEAN, YOU KNOW, IT JUST
7 DOESN'T MAKE SENSE. LIKE I SAY, HE'S GOT SOME PROBLEMS,
8 THOUGH. ALRIGHT.

9 THE FIRST ONE, HE MAKES THE MISTAKE,
10 YOU KNOW, AND KEEP IN MIND, THIS IS JUST THE FOLLOWING
11 MORNING NOW, SO, YOU KNOW, TWENTY-FOUR HOURS LATER, YOU
12 KNOW, HE COMES UP WITH THIS, HE'S GOT TO HAVE A REASON
13 WHY HE'S THERE. ALRIGHT, AND HE COMES UP WITH, WELL, I
14 WAS GOING TO SEE GEORGE, THE ROOMMATE. OKAY. AND THEY
15 TOLD ME THAT HE WAS COMING BACK SHORTLY. YET AGAIN, AS
16 I MENTIONED EARLIER, THAT'S THE FIRST PROBLEM, BECAUSE
17 THAT CAN'T BE TRUE. THAT CAN'T BE TRUE BECAUSE THEY
18 KNEW HE WASN'T COMING HOME. BUT YET AGAIN, I MEAN, HE
19 KNOWS HE'S GOT TO HAVE SOME REASON FOR WHY HE'S JUST
20 HANGING OUT THERE AS OPPOSED TO JUST COMING AND GOING
21 LIKE HE CLAIMS HE DID THE OTHER HUNDRED OR SO TIMES.
22 SO, THAT'S HIS FIRST PROBLEM.

23 ALRIGHT. AND OBVIOUSLY, HIS SECOND
24 PROBLEM, AS I SAID, I MEAN, HE'S GOT TO COME UP WITH
25 SOME WAY, YOU KNOW, HE KNOWS HE'S KIND OF, YOU KNOW, THE

1 SHORTS HAVE BEEN FOUND, YOU KNOW, AND HE'S GOT TO COME
2 UP WITH SOME REASON, I MEAN, YOU KNOW, WHAT HAPPENED.
3 AND THE OBVIOUS ONE WAS, I WAS DEFENDING MYSELF, I WAS
4 DEFENDING MYSELF. WHEN YOU GET BACK AND LOOK AT THAT
5 STATEMENT, ALRIGHT, LIKE I SAID, LOOK BACK AT THE
6 ELEMENTS OF SELF DEFENSE THAT HIS HONOR'S GOING TO
7 CHARGE YOU ON, THE DEFENDANT MUST BE WITHOUT FAULT IN
8 BRINGING ON THE DIFFICULTY, MUST HAVE ACTUALLY BELIEVED
9 HE WAS IN EMINENT DANGER OF LOSING HIS LIFE OR
10 SUSTAINING SERIOUS BODILY INJURY, HAD NO OTHER PROBABLE
11 MEANS OF AVOIDING THAT DANGER. ALRIGHT. IF HE GIVES
12 THIS WRITTEN STATEMENT THE MORNING OF SEPTEMBER
13 THIRTIETH WHAT DOES HE TELL THE POLICE? ALRIGHT, HE'S
14 TRYING TO LEAVE THE VICTIM'S PROPERTY, ALRIGHT, WITH THE
15 VICTIM'S PROPERTY. ALRIGHT, AND HE'S GOT DRUGS THAT HE
16 SAYS BELONG TO THE VICTIM THAT HE IS TRYING TO LEAVE
17 WITH, AND MR. LIVINGSTON DOESN'T WANT HIM TO. OKAY.
18 SO, YOU KNOW, IT'S HARD TO SAY THAT HE'S NOT AT FAULT
19 NOW IN STARTING THIS WHOLE ALTERCATION OR WHATEVER
20 HAPPENED. ALRIGHT. LOOK AT THAT, HIS STATEMENT, WHO
21 DOES HE PUT ARMING THEMSELVES FIRST IN HIS WRITTEN
22 STATEMENT? HE PUTS HIMSELF, THAT HE PICKED UP A KNIFE.
23 THEN HE SAID THE VICTIM PICKED UP A STICK AND THREATENED
24 HIM. THIS IS HARRY LIVINGSTON'S HOUSE, I MEAN, WHO'S
25 GOT HE RIGHT TO SELF DEFENSE HERE? FORTUNATELY, IT'S

1 THE PERSON THAT WAS UNABLE TO EXERCISE IT, AND IS NOW NO
2 LONGER WITH US. AND HE NEVER AT ANY POINT IN TIME SAYS
3 IN THERE THAT HARRY LIVINGSTON STRUCK HIM WITH THAT
4 STICK OR EVEN SWUNG IT AT HIM. HE NEVER AT ANY POINT IN
5 TIME WHEN HE WROTE THAT, GAVE THAT STATEMENT TO THE
6 SHERIFF'S OFFICE. HE SAYS THAT HE STABS THE VICTIM MORE
7 THAN ONE TIME, AND THAT HE IS PUNCHING THE VICTIM IN THE
8 HEAD UNTIL HE PASSES OUT, UNTIL HE PASSES OUT. THE
9 PROBLEM IS, LADIES AND GENTLEMEN, WITH THAT STATEMENT,
10 AND I'M GOING TO GET TO THAT WHEN I TALK ABOUT WHY
11 THINGS SUDDENLY CHANGED HERE ON THE STAND WHEN HE
12 TESTIFIED, BECAUSE YOU KNOW, THAT CONVICTS HIM OF
13 MURDER. AT THE VERY LEAST IT CONVICTS HIM OF VOLUNTARY
14 MANSLAUGHTER. IT'S NOT SELF DEFENSE. OKAY? HE'S HAD AN
15 OPPORTUNITY NOW FOR TWO YEARS, YOU KNOW, TO TALK TO HIS
16 LAWYERS, TO SIT IN HERE AND GO OVER ALL THE EVIDENCE, TO
17 LISTEN TO ALL THE EVIDENCE, AND I MEAN, YOU KNOW, HE'S
18 GOING TO HAVE TO CHANGE SOME THINGS. AND I'M GOING TO
19 GET TO THOSE CHANGES IN A SECOND. BUT WHAT ELSE DOES HE
20 SAY IN HERE? WHAT ELSE DOES HE SAY IN HERE? "HARRY
21 PASSED OUT SO I GOT UP, I THEN SAW A PLASTIC BAG THAT
22 HARRY HAD DROPPED. IT HAD FIFTY DOLLARS IN IT, SO I
23 PICKED IT UP AND RAN OUT OF THE HOUSE." NOW, THIS IS
24 AFTER, THIS IS AFTER HE HAS STABBED THE VICTIM AND
25 BEATEN HIM. OKAY? AND HIS HONOR IS GOING TO CHARGE YOU

1 THAT ARMED ROBBERY, YOU KNOW, HARRY DIDN'T EVEN HAVE TO
2 STILL BE ALIVE FOR IT TO BE ARMED ROBBERY. OKAY? AS
3 LONG AS IT IS A CONTINUOUS CHAIN OF EVENTS IT'S ARMED
4 ROBBERY, AND I SUBMIT TO YOU, WHEN YOU TAKE PROPERTY
5 FROM ANOTHER, AND THERE'S NO DOUBT ABOUT IT, THAT IS
6 THROUGH FORCE, VIOLENCE, INTIMIDATION AND THE USE OF A
7 DEADLY WEAPON, THAT'S ARMED ROBBERY. SO, YOU'VE GOT
8 ANOTHER PROBLEM, OOPS, MY STATEMENT CONVICTS ME OF ARMED
9 ROBBERY. LET ME ASK YOU THIS, I MEAN, IF DEPUTY
10 RODRIGUEZ IS GOING TO JUST FOR SOME REASON DECIDE TO
11 JUST KIND OF PUT SOMETHING LIKE THAT, I MEAN, HOW DO YOU
12 COME UP WITH, YOU KNOW, THAT HE DROPPED A PLASTIC BAG
13 WITH FIFTY DOLLARS IN IT. I MEAN, THAT'S NOT A FACT
14 THAT YOU JUST KIND OF MAKE UP, I MEAN, UNLESS IT
15 HAPPENED, UNLESS IT'S THE TRUTH. I MEAN, YOU'RE GOING
16 TO SAY, I MEAN, IF YOU'RE JUST GOING TO PUT SOMETHING IN
17 THERE THAT HE TOOK SOMETHING, HE'S GOING TO SAY, I TOOK
18 MONEY OUT OF HIS POCKET, OR I TOOK MONEY OFF THE TABLE.
19 HE'S NOT GOING TO SAY THAT IT WAS IN A PLASTIC BAG
20 UNLESS THAT'S WHAT HE TOLD HIM.

21 ALRIGHT, THEN HE TALKS ABOUT THE
22 DOG, YOU KNOW, HE PUTS THE DOG IN THERE BITING HIS SHOES
23 AND HIS LEGS. ALRIGHT. NOW, KEEP IN MIND, HE'S GOT
24 THOSE SHORTS ON, HE DOESN'T HAVE LONG PANTS ON. I SUBMIT
25 TO YOU, IT AIN'T NO DOUBT ABOUT IT, I MEAN, I THINK YOU

1 HEARD TESTIMONY FROM THE STATE'S WITNESSES, ALONG WITH
2 HIM, I MEAN, IT IS A LARGE DOG. IF A LARGE ROTTWEILER
3 GETS A HOLD OF YOUR LEG, GETS A HOLD OF YOUR LEG YOU'RE
4 NOT GOING TO GET OUT OF THERE WITH JUST A SCRATCH OR TWO
5 ON YOUR LEGS, EITHER THAT DOG IS GOING TO BE SERIOUSLY
6 INJURED OR YOU'RE GOING TO BE SERIOUSLY INJURED. WE
7 DIDN'T FIND GEORGE MOSES'S BLOOD ALL OVER THAT KITCHEN
8 FLOOR. AS I SAID EARLIER, WE DIDN'T FIND ANY INJURIES ON
9 THE DOG. SO I SUBMIT TO YOU, HE'S MAKING THAT UP, THAT
10 THAT DOG NEVER ATTACKED HIM INSIDE THAT HOUSE, HE WAS
11 NEVER IN FEAR OF THAT DOG, THAT HE HAD SEEN OVER A
12 HUNDRED TIMES, ATTACKING HIM.

13 AN INTERESTING THING HE LEAVES OUT
14 IN HIS STATEMENT ALSO, IF YOU KNOW, HE NEVER SAYS
15 ANYTHING ABOUT HITTING THE VICTIM WITH THE STICK IN THE
16 STATEMENT. YOU KNOW, WHEN HE FIRST GAVE HIM THIS
17 STATEMENT, I MEAN, AS I SAID EARLIER, YOU KNOW, IT'S BAD
18 ENOUGH THAT HE'S, YOU KNOW, HE'S GOT TO ADMIT HE STABBED
19 HIM A COUPLE OF TIMES AND BEAT HIM, BUT I GUESS IF
20 YOU'VE GOT TO SAY YOU THEN BEAT HIM WITH A STICK, TOO,
21 I MEAN, IT'S KIND OF HARD TO ARGUE THAT, YOU KNOW, THAT
22 YOU HAD NO OTHER MEANS OF AVOIDING THE DANGER, WHEN YOU
23 SAY YOU HAVE ALL THE WEAPONS. I MEAN, YOU KNOW, IT'S
24 KIND OF HARD TO MEET THAT, SO HE LEAVES THAT OUT OF
25 THERE. YOU KNOW, FORTUNATELY, YOU KNOW, HE CAN'T GET

1 AROUND, HE CAN'T GET AROUND WHEN THE PATHOLOGIST THEN
2 COMES IN AND TESTIFIES, KEEP IN MIND, HE'S GOT, WHEN
3 HE'S WRITING THIS STATEMENT ON SEPTEMBER THIRTIETH, HE
4 HADN'T HAD ACCESS TO A PATHOLOGY REPORT, HE HADN'T HAD
5 THE OPPORTUNITY TO LISTEN TO THE PATHOLOGIST COME IN
6 HERE AND TESTIFY, THAT THERE ARE ALL THESE WOUNDS THAT
7 ARE NOT FROM HIM PUNCHING THE VICTIM, THEY'RE FROM SOME
8 OTHER ROD LIKE OBJECT STRIKING HIM REPEATEDLY IN THE
9 HEAD.

10 SO, NOW WE COME TO THE LAST THING I
11 WANT TO GO OVER WITH YOU, IS HIS TESTIMONY YESTERDAY.
12 ALRIGHT, AS I SAID, HE'S NOW HAD A CHANCE TO HEAR ALL
13 THE EVIDENCE. HE'S SPENT TWO YEARS TRYING TO COME UP
14 WITH EXPLANATIONS AS TO THE THINGS IN HERE THAT CONVICT
15 HIM. AND THAT'S WHAT WE GOT YESTERDAY. THAT'S WHAT WE
16 GOT YESTERDAY. AND KEEP IN MIND, YOU KNOW, I MEAN, THEY
17 MADE A BIG DEAL ABOUT HOW MUCH WEIGHT HE'S LOST AND ALL.
18 YOU KNOW, ACCORDING TO HIS OWN TESTIMONY HE'S KIND OF
19 THE, I GUESS, THE TOUCH GUY AROUND. YOU KNOW, REMEMBER
20 HE TOLD YOU THAT A LOT OF TIMES THERE ARE PEOPLE THAT
21 ARE ADDICTED TO CRACK COCAINE THAT ARE SCARED TO GO BUY
22 THE CRACK COCAINE, SO HE'LL GO AND BUY IT FOR THEM, AND
23 THEN BE KIND OF THE MIDDLE MAN. SO, I GUESS HE'S NO
24 AFRAID TO GO BUY IT WHEREVER IT'S BEING SOLD. AND THEN,
25 THAT, I GUESS, HELPS SUPPORT HIM THEN BUYING HIS POWDER

1 COCAINE, I GUESS. ALRIGHT, BUT WHAT'S THE FIRST THING
2 THAT HE HAS TO CHANGE FROM IN THIS STATEMENT THAT HE
3 GAVE ON THE THIRTIETH? ALRIGHT, OBVIOUSLY, THE FACT
4 THAT HE DIDN'T TAKE ANYTHING BELONGING TO THE VICTIM.
5 SO, SUDDENLY, WE NOW HAVE TO BELIEVE THAT HE HAD DROPPED
6 HIS OWN, OR HAD KNOCKED OUT OF HIS HAND HIS OWN TWENTY-
7 FIVE DOLLARS AND THAT'S ACTUALLY WHAT, WHAT HE HAD TOLD
8 DEPUTY RODRIGUEZ, AND HE SOMEHOW, HE SOMEHOW CHANGED
9 THAT HAPPENING INTO THE VICTIM DROPPING FIFTY DOLLARS IN
10 A PLASTIC BAG. OKAY. AND THAT SOMEHOW HAPPENED RIGHT
11 IN THE KITCHEN. OKAY.

12 BUT THE OTHER THING THAT'S
13 INTERESTING THAT THERE'S NO EXPLANATION FOR IS, FIRST OF
14 ALL, IS THE FACT THAT, YOU KNOW, WE KNOW, ACCORDING TO
15 YVETTE, THAT SHE GAVE HARRY A HUNDRED AND FORTY-SEVEN
16 DOLLARS. OKAY. THERE'S NO SIGN OF THAT. OKAY.
17 ADDITIONALLY, ACCORDING TO HIS TESTIMONY, SOMEBODY IN
18 THE INTERIM THERE CAME AND MADE A DRUG DEAL WITH HARRY
19 WHILE HE WAS THERE. WELL, YOU WOULD PRESUME THAT THAT
20 PERSON THEN HAD GIVEN HARRY SOME MONEY TO GET DRUGS FROM
21 HIM. WELL, WHERE IS THAT MONEY, BECAUSE THAT'S THEN
22 HARRY'S MONEY? OKAY. YET AGAIN, NO MONEY FOUND ON
23 HARRY OR ANYWHERE AROUND HIM IN THAT KITCHEN, EITHER BY
24 LAW ENFORCEMENT WHEN THEY GOT THERE OR WHEN HIS BODY WAS
25 TRANSPORTED FOR THE AUTOPSY. EIGHTY-ONE CENTS, THAT'S

1 WHAT HE WAS LEFT WITH, EIGHTY-ONE CENTS. I SUBMIT TO
2 YOU, THE REASON IS THAT HE TOOK IT.

3 ALRIGHT, NOW, HE'S GOT TO CHANGE --
4 THE NEXT THING HE'S GOT TO CHANGE, AS I SAID IS, YOU
5 KNOW, NOWHERE IN HERE DOES HE PUT AT ANY POINT IN TIME
6 HARRY LIVINGSTON EVEN SWINGING THAT STICK AT HIM, LET
7 ALONE, HITTING HIM WITH IT. BUT HE'S GOT TO CHANGE THAT
8 BECAUSE YOU KNOW HE'S GOT TO NOW MAKE, YOU KNOW, BECAUSE
9 IF YOU LOOK AT THIS AND IT'S BASICALLY, YOU KNOW, THAT
10 HE'S THE ONE THAT'S BRINGING ON THE DIFFICULTIES, AND
11 NOW HE'S THE ONE THAT'S, YOU KNOW, THAT'S STABBING WITH
12 THE KNIFE. SO, NOW HE'S GOT TO CHANGE THAT AND PUT THE
13 VICTIM, PUT THE VICTIM BEING THE ONE HITTING HIM.
14 DESPITE THE FACT THAT HE SOMEHOW COMES OUT OF IT WITH,
15 YOU KNOW, NO INJURIES THAT WE KNOW, MAYBE SOME SMALL
16 SCRATCHES, SUPPOSED TO THAT, BUT YET, HE'S THE ONE THAT
17 WE'RE SUPPOSED TO BELIEVE HAS GOT THE SELF DEFENSE
18 CLAIM. DOES THAT MAKE SENSE? IT SAYS THAT HE WAS ONLY
19 SWINGING THE KNIFE AROUND, SWINGING THE KNIFE AROUND.
20 WELL, WE KNOW THAT'S NOT TRUE, WE KNOW THAT'S NOT TRUE
21 FROM DR. ROSS AND THE PHOTOGRAPHS. I MEAN, HE'S GOT
22 FOUR PUNCTURE WOUNDS, THREE ON HIS SIDE AND ONE IN HIS
23 ABDOMEN. THAT'S NOT FROM SOMEBODY SWINGING THE KNIFE
24 AROUND, THAT'S FROM SOMEBODY STABBING HIM FOUR TIMES.
25 HIS EXPLANATION NOW, AS I SAID, YOU KNOW, THE FIRST TIME

1 WHEN HE GIVES THAT STATEMENT ON THE THIRTIETH HE DOESN'T
2 SAY ANYTHING ABOUT STRIKING THE VICTIM WITH A STICK.
3 SO, NOW HE PUTS HIM KIND OF LIKE CLIMBING UP AND HOLDING
4 ONTO HIM, AND HE'S HITTING HIM, TRYING TO GET HIM OFF OF
5 HIM. I MEAN, THAT'S THE EXPLANATION HE GIVES FOR WHY HE
6 HIT HIM WITH THE STICK. BUT THAT DOESN'T EXPLAIN,
7 LADIES AND GENTLEMEN, YOU KNOW, THIS BLOOD SPATTER ON
8 THE WALL DOWN HERE. YOU HEARD THE TESTIMONY FROM AGENT
9 GREEN THAT THAT BLOOD SPATTER ON THE WALL IS CONSISTENT
10 WITH THE VICTIM, SOME DEGREE OF FORCE BEING EXERTED ON
11 HIS HEAD, I SUBMIT TO YOU THAT STICK HITTING HIM, WHEN
12 HIS HEAD IS ON THE GROUND HERE UP AGAINST THE WALL.
13 THAT WALL IS THE WALL DIVIDING, I MEAN, THE WAY OUT OF
14 THE KITCHEN IS OVER HERE, I MEAN, THAT'S NOT ANYWHERE
15 NEAR THE WAY OUT OF THE KITCHEN, THAT'S THE WALL
16 DIVIDING THE LIVING ROOM AND THE KITCHEN. I SUBMIT TO
17 YOU, THAT'S WHERE HE'S ON TOP OF HIM FINISHING HIM OFF,
18 FINISHING HIM OFF WITH THAT STICK.

19 ALRIGHT, HERE WHEN WE TALK ABOUT
20 CREDIBILITY, I THINK ABOUT ONE OF THE LAST POINTS I'VE
21 GOT ON HIS STATEMENT. AS I SAID, HE'S GOT TO BRING THE
22 DOG INTO THE EQUATION, TOO. YOU KNOW, BECAUSE HE'S GOT
23 TO BE, HE'S GOT TO BE ABLE TO ARGUE THAT HE WAS IN FEAR
24 OF HIS LIFE, OR SERIOUS BODILY INJURY. SO, OBVIOUSLY,
25 YOU KNOW, THE DOG IS PRESENT, SO I'LL PUT THE DOG

1 ATTACKING ME. OKAY, EVEN THOUGH HE DOESN'T HAVE
2 INJURIES CONSISTENT WITH THAT, THE DOG DOESN'T HAVE ANY
3 INJURIES CONSISTENT WITH THAT, BUT THIS, HOWEVER, LADIES
4 AND GENTLEMEN, IS THE POINT THAT ABSOLUTELY DESTROYS HIS
5 WHOLE TESTIMONY YESTERDAY. OKAY? AND I ASKED HIM THIS,
6 IT HAD TO BE THREE OR FOUR TIMES, HE'S DESCRIBING AFTER
7 HARRY IS DOWN, HE HAS GOTTEN AWAY FROM HARRY, THAT HE IS
8 LEAVING, ATTEMPTING NOW TO LEAVE THE TRAILER. HE'S GOT
9 THE STICK IN ONE HAND, THE CHAIR IN THE OTHER, BUT
10 SOMEHOW MANAGES TO BEND DOWN AND PICK UP HIS MONEY WITH
11 THE HAND WITH THE STICK IN IT, AND HE IS, THE WAY HE HAS
12 DESCRIBED IT, AND HE DID IT MORE THAN ONCE, IS THAT HE
13 IS NOW BACKING THE DOG UP, OKAY. THE CHAIR, KIND OF
14 LIKE, AS I SAID, LIKE A LION TAMER ALMOST, SO THE CAN
15 GET TO THE DOOR AND GET OUT. OKAY. GET TO THE DOOR AND
16 GET OUT. AND THAT'S LOOKING NOW FROM THE DOORWAY INTO
17 THE LIVING ROOM, INTO THE KITCHEN, THAT'S LOOKING BACK
18 NOW AT THE DOOR. SO, THESE TWO PICTURES HERE, STATE'S
19 EXHIBITS SIX AND TWENTY-FOUR BASICALLY SHOW THAT WHOLE
20 AREA, THE ENTIRE AREA RIGHT INSIDE THE DOOR. WHAT DOES
21 HE TELL YOU HE DID AS HE EXITED THE DOOR? AND I ASKED
22 HIM THIS MORE THAN ONE TIME JUST TO MAKE SURE HE WAS
23 ABSOLUTELY CRYSTAL CLEAR ON IT. HE SAID AS HE BACKED UP
24 TO THE DOOR, GOT THE DOOR OPEN, BACKING THE DOG UP, HE
25 TOOK THE STICK WITH HIM, HE SET THE CHAIR DOWN RIGHT

1 INSIDE THE DOOR. LADIES AND GENTLEMEN, THERE'S NO CHAIR
2 INSIDE THAT DOOR. THERE'S NO CHAIR INSIDE THAT DOOR.
3 THE ONLY CHAIRS ARE FOUND IN THE KITCHEN PILED UP BESIDE
4 THE VICTIM, I SUBMIT TO YOU, AS A RESULT OF WHEN HE
5 ATTACKED THE VICTIM IN THAT KITCHEN. YOU CAN'T GET
6 AROUND THAT, LADIES AND GENTLEMEN.

7 LOOK AT HIS ACTIONS. ARE THESE THE
8 ACTIONS OF A MAN WHO DID NO WRONG, WHO WASN'T AT FAULT?
9 DID HE CALL THE POLICE? NO. HIDING AND DESTROYING THE
10 EVIDENCE, HIDING THE PANTS, HIDING THE SHORTS, THROWING
11 AWAY THE STICK, BURNING THE SHIRT. YOU KNOW, HIS ONLY
12 CONCERN AT THAT POINT IN TIME ISN'T THE WELFARE OF HARRY
13 LIVINGSTON, IT'S WHERE HE'S GOING TO GO GET HIGH NEXT.
14 THAT'S HIS ONLY CONCERN. THEN WHEN HE'S FINALLY
15 CONFRONTED BY THE POLICE, THE LIES BEGIN, THE LIES
16 BEGIN. I SUBMIT TO YOU, THOSE ARE NOT THE ACTIONS OF A
17 MAN THAT DID NO WRONG, NOT THE ACTIONS OF A MAN WHO HAD
18 JUST DEFENDED HIMSELF, THOSE ARE THE ACTIONS OF A COLD,
19 MALICIOUS KILLER, A COLD, MALICIOUS KILLER.

20 NOW, LADIES AND GENTLEMEN, I'M JUST
21 ABOUT DONE. I KNOW, THIS FAMILY KNOWS THAT THERE'S
22 NOTHING THAT YOU CAN DO BACK IN THAT JURY ROOM THAT'S
23 EVER GOING TO BRING HARRY BACK. THAT'S NOT POSSIBLE.
24 THE ONE THING THAT YOU CAN DO, HOWEVER, WHEN YOU GET
25 BACK THERE, AND YOU BEGIN DELIBERATING, WHEN YOU REACH

1 A VERDICT, YOU CAN BRING SOME JUSTICE, SOME JUSTICE TO
2 THAT FAMILY, TO SOCIETY. YOU CAN SEND A MESSAGE TO THAT
3 MAN THAT HE WILL BE HELD RESPONSIBLE, HE WILL BE HELD
4 ACCOUNTABLE FOR HIS ACTIONS BACK ON SEPTEMBER TWENTY-
5 NINTH, OF TWO THOUSAND AND SIX.

6 YOU KNOW, THERE'S AN OLD QUOTE, I
7 SPENT SOME TIME ON THE INTERNET TRYING TO FIND OUT WHO
8 IT HAD INITIALLY BEEN ATTRIBUTED TO, AND SOME PEOPLE
9 ATTRIBUTE IT TO CONFUCIUS, IT'S ACTUALLY BEEN ATTRIBUTED
10 TO NAPOLEON BONAPARTE ALSO, AND TO SEVERAL OTHER WRITES
11 THROUGHOUT HISTORY, EARLY NINETEEN HUNDREDS, THAT A
12 PICTURE IS WORTH A THOUSAND WORDS. A PICTURE, LADIES
13 AND GENTLEMEN, IS WORTH A THOUSAND WORDS. LADIES AND
14 GENTLEMEN, WHEN YOU GET BACK INTO THAT JURY ROOM, I'M
15 NOT ASKING YOU FOR A THOUSAND WORDS, I'M NOT ASKING YOU
16 FOR A THOUSAND WORDS, I'M JUST ASKING YOU FOR ONE, AND
17 THAT'S GUILTY, LADIES AND GENTLEMEN, THAT YOU RETURN A
18 VERDICT OF GUILTY TO GEORGE MOSES FOR THE MURDER OF
19 HARRY LIVINGSTON AND FOR THE ARMED ROBBERY OF HARRY
20 LIVINGSTON ON SEPTEMBER TWENTY-NINTH, TWO THOUSAND AND
21 SIX.

22 THANK YOU.

23 THE COURT: THANK YOU, SIR.

24 LADIES AND GENTLEMEN, WE'RE GOING TO
25 TAKE A SHORT BREAK AT THIS TIME. PLEASE RETIRE TO YOUR

1 JURY ROOM, WE'LL BE STARTING BACK UP IN ABOUT FIVE
2 MINUTES. YOU'VE BEEN THERE FOR ABOUT AN HOUR AND
3 FIFTEEN, TWENTY MINUTES, OR LONGER THAN THAT, REALLY, SO
4 WE'RE GOING TO TAKE A SHORT BREAK AND THEN WE'LL BE BACK
5 IN A FEW MINUTES. SO, PLEASE RETIRE TO YOUR JURY ROOM,
6 PLEASE REMEMBER, DO NOT TALK ABOUT THE CASE.

7 (Whereupon, the jury retires
8 to the jury room.)

9 (Recess)

10 THE COURT: ARE YOU ALL READY?

11 MR. MELLARD: WE'RE READY, YOUR
12 HONOR.

13 THE COURT: BRING THE JURY IN.

14 (Whereupon the jury
15 enters the courtroom.)

16 BAILIFF: YOUR HONOR, ALL OF THE
17 JURORS ARE IN THE JURY BOX.

18 THE COURT: THANK YOU, SIR.

19 LADIES AND GENTLEMEN, I'VE TOLD THEM
20 TO GO AHEAD AND ORDER YOU SOME LUNCH. THEY HAVE PRETTY
21 GOOD FOOD OVER THERE, SO HOPEFULLY NOT TOO LONG AFTER
22 YOU START YOUR DELIBERATIONS WE'LL HAVE YOUR LUNCH FOR
23 YOU.

24 CHARGE BY THE COURT

25 YOU KNOW, NOW, OF COURSE, THAT THE

1 STATE HAS CHARGED MR. MOSES IN TWO INDICTMENTS WITH TWO
2 SEPARATE CRIMES, THE CRIME OF MURDER AND THE CRIME OF
3 ARMED ROBBERY. TO THOSE INDICTMENTS AND THE CHARGES
4 CONTAINED IN THOSE INDICTMENTS HE HAS PLED NOT GUILTY.
5 NOW, LADIES AND GENTLEMEN, YOU'LL HAVE TO REACH SEPARATE
6 DECISIONS ON EACH OF THOSE INDICTMENTS. AND SOME OF THE
7 EVIDENCE MAY APPLY TO BOTH OF THE INDICTMENTS BUT YOU
8 MAKE SEPARATE DECISIONS BASED ON THE EVIDENCE AND THE
9 LAW AS I'M ABOUT TO CHARGE YOU AS TO EACH SEPARATE
10 OFFENSE. THE IMPORTANT THING IS, AND YOU'LL HAVE THESE
11 INDICTMENTS WITH YOU IN THE JURY ROOM. THE IMPORTANT
12 THING FOR YOU TO RECOGNIZE IS THAT THEY AREN'T EVIDENCE,
13 AND TO THE CHARGES HE HAS PLED NOT GUILTY. AND THAT
14 PLACES THE BURDEN ON THE STATE TO PROVE HIM GUILTY
15 BEYOND A REASONABLE DOUBT. A PERSON IS NEVER CHARGED OR
16 NEVER REQUIRED TO PROVE HIMSELF INNOCENT. IT IS A VITAL,
17 IMPORTANT RULE OF LAW THAT A DEFENDANT IN A CRIMINAL
18 CASE, NO MATTER HOW GREAT OR HOW SERIOUS THE CHARGES
19 WITH WHICH HE IS FACED, MUST ALWAYS BE PRESUMED INNOCENT
20 UNTIL THE STATE HAS PROVEN HIS GUILT BEYOND A REASONABLE
21 DOUBT. THIS PRESUMPTION OF INNOCENCE REMAINS WITH THE
22 DEFENDANT FROM THE MOMENT HE COMES INTO THIS COURTROOM
23 AND UNTIL YOU HAVE, UPON THE EVIDENCE PRESENTED IN THIS
24 CASE, MADE A DETERMINATION THAT HE IS GUILTY BEYOND A
25 REASONABLE DOUBT. IT IS YOUR DUTY, LADIES AND

1 GENTLEMEN, IF YOU ARE NOT SO CONVINCED, TO FIND HIM NOT
2 GUILTY. BY THE SAME TOKEN, IT IS YOUR DUTY, IF YOU ARE
3 SO CONVINCED, TO FIND HIM GUILTY. SO, IF THE BURDEN IS
4 ON THE STATE TO PROVE HIM GUILTY BEYOND A REASONABLE
5 DOUBT, WHAT DO WE MEAN BY BEYOND A REASONABLE DOUBT?

6 WELL, YOU MIGHT HAVE SERVED AS A
7 JUROR IN A CIVIL CASE AT SOME TIME AND YOU WERE ONLY
8 TOLD THAT IT IS NECESSARY TO PROVE THAT A FACT IS MORE
9 LIKELY THAN NOT TRUE. WELL, IN A CRIMINAL CASE THE
10 STATE'S BURDEN IS GREATER THAN THAT. PROOF BEYOND A
11 REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
12 CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW
13 THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
14 CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT
15 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF
16 BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
17 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE
18 CRIME CHARGED YOU MUST FIND HIM GUILTY. ON THE OTHER
19 HAND, IF YOU THINK THERE IS A REAL POSSIBILITY THAT HE
20 IS NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF ANY
21 REASONABLE DOUBT AND FIND HIM NOT GUILTY.

22 NOW, LADIES AND GENTLEMEN, AS I TOLD
23 YOU EARLIER, YOU ARE THE JUDGES OF THE FACTS IN THE
24 CASE, AND I DON'T HAVE A RIGHT TO EXPRESS ANY OPINION I
25 MIGHT HAVE ABOUT THE FACTS OF THE CASE OR THE GUILT OF

1 THE DEFENDANT OR ANY SUCH MATTER.

2 IN ORDER FOR YOU TO DETERMINE THE
3 FACTS IN THE CASE YOU HAVE TO JUDGE THE CREDIBILITY OR
4 THE BELIEVABILITY OF THE WITNESS WHO HAVE TESTIFIED IN
5 THE CASE, AND YOU ARE THE ONLY ONES WHO CAN MAKE THAT
6 DETERMINATION OF CREDIBILITY. IN PASSING UPON THEIR
7 CREDIBILITY OR BELIEVABILITY YOU SHOULD CONSIDER A
8 NUMBER THINGS: THE Demeanor OR THE MANNER OF TESTIFYING;
9 WAS THE WITNESS FORTHRIGHT OR WAS THE WITNESS HESITANT?
10 DID THE WITNESS HAVE REASON TO BIASED OR PREJUDICED IN
11 THEIR TESTIMONY? WAS A WITNESS'S TESTIMONY CONTRADICTED
12 ON ONE HAND OR WAS IT SUPPORTED AND CORROBORATED ON THE
13 OTHER HAND? WHAT WAS THE WITNESS'S OPPORTUNITY FOR
14 OBSERVATION AND KNOWLEDGE OF THE MATTERS ABOUT WHICH
15 THEY'VE TESTIFIED? HOW REASONABLE WAS THE WITNESS'S
16 TESTIMONY WHEN CONSIDERED IN THE LIGHT OF THE OTHER
17 EVIDENCE WHICH YOU DO BELIEVE?

18 YOU DON'T DETERMINE CREDIBILITY OR
19 BELIEVABILITY BY COUNTING THE NUMBER OF WITNESSES FOR
20 EITHER SIDE. YOU CAN BELIEVE A SMALL PORTION OF A
21 WITNESS'S TESTIMONY, ALL OF THAT WITNESS'S TESTIMONY, OR
22 NONE OF THAT WITNESS'S TESTIMONY. YOU CAN BELIEVE ONE
23 WITNESS AGAINST MANY, OR MANY AGAINST ONE. ALL OF THESE
24 THINGS YOU WILL USE, JUST USING YOUR GOOD COMMON SENSE
25 AS YOU DO IN YOUR RELATIONSHIPS EVERY DAY, BEARING IN

1 MIND THAT YOU SHOULD GIVE THE DEFENDANT THE BENEFIT OF
2 ANY REASONABLE DOUBT.

3 NOW, LADIES AND GENTLEMEN, I TOLD
4 YOU EARLIER THAT CERTAIN WITNESSES WERE QUALIFIED TO BE
5 EXPERT WITNESSES, AND THAT SIMPLY MEANS THAT THEY ARE
6 ALLOWED TO GIVE YOU THEIR OPINION IN THE MATTER OF THEIR
7 AREA OF EXPERTISE. THAT OPINION IS NOT GIVEN FOR THE
8 PURPOSE OF CONTROLLING YOUR JUDGEMENT, BUT FOR THE
9 PURPOSE OF HELPING YOU UNDERSTAND THE EVIDENCE THAT YOU
10 MIGHT HAVE HEARD. AND SO, YOU WEIGH THE CREDIBILITY OF
11 AN EXPERT WITNESS JUST AS YOU DO EVERY OTHER WITNESS AND
12 GIVE IT SUCH WEIGHT AS YOU THINK IT DESERVES.

13 THERE ARE TWO TYPES OF EVIDENCE,
14 LADIES AND GENTLEMEN, FOR WHICH YOU CAN PROPERLY FIND
15 THE TRUTH AS TO THE FACTS IN THE CASE. ONE IS BY DIRECT
16 EVIDENCE, AND THE OTHER IS BY INDIRECT OR WHAT WE CALL
17 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE, LADIES AND
18 GENTLEMEN, INVOLVES THE TESTIMONY OF PERSONS WHO HAVE
19 PERCEIVED ITS EXISTENCE BY ONE OF THEIR FIVE SENSES, AND
20 COMES INTO COURT TO TESTIFY TO WHAT THEY'VE SEEN OR
21 HEARD, OR SMELLED, OR TOUCHED, THE FIVE SENSES, SIGHT,
22 SMELL, TASTE, SOUND OR FEELING. AND IT'S TESTIMONY
23 THAT'S GIVEN OF EVIDENCE THAT WAS PERCEIVED WITH THE USE
24 OF THESE FIVE SENSES WITHOUT THE AID OF ANY INFERENCES
25 WHATSOEVER. CIRCUMSTANTIAL EVIDENCE, ON THE OTHER HAND,

1 INVOLVES TESTIMONY OR EVIDENCE OF SURROUNDING FACTS FROM
2 WHICH ONE MAY OR MAY NOT INFER THAT AN EVENT HAS
3 OCCURRED OR THAT A FACT HAS BEEN ESTABLISHED.
4 CIRCUMSTANTIAL EVIDENCE CAN EXIST WHERE CERTAIN FACTS
5 ARE KNOWN THROUGH ONE OR MORE OF THE FIVE SENSES, AND
6 THESE FACTS GIVE RISE TO THE LOGICAL INFERENCE THAT
7 OTHER FACTS EXIST WITHOUT DIRECTLY PROVING THOSE FACTS.
8 IF YOU GO BACK IN YOUR JURY ROOM IN A FEW MINUTES AND
9 YOU SEE WATER ON THE WINDOW AND WINDOW SILL AND MAYBE
10 WATER RUNNING DOWN THE STREET, YOU CAN SAY, WELL, GOSH,
11 IT RAINED. WELL, YOU SEE CIRCUMSTANTIAL EVIDENCE THAT
12 IT RAINED, YOU DIDN'T, YOU DON'T HAVE ANY DIRECT
13 EVIDENCE, YOU DIDN'T SEE IT RAIN, HEAR IT RAIN, FEEL IT
14 RAIN, BUT YOU SAW THE WATER, AND SO, YOU MIGHT CONCLUDE
15 FROM THAT THAT IT RAINED. THAT'S CIRCUMSTANTIAL
16 EVIDENCE THAT IT RAINED WHILE WE WERE IN THIS COURTROOM.
17 SO, YOU MIGHT NOT HAVE USED THAT TERM, BUT YOU USE
18 CIRCUMSTANTIAL EVIDENCE EVERY DAY ALSO. ON A PARTICULAR
19 ISSUE YOU MAY HAVE SOME DIRECT EVIDENCE AND SOME
20 CIRCUMSTANTIAL EVIDENCE, OR A COMBINATION OF THE TWO AS
21 TO THAT FACT. BUT WITH REGARD TO BOTH DIRECT AND
22 CIRCUMSTANTIAL IT MUST BE SUCH AS TO PROVE THE GUILT OF
23 THE DEFENDANT BEYOND A REASONABLE DOUBT. YOU CONSIDER
24 ALL OF THE EVIDENCE IN THE CASE, BOTH DIRECT AND
25 CIRCUMSTANTIAL. THE LAW MAKES ABSOLUTELY NO DISTINCTION

1 BETWEEN THE WEIGHT OR THE VALUE TO BE GIVEN TO EITHER
2 DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER
3 DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE
4 THAN TO DIRECT EVIDENCE. YOU SIMPLY WEIGH ALL OF THE
5 EVIDENCE AND MAKE YOUR DECISION BASED ON THAT REVIEW.

6 NOW, LADIES AND GENTLEMEN, IN THIS
7 CASE YOU HEARD TESTIMONY ABOUT CERTAIN STATEMENTS THAT
8 WERE ALLEGED TO HAVE BEEN MADE BY MR. MOSES, THE
9 DEFENDANT IN THIS CASE. THERE WAS AN ORAL STATEMENT AND
10 A WRITTEN STATEMENT, AS WELL AS I REMEMBER. WELL, THE
11 COURT DETERMINES THE ADMISSIBILITY OF EVIDENCE, AND I
12 HAVE IN THIS CASE. YOU MUST DETERMINE REGARDING THESE
13 STATEMENTS AND MAKE THE ULTIMATE DETERMINATION OF
14 WHETHER OR NOT THE STATEMENTS WERE MADE BY THE
15 DEFENDANT, AND IF HE DID MAKE THE STATEMENTS WHETHER
16 THEY WERE MADE FREELY AND VOLUNTARILY. AND IF YOU
17 DECIDE THAT THEY WERE MADE AND WERE MADE FREELY AND
18 VOLUNTARILY, YOU CONSIDER THE STATEMENTS. IF YOU DECIDE
19 THEY WERE NOT MADE, OR THAT THEY WERE MADE BUT NOT MADE
20 FREELY AND VOLUNTARILY, THEN YOU CANNOT CONSIDER THOSE
21 STATEMENTS OR GIVE THEM ANY WEIGHT WHATSOEVER. SO, YOU
22 MUST DETERMINE WHETHER THESE STATEMENTS WERE THE PRODUCT
23 OF AN ESSENTIALLY FREE AND UNCONSTRAINED CHOICE, THAT
24 THEY WERE MADE VOLUNTARILY AND OF THEIR OWN FREE WILL.
25 IF YOU DETERMINE THAT THEY WERE, AND THE BURDEN IS UPON

1 THE STATE TO PROVE THAT FACT, AS ALL OTHER FACTS, BEYOND
2 A REASONABLE DOUBT, THEN YOU CAN GIVE THAT STATEMENT
3 SUCH WEIGHT AS YOU THINK IT SHOULD HAVE. IF YOU
4 DETERMINE THAT THE ALLEGED STATEMENTS WERE NOT THE FREE
5 AND VOLUNTARY WILL OR EXPRESSION OF THE DEFENDANT, THEN
6 YOU SHOULD NOT CONSIDER THEM AT ALL. IN DETERMINING
7 WHETHER A DEFENDANT'S WILL WAS OVERCOME IN OBTAINING A
8 STATEMENT YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS
9 OF THE ACCUSED AND THE DETAILS OF THE QUESTIONING, WHICH
10 IS OFTEN REFERRED TO AS THE TOTALITY OF THE
11 CIRCUMSTANCES. YOU WOULD CONSIDER THE AGE, OR THE YOUTH
12 OF THE ACCUSED, HIS EDUCATION OR LACK THEREOF, HIS
13 MENTAL ABILITY OR CAPACITY, HIS BACKGROUND AND
14 ENVIRONMENT, THE ADVICE, OR THE LACK THEREOF TO THE
15 DEFENDANT OF HIS CONSTITUTIONAL RIGHTS, INCLUDING BUT
16 NOT LIMITED TO THE PROCEDURAL SAFEGUARDS KNOWN AS THE
17 MIRANDA WARNINGS, THAT HE HAD THE RIGHT TO REMAIN
18 SILENT; THAT A STATEMENT COULD BE USED AGAINST HIM IN A
19 COURT OF LAW; HIS RIGHT TO HAVE A LAWYER PRESENT; IF
20 INDIGENT HIS RIGHT TO HAVE A LAWYER APPOINTED TO
21 REPRESENT HIM, AND THE FACT THAT HE COULD STOP MAKING A
22 STATEMENT, IF HE CHOSE TO BEGIN MAKING THAT STATEMENT HE
23 COULD STOP AT ANYTIME. AND YOU SHOULD CONSIDER THE
24 PLACE AND THE LENGTH OF THE DETENTION AND THE NATURE OF
25 THE QUESTIONING. YOU MUST BE SATISFIED BEYOND A

1 REASONABLE DOUBT THAT THE STATEMENT WAS MADE BY THE
2 ACCUSED AND THAT IT WAS MADE UNINFLUENCED BY THE PROMISE
3 OF REWARD, THREAT OF INJURY, OR DIMINUTION OF HIS RIGHTS
4 IN ANY MANNER WHATSOEVER, AND IF YOU DETERMINE THOSE
5 FACTORS, THAT IT WAS MADE, THAT IT WAS MADE FREELY AND
6 VOLUNTARY, THEN YOU GIVE THOSE STATEMENTS SUCH WEIGHT AS
7 YOU THINK THEY SHOULD DESERVE.

8 NOW, LADIES AND GENTLEMEN, THE SAME
9 CONSTITUTION AND LAW WHICH MAKE YOU THE JUDGES OF THE
10 FACTS IN THE CASE MAKE ME THE JUDGE OF THE LAW IN THE
11 CASE. AND I'M TELLING YOU NOW, AND I'M ABOUT TO TELL
12 YOU SOME MORE ABOUT WHAT THE LAW IS. AND YOU MUST ACCEPT
13 THE LAW AS I GIVE IT TO YOU BECAUSE I'M THE ONLY JUDGE
14 OF THE LAW. YOU ARE THE ONLY JUDGE OF THE FACTS, NOBODY
15 CAN QUESTION YOUR DECISION AS FAR AS THE FACTS IN THE
16 CASE, BUT I'M THE ONLY JUDGE OF THE LAW. AND IF YOU
17 FIND THAT WHAT I TELL YOU IS NOT WHAT YOU THOUGHT THE
18 LAW WAS, OR EVEN IF IT'S NOT WHAT YOU THINK THE LAW
19 OUGHT TO BE, YOU MUST PUT ASIDE YOUR POSITION OR YOUR
20 OPINION ON THE LAW, ACCEPT THE LAW AS I GIVE IT TO YOU,
21 AND APPLY THAT TO THE FACTS AS YOU FIND THEM TO BE IN
22 THE CASE IN ORDER TO REACH YOUR VERDICT IN THE CASE.

23 NOW, FIRST I'M GOING TO DEFINE FOR
24 YOU, LADIES AND GENTLEMEN, WHAT WE MEAN BY ARMED
25 ROBBERY. WELL, ARMED ROBBERY INCLUDES ALL THE ELEMENTS

1 FIRST OF LARCENY AND ROBBERY. AND SO, LARCENY, LADIES
2 AND GENTLEMEN, IS NOTHING BUT STEALING. THE STATE MUST
3 PROVE FOUR THINGS TO PROVE LARCENY, AND THEY MUST PROVE
4 EACH OF THESE BEYOND A REASONABLE DOUBT:

5 THAT THERE WAS A TAKING;

6 THAT THE TAKING WAS OF PERSONAL PROPERTY.

7 NOW, LADIES AND GENTLEMEN, THE LAW RECOGNIZES ONLY TWO
8 KINDS OF PROPERTY, ONE IS PERSONAL PROPERTY, ONE IS REAL
9 PROPERTY. REAL PROPERTY CONSISTS OF LAND AND HOUSES OR
10 BUILDINGS UPON THAT LAND. EVERYTHING ELSE IS PERSONAL
11 PROPERTY.

12 SO, IT MUST BE A TAKING;

13 IT MUST BE OF PERSONAL PROPERTY;

14 THE PROPERTY MUST BE CARRIED AWAY, IT DOESN'T
15 HAVE TO BE CARRIED ANY PARTICULAR DISTANCE, BUT
16 IT'S GOT TO BE CARRIED AWAY; AND

17 IT'S GOT TO BE TAKEN FROM, WITH THE INTENT TO
18 STEAL THAT PROPERTY OR DEPRIVE THE OTHER PERSON OF
19 THAT PROPERTY.

20 SO, THAT'S LARCENY, THAT'S LARCENY OR STEALING, THE
21 TAKING, THE CARRYING AWAY, OF PERSONAL PROPERTY, WITH
22 INTENT TO STEAL THAT PROPERTY.

23 NOW, TO MAKE THAT ROBBERY, LADIES
24 AND GENTLEMEN, THERE'S ONE OTHER ELEMENT, AND IT IS THAT
25 THE TAKING MUST BE FROM THE PERSON OR PRESENCE OF THE

1 VICTIM IN THE CASE. AND THERE ARE TWO OTHER ELEMENTS,
2 IT MUST BE TAKEN FROM THE PERSON OR PRESENCE OF THE
3 VICTIM, AND IT MUST HAVE BEEN ACCOMPLISHED BY PLACING
4 THE OTHER PERSON IN FEAR BY VIOLENCE OR THREATS OF
5 VIOLENCE SO AS TO MAKE THAT PERSON SURRENDER THE
6 PROPERTY WITHOUT THEIR CONSENT AND AGAINST THEIR WILL.
7 IN OTHER WORDS, IF YOU GO TO SOMEBODY'S HOUSE AND STEAL
8 THEIR LAWN MOWER AND LEAVE, THAT'S NOT ROBBERY BECAUSE
9 YOU DIDN'T TAKE IT -- IT'S LARCENY, BUT IT'S NOT ROBBERY
10 BECAUSE YOU DIDN'T TAKE IT FROM THE PERSON OR PRESENCE
11 OF THAT PERSON. BY THE SAME TOKEN, IF SOMEBODY IS
12 SITTING IN A RESTAURANT AND YOU WALK UP BEHIND THEM AND
13 YOU TAKE THE PURSE OFF THE BENCH AND TAKE IT OUT, THAT'S
14 STEALING BUT IT'S NOT ROBBERY, AND EVEN THOUGH YOU TOOK
15 IT FROM THE PRESENCE OF THE VICTIM, YOU DIDN'T TAKE IT
16 BY PLACING THE PERSON IN FEAR OR INTIMIDATION IN ORDER
17 TO MAKE THEM GIVE UP THE PROPERTY. WE WOULD CALL THAT
18 SERRUPTICIOUSLY STEALING, AND SO THAT WOULDN'T BE
19 ROBBERY. SO, ROBBERY IS TAKING, CARRYING AWAY, PERSONAL
20 PROPERTY OF ANOTHER, WITH THE INTENT TO STEAL THAT
21 PROPERTY, AND IT HAS TO BE TAKEN FROM THE PERSON OR
22 PRESENCE OF THAT PERSON AND IT HAS TO BE TAKEN BY
23 PLACING THAT PERSON IN FEAR OR INTIMIDATION.

24 NOW, ARMED ROBBERY INCLUDES ONE
25 ADDITIONAL ELEMENT, AND THAT MEANS THAT THE FORCE OR

1 INTIMIDATION IS ACCOMPLISHED BY BEING ARMED, THAT THE
2 PERSON WAS ARMED AND THAT WAY THEY INTIMIDATED THE
3 PERSON OR FORCED HIM TO GIVE UP THE PROPERTY. AND SO,
4 THE STATE MUST PROVE IN ORDER FOR YOU TO CONVICT THE
5 DEFENDANT OF ARMED ROBBERY THAT HE TOOK AND CARRIED AWAY
6 THE PERSON PROPERTY OF THE VICTIM IN THE CASE, THAT HE
7 DID IT FROM THE PERSON OR PRESENCE OF THE VICTIM, AND
8 THAT HE DID IT BY PLACING THAT PERSON IN FEAR OR
9 INTIMIDATION BY THE USE OF A DEADLY WEAPON.

10 NOW, LADIES AND GENTLEMEN, THE STATE
11 ACTUALLY HAS DEFINED ARMED ROBBERY AS SAYING THAT A
12 PERSON WHO COMMITS THE CRIME OF ROBBERY WHILE ARMED WITH
13 A PISTOL, DIRK, SLING SHOT, METAL KNUCKLES, RAZOR OR ANY
14 OTHER DEADLY WEAPON COMMITS THE OFFENSE OF ARMED
15 ROBBERY. AND A DEADLY WEAPON IS ANY TYPE OF WEAPON
16 WHICH CAN BE USED TO INFLECT SERIOUS BODILY HARM.

17 LADIES AND GENTLEMEN, IT IS NOT
18 ESSENTIAL THAT A VICTIM IN AN ARMED ROBBERY MUST BE
19 ALIVE WHEN THE ROBBERY OCCURS, BUT IN ORDER TO BE GUILTY
20 OF ARMED ROBBERY IN CONJUNCTION WITH A HOMICIDE, OR
21 MURDER, THE STATE MUST PROVE THE VICTIM'S DEATH AND THE
22 TAKING ARE A PART OF A CONTINUOUS CHAIN OF EVENTS, AND
23 THAT THEY ARE SO INTERCONNECTED AS TO BE INSEPARABLE.

24 NOW, LADIES AND GENTLEMEN, THE STATE
25 HAS CHARGED THE DEFENDANT WITH MURDER. AND UNDER THE

1 PRINCIPLE IN SOUTH CAROLINA THAT A GREATER CRIME
2 INCLUDES A LESSER CRIME, THIS INDICTMENT OF MURDER
3 INCLUDES ALSO THE CHARGE OF MANSLAUGHTER IN ADDITION TO
4 THE CRIME OF MURDER, MURDER BEING THE GREATER CRIME,
5 MANSLAUGHTER BEING THE LESSER CRIME. AND SO, I MUST
6 CHARGE YOU ON MURDER AND MANSLAUGHTER.

7 NOW, WHAT IS MURDER? THE DEFINITION
8 OF MURDER IS, IT IS THE WILLFUL, FELONIOUS KILLING OF A
9 HUMAN BEING BY A HUMAN BEING WITH MALICE AFORETHOUGHT,
10 THAT MALICE BEING EITHER EXPRESS MALICE OR IMPLIED
11 MALICE.

12 THE WILLFUL. WILLFUL, LADIES AND GENTLEMEN,
13 MEANS INTENTIONAL, IT MEANS VOLUNTARY, IT MEANS
14 CONSCIOUS, IT MEANS KNOWING AS OPPOSED TO
15 ACCIDENTALLY.

16 FELONIOUS, LADIES AND GENTLEMEN, MEANS
17 WRONGFUL, IT MEANS UNLAWFUL, IT MEANS WITHOUT
18 JUSTIFICATION OR EXCUSE.

19 MALICE, LADIES AND GENTLEMEN, IS A - - -
20 WELL, LET ME DEFINE MANSLAUGHTER AND THEN I'LL DEFINE
21 MALICE FOR YOU.

22 MANSLAUGHTER, LADIES AND GENTLEMEN,
23 IS THE FELONIOUS OR WRONGFUL KILLING OF A HUMAN BEING
24 WITHOUT MALICE, IN SUDDEN HEAT AND PASSION, UPON A
25 SUFFICIENT LEGAL PROVOCATION. SO, THE DIFFERENCE

1 BETWEEN MURDER AND MANSLAUGHTER IS THE PRESENCE OR
2 ABSENCE OF MALICE, MALICE BEING PRESENT IN MURDER, BUT
3 NOT PRESENT IN MANSLAUGHTER.

4 SO, WHILE MURDER IS THE WILLFUL,
5 FELONIOUS KILLING OF A HUMAN BEING BY A HUMAN BEING WITH
6 MALICE AFORETHOUGHT, AND THAT MALICE EITHER BEING
7 EXPRESSED OR IMPLIED MALICE, MANSLAUGHTER IS THE
8 FELONIOUS OR WRONGFUL KILLING OF A HUMAN BEING WITHOUT
9 MALICE IN A SUDDEN HEAT OF PASSION AND UPON SUFFICIENT
10 LEGAL PROVOCATION.

11 NOW, LET ME DEFINE FOR YOU FIRST
12 WHAT WE MEAN BY MALICE. MALICE IS AN ESSENTIAL ELEMENT
13 OF THE CRIME OF MURDER. MALICE IS A TERM OF ART, A
14 TECHNICAL TERM. IT IMPORTS WICKEDNESS, IT EXCLUDES JUST
15 CAUSE OR LEGAL EXCUSE. MALICE IN ANY FORM, WHETHER IT
16 ARISES FROM HATRED, ILL WILL, OR OTHERWISE, IS STILL
17 MALICE. MALICE SPRINGS FROM THE DEPRAVITY, FROM A HEART
18 DEVOID OF SOCIAL DUTY, AND FATALLY BENT ON MISCHIEF. IT
19 MUST BE AFORETHOUGHT. THE LAW DOES NOT REQUIRE THAT
20 MALICE SHOULD EXIST FOR ANY PARTICULAR TIME BEFORE THE
21 COMMISSION OF THE ACT, BUT MALICE MUST EXIST IN THE MIND
22 OF THE ACCUSED JUST BEFORE AND AT THE TIME OF THE
23 COMMISSION OF THE ACT. THERE MUST BE A COMBINATION OF
24 THE PREVIOUS EVIL INTENT AND THE ACT PRODUCING THE
25 RESULT.

1 MALICE AFORETHOUGHT MAY BE EITHER
2 EXPRESSED OR IMPLIED. THESE WORDS, EXPRESSED OR
3 IMPLIED, DO NOT MEAN DIFFERENT KINDS OF MALICE, BUT
4 MERELY THE MANNER IN WHICH THE ONLY KIND OF MALICE KNOWN
5 TO THE LAW MAY BE SHOWN TO EXIST, THAT IS, EITHER BY
6 DIRECT EVIDENCE OR BY A NECESSARY INFERENCE FROM THE
7 FACTS AND CIRCUMSTANCES WHICH ARE PROVEN. EXPRESS
8 MALICE IS SHOWN WHEN ONE, BY WORD OF MOUTH, EXPRESSES
9 HIS HATRED OR ILL WILL FOR ANOTHER OR WHERE THE STATE
10 SHOWS HE HAS MADE PREPARATION BEFOREHAND TO DO THE DEED
11 WHICH WAS LATER ACCOMPLISHED. LYING IN WAIT FOR A
12 PERSON OR ANY ACTS OF PREPARATION GOING TO SHOW THAT THE
13 DEED WAS WITHIN HIS MIND OR HIS THINKING WOULD BE
14 EXPRESSED MALICE.

15 NOW, EVEN THOUGH NO EXPRESSED INTENT
16 TO KILL IS PROVED BY DIRECT EVIDENCE, IT MAY BE INFERRED
17 FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVEN.
18 MALICE MAY BE INFERRED FROM THE WILLFUL, DELIBERATE AND
19 INTENTIONAL DOING OF AN UNLAWFUL ACT WITHOUT JUST CAUSE
20 OR LEGAL EXCUSE. IN OTHER WORDS, IN ITS GENERAL
21 SIGNIFICATION, MALICE MEANS THE DOING OF A WRONGFUL ACT
22 INTENTIONALLY, WITHOUT JUSTIFICATION OR LEGAL EXCUSE. IT
23 MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD
24 FOR HUMAN LIFE. THE INFERENCE OF MALICE ARISE WHEN THE
25 DEED IS DONE WITH A DEADLY WEAPON. A DEADLY WEAPON IS

1 ANY ARTICLE, INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO
2 CAUSE DEATH OR GREAT BODILY HARM. MALICE DOES NOT
3 NECESSARILY IMPART ILL WILL TOWARD THE INDIVIDUAL
4 INJURED, BUT RATHER SIGNIFIES A GENERAL MALIGNANT
5 RECKLESSNESS OF THE LIVES AND SAFETY OF OTHERS, A
6 CONDITION OF MIND WHICH SHOWS THE HEART DEVOID OF SOCIAL
7 DUTY AND FATALLY BENT ON MISCHIEF. IT IS THE WRONGFUL
8 INTENT TO INJURE ANOTHER AND INDICATES A WICKED OR
9 DEPRAVED SPIRIT INTENT ON DOING WRONG. SO IF FACTS ARE
10 PROVEN BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN
11 INFERENCE OF MURDER TO YOUR SATISFACTION, THIS INFERENCE
12 WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO
13 CONSIDERATION BY YOU, THE JURY, ALONG WITH OTHER
14 EVIDENCE IN THE CASE, AND YOU MAY GIVE IT SUCH WEIGHT AS
15 YOU DETERMINE IT SHOULD RECEIVE.

16 NOW, LADIES AND GENTLEMEN,
17 MANSLAUGHTER, AS I HAVE ALREADY INDICATED TO YOU, IS THE
18 UNLAWFUL OR FELONIOUS KILLING OF A HUMAN BEING WITHOUT
19 MALICE BUT IN SUDDEN HEAT AND PASSION UPON A SUFFICIENT
20 LEGAL PROVOCATION. A LEGAL PROVOCATION, LADIES AND
21 GENTLEMEN, IS SOME ACT WHICH, EITHER ALONE OR IN
22 CONJUNCTION WITH WORDS OR CIRCUMSTANCES, IS CALCULATED
23 TO THROW ONE INTO A PASSION. NOW, THE SUDDEN HEAT AND
24 PASSION UPON SUFFICIENT LEGAL PROVOCATION WHICH
25 MITIGATES OR REDUCES DOWN A FELONIOUS KILLING FROM

1 MURDER TO MANSLAUGHTER, WHILE IT NEED NOT DETHRONE OR
2 ELIMINATE REASON ENTIRELY, IT MUST BE SUCH AS WOULD
3 NATURALLY DISTURB OR SWAY THE REASON OF AN ORDINARY
4 PERSON AND RENDER HIS MIND INCAPABLE OF COOL REFLECTION,
5 AND PRODUCE WHAT ACCORDING TO HUMAN EXPERIENCE MAY BE
6 CALLED AN UNCONTROLLED IMPULSE TO DO VIOLENCE.

7 NOW, LADIES AND GENTLEMEN, IF THE
8 HEAT OF PASSION, EVEN IF IT EXISTED, HAD COOL, OR IF
9 THERE WAS SUFFICIENT TIME BETWEEN THE PROVOCATION AND
10 THE KILLING FOR PASSION TO HAVE COOLED, THE KILLING
11 WOULD NOT BE ATTRIBUTED TO THE HEAT OF PASSION BUT IT
12 WOULD BE ATTRIBUTED TO MALICE. NOW, AS TO WHETHER OR
13 NOT A REASONABLE TIME FOR THE COOLING HAD ELAPSED, YOU
14 SHOULD TAKE INTO CONSIDERATION THE WHOLE CIRCUMSTANCES
15 SURROUNDING THE DIFFICULTY. YOU SHOULD CONSIDER THE
16 NATURE OF THE PROVOCATION, THE DEFENDANT'S PHYSICAL AND
17 MENTAL CONSTITUTION, HIS CONDITION IN LIFE AND PECULIAR
18 SITUATION AT THE TIME OF THE AFFAIR, HIS EDUCATION, HIS
19 CONDUCT, MANNER AND CONVERSATION THROUGHOUT THE
20 TRANSACTION. ALL PERTINENT CIRCUMSTANCES MAY BE
21 CONSIDERED, AND THE TIME IN WHICH AN ORDINARY MAN IN
22 LIKE CIRCUMSTANCES WOULD HAVE COOLED, THAT WOULD BE THE
23 REASONABLE TIME.

24 LADIES AND GENTLEMEN, A TYPICAL
25 CASE THAT'S GIVEN IS, A MAN COMES HOME AND FINDS ANOTHER

1 MAN IN BED WITH HIS WIFE, AND HE KILLS THAT MAN RIGHT
2 THERE, BAM. IT WOULD BE UP TO A JURY, BUT THERE HAVE
3 BEEN MANY CASES WHERE THE JURY DETERMINED THAT THAT WAS
4 SUFFICIENT LEGAL PROVOCATION TO PROVOKE THE MAN IN THE
5 HEAT OF PASSION TO TAKING THAT MAN'S LIFE. NOW, IF THE
6 MAN COMES HOME AND FINDS ANOTHER MAN IN BED WITH HIS
7 WIFE, AND HE SAYS, GET OUT OF MY HOUSE, AND A WEEK LATER
8 HE GOES AND KILLS HIM, AS A MATTER OF LAW THAT WOULD NOT
9 BE SUFFICIENT LEGAL PROVOCATION BECAUSE HE'S HAD A WEEK
10 TO COOL OFF. HE COULDN'T BE SAID TO BE IN THE HEAT OF
11 PASSION. THAT'S WHAT WE MEAN BY, IT'S GOT TO HAPPEN
12 WHILE HE'S IN THE HEAT OF PASSION. BY THE SAME TOKEN, IF
13 SOMEBODY WALKS UP TO YOU AND SAYS, GEE, THAT'S THE
14 UGLIEST SHIRT I'VE EVER SEEN IN MY LIFE, AND YOU FLY
15 INTO A RAGE AND KILL HIM, THAT'S NOT GOING TO EXCUSE
16 YOU, BECAUSE THAT'S NOT ADEQUATE LEGAL PROVOCATION. YOU
17 KNOW, FINDING A MAN IN BED WITH YOUR WIFE HAS BEEN
18 CONSIDERED TO BE ADEQUATE LEGAL PROVOCATION, AND IT
19 WOULD BE UP TO A JURY, YOU MAY CONSIDER IT'S NOT, AND
20 THAT DOESN'T APPLY TO THIS CASE, I'M JUST TRYING TO SHOW
21 YOU WHAT WE MEAN BY ADEQUATE LEGAL PROVOCATION, THE HEAT
22 OF PASSION, AND THE TIME TO COOL OFF, AND I THINK THAT
23 ILLUSTRATES THAT. YOU WOULDN'T ORDINARILY GET SO
24 INFLAMED BY THE COLOR OF A MAN'S SHIRT, OR A MAN NOT
25 LIKING THE COLOR OF YOUR SHIRT THAT YOU WOULD KILL HIM,

1 AND THAT IN THE LAW WOULDN'T BE SUFFICIENT.

2 NOW, LADIES AND GENTLEMEN, WHEN YOU
3 CONSIDER ALL OF THE EVIDENCE IN THE CASE IF YOU CONCLUDE
4 THAT THE DEFENDANT IS GUILTY BUT THERE'S A REASONABLE
5 DOUBT AS TO WHETHER HE'S GUILTY OF MURDER OR
6 MANSLAUGHTER, THEN YOU WOULD RESOLVE THAT DOUBT IN FAVOR
7 OF THE DEFENDANT AND FIND HIM GUILTY OF MANSLAUGHTER,
8 BUT YOU WOULDN'T FIND HIM GUILTY OF ANYTHING UNLESS YOU
9 FIND THAT THE STATE HAS PROVEN THE ELEMENTS OF THAT
10 CRIME, EACH OF THOSE ELEMENTS BEYOND A REASONABLE DOUBT.

11 NOW, LADIES AND GENTLEMEN, THE
12 DEFENDANT IN THIS CASE HAS RAISED THE QUESTION OF SELF
13 DEFENSE, AND I CHARGE YOU, LADIES AND GENTLEMEN, THAT
14 THE LAW RECOGNIZES THE RIGHT OF EVERY PERSON TO DEFEND
15 HIMSELF FROM DEATH OR SERIOUS BODILY HARM. AND TO DO
16 THIS HE MAY USE SUCH FORCE AS IS NECESSARY, EVEN TO THE
17 POINT OF TAKING A HUMAN LIFE. IN OTHER WORDS, SELF
18 DEFENSE IS A COMPLETE DEFENSE, ENTITLED TO ONE CHARGED
19 WITH AN UNLAWFUL ACT, WHETHER IT BE MURDER OR
20 MANSLAUGHTER, TO AN ACQUITTAL OR NOT GUILTY VERDICT IF
21 THE LEGAL ELEMENTS OF THE PLEA OF SELF DEFENSE ARE SHOWN
22 TO YOUR SATISFACTION BY THE EVIDENCE IN THE CASE. SINCE
23 SELF DEFENSE IS A COMPLETE DEFENSE, IF YOU BELIEVE THAT
24 THE DEFENDANT ACTED IN SELF DEFENSE YOU MUST FIND HIM
25 NOT GUILTY.

1 NOW, LADIES AND GENTLEMEN, THERE ARE
2 FOUR ELEMENTS REQUIRED BY LAW TO ESTABLISH THE DEFENSE
3 OF SELF DEFENSE IN THIS CASE:

4 FIRST, THE DEFENDANT MUST BE WITHOUT FAULT IN
5 BRINGING ON THE DIFFICULTY. OBVIOUSLY, SOMEBODY
6 CAN'T CREATE A SITUATION AND THEN KILL A MAN AND
7 SAY, WELL, YOU KNOW, I'VE KILLED HIM IN SELF
8 DEFENSE. SO, YOU HAVE TO BE WITHOUT FAULT IN
9 BRINGING ON THE SITUATION.

10 SECONDLY, THE DEFENDANT MUST HAVE ACTUALLY
11 BELIEVED HE WAS IN EMINENT DANGER OF LOSING HIS
12 LIFE OR SUSTAINING SERIOUS BODILY INJURY, OR HE
13 ACTUALLY WAS IN SUCH EMINENT DANGER. HE EITHER HAD
14 TO BELIEVE THAT HE WAS IN EMINENT DANGER OF LOSING
15 HIS LIFE OR HE ACTUALLY WAS IN THE DANGER. WHAT'S
16 THE DIFFERENCE? WELL, ONE EXAMPLE COULD BE, IF
17 SOMEBODY IS POINTING A WEAPON AT YOU BUT IT'S NOT
18 LOADED, YOU KNOW, YOU'RE NOT REALLY IN EMINENT
19 DANGER BUT YOU COULD HAVE BELIEVED THAT YOU WERE
20 IN EMINENT DANGER. IF IT WAS LOADED YOU ARE IN
21 EMINENT DANGER. SO, BUT YOU DIDN'T KNOW. SO, YOU
22 HAVE TO HAVE BELIEVED THAT YOU WERE IN DANGER OR
23 ACTUALLY WERE IN DANGER, THAT'S THE SECOND
24 ELEMENT.

25 NOW, THE THIRD ELEMENT IS THIS, IF THE

1 DEFENSE IS BASED UPON THE BELIEF OF EMINENT
2 DANGER, WHEN MAYBE HE WASN'T, THE BELIEF, THEN A
3 REASONABLE PRUDENT MAN OF ORDINARY PRUDENCE AND
4 COURAGE WOULD HAVE ENTERTAINED THE SAME BELIEF.
5 IN OTHER WORDS, IF SOMEBODY IS HOLDING AT YOU AND
6 YOU DON'T KNOW WHETHER IT'S LOADED OR NOT, IT
7 TURNS OUT NOT TO BE LOADED, AND YOU ACTED AND
8 CLAIMED IT WAS SELF DEFENSE WHEN YOU TOOK THAT
9 PERSON'S LIFE, THEN THE QUESTION FOR THE JURY
10 WOULD BE, WOULD A MAN OF ORDINARY REASON AND
11 PRUDENCE HAVE FELT LIKE THAT HE WAS IN THAT
12 DANGER? NOW, IF THAT PERSON WAS POINTING A SLING
13 SHOT AT YOU IT WOULD BE A DIFFERENT QUESTION FOR
14 YOU TO RESOLVE. NOW, IF THE DEFENDANT ACTUALLY
15 WAS IN EMINENT DANGER, LADIES AND GENTLEMEN, THEN
16 THE CIRCUMSTANCES WERE SUCH AS WOULD WARRANT A MAN
17 OF ORDINARY PRUDENCE, FIRMNESS AND COURAGE TO
18 STRIKE THE FATAL BLOW IN ORDER TO SAVE HIMSELF
19 FROM SERIOUS BODILY HARM OR LOSING HIS OWN LIFE.
20 SO, IF HE BELIEVED THAT HE WAS IN DANGER IT MUST
21 HAVE BEEN A BELIEF THAT A REASONABLY PRUDENT MAN
22 WOULD HAVE HAD AT THE SAME TIME. IF HE ACTUALLY
23 WAS IN THAT EMINENT DANGER OF LOSING HIS LIFE OR
24 SUFFERING SERIOUS BODILY HARM, THEN THE CONDUCT,
25 HIS ACTIONS AFTER THAT BELIEF SHOULD BE SUCH AS

1 WOULD WARRANT A MAN OF ORDINARY PRUDENCE, FIRMNESS
2 AND COURAGE TO STRIKE THE FATAL BLOW IN ORDER TO
3 SAVE HIMSELF FROM SERIOUS BODILY HARM OR LOSING
4 HIS OWN LIFE.

5 FOURTH, LADIES AND GENTLEMEN, YOU MUST BE
6 CONVINCED THAT THE DEFENDANT HAD NO OTHER PROBABLE
7 MEANS OF AVOIDING THE DANGER OF LOSING HIS OWN
8 LIFE OR SUSTAINING SERIOUS BODILY INJURY OTHER
9 THAN TO ACT AS HE DID IN THIS PARTICULAR
10 CIRCUMSTANCE. SO, LADIES AND GENTLEMEN, A PERSON
11 HAS A DUTY TO AVOID TAKING HUMAN LIFE, OR
12 INFLECTING SERIOUS BODILY INJURY IF IT IS POSSIBLE
13 TO DO SO, EVEN TO THE EXTENT OF RETREATING FROM
14 HIS ADVERSARY UNLESS BY RETREATING THE DANGER OF
15 BEING KILLED OR SUFFERING SERIOUS BODILY HARM IS
16 INCREASED OR IT IS REASONABLY APPARENT THAT SUCH
17 DANGER WOULD BE INCREASED. SO, THERE IS A DUTY TO
18 RETREAT.

19 LADIES AND GENTLEMEN, THE FORCE WHICH A PERSON MAY USE
20 IN SELF DEFENSE IS THAT WHICH UNDER ALL CIRCUMSTANCES
21 REASONABLY APPEARS NECESSARY TO THAT PERSON IN ORDER TO
22 PREVENT AN IMPENDING INJURY. THE INFLECTING OF SERIOUS
23 BODILY INJURY IS NOT JUSTIFIABLE OR EXCUSABLE ON THE
24 GROUND OF SELF DEFENSE BY REASON OF A DANGER OR
25 APPREHENSION OF DANGER OF SLIGHT BODILY INJURY OR OF A

1 MERE INDIGNITY OF A SLIGHT OR MODERATE INJURY, SUCH AS
2 TO THAT TO BE APPREHENDED FROM A SIMPLE OR ORDINARY
3 ASSAULT OR BATTERY WITH OR WITHOUT SOME TYPE OF WEAPON
4 UNLESS THE ASSAULT IS ACCOMPANIED BY ACTS INDICATING
5 EMINENT DANGER OF SERIOUS BODILY HARM, OR A FELONY, AND
6 PRODUCES IN THE MIND OF THE ACCUSED A REASONABLE BELIEF
7 OF THAT DANGER. IN DETERMINING WHETHER THE PARTICULAR
8 MEANS AND METHOD USED IN SELF DEFENSE IS OR IS NOT
9 EXCESSIVE, THE AMOUNT OF FORCE EXERTED, THE MEANS OR
10 INSTRUMENTALITY BY WHICH IT IS APPLIED, THE MANNER OR
11 METHOD OF APPLYING IT AND THE CIRCUMSTANCES UNDER WHICH
12 THE FORCE WAS APPLIED ARE FACTORS TO BE CONSIDERED. THE
13 PRIVILEGE OF SELF DEFENSE RESTS UPON THE NECESSITY OF
14 PERMITTING A PERSON WHO IS ATTACKED TO TAKE REASONABLE
15 STEPS TO PREVENT HARM TO HIMSELF OR HERSELF WHERE THERE
16 IS NO TIME TO RESORT TO LAW. THE PRIVILEGE EXTENDS TO
17 THE USE OF ALL REASONABLE FORCE TO PREVENT ANY
18 THREATENED HARM OR OFFENSIVE BODILY CONDUCT OR
19 CONFINEMENT, WHETHER INTENDED OR NEGLIGENT.

20 LADIES AND GENTLEMEN, I'VE TOLD YOU
21 THAT THE STATE HAS THE BURDEN OF PROOF IN THIS CASE.
22 WELL, THE STATE MUST PROVE THE LACK OF EXISTENCE OF THE
23 DEFENSE OF SELF DEFENSE, OR THE STATE HAS TO DISPROVE
24 SELF DEFENSE BY PROOF BEYOND A REASONABLE DOUBT. IT IS
25 NOT SOMETHING THAT THE DEFENDANT HAS TO PROVE, BUT THE

1 STATE HAS TO PROVE THE ABSENCE OF THAT DEFENSE. YOU
2 SHOULD CONSIDER ALL OF THE EVIDENCE THAT YOU'VE HEARD IN
3 THIS CASE, AND AFTER YOU'VE HEARD ALL OF THE EVIDENCE,
4 INCLUDING THE EVIDENCE OF SELF DEFENSE, AND YOU HAVE A
5 REASONABLE DOUBT AS TO HIS GUILT YOU MUST FIND HIM NOT
6 GUILTY. ON THE HAND, AFTER CONSIDERING ALL OF THE
7 EVIDENCE, INCLUDING THE EVIDENCE OF SELF DEFENSE, IF YOU
8 FIND THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT
9 HIS GUILT, THEN YOU MUST FIND HIM GUILTY.

10 NOW, LADIES AND GENTLEMEN, NOTHING
11 THAT I'VE SAID DURING THE COURSE OF THIS TRIAL HAS BEEN
12 IN ANY WAY INTENDED TO EXPRESS OR SUGGEST A VIEW OF THIS
13 CASE OR AN OPINION AS TO THE FACTS OF THE CASE OR THE
14 WEIGHT OF THE EVIDENCE IN THE CASE, OR THE CREDIBILITY
15 OF THE WITNESSES, OR WHAT YOUR VERDICT SHOULD BE. AND
16 IF ANYTHING I'VE SAID OR DONE DURING THIS TRIAL OR THESE
17 INSTRUCTIONS SEEMS TO INDICATE TO YOU THAT I HAVE SUCH
18 AN OPINION, PLEASE DISREGARD THAT. PUT THAT OUT OF YOUR
19 MIND, YOU MUST MAKE THAT DECISION SOLELY, THAT IS SOLELY
20 YOUR PROVINCE.

21 YOU'VE BEEN SELECTED AS FAIR AND
22 IMPARTIAL JURORS. YOU ARE SWORN TO IMPARTIALLY TRY AND
23 DETERMINE THE FACTS OF THIS CASE. AND WHEN YOU COMPLY
24 WITH YOUR OATH TO DO SO THEN NO ONE WILL HAVE A RIGHT TO
25 CRITICIZE YOUR VERDICT, AND YOU WILL HAVE FULLY

1 DISCHARGED YOUR DUTY AS JURORS. YOU ARE TO DECIDE THIS
2 CASE ACCORDING TO THE TESTIMONY THAT YOU'VE HEARD FROM
3 THE LIPS OF THE WITNESSES IN THIS CASE ALONG WITH THE
4 OTHER EVIDENCE INTRODUCED. AS JURORS YOU MUST DECIDE
5 THE ISSUES IN THIS PROCEEDING WITHOUT BIAS AND WITHOUT
6 PREJUDICE TO ANY PARTY. YOU CANNOT ALLOW YOURSELF TO BE
7 GOVERNED BY PASSION, BY UNFAIR SYMPATHY, BY PREJUDICE
8 FOR OR AGAINST ANY PERSON, BY PUBLIC OPINION, OR ANY
9 OTHER ARBITRARY FACTOR. BOTH THE STATE AND THE
10 DEFENDANT HAVE A RIGHT TO EXPECT THAT EACH OF YOU WILL
11 CAREFULLY AND IMPARTIALLY CONSIDER ALL OF THE EVIDENCE
12 IN THE CASE AND THAT YOU WILL FOLLOW MY INSTRUCTIONS TO
13 YOU ON THE LAW IN ORDER TO REACH YOUR VERDICT IN THIS
14 CASE.

15 NOW, LADIES AND GENTLEMEN, AS I
16 SAID, YOU WILL HAVE THESE INDICTMENTS WITH YOU IN THE
17 JURY ROOM.

18 AND MR. SALLEY, I'M GOING TO ASK IF
19 YOU WOULD SERVE AS THE FOREPERSON. THAT SIMPLY MEANS
20 THAT YOU WOULD PRESIDE, THAT YOU WOULD SEE THAT
21 EVERYBODY HAS AN OPPORTUNITY TO SPEAK WHO WANTS TO BE
22 HEARD, WITHOUT EVERYBODY TALKING ALL AT ONE TIME. WHEN
23 THE JURY HAS REACHED A UNANIMOUS VERDICT IT WOULD BE
24 YOUR DUTY TO REPORT THAT VERDICT ON BEHALF OF THE ENTIRE
25 JURY. YOUR VERDICT MUST BE UNANIMOUS, ALL TWELVE OF YOU

1 MUST AGREE BEFORE ANY VERDICT CAN BE REPORTED ON BEHALF
2 OF THIS JURY.

3 NOW, AS TO THE INDICTMENT FOR ARMED
4 ROBBERY THERE ARE ONLY TWO POSSIBLE VERDICTS. IF YOU
5 FIND THE STATE HAS PROVEN THE ELEMENTS FOR ARMED ROBBERY
6 AS OUTLINED, YOUR VERDICT WOULD BE GUILTY. IF YOU FIND
7 THE STATE HAS FAILED TO PROVE EACH AND EVERY ONE OF
8 THOSE ELEMENTS, THEN YOUR VERDICT WOULD BE NOT GUILTY.
9 AND AS I SAID, IT MUST BE A UNANIMOUS DECISION. NOW,
10 YOU WILL HAVE THE INDICTMENT, ON ONE SAID IT HAS, ARMED
11 ROBBERY, AND IT HAS A LITTLE SUMMARY OF THE CHARGES. ON
12 THE OTHER SIDE, DOWN IN THIS BOTTOM CORNER IT HAS A
13 LITTLE BLANK BLOCK THAT SAYS, VERDICT. NOW, I HAVE THE
14 TWO VERDICTS THERE. THERE'S NO SIGNIFICANCE IN THE
15 ORDER IN WHICH I HAVE WRITTEN THE VERDICTS, IF I'M GOING
16 TO TALK ABOUT TWO MATTERS, IF I'M GOING TO WRITE TWO
17 THINGS DOWN I HAVE TO WRITE ONE AHEAD OF THE OTHER, BUT
18 THE VERDICTS ARE SIMPLY, GUILTY OR NOT GUILTY. YOU
19 WOULD SIMPLY STRIKE THROUGH THE APPROPRIATE ONE AND
20 LEAVE THE OTHER ONE SO IT'S CLEAR TO ME WHAT THE VERDICT
21 OF THE JURY IS, EITHER GUILTY OR NOT GUILTY.

22 NOW, ON THE MURDER CHARGE THERE ARE
23 THREE POSSIBLE VERDICTS, AND THERE'S NO SIGNIFICANCE
24 AGAIN IN THE ORDER IN WHICH I TELL YOU ABOUT THOSE
25 VERDICTS OR THE ORDER IN WHICH I HAVE WRITTEN THEM DOWN

1 ON THIS INDICTMENT. YOU SIMPLY HAVE TO WRITE SOMETHING
2 DOWN, IF YOU'RE GOING TO WRITE IT, ONE'S GOT TO BE AHEAD
3 OF THE OTHER. IF YOU FIND THAT THE STATE HAS PROVEN THE
4 ELEMENTS OF MURDER YOUR VERDICT WOULD BE GUILTY OF
5 MURDER, AND THAT'S THE FIRST ONE I HAVE WRITTEN. IF YOU
6 FIND THAT THE STATE HAS NOT PROVEN MURDER BUT HAS PROVEN
7 THAT THE DEFENDANT IS GUILTY OF VOLUNTARY MANSLAUGHTER,
8 THEN YOU WOULD FIND HIM GUILTY OF VOLUNTARY
9 MANSLAUGHTER. IF YOU FIND THAT THE STATE HAS NOT PROVEN
10 BEYOND A REASONABLE DOUBT THE ELEMENTS OF EITHER CRIME
11 THEN YOUR VERDICT WOULD BE NOT GUILTY. AND I'VE WRITTEN
12 ALL THREE OF THOSE RIGHT THERE, YOU JUST STRIKE OUT TWO
13 OF THEM, LEAVING IT CLEAR TO ME WHICH ONE YOU'VE LEFT AS
14 THE UNANIMOUS VERDICT OF THE JURY.

15 NOW, IF YOU HAVE ANY QUESTIONS THAT
16 COME UP, WRITE THEM DOWN ON A SHEET OF PAPER. THE
17 BAILIFF WILL SEE THAT YOU HAVE SOME PAPER BACK THERE,
18 AND JUST WRITE THEM DOWN, GIVE THEM TO THE BAILIFF,
19 KNOCK ON THE DOOR, THERE WILL BE SOMEBODY STANDING
20 OUTSIDE THAT DOOR EVERY MINUTE YOU ARE BACK THERE. GIVE
21 THEM TO THE BAILIFF, HE'LL BRING THEM TO ME, AND I'LL DO
22 WHATEVER I NEED TO DO IN RESPONSE TO THAT QUESTION.

23 IF WE HAVE ANY SMOKERS AND THE
24 SMOKERS NEED TO GO OUT, JUST KNOCK ON THE DOOR, TELL THE
25 BAILIFF YOU NEED TO SMOKE AND HE'LL TAKE YOU OUTSIDE ON

1 THE LAWN SOMEWHERE TO SMOKE. YOU CAN'T SMOKE IN THE
2 COURTHOUSE. IF THE SMOKERS LEAVE YOU HAVE TO STOP YOUR
3 DELIBERATIONS. YOU CAN'T DELIBERATE UNLESS ALL TWELVE OF
4 YOU ARE THERE.

5 WHEN YOU HAVE REACHED A VERDICT YOU
6 WILL SIMPLY KNOCK ON THE DOOR, TELL THE BAILIFF YOU HAVE
7 REACHED A VERDICT. YOU DO NOT TELL HIM WHAT THE VERDICT
8 IS, YOU DO NOT GIVE HIM THE INDICTMENTS, THESE VERDICT
9 FORMS, YOU SIMPLY TELL HIM YOU'VE REACHED A VERDICT AND
10 HE'LL NOTIFY ME. WE HAVE SOME OTHER MATTERS THAT WE'RE
11 GOING TO BE DOING SO IT MIGHT TAKE ME A FEW MINUTES, IT
12 MIGHT NOT BE INSTANTLY, BUT HE WILL NOTIFY ME, I'LL
13 BRING YOU BACK INTO THE COURTROOM AND WE WILL ACCEPT
14 YOUR VERDICT IN THE COURTROOM.

15 SO, WITH THAT I'M GOING TO ASK YOU
16 TO RETIRE TO THE JURY ROOM IN JUST A SECOND, BUT I'M
17 GOING TO ASK YOU NOT TO TALK ABOUT THE CASE FOR THIS
18 REASON, I MUST DISCUSS MY CHARGE TO YOU WITH THE
19 ATTORNEYS. SOMETIME I MAKE A MISTAKE. I KNOW THAT MIGHT
20 SHOCK YOU, BUT I DO. AND SO, IF I NEED TO CORRECT SOME
21 ERROR THAT I'VE MADE, IF I'VE NOT TOLD YOU EVERYTHING I
22 NEED TO TELL YOU, OR IF I NEED TO CHANGE SOMETHING I'VE
23 TOLD YOU I'LL BRING YOU BACK OUT IN JUST A COUPLE OF
24 MINUTES, AND I'LL CORRECT THAT ERROR. IF I DON'T NEED
25 TO DO THAT I WILL SEND IN TO YOU, MR. FOREMAN, THESE TWO

1 INDICTMENTS AND ALL OF THE EXHIBITS WHICH HAVE BEEN
2 INTRODUCED INTO THIS CASE. ONCE YOU RECEIVE THE
3 INDICTMENTS AND THE EXHIBITS YOU CAN BEGIN YOUR
4 DELIBERATIONS BUT NOT UNTIL THAT TIME. WHEN YOUR LUNCH
5 COMES THEY WILL BRING IT RIGHT ON IN, THEY'LL KNOCK ON
6 THE DOOR, BRING IT ON IN TO YOU, AND YOU CAN HAVE YOUR
7 LUNCH AND CONTINUE YOUR DELIBERATIONS.

8 MR. FOGLE, I'M GOING TO ASK IF YOU
9 WOULD WAIT IN THE GRAND JURY ROOM. YOU CANNOT GO BACK
10 INTO THE JURY ROOM WITH THE OTHER TWELVE. WE CAN ONLY
11 HAVE TWELVE DELIBERATING, BUT I'M GOING TO ASK YOU TO
12 WAIT THERE AT LEAST UNTIL YOUR LUNCH COMES, AND THEN
13 I'LL PROBABLY EXCUSE YOU AND YOU CAN GO ON ABOUT YOUR
14 BUSINESS AS LONG AS EVERYBODY ELSE IS HEALTHY AND
15 FEELING OKAY. ALRIGHT, SIR? SO, MR. FOGLE, YOU RETIRE
16 TO THE GRAND JURY ROOM, EVERYBODY ELSE RETIRE TO THE
17 JURY ROOM, BUT DON'T BEGIN YOUR DELIBERATIONS UNTIL YOU
18 RECEIVE THE INDICTMENTS AND EXHIBITS. THANK YOU VERY
19 MUCH, PLEASE FOLLOW THE DEPUTY OUT.

20 (Whereupon, the jury retires
21 to the jury room and the following
22 takes place out of the presence
23 of the jury.)

24 THE COURT: ANY EXCEPTIONS FROM THE
25 STATE?

1 SOLICITOR SORENSON: YOUR HONOR, I
2 MAY HAVE MISSED IT, BUT DID YOU TELL THEM THAT THEIR
3 VERDICT HAS TO BE UNANIMOUS?

4 THE COURT: I DID.

5 SOLICITOR SORENSON: OKAY. I GUESS
6 I JUST MISSED IT.

7 THE COURT: I DIDN'T EXPRESS IT AS
8 MUCH AS I USUALLY DO, BUT I DID TELL THEM, WITHOUT ANY
9 QUESTION.

10 OKAY, ANY EXCEPTIONS FROM THE
11 DEFENSE?

12 MR. MELLARD: I WOULD JUST RENEW OUR
13 OBJECTION TO THE CHARGE OF VOLUNTARY MANSLAUGHTER.

14 THE COURT: ALRIGHT, OKAY. HOW MANY
15 EXHIBITS DO WE HAVE FOR THE STATE, MS. WALKER?

16 COURT REPORTER: I BELIEVE TWENTY-
17 FOUR.

18 THE COURT: TWENTY-FOUR?

19 COURT REPORTER: YES, SIR.

20 THE COURT: AND HOW MANY FOR THE
21 DEFENSE?

22 COURT REPORTER: NONE.

23 THE COURT: NONE. OKAY. MR.
24 MELLARD, YOU AND MR. SORENSON GATHER UP THOSE EXHIBITS,
25 BE SURE YOU'VE GOT ALL TWENTY-FOUR OF THEM THERE, AND AS

1 SOON AS YOU GET THOSE EXHIBITS, MR. DEPUTY, YOU CAN GIVE
2 THEM TO THE JURY. NOW, YOU PUT A DOOR OUTSIDE THAT JURY
3 ROOM AND SOMEBODY'S GOT TO BE THERE EVERY MINUTE.

4 BAILIFF: YES, SIR.

5 THE COURT: ONE OF YOU, YOU CAN'T
6 LEAVE THAT DOOR UNATTENDED. ALRIGHT?

7 BAILIFF: ALRIGHT, SIR.

8 (Whereupon, the jury begins
9 deliberations at 12:10 p.m.)

10 (Recess)

11 (Whereupon, the jury sends in
12 a note and the following
13 takes place out of the presence
14 of the jury.)

15 THE COURT: WOULD YOU MARK THIS AS
16 COURT'S EXHIBIT NUMBER SEVEN. A QUESTION FROM THE JURY.
17 (Court's Exhibit Seven
18 marked and filed.)

19 THE COURT: THE FIRST ONE SAYS,
20 "WHERE ARE THE POLICE PICTURES THAT WERE TAKEN OF MR.
21 MOSES THE MORNING OF HIS ARREST THAT COULD POSSIBLY SHOW
22 SCARS FROM DOG SCRATCHES." THERE WERE NONE INTRODUCED
23 INTO EVIDENCE, I'LL JUST TELL THEM THERE ARE NONE IN
24 EVIDENCE, AND WE CAN'T INTRODUCE NEW EVIDENCE AT THIS
25 TIME. THAT'S ALL I'LL TELL THEM.

1 SOLICITOR SORENSON: I GUESS MY
2 CONCERN, JUDGE, IS - - -

3 THE COURT: HUH?

4 SOLICITOR SORENSON: THE STATE'S
5 CONCERN WITH THE RESPONSE IS JUST LIKE THEIR CONCERN, IS
6 MAKING SURE IT DIDN'T APPLY, THAT YOU'RE SAYING THERE
7 ARE NO PHOTOGRAPHS. WELL, OUR CONCERN IS MAKING SURE
8 YOU DON'T IMPLY THAT WE JUST DIDN'T INTRODUCE THEM. I
9 MEAN, IT'S OUR POSITION THEY EXIST.

10 THE COURT: WELL, WHAT DO I TELL
11 THEM?

12 SOLICITOR SORENSON: THEY DON'T
13 EXIST. I THINK JUST THAT THEY HAVE ALL THE EVIDENCE,
14 THAT YOU HAVE ALL THE EVIDENCE AND THEN LEAVE IT AT
15 THAT. I MEAN, BECAUSE IT'S OUR POSITION THAT THERE ARE
16 NO PHOTOGRAPHS, THEY DON'T EXIST, THEY WEREN'T TAKEN,
17 THEY DON'T EXIST. I MEAN, THEY OBVIOUSLY HAVE A
18 DIFFERENT POSITION, BUT IT'S OUR, I MEAN, I DON'T WANT
19 THE JURY THINKING THAT WE JUST ARE HIDING SOMETHING THAT
20 WE DIDN'T PUT IN, I MEAN, THAT'S NOT THE CASE.

21 MR. MELLARD: YOUR HONOR, I THINK
22 THAT'S PRETTY MUCH CORRECT, WHAT WE WOULD SAY THAT, YOU
23 KNOW, THEY'VE HEARD THE TESTIMONY, THEY'VE SEEN THE
24 EVIDENCE, THEY HAVE TO GO ON WITH WHAT - - -

25 THE COURT: ALRIGHT, I'LL JUST TELL

1 THEM WE CANNOT INTRODUCE NEW EVIDENCE AT THIS TIME.

2 SOLICITOR SORENSON: WELL, THAT
3 STILL WOULD IMPLY THAT THERE'S OTHER EVIDENCE OUT THERE,
4 BUT THERE ISN'T, I MEAN, IT'S NOT LIKE WE HAVE SOME
5 PHOTOGRAPHS SITTING HERE THAT WE CAN, I MEAN, IT DOESN'T
6 EXIST.

7 THE COURT: WELL, ANY WAY I SAY IT,
8 IT'S GOING TO MISLEADING, ONE WAY OR THE OTHER, I MEAN,
9 IT'S NO DIFFERENT TO SAY, YOU HAVE ALL THE EVIDENCE, OR
10 TO SAY, WE CAN'T INTRODUCE - - -

11 SOLICITOR SORENSON: WELL, I THINK
12 THE ACCURATE THING TO SAY, YOUR HONOR, THAT THERE ARE NO
13 PHOTOGRAPHS. I MEAN, THE PHOTOGRAPHS DO NOT EXIST. I
14 MEAN, THAT WOULD BE THE ACCURATE THING TO SAY.

15 THE COURT: IF THE POLICE DON'T HAVE
16 ANY PHOTOGRAPHS, DO THEY?

17 SOLICITOR SORENSON: NO, I MEAN,
18 WE'VE BEEN THROUGH THEIR FILE, WE'VE BEEN THROUGH THEIR
19 EVIDENCE, I MEAN, THERE'S NO NOTATION IN THEIR REPORT
20 THAT THEY TOOK PHOTOGRAPHS, I MEAN, THERE'S A NOTATION
21 THAT HE SHOWED THEM SOME SCRATCHES ON HIS ARM, THAT'S
22 WRITTEN IN SHUMPERT'S REPORT, BUT THERE'S NOTHING
23 INDICATING THEY TOOK PHOTOGRAPHS, NO.

24 MR. MELLARD: THE DEFENDANT
25 TESTIFIED THAT HE SAW THEM TAKE PHOTOGRAPHS OF HIMSELF.

1 SOLICITOR SORENSON: I MEAN, WE
2 SHOULD THEN HAVE - - -

3 MR. MELLARD: SHUMPERT AND WHO,
4 CRAFT?

5 DEFENDANT: CRAFT.

6 MR. MELLARD: THEY SHOULD HAVE HAD
7 THEM, BECAUSE THERE WERE PEOPLE THERE THAT TOOK THE
8 PHOTOGRAPHS.

9 SOLICITOR JOHNSON: YOUR HONOR,
10 COULDN'T YOU STATE BOTH, THAT IT'S OUR CONTENTION THAT
11 THERE IS NO PHOTOGRAPHS, AND IT'S THEIR CONTENTION
12 THROUGH THEIR WITNESS THAT THERE IS, AND IT'S OUR
13 CONTENTION, THE STATE'S CONTENTION THAT THERE IS NO
14 PHOTOGRAPHS. THAT WAY YOU COVER BOTH SIDES.

15 THE COURT: THAT SUITS ME GOOD.

16 THE SECOND QUESTION IS, WE NEED
17 DEFINITIONS OF MURDER AND MANSLAUGHTER. I CAN HANDLE
18 THAT ONE WITHOUT ANY HELP.

19 OKAY, BRING THE JURY IN.

20 (Whereupon, the jury enters
21 the courtroom and the following
22 takes place in the presence of
23 the jury.)

24 THE COURT: JUST ONE MINUTE, LADIES
25 AND GENTLEMEN.

1 YOUR FIRST QUESTION WAS, "WHERE ARE
2 THE PICTURES THAT WERE TAKEN OF MR. MOSES THE MORNING OF
3 HIS ARREST THAT COULD POSSIBLY SHOW SCARS FROM DOG
4 SCRATCHES? THERE ARE NO PICTURES IN ANYBODY'S
5 POSSESSION AT THIS TIME. WHETHER THEY WERE EVER ANY
6 PICTURES TAKEN OR NOT YOU'LL HAVE TO DEPEND ON ANY
7 TESTIMONY ABOUT THAT REGARD, I DON'T KNOW. BUT THERE
8 ARE NO PICTURES IN EXISTENCE THAT ANYBODY KNOWS ABOUT.
9 NOBODY IS TRYING TO HIDE ANYTHING TO YOU, NOBODY IS
10 TRYING TO MISLEAD YOU, AND I DON'T WANT YOU TO BLAME THE
11 STATE FOR THE THAT OR THE DEFENSE FOR THAT. IT'S JUST,
12 THE FACT IS, THERE ARE NO PHOTOGRAPHS THAT ARE IN
13 EXISTENCE. IF THERE EVER WERE ONE, WE DON'T KNOW. I
14 THINK THERE'S SOME TESTIMONY IN THE RECORD ABOUT SOME
15 INJURIES OR SOME EVIDENCE ABOUT INJURIES. YOU'VE GOT
16 THAT TESTIMONY, YOU'LL HAVE TO MAKE THAT DECISION BASED
17 ON THAT TESTIMONY YOU'VE HEARD. THERE ARE TWELVE OF YOU
18 AND HOPEFULLY BETWEEN THE TWELVE OF YOU, YOU CAN
19 RECOLLECT THAT TESTIMONY REGARDING ANY POSSIBLE INJURIES
20 AND MAKE A DECISION ON THAT BASIS. THERE ARE NO
21 PHOTOGRAPHS AVAILABLE. AND AS I SAID, IT'S REALLY
22 NOBODY'S FAULT, WE JUST DON'T HAVE ANY.

23 NOW, AS FAR AS MURDER AND
24 MANSLAUGHTER, MURDER IS THE WILLFUL, FELONIOUS KILLING
25 OF A HUMAN BEING BY A HUMAN BEING WITH MALICE

1 AFORETHOUGHT. THAT MALICE CAN EITHER BE EXPRESSED OR
2 IMPLIED. I THINK THAT'S PRETTY SIMPLE EXCEPT FOR
3 MALICE. I'LL DEFINE FOR YOU. MALICE IS AN INTENT TO DO
4 HARM, IT'S A WILLFUL, MALICIOUS CONDUCT. IT'S DOING HARM
5 TO SOMEBODY WITHOUT ANY LEGAL JUSTIFICATION OR ANY LEGAL
6 EXCUSE WHATSOEVER. IT'S CALLED SOMETIME A DEPRAVED OR
7 WICKED SPIRIT. MALICE CAN, YOU HAVE TO DETERMINE FROM
8 THE WAY THE CRIME WAS COMMITTED WHETHER THAT MALICE
9 EXISTED, BUT IT'S A CONDITION OF SOMEBODY'S HEART, IT'S
10 WHAT'S INSIDE SOMEBODY IS WHAT WE MEAN BY MALICE. AND
11 MALICE HAS TO EXIST FOR A CRIME OF MURDER. AS I SAID,
12 IT DOESN'T NECESSARILY IMPART ILL WILL TOWARD ANY
13 PARTICULAR INDIVIDUAL, BUT A GENERAL MALIGNANT
14 RECKLESSNESS AS TO THE LIVES AND SAFETY OF OTHERS, A
15 CONDITION OF MIND WHICH SHOWS A HEART DEVOID OF SOCIAL
16 DUTY AND FATALLY BENT ON MISCHIEF. IT IS THE WRONGFUL
17 INTENT TO INJURE ANOTHER AND INDICATES A WICKED OR
18 DEPRAVED SPIRIT INTENT ON DOING WRONG. THAT'S WHAT WE
19 MEAN BY MALICE. THAT'S A MENTAL ATTITUDE AND YOU HAVE
20 TO DETERMINE THAT BY LOOKING AT THE FACTS THAT HAVE BEEN
21 PROVEN WHETHER MALICE EXISTED AT THE TIME OF THE
22 INCIDENT. MALICE MUST BE AFORETHOUGHT. I USED TO THINK
23 THAT MEANT WHEN YOU'RE TALKING MALICE AFORETHOUGHT, THAT
24 SOMEBODY SAT DOWN AND PLOTTED FOR DAYS OR WEEKS OR HOURS
25 TO TAKE SOMEBODY'S LIFE. IT DOESN'T MEAN THAT AT ALL, IT

1 MEANS IT HAS TO EXIST IMMEDIATELY AND AT THE TIME THE
2 FATAL ACTS WERE TAKEN, BUT IT'S NO PARTICULAR LENGTH OF
3 TIME WHEN WE SAY, AFORETHOUGHT, WITH MALICE
4 AFORETHOUGHT. THE MALICE CAN EITHER BE EXPRESSED OR
5 IMPLIED. EXPRESSED MEANS, I'M GOING TO KILL S.O.B.
6 THAT'S AN EXPRESSION OF MALICE, OR IT CAN BE IMPLIED. IF
7 IT'S NOT EXPRESSED IT CAN STILL EXIST, IT COULD BE
8 IMPLIED IN THE WAY IT WAS HANDLED, OR SOMEBODY LYING IN
9 WAIT, OR MAKING PREPARATIONS TO DO THE ACT. THAT WOULD
10 IMPLY MALICE. SO, IT CAN BE EITHER WAY, IT DOESN'T HAVE
11 TO BE AN EXPRESSION, IT CAN BE IMPLIED. THAT'S WHAT WE
12 MEAN BY MALICE. AND THE KILLING, FOR IT TO BE MURDER IT
13 MUST CONTAIN MALICE, YOU MUST DETERMINE THAT THE STATE
14 HAS PROVEN BEYOND A REASONABLE DOUBT THAT THERE WAS
15 MALICE ON THE PART OF THE DEFENDANT AT THE TIME THE
16 FATAL OR BLOWS WERE STUCK.

17 MANSLAUGHTER, LADIES AND GENTLEMEN,
18 IS A LESSER INCLUDED CRIME. AND MANSLAUGHTER IS THE
19 KILLING OF A HUMAN BEING BY ANOTHER HUMAN BEING. SO, IN
20 THAT REGARD IT'S EXACTLY THE SAME AS MURDER. BUT IT'S
21 WITHOUT MALICE. IT'S THE KILLING IN THE HEAT OF PASSION,
22 AFTER ADEQUATE LEGAL PROVOCATION, WITHOUT SUFFICIENT
23 TIME TO COOL, TO COOL OFF. AND I GAVE YOU AN EXAMPLE
24 ABOUT THAT, YOU KNOW, THE MAN FINDING ANOTHER MAN IN BED
25 WITH HIS WIFE, IT COULD BE A WOMAN ANOTHER, YOU KNOW, I

1 DIDN'T MEAN TO GET INTO THAT TYPE OF THING, IT COULD BE
2 EITHER WAY, BUT I MEAN, SUFFICIENT LEGAL PROVOCATION
3 MEANS A SIGNIFICANT ACT THAT WOULD CAUSE MOST PEOPLE,
4 THE ORDINARY MAN, TO LOSE CONTROL. THAT'S WHAT WE MEAN
5 BY THE HEAT OF PASSION. AND SO, LIKE I SAY, SOMEBODY
6 TELLING YOU THEY DON'T LIKE THE COLOR OF YOUR SHIRT, YOU
7 KNOW, AS A MATTER OF LAW THAT WOULDN'T BE SUFFICIENT TO
8 KILL SOMEBODY. SO, THE FIRST THING YOU HAVE IS, THE
9 KILLING IS IN THE HEAT OF PASSION, SOMEBODY JUST LOST IT
10 AND WENT INTO A RAGE AND TOOK SOMEBODY'S LIFE. BUT IT
11 HAS TO BE AFTER ADEQUATE LEGAL PROVOCATION. AND THE
12 EXAMPLE I GAVE YOU OF THE ADULTEROUS SITUATION HAS BEEN,
13 IT'S KIND OF THE CLASSIC EXAMPLE OF WHAT MOST JURORS
14 WOULD FIND, WELL, THAT'S BAD ENOUGH THAT THAT WOULD
15 PROBABLY CAUSE MOST ANYBODY TO WANT TO KILL WHOEVER IS
16 INVOLVED IN IT, AND THAT WOULD REDUCE THE KILLING FROM
17 MURDER TO MANSLAUGHTER. IT WOULD ELIMINATE THE MALICE
18 WITH THAT EXAMPLE. BUT BY THE SAME TOKEN, THE ONE I
19 GAVE YOU ABOUT SOMEBODY TELLS YOU THAT THEY DON'T LIKE
20 THE COLOR OF YOUR SHIRT, AND YOU JUMP UP AND KILL THEM,
21 THAT IS NOT ADEQUATE LEGAL PROVOCATION. IT MIGHT HAVE
22 BEEN PROVOCATION FOR THAT INDIVIDUAL BUT THAT'S NOT
23 LEGAL JUSTIFICATION FOR KILLING SOMEBODY BECAUSE THEY
24 DON'T LIKE THE COLOR OF YOUR SHIRT. AND IT HAS TO BE
25 DONE BEFORE THERE'S SUFFICIENT TIME TO COOL. AND I GAVE

1 YOU AN EXAMPLE AGAIN, A MAN WALKS IN ON AN ADULTEROUS
2 RELATIONSHIP, HE TELLS THE GUY TO GET OUT AND WEEK LATER
3 HE GOES AND KILLS HIM. WELL, YOU KNOW, IN A WEEK YOU'RE
4 NOT STILL IN THE HEAT OF PASSION, IT JUST DOESN'T WORK.
5 SO, ALL OF THEM ARE KIND OF TIED TOGETHER. SO, MURDER,
6 YOU HAVE TO FIND MALICE, THE INTENT TO DO EVIL, AN EVIL
7 INTENT, AND IT HAS TO EXIST AT THE TIME AND JUST BEFORE
8 THE ACT IS STRUCK. MANSLAUGHTER, THERE'S NO MALICE,
9 THERE'S NO MALICE INVOLVED. IF THERE'S MALICE IT'S
10 MURDER. BUT MANSLAUGHTER, IT HAS TO BE UPON, IN THE
11 HEAT OF PASSION, AFTER ADEQUATE LEGAL PROVOCATION, AND
12 WITHOUT SUFFICIENT TIME TO COOL.

13 NOW, I TRIED TO EXPLAIN THAT IN MY
14 OWN WORDS INSTEAD OF GOING BACK AND READING IT. I'LL BE
15 GLAD TO GO BACK AND READ IT VERBATIM.

16 DO YOU THINK, MR. FOREMAN, I'VE
17 ANSWERED YOUR QUESTIONS?

18 JUROR FOREMAN: YES, SIR.

19 THE COURT: WELL, IF YOU WANT ME TO
20 RECHARGE IT FORMALLY EXACTLY THE WAY I DID BEFORE I'LL
21 BE GLAD TO DO THAT, I'LL JUST LEAVE THAT UP TO YOU, BUT
22 SOMETIMES IT'S BETTER JUST TO KIND OF PUT IT IN YOUR OWN
23 WORDS AND HELP YOU UNDERSTAND THE DIFFERENCE BETWEEN
24 MURDER AND MANSLAUGHTER.

25 JUROR FOREMAN: YES, SIR, THAT WILL

1 SUFFICE. THAT'S GOOD.

2 THE COURT: ALRIGHT, THANK YOU VERY
3 MUCH. AND OF COURSE, THE STATE HAS TO PROVE ALL OF
4 THESE ELEMENTS. THANK YOU VERY MUCH, CONTINUE YOUR
5 DELIBERATIONS, LET ME KNOW IF YOU HAVE ANOTHER QUESTION.
6 THANK YOU.

7 (Whereupon, the jury retires
8 to the jury room and continues
9 their deliberations, and the
10 following takes place out of
11 the presence of the jury.)

12 THE COURT: ANY EXCEPTIONS FROM THE
13 STATE?

14 SOLICITOR SORENSON: NO EXCEPTIONS,
15 YOUR HONOR, I'M WITH YOU. YOUR HONOR, THE FOREPERSON
16 WAS, THE FOREMAN WAS TAKING NOTES.

17 THE COURT: THAT'S GOOD.

18 ANY EXCEPTIONS FROM THE DEFENSE?

19 MR. MELLARD: NONE FROM THE DEFENSE,
20 YOUR HONOR.

21 THE COURT: ALRIGHT. WE'LL BE AT
22 EASE IN THIS CASE.

23 (Recess)

24 THE COURT: I THINK WE HAVE A
25 VERDICT. IS THE STATE READY?

1 SOLICITOR SORENSON: YES, SIR.

2 THE COURT: IS THE DEFENDANT READY?

3 MR. MELLARD: YES, SIR.

4 THE COURT: ALRIGHT, BRING THE JURY
5 IN, PLEASE. LET'S NOT HAVE ANY OUTBURSTS, LADIES AND
6 GENTLEMEN, WHEN THE VERDICT IS READ.

7 (Whereupon, the jury returns
8 with a verdict at 4:10 p.m.)

9 THE COURT: MR. FOREMAN, HAVE YOU
10 REACHED A VERDICT?

11 JURY FOREMAN: YES, SIR.

12 THE COURT: WOULD YOU PASS IT DOWN
13 THE BAILIFF?

14 MR. DEPUTY, WOULD YOU PICK UP THE
15 VERDICTS AND BRING THEM TO ME?

16 AND IT IS A UNANIMOUS VERDICT?

17 JUROR FOREMAN: YES, IT IS, YOUR
18 HONOR.

19 THE COURT: ALRIGHT.

20 (Whereupon, the Court
21 examines the verdicts.)

22 VERDICTS OF THE JURY

23 THE COURT: ALRIGHT, IN DOCKET
24 NUMBER 2006-GS-38-2067, THE STATE VERSUS GEORGE NAPOLEON
25 MOSES, THE CHARGE IS ARMED ROBBERY, AND THE VERDICT OF

1 THE JURY IS GUILTY.

2 INDICTMENT 2006-GS-38-2068, THE
3 STATE OF SOUTH CAROLINA VERSUS GEORGE NAPOLEON MOSES,
4 INDICTMENT FOR MURDER, THE VERDICT IS GUILTY OF
5 VOLUNTARY MANSLAUGHTER.

6 IS THERE ANY REQUEST TO POLL THE
7 JURY?

8 MR. MELLARD: YES, SIR.

9 THE COURT: ALRIGHT, LADIES AND
10 GENTLEMEN, I'M GOING TO ASK YOU TWO QUESTIONS, AND YOU
11 JUST ANSWER THE QUESTIONS APPROPRIATELY. THE FIRST
12 QUESTION IS, WERE THESE YOUR VERDICTS? AND THE SECOND
13 QUESTION IS, ARE THEY STILL YOUR VERDICTS?

14 MA'AM, WERE THESE YOUR VERDICTS?

15 JUROR: YES.

16 THE COURT: ARE THEY STILL YOUR
17 VERDICTS?

18 JUROR: YES.

19 THE COURT: MA'AM, WERE THESE YOUR
20 VERDICTS?

21 JUROR: YES.

22 THE COURT: ARE THEY STILL YOUR
23 VERDICTS?

24 JUROR: YES.

25 THE COURT: SIR, WERE THESE YOUR

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VERDICTS?

JUROR: YES.

THE COURT: ARE THEY STILL YOUR

VERDICTS?

JUROR: YES.

THE COURT: MA'AM, WERE THESE YOUR

VERDICTS?

JUROR: YES.

THE COURT: ARE THEY STILL YOUR

VERDICTS?

JUROR: YES.

THE COURT: MA'AM, WERE THESE YOUR

VERDICTS?

JUROR: YES.

THE COURT: ARE THEY STILL YOUR

VERDICTS?

JUROR: YES.

THE COURT: MA'AM, WERE THESE YOUR

VERDICTS?

JUROR: YES.

THE COURT: ARE THEY STILL YOUR

VERDICTS?

JUROR: YES.

THE COURT: SIR, WERE THESE YOUR

VERDICTS?

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VERDICTS?

JUROR: YES.

THE COURT: ARE THEY STILL YOUR

JUROR: YES.

THE COURT: SIR, WERE THESE YOUR

VERDICTS?

JUROR: YES.

THE COURT: ARE THEY STILL YOUR

VERDICTS?

JUROR: YES.

THE COURT: MA'AM, WERE THESE YOUR

VERDICTS?

JUROR: YES.

THE COURT: ARE THEY STILL YOUR

VERDICTS?

JUROR: YES.

THE COURT: MA'AM, WERE THESE YOUR

VERDICTS?

JUROR: YES.

THE COURT: ARE THEY STILL YOUR

VERDICTS?

JUROR: YES.

THE COURT: SIR, WERE THESE YOUR

VERDICTS?

JUROR: YES.

1 THE COURT: ARE THEY STILL YOUR
2 VERDICTS?

3 JUROR: YES.

4 THE COURT: SIR, WERE THESE YOUR
5 VERDICTS?

6 JUROR: YES.

7 THE COURT: ARE THEY STILL YOUR
8 VERDICTS?

9 JUROR: YES.

10 THE COURT: ALRIGHT, I'VE POLLED THE
11 ENTIRE AND THE VERDICT STANDS.

12 LADIES AND GENTLEMEN, THAT CONCLUDES
13 YOUR SERVICES IN THIS CASE, THAT CONCLUDES YOUR SERVICES
14 FOR THE WEEK. YOU CAN GO HOME NOW AND GET THE TIMES AND
15 DEMOCRAT AND READ ALL ABOUT THIS CASE. YOU CAN GO HOME
16 AND LOOK IT UP ON THE INTERNET, YOU CAN TALK TO ANYBODY
17 YOU WANT TO TALK ABOUT IT WITH IF YOU WANT TO DO THAT.
18 BUT YOU DO NOT HAVE TO TALK ABOUT IT. IF SOMEBODY CALLS
19 AND WANTS TO TALK ABOUT THIS CASE AND YOUR SERVICE ON
20 THIS JURY, AND YOU DON'T WANT TO DO IT AND THEY PERSIST
21 IN TRYING TO GET YOU TO TALK ABOUT IT AFTER YOU MAKE IT
22 CLEAR TO THEM THAT YOU DON'T WANT TO DISCUSS IT, YOU
23 PLEASE BE SURE YOU GET THAT PERSON'S NAME AND YOU CALL
24 BACK THAT NUMBER OR YOUR LETTER TO THE CLERK OF COURT'S
25 OFFICE AND REPORT THAT AND WE'LL TAKE CARE OF THAT. WE

1 DON'T ALLOW ANY HARASSMENT OF OUR JURORS.

2 I'M GOING TO EXCUSE YOU NOW, YOU'LL
3 BE GETTING A LITTLE CHECK IN THE MAIL. DON'T GO OUT AND
4 SPEND A BUNCH OF MONEY THINKING YOU'RE GOING TO PAY
5 YOURSELF, IT WILL HARDLY BE ENOUGH TO CARRY YOUR
6 SIGNIFICANT OTHER OUT TO A THANKSGIVING DINNER UNLESS
7 YOU GO TO HARDEES OR SOMEWHERE LIKE THAT. PRIMARILY,
8 WHAT YOU GET IS THE THANKS OF THE PEOPLE OF ORANGEBURG
9 COUNTY.

10 HAVE ANY OF YOU EVER SERVED ON A
11 JURY PRIOR TO THIS JURY? OH, JUST ABOUT EVERYBODY, SO
12 Y'ALL KIND OF KNOW HOW IT WORKS. WAS IT IN BIG COURT OR
13 MAGISTRATE'S COURT? MAGISTRATE'S COURT? WELL, IT'S A
14 LITTLE DIFFERENT, BUT NOW YOU HAVE A BETTER APPRECIATION
15 FOR HOW THE SYSTEM WORKS. AND WE COULD NOT DO IT, WE
16 JUST COULD NOT EXIST WITHOUT PEOPLE LIKE YOU WHO ARE
17 WILLING TO COME IN WITHOUT COMPLAINING, I KNOW YOU
18 DIDN'T VOLUNTEER, BUT NEITHER DID YOU TRY TO GET OUT OF
19 SO, AND SO, WE APPRECIATE YOUR SERVICE.

20 AT THIS TIME YOU ARE EXCUSED, YOU
21 ARE FREE TO GO, AND LIKE I SAID, YOU'LL BE GETTING THAT
22 CHECK IN THE MAIL. IF YOU WANT TO HAVE A SEAT IN THE
23 COURTROOM WE'RE GOING TO HAVE THE SENTENCING PROCEDURE
24 HERE IN JUST A FEW MINUTES, YOU'RE WELCOME TO STAY FOR
25 THAT, OR YOU CAN READ ABOUT IT IN THE TIMES AND DEMOCRAT

1 IN THE MORNING OR LOOK IT UP ON THEIR WEB SITE, I'M SURE
2 THEY'LL HAVE IT. THANK YOU VERY MUCH, YOU ARE EXCUSED.

3 THE COURT: ANY MOTIONS?

4 MR. MELLARD: WE'D RENEW ALL OF OUR
5 PRIOR MOTIONS THAT WE MADE DURING THIS TRIAL, TO INCLUDE
6 THE MOTION OPPOSING THE AMENDMENT OF THE INDICTMENT, AND
7 ALSO THE MOTION OPPOSING THE CHARGE OF VOLUNTARY
8 MANSLAUGHTER.

9 IN ADDITION, WE'VE MOVE FOR A MOTION
10 FOR A NEW TRIAL. IT'S OUR CONTENTION THEY FAILED TO
11 PROVE ALL THE ELEMENTS OF ARMED ROBBERY AS HAS BEEN
12 PREVIOUSLY DISCUSSED, AND ALSO THAT THEY FAILED TO PROVE
13 THE ELEMENTS OF VOLUNTARY MANSLAUGHTER. AND WE'D ALSO
14 MOVE FOR A MOTION FOR VERDICT IN ARREST OF THE
15 JUDGEMENT. IT'S OUR CONTENTION THAT THE CHARGING
16 DOCUMENT IN THIS CASE, WHICH IS THE INDICTMENT FOR
17 MURDER, WAS DEFECTIVE, THAT THE AMENDMENT WAS IMPROPER
18 AS WE'VE ALREADY DISCUSSED, AND WE WOULD SAY THAT THE
19 CHARGING DOCUMENT AS INSUFFICIENT AND THE COURT LACKED
20 JURISDICTION.

21 THE COURT: ALRIGHT, SIR. WELL, I
22 WOULD DENY THE MOTIONS PREVIOUSLY MADE ON THE GROUNDS
23 THAT I PREVIOUSLY DENIED THOSE MOTIONS. I THINK THE
24 EVIDENCE WAS SUFFICIENT IN THE RECORD TO SUPPORT BOTH
25 VERDICTS IN THE CASE, IT WAS A JURY QUESTION, AND I

1 WOULDN'T HAVE ANY REASON TO SET ASIDE THE JURY'S
2 VERDICTS.

3 YOUR OBJECTION TO THE AMENDMENT OF
4 THE INDICTMENT IS CERTAINLY A PART OF THE RECORD, AND
5 WHAT I'M GOING TO DO OUT OF THE ABUNDANCE OF CAUTION IS,
6 I'M GOING TO GIVE THE ORIGINAL INDICTMENT, NOT THE ONE
7 THAT WENT TO THE JURY, BUT THE ORIGINAL INDICTMENT WHICH
8 WAS AMENDED, I'M GOING TO HAVE IT MADE A COURT'S
9 EXHIBIT. THAT WAY WE'LL BE CERTAIN THAT IT GETS INTO THE
10 RECORD, BECAUSE IT'S CERTAINLY POSSIBLE THAT IT WOULD
11 NOT BE TRANSMITTED.

12 MR. MELLARD: THAT'S FINE. WE'D ALSO
13 LIKE THE, I GUESS THE OTHER ONE TO BE PUT IN, TOO.

14 THE COURT: WELL, - - -

15 MR. MELLARD: OH, I'M SORRY, YOU'RE
16 SAYING IT ALREADY IS?

17 THE COURT: I DON'T THINK, THE OTHER
18 ONES HAVE TO BE PART OF THE RECORD BECAUSE THEY ARE THE
19 VERDICTS.

20 MR. MELLARD: RIGHT, THAT'S, I JUST
21 WANTED TO BE SURE.

22 THE COURT: AND SO, I DON'T THINK I
23 WOULD MAKE THOSE COURT'S EXHIBITS.

24 MR. MELLARD: OKAY.

25 THE COURT: I'M SURE THEY'LL BE

1 TRANSMITTED, BUT IT COULD BE THAT SOMEBODY IN GOING
2 THROUGH THE RECORD WOULD JUST NOT NOTICE THIS OTHER
3 INDICTMENT SITTING THERE, AND NOT TRANSMIT IT WITH THE
4 RECORD. AND SO, THAT'S THE REASON I AM GOING TO MAKE IT
5 COURT'S EXHIBIT NUMBER - - -

6 COURT REPORTER: EIGHT.

7 THE COURT: EIGHT.

8 MR. MELLARD: ALRIGHT.

9 MS. HINDS: THANK YOU, YOUR HONOR.

10 (Court's Exhibit Number Eight
11 marked and filed.)

12 THE COURT: BUT, I MEAN, THERE'S NO
13 QUESTION IN MY MIND, THE OTHER TWO EXHIBITS WILL BE PART
14 OF THE RECORD, I MEAN, THE OTHER TWO INDICTMENTS.

15 ALRIGHT, DOES ANYBODY WANT TO SPEAK
16 ON BEHALF OF THE VICTIM? I'LL BE GLAD TO HEAR FROM
17 THEM.

18 VICTIM'S ADVOCATE: NO, SIR, YOUR
19 HONOR.

20 SOLICITOR JOHNSON: NO, SIR, YOUR
21 HONOR.

22 THE COURT: ALRIGHT. YES, SIR, MR.
23 JOHNSON?

24 SOLICITOR JOHNSON: YOUR HONOR, FOR
25 THE STATE, YOUR HONOR, WE HAVE GIVE THE DEFENDANT PRIOR

1 NOTICE OF INTENT TO SEEK LIFE WITHOUT PAROLE. HE WAS
2 CONVICTED OF A -- HE WAS CONVICTED OF A MURDER BUT
3 REMANDED BACK ON NOVEMBER THE SIXTH OF NINETEEN NINETY-
4 ONE, REMANDED BACK FOR A VOLUNTARY MANSLAUGHTER CHARGE,
5 AND GIVEN, I'M NOT, IT WAS PRIOR NOTICE, YOUR HONOR.
6 BUT HE HAS A PRIOR CONVICTION FOR MANSLAUGHTER. UNDER
7 THE STATE STATUTE I THINK IT'S REQUIRED THAT THE STATE
8 MUST, UNDER THIS CONDITION IF HE'S FOUND GUILTY,
9 SENTENCE THE DEFENDANT TO A LIFE WITHOUT PAROLE
10 SENTENCE. WE ASK THAT THAT SENTENCE BE IMPOSED TODAY.

11 THE COURT: THIS WOULD BE TWO, THIS
12 WOULD BE HIS SECOND MOST SERIOUS, WHICH IS A MANDATORY
13 LIFE WITHOUT PAROLE, RIGHT?

14 SOLICITOR SORENSON: THAT'S CORRECT,
15 YOUR HONOR.

16 THE COURT: MR. MELLARD, LET ME HEAR
17 FROM YOU ON THAT. I MEAN, DO YOU AGREE? ACTUALLY, HE
18 HAS A -- THE CONVICTION FOR MURDER WAS SET ASIDE, SO HE
19 HAS NO CONVICTION FOR MURDER.

20 MR. MELLARD: THAT'S CORRECT, YOUR
21 HONOR.

22 THE COURT: BUT HE HAS A PRIOR
23 CONVICTION FOR VOLUNTARY MANSLAUGHTER ON NOVEMBER THE
24 SIXTH, NINETEEN NINETY-ONE. I CAN'T READ THE SENTENCE,
25 BUT I'VE GOT THE INDICTMENT SHEET, IT'S JUST CUT OFF AT

1 THE BOTTOM. BUT I MEAN, YOU HAVE NO REASON TO DISAGREE
2 THAT HE DOES HAVE THAT PRIOR CONVICTION, IS THAT - - -

3 MR. MELLARD: I, I, AS AN OFFICER OF
4 THE COURT, I'VE CONTACTED BAMBERG COUNTY, I'VE TALKED TO
5 THEM ABOUT THIS FILE. THEY TELL ME THAT THAT IS INDEED
6 WHAT HE WAS CONVICTED OF. I DON'T KNOW THAT FOR A FACT,
7 BUT I THINK THAT BASED ON WHAT THEY TOLD ME, AND I WOULD
8 JUST LEAVE IT UP TO THE COURT.

9 THE COURT: WELL, THE RECORD
10 CERTAINLY, I MEAN, IT'S A TRUE COPY FROM THE CLERK OF
11 COURT IN BAMBERG COUNTY AND IT CERTAINLY APPEARS TO BE
12 ACCURATE AND REFLECT EXACTLY WHAT WE JUST SAID, A
13 CONVICTION FOR VOLUNTARY MANSLAUGHTER ON NOVEMBER THE
14 SIXTH, NINETEEN NINETY-ONE.

15 ALRIGHT, ANYTHING ELSE FROM THE
16 STATE?

17 SOLICITOR JOHNSON: NOTHING ELSE,
18 YOUR HONOR, WE'D JUST ASK THAT THE COURT IMPOSE THE
19 SENTENCE AS REQUESTED.

20 THE COURT: ALRIGHT, DO YOU HAVE THE
21 SENTENCING SHEETS PREPARED? AND I'LL BE GLAD TO HEAR
22 ANYTHING FROM THE DEFENDANT OR ON HIS BEHALF.

23 SOLICITOR JOHNSON: YOUR HONOR, IF
24 I COULD HAVE A MOMENT JUST TO PREPARE THE SENTENCING
25 SHEETS?

1 THE COURT: WELL, I GUESS YOU WILL
2 BECAUSE I CAN'T DO ANYTHING WITHOUT THEM. JUST FILL IN
3 THE NAME AND INDICTMENT NUMBER, AND VOLUNTARY
4 MANSLAUGHTER, AND I WILL FILL IN THE REST AND THEN YOU
5 FILL IN THE OTHER DATA.

6 MR. MELLARD, DO YOU WISH TO BE
7 HEARD, YOU OR MS. HINDS, OR ANYBODY?

8 MR. MELLARD: NO, SIR.

9 THE COURT: ALRIGHT.

10 SOLICITOR SORENSON: WE'LL FILL IN
11 THE REST OF THE STUFF WHEN WE'RE DONE.

12 THE COURT: YES, YOU CAN FILL IN THE
13 REST OF THOSE DETAILS LATER.

14 SOLICITOR SORENSON: I NEED TO SIGN
15 THAT ONE.

16 THE COURT: YOU CAN SIGN IT LATER.
17 ONE THING, DO ME ANOTHER ONE ON VOLUNTARY MANSLAUGHTER,
18 I JUST MESSED IT UP. SO, JUST PUT HIS NAME ON IT AND
19 THE INDICTMENT NUMBER, VOLUNTARY MANSLAUGHTER, AND GIVE
20 IT TO ME.

21 SENTENCE OF THE COURT

22 ALRIGHT, ON INDICTMENT 2006-GS-38-
23 2068, THE CHARGE, I'M SORRY, 67, 2067, THE CHARGE BEING
24 ARMED ROBBERY, THE SENTENCE OF THE COURT IS THAT YOU BE
25 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A

1 PERIOD OF THIRTY YEARS.

2 ON INDICTMENT 2006-GS-38-2068, THE
3 STATE VERSUS GEORGE MOSES, THE CHARGE IS VOLUNTARY
4 MANSLAUGHTER. THE SENTENCE IS THAT YOU BE COMMITTED TO
5 THE STATE DEPARTMENT OF CORRECTIONS FOR THE BALANCE OF
6 YOUR NATURAL LIFE, WITHOUT POSSIBILITY OF PAROLE,
7 PURSUANT TO SECTION SEVENTEEN, DASH, TWENTY-FIVE, DASH,
8 FORTY-FIVE.

9 GOOD LUCK TO YOU, SIR.

10 SOLICITOR SORENSON: YOUR HONOR, --

11 -

12 THE COURT: YES, SIR.

13 SOLICITOR SORENSON: IT WOULD BE
14 THE STATE'S POSITION AS TO THE ARMED ROBBERY, THAT'S A
15 MOST SERIOUS ALSO. SO, IT WOULD FALL UNDER THE TWO
16 STRIKE PROVISION ALSO. AND THE NOTICE WAS SERVED WITH
17 BOTH OF THOSE INDICTMENTS ON THE NOTICE. THE ARMED
18 ROBBERY IS THE MOST SERIOUS. SO, IF HE HAD JUST BEEN
19 CONVICTED OF ARMED ROBBERY AND NOTHING ELSE HE'D STILL
20 BE SUBJECT TO THE STATE'S TWO STRIKE LAW.

21 THE COURT: SO, YOU'RE SAYING THE
22 SENTENCE SHOULD BE LIFE WITHOUT PAROLE ON EACH
23 INDICTMENT?

24 SOLICITOR SORENSON: YES, YOUR
25 HONOR.

1 THE COURT: I UNDERSTAND WHAT YOU'RE
2 SAYING.

3 MR. MELLARD: WELL, WE WOULD -- THE
4 SERVICE THAT WE GOT WAS ON THE MURDER CHARGE.

5 SOLICITOR SORENSON: I MEAN, IT'S
6 GOT BOTH.

7 MR. MELLARD: WHERE? YOU TELL ME
8 WHERE THE SERVICE IS ON THE MURDER CHARGE?

9 SOLICITOR JOHNSON: IT'S ON BOTH.

10 MR. MELLARD: THAT'S HIS MURDER FROM
11 BAMBERG.

12 SOLICITOR JOHNSON: I SEE WHAT
13 YOU'RE SAYING, I SEE WHAT YOU'RE SAYING.

14 MR. MELLARD: THAT'S AT THE TOP,
15 BOTH OF THE INDICTMENTS AT THE TOP.

16 THE COURT: HE'S JUST SAYING IT
17 SHOULD BE TWO LIFE WITHOUT PAROLE SENTENCES INSTEAD OF
18 ONE THIRTY YEAR SENTENCE.

19 MR. MELLARD: YES, SIR.

20 THE COURT: AND I THINK HE'S RIGHT
21 BUT I'LL BE GLAD TO HEAR YOU ON THAT.

22 MR. MELLARD: I'LL JUST LEAVE IT UP
23 TO THE COURT.

24 SOLICITOR SORENSON: IF WE COULD
25 JUST PUT ON THE RECORD, THAT NOTICE WAS SERVED ON THEM,

1 I BELIEVE ON THE RECORD IN FRONT OF YOUR HONOR BACK IN
2 DECEMBER, ALSO JUST SO THERE'S NO - - -

3 THE COURT: WELL, I, I MEAN, HE'S
4 NOT QUESTIONING THE NOTICE I DON'T THINK, ARE YOU?

5 MS. HINDS: NO, SIR.

6 MR. MELLARD: NO, SIR.

7 THE COURT: WELL, I THINK HE'S
8 RIGHT, I THINK EITHER ONE OF THESE WOULD BE A MOST
9 SERIOUS, WOULD BE A SECOND STRIKE, AND SO, I THINK THE
10 PROPER SENTENCE ON EACH OF THEM IS LIFE WITHOUT PAROLE.

11 AMENDED SENTENCE OF THE COURT

12 SO, THE SENTENCE ON THE ARMED
13 ROBBERY WOULD ALSO BE LIFE WITHOUT PAROLE.

14 MS. HINDS: THANK YOU.

15 MR. MELLARD: THANK YOU.

16 THE COURT: ALRIGHT. GOOD LUCK TO
17 YOU, SIR.

18 SOLICITOR JOHNSON: THANK YOU, SIR.

19 THE COURT: TAKE MR. MOSES OUT,
20 PLEASE.

21 LADIES AND GENTLEMEN, LET ME, IF YOU
22 HAVE ANY QUESTIONS ABOUT THE SENTENCE, IT'S KIND OF
23 UNUSUAL, BUT IF YOU DO I'LL BE GLAD TO ANSWER THEM, YOU
24 PEOPLE ON THE JURY. I MEAN, HE HAD A PRIOR CONVICTION
25 FOR VOLUNTARY MANSLAUGHTER, AND THAT MADE IT A MANDATORY

1 LIFE WITHOUT PAROLE. I HAD NO DISCRETION IN THE MATTER,
2 I MEAN, THAT'S THE SECOND PERSON THAT HE'S KILLED AND
3 THE STATE SAYS THAT THAT'S MANDATORY LIFE WITHOUT
4 PAROLE. IF YOU FEEL LIKE THAT'S TOO TOUGH, IT'S NOT
5 YOUR SENTENCE. YOU JUST, YOU MAKE THE DECISION YOU NEED
6 TO MAKE, I CARRY OUT THE LAW. SO, Y'ALL DON'T HAVE
7 ANYTHING TO DO WITH THE SENTENCE.

8 THANK YOU FOR YOUR SERVICE.
9 ALRIGHT.

10 ALRIGHT, GIVE ME ANOTHER BLANK ON
11 THE VOLUNTARY, I MEAN, ON THE ARMED ROBBERY.

12 SOLICITOR JOHNSON: I'VE GOT A BLANK
13 ONE. I HAVE ONE HERE, YOUR HONOR.

14 THE COURT: NOW, IS THAT IT,
15 SOLICITOR?

16 SOLICITOR SORENSON: I BELIEVE SO,
17 YOUR HONOR.

18 THE COURT: ALRIGHT, COURT IS
19 ADJOURNED, SINE DIE.

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CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE TENTH THROUGH TWELFTH DAYS OF FEBRUARY, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: APRIL 8, 2009

Harry A. Walker

(MRS.) HARRY A. WALKER

COUNTY: ORANGEBURG DATE: FEBRUARY 9, 2009
 Case No.: 06-GS-38-2067 AND 2068
VOIR DIRE (PAGE 1 OF 2)

Judge: JAMES C. WILLIAMS, JR.

Pl./State: State/Pl's.Atty:
STATE OF SOUTH CAROLINA DON SORENSON
CHARLIE JOHNSON

Defendant: Defense Atty:
GEORGE NAPOLEON MOSES DOUG MELLARD
MARGARET HINDS

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Strikes:			Accept
		Sex	Race	Pl. Def.	
19	THOMAS BETSILL	M	W		X
155	MARY SELLERS	F	B		X
151	HENRY SALLEY	M	B		X
185	MONICA WASHINGTON	F	B		X
65	DONAVAN GAFFNEY	M	W		X
190	LEROY WEST	M	B		X
41	BRIAN DAVIS	M	B		X
86	TAMMI CALLAHAN	F	W	X	
134	DARRELL POUGH	M	B		X
52	JAMES FANNING	M	W		X
2	AUDREY AIKEN	F	B		X
91	JONATHAN JAMISON	M	B	X	
27	EMMA BROWN	F	B		X
83	TANGELA HOOK	F	B		X
148	MICHAEL ROMANSTINE	M	W		X
142	LORRAINE RICKENBAKER	F	B		X
77	JOHN GREEN	M	B		X

COUNTY: ORANGEBURG DATE: FEBRUARY 9, 2009
 Case No.: 06-GS-38-2067 AND 2068
VOIR DIRE (PAGE 2 OF 2)

Judge: JAMES C. WILLIAMS, JR.

Pl./State: STATE OF SOUTH CAROLINA State/Pl's.Atty: DON SORENSON
CHARLIE JOHNSON

Defendant: GEORGE NAPOLEON MOSES Defense Atty: DOUG MELLARD
MARGARET HINDS

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Sex	Race	Pl.	Strikes:		Accept
					Def.		
172	ELLEN SUTTON	F	W				X
3	EMMA ASBURY	F	B				X
ALTERNATE NO. 1							
7	TARZIE BACKMAN	F	W				X
ALTERNATE NO. 2							
85	BETH HOWARD	F	B			X	
40	ANNETTE DAVIS	F	B	X			
43	DAVID DIETIKER	M	W			X	
53	ROBERT FANNING	M	W				X

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WITNESSES

DOCKET NO. 2006GS38-2067

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

596

The State of South Carolina

County of

ORANGEBURG

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
USA W. JIMZELL
CLERK OF COURT
ORANGEBURG, SC

12/06/06 10:47

FILED FOR RECORD
USA W. JIMZELL
CLERK OF COURT
ORANGEBURG, SC

12/06/06 10:47

DETECTIVE ROMAN RODRIGUEZ

Arresting Agency:

Orangeburg Co. Sheriff Dept.

COURT OF GENERAL SESSIONS

December 04, 2006 TERM

ARREST WARRANT NUMBER

H941781

Arrested: Oct 02, 2006

THE STATE

vs.

George Napoleon Moses

ACTION OF GRAND JURY

TRUE BILL

Roman Rodriguez

Foreperson of Grand Jury
Date: December 6, 2006

DEC 06 2006

Indictment for

ARMED ROBBERY

VERDICT

Guilty

~~*Not Guilty*~~

SC Code: 16-11-0330

CDR Code: 0139

Class: FEL-A(V)

Henry Solly
Foreperson of Petit Jury
Date: 2-12-2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

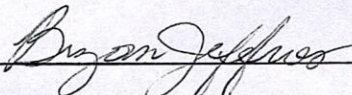
INDICTMENT
2006GS38-2067

At a Court of General Sessions, convened on December 04, 2006 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That George Napoleon Moses, did in Orangeburg County, on or about September 29, 2006, commit robbery by feloniously taking from the person or presence of the victim, Harry Livingston, by means of force or intimidation goods or monies of Harry Livingston such goods or monies being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of Section §16-11-330 of the South Carolina Code of laws, (1976 as amended).

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



Bryan S. Jeffries SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG
STATE

INDICTMENT/CASE#: 2006-GS-38-2067

VS.

George Napoleon Moses

AW#: H-941781

AKA: _____

Date of Offense: 9-29-06

Race: B Sex: m Age: _____

S.C. Code §: 16-11-0330

DOB: 1-9-58 SS#: 097-46-7862

CDR Code #: 0139

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: ARMED ROBBERY

in violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0139

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

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

ATTEST: Charles J. Johnson
Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, Youthful Offender Act not to exceed life years without possibility of parole pursuant to 17-25-45
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	\$ <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)	\$	\$ <u>3.90</u>
§90.11 TP (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
TOTAL		\$ <u>133.90</u>

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

James W. Williams
0114
2-12-09

Judge Code: _____

Sentence Date: _____

Marion S. Edgemon
Clerk of Court/ Deputy Clerk

Court Reporter: Harry Dat Walker

WITNESSES

Roman Rodriguez

Orangeburg County Sheriff

ARREST WARRANT NUMBER
H941779

Arrested: October 2, 2006

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: December 4, 2006

VERDICT

~~Guilty of Murder~~

Guilty of Voluntary Manslaughter

~~Not Guilty~~

W. Saly
Foreperson of Petit Jury
Date: 2-12-2009

DOCKET NO. 2006GS38-2068

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS
December 4, 2006 TERM

THE STATE
vs.

George Napoleon Moses

Indictment for

MURDER

SC Code: 16-3-10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Orangeburg
STATE

INDICTMENT/CASE#: 06 -GS- 38 - 2068

George Moses
AKA:

A/W#: H 941779

Race: Blk Sex: M Age: _____

Date of Offense: 9/29/06

DOB: 1-9-58 SS#: 097-46-7862

S.C. Code §: 16-03-10

Address: _____

CDR Code #: 0116

City, State, Zip: _____

SENTENCE SHEET

DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Voluntary Manslaughter

in violation of § 16-003-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st 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 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of _____ days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment prole
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for pursuant to 17-25-45
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: \$ _____ Random Drug/Alcohol Testing
§14-1-206 (Assessments 107.5%) \$ _____ Fine may be pd. in equal, consecutive weekly/monthly
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 pmts. of \$ _____ Beginning _____
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ \$ _____ paid to Public Defender Fund
§56-5-2995 (DUI Assessment) \$12 \$ _____
§35.13 (Public Def/Prob) \$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§50-21-114(BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.90
§90.11 TP (SCCJA Surcharge) \$5 \$ 5.00
TOTAL \$ 133.90

Other: _____

Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

Marion S. Edgemon Jr
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE [Signature]

Court Reporter: Harry Dat Walker

Judge Code: 0114
Sentence Date: 2-12-09

To: Clerk of Court
 General Sessions
 County of Orangeburg, S.C.

From: Mr. George N. Moses #103370
 Allendale Court Inst.

FS B6
 1057 Revolutionary Trail
 Fairfax, S.C. 29827

Hm
 2017
 JAN 3 10 26 AM
 CLERK OF COURT
 GENERAL SESSIONS
 COUNTY OF ORANGEBURG
 S.C.

RE: Application of DNA Testing and Enclosed Motion.

would you please return a clock stamped
 copy of my resubmitted Application for
 DNA Testing and all enclosed Motions.
 At the above address.

JANUARY 3, 2017

George N. Moses #103370, Pro Se

c.c. South Carolina Supreme Court

STATE OF SOUTH CAROLINA

COUNTY OF

Orangeburg

George N. Meskes #103370, Pro SE
Name of applicant and Inmate number (if applicable)

OR

IN THE INTEREST OF

Juvenile

v.

State of South Carolina

) IN THE COURT OF (Select one)
) GENERAL SESSIONS
) FAMILY COURT
) JUDICIAL CIRCUIT

) APPLICATION FOR
) FORENSIC DNA TESTING

) ORIGINAL INDICTMENT NO.

) 06 38 2068
) -GS- -

) 06 38 2067
) ORIGINAL PETITION NO.

) -GS- -

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 continue an 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 end of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted or adjudicated.

I understand that DNA testing is only available if I have been convicted or adjudicated of an offense listed in S.C. Code Ann. § 17-28-30, that I am currently incarcerated for that offense, and that I am asserting that I am innocent of the offense. Further, if the conviction or adjudication was the result of a plea of guilty or nolo contendere, the application must be filed within seven years of the date of sentencing.

- 1. Identify the proceedings in which the applicant was convicted or adjudicated:

Court of General Sessions, Jury Trial 2-12-09

2. Give the date of the entry of the judgment and sentence:

2-12-09 - Life without Parole

and current place of incarceration: Allendale Correctional Inst.

3. Identify all previous or ongoing proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or adjudication:

(a) See back page

(b) See back page

(c) See back page

4. Make a reasonable attempt to identify the physical evidence or biological material that should be tested:

see back page

Identify specific type of DNA testing being sought:

Short Tandem Repeat (STR) PCR DNA

5. Explain why the identity of the applicant was or should have been a significant issue during the original court proceedings, notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity:

BECAUSE the applicant is innocent and the introduction of the DNA evidence, resulted in him being falsely convicted. The test results from these items will show that it was others who committed these crimes. These test and of proceedings will show that information was withheld during the original court proceedings.

6. Explain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, provide the results of the testing and explain how the requested

3. (A) Direct Appeal - South Carolina Court of Appeals.
Denial of right to Counsel during interrogation.
3. (b) Petition for writ of Post Conviction Relief.
Ineffective Assistance of Counsel.
3. (c) South Carolina Supreme Court - Petition for a writ of Certiorari. Failing to find trial counsel ineffective for not obtaining victims Medical records.
3. (D) Federal District Court of South Carolina - Fourth Circuit Court of Appeals - U.S. Supreme Court.
Denial of right to Counsel during interrogation.
4. S.L.E.D. Chain of Custody L06-13571 (1) item 8.3 swab(s) described as from pockets of blue jean shorts.
(2) item 18. Fingernail clippings from Harry Livingston.

DNA test would provide a substantially more probative result:

- (1.) The evidence was not subject to DNA testing due to ineffective Assistance of Counsel.
- (2.) It was claim that the SLED Experts ran out of money.
- (3.) Evidence will show that the petition did not commit these crimes.
- (4.) Evidence was not present to jury.

7. Explain why if the DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching:

If the state ran these test and with hold the results Rule 5 (a)(6)(D) SCR Crim. P. depriving the defendant a fair trial, this information could have been presented to the jury and the proceedings could have resulted in a different verdict.

8. I assert that I am actually innocent of the listed offense, that this offense is listed in S.C. Code Ann. § 17-28-30 and that I am currently incarcerated for the listed offense. I attest that this application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

9. If DNA testing is conducted and results are determined to be inculpatory by the Court, I understand that:

- (a) The Court may hold me in contempt of court if it determines that my assertion of actual innocence was intentionally false;
- (b) The Court may assess the cost of any DNA testing against me;
- (c) The South Carolina Department of Corrections may use this determination to deny good conduct credit; and,
- (d) The Department of Probation, Parole, and Pardon Services can use this determination to deny parole.

George N. Moses # 103370
Print Applicant Name

George N. Moses
Signature of Applicant

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

I George N. Moses, Pro SE, 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.

George N. Moses
George N. Moses, Pro SE
 Signature of Applicant

SWORN to and subscribed before me this 2
day of January, 2017.

Virginia Arub (L.S.)
Notary Public

My Commission Expires: 12/12/22

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Orangeburg)

I George N. Moses, Pro SE, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; and that the matters and allegations set forth are true.

George N. Moses
George N. Moses, Pro SE
Signature of Applicant

SWORN to and subscribed before me this 2 day of January, 2017.

Virginia Drubb (L.S.)
Notary Public

My Commission Expires: 12/12/22

FILE
2017
36

State of South Carolina
Court of General Sessions
County of Orangeburg

George N. Moses #103370, Pro SE Proof of Service

FILED IN PROCEEDINGS
WINNIE T. HANNAH
2017 JAN 13 10 36
CLERK OF COURT
COUNTY OF ORANGEBURG

v.
State of South Carolina

I George N. Moses, Pro SE, do certify that I have re-submitted my, Application for Forensic DNA Testing. On the County of Orangeburg, S.C., by depositing a copy in the U.S. Mail, postage prepaid on JANUARY 3, 2017. Addressed to the Court of General Session of Orangeburg, P.O. Drawer 9000 Orangeburg, S.C.

JANUARY 2017

George N. Moses, Pro SE

c.c. South Carolina Supreme Court

State of South Carolina
Court of General Sessions

Orangeburg, S.C.

George N. Moses #103370, Pro SE

Motion for
Subpoena

v.

State of South Carolina

FILED IN COURT
2017 JAN 03 09:36
CLERK OF COURT
ORANGEBURG, S.C.

The petitioner, George N. Moses, is hereby requesting that a subpoena, be issued for Dr. Ross, Sled DNA Expert. To give testimony in this matter.

January 3, 2017

George N. Moses, Pro SE

State of South Carolina
 Court of General Sessions
 Orangeburg, S.C.

George N. Moses, #103370, Pro Se

v.

State of South Carolina

Motion for the
 Appointment of
 Counsel

Pursuant to South Carolina Code of Law, 17-28-60, Petitioner is requesting that counsel be appointed to represent him in this matter before the court, "Access to Justice DNA Testing Application". The petitioner is without funds and unable to afford the cost of Counsel.

JANUARY 3, 2017

George N. Moses, Pro Se

State of South Carolina
 Court of General Sessions
 Orangeburg, S. C.

George N. Moses, #103370, Pro SE Motion for funds
 v. to hire DNA
 State of South Carolina expert

Pursuant to South Carolina Code of Law
 17-3-50 (B), the petitioner George N. Moses,
 is hereby requesting funds for a expert
 witness to review the DNA records and
 finding from the test petitioner is requesting.

JANUARY 3, 2017

George N. Moses, Pro SE

State of South Carolina
County of Orangeburg
Court of General Sessions

George A. Moses # 103370 Pro Se
Petitioner

FILED FOR RECORD
MINNIFIA B. CLARK
2017 MAY - 8 A 11:10
CLERK OF COURTS
ORANGEBURG, SC

Motion for
Judgment

v.
State of South Carolina
Respondent

06-GS-38-2067
2068

Now comes the petitioner, George A. Moses, #103370 Pro Se before this honorable court. The petitioner is hereby requesting that he be granted a motion for Summary Judgment, To his application for, Access to Justice DNA testing, South Carolina code of laws, Section 17-28-10, Filed January 3, 2017.

The petitioner is hereby requesting that all testing requested in the original application be granted along

with all motions requested by the petitioner
and filed with the application;

(1.) Motion for the appointment of Counsel
Pursuant to South Carolina Code of Laws,
Section 17-28-60.

(2.) Motion to proceed in forma Pauperis.

(3.) Motion for funds to hire DNA expert,
Pursuant to South Carolina Code of Laws,
17-3-50 (B)

(4.) Motion to subpoena documents/witness such
as Dr. Ross and Betty W. Butler, Pursuant to
South Carolina Code of Laws, section 17-28-80

Pursuant to South Carolina Code of Laws, section
17-28-90 (A). The application must be heard
in/and before a Judge of the General Sessions of

Family Court of the county in which the conviction took place. A record of the proceedings must be made and preserved.

Furthermore by not filing a response to petitioner's application for DNA testing within the (90) day time limit required by the statute in South Carolina Code of Laws, section 17-28-50 the state is in default and the defendant's petition/application ~~such~~ should be granted.

In his petition/application for DNA testing he squarely alleges that the state ~~by~~ deprived him of access to exculpatory evidence in violation of, Brady v. Maryland and the Due process clause of the fourteenth amendment to the U.S. Constitution.

Also, Pursuant to South Carolina code of laws, section, 17-25-50 (B) petitioner request that this court proceed with a hearing and grant his application for DNA testing and all motions filed by petitioner on January 3, 2017.

Date: May 3, 2017

cc: David Pascoe, solicitor
P.O. Box 1525
Orangeburg, S.C. 29116

George A. Moses, ProSe

FILED FOR RECORD
MINNIFA B. CLARK
2017 MAY -8 A 11: 10
CLERK OF COURT
ORANGEBURG, SC

State of South Carolina
County of Orangeburg
Court of General Sessions

FILED FOR RECORD
MINNIE B. CLARK
2017 MAY -8 A 11:10
CLERK OF COURT
ORANGEBURG, SC

George N. Moses, #103370 Pro Se
Petitioner

Proof of Service

v.
State of South Carolina
Respondent

OG-GS-38-2067
2068

I George N. Moses #103370 Pro Se, do certify that I have served a Motion for Summary Judgment on the State of South Carolina and the Court of General Session of Orangeburg, S.C., by depositing a copy in the U.S. Mail postage prepaid on May 3, 2017.

May 3, 2017

George N. Moses, #103370, Pro Se



STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

State of South Carolina,)
Respondent)

Case No./Original Indictment No.: 2006GS38-2568
2006GS38-2067

v.)

STATE'S RESPONSE TO PETITIOER'S
APPLICATION FOR POST-CONVICTION
DNA TESTING

George N. Moses,)
Petitioner.)

NOW COMES the State, through Assistant Solicitor Ashley B. Cornwell, and submits the following Response to Petitioner's Application for Post-Conviction DNA Testing. It is the State's position that the Court should deny Petitioner's application because the DNA evidence being requested is not exculpatory and would not change the outcome of the trial. S.C. Code Ann. § 17-28-40 (2009).

FILED FOR RECORD
ANNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC
NOV 14 P 12:51

FACTS

On September 29, 2006, Defendant George Moses (hereinafter "Defendant") robbed and killed Victim Harry Livingston (hereinafter "Victim") at Victim's home located at [redacted] Aultman Street in Orangeburg, SC. According to Defendant's statement to law enforcement, he was at the Victim's home, attempted to steal drugs from the Victim without paying for them, and a fight ensued. During the fight Defendant repeatedly punched Victim in the face and stabbed the Victim multiple times, ultimately killing the Victim. Afterwards, Defendant took the Victim's drugs and fifty dollars in US currency and left the house. Defendant was subsequently charged with Murder and Armed Robbery.

On February 12, 2009, after hearing testimony, including testimony regarding Defendant's confession, and examining all of the evidence presented during trial, a jury found Defendant guilty of Voluntary Manslaughter and Armed Robbery. Based on Defendant's prior

record, Defendant was sentenced to Life Without Parole in accordance with §17-25-45 of the South Carolina Code of Laws. On January 3, 2017, Defendant filed a motion requesting that the State submit DNA swabs taken from the pockets of the blue jean shorts (SLED item 8.3) and the fingernail clippings from the victim (SLED item 18) for post-conviction DNA testing; claiming that the DNA results will prove his innocence.

LAW

In order for an application of Post-Conviction DNA Testing to be granted under S.C. Code Ann. § 17-28-40(C) (2009), the Defendant must (a) demonstrate to the court that identity was a significant issue during the original court proceedings; (b) explain how testing of DNA would provide a substantially more probative result than evidence submitted at trial; (c) explain how any exculpatory DNA results would constitute new evidence that would probably change the result of Defendant's conviction if a new trial were granted and (d) prove to the court that the application is made to demonstrate Defendant's innocence and not being made to delay the execution of a sentence or administration of justice. *See* S.C. Code Ann. § 17-28-40(C)(5)-(8) (2009)..

LEGAL ANALYSIS

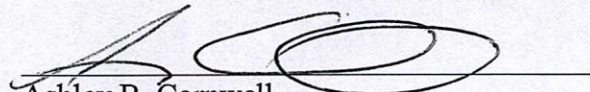
Defendant's application should be denied based on his failure to meet the statutory requirements of the Act. The Defendant is unable to assert an issue of identity in this case as he admits to being in the Victim's home and physically assaulting, stabbing and stealing from the Victim (Attachment A). Additionally, Defendant fails to demonstrate how testing the two additional items requested would produce exculpatory evidence which would change the outcome of his conviction if a new trial were to be granted.

In the case at hand, DNA evidence was collected during the course of this investigation and submitted to SLED for testing. This evidence included a pair of blue jean shorts, a knife, DNA swabs collected from inside the Victim's home, DNA swabs collected from inside Defendant's vehicle and Victim's fingernail clippings. All items submitted to SLED were tested by Serology for DNA evidence. (Attachment B) Once Serology tested all items for DNA evidence, seven (7) of those items were sent to the DNA department for comparison to both Victim and Defendant's DNA. Upon analyzing all of the submitted evidence, Defendant was excluded as being a contributor to the DNA found on the items submitted to SLED. (Attachment C) Accordingly, DNA evidence was not used to convict the Defendant; therefore Defendant cannot effectively demonstrate how additional DNA testing would change the outcome of his conviction¹.

CONCLUSION

The Defendant has failed to meet the statutory requirements for Post-Conviction DNA Testing under S.C. Code Ann. § 17-28-40. Accordingly, the State respectfully requests that the Defendant's application for Post-Conviction DNA testing be DENIED.

Respectfully Submitted,


Ashley B. Cornwell
Assistant Solicitor, First Judicial Circuit

November 14, 2017
Orangeburg, South Carolina

¹ The State has not reviewed a transcript of this trial so it is unclear as to whether or not any testimony or evidence regarding any DNA results were presented to the jury by either the State or the Defense; however it is clear that the Verdict is not based on the fact that Defendant was excluded as being a contributor to the DNA.

ATTACHMENT A

FILED FOR RECORD
WINNIFA B. CLARK

2017 NOV 14 P 12:57

CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

ORANGEBURG COUNTY SHERIFF'S OFFICE
CRIMINAL INVESTIGATIVE DIVISION

Place: LEC Date: 9/30/06 Time: 11:30 Am

THESE ARE YOUR RIGHTS. PLEASE READ CAREFULLY

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.
Please initial beside each sentence.

- GM 1. You have the right to remain silent, anything you say can be used against you in court.
- GM 2. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
- GM 3. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
- GM 4. If you decide to answer questions not without a lawyer present, you will still have the right to stop answering at any time.
- GM 5. You also have the right to stop answering at any time until you talk to a lawyer.

I UNDERSTAND MY RIGHTS.

C. F. [Signature]
Signature

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

C. F. [Signature]
Signature

Witnesses:

[Signature]
[Signature]

**ORANGEBURG COUNTY SHERIFF'S OFFICE
CENTRAL INVESTIGATIVE DIVISION
DEFENDANT AFFIDAVIT**

Date: 9-30-06 Time: 11:43am Place: LEC
 Defendant Name: George Napoleon Muses SSN: 097-46-7862
 Age: 49 Date of Birth: 1-9-58 Phone Number: (803) NONE
 Address: 4515 Bushy Drive, Orangeburg SC 29115
South Carolina DL: 064438035

I understand my rights and have initialed each. I have been advised of the rights by Roman Rodriguez of the Orangeburg County Sheriff's Office, and wish to make the following statement.

To George Napoleon Muses is allowing Roman Rodriguez of the Orangeburg County Sheriff's Office to write this statement for me, the handwriting is not mine but the words are (GWR)
On Friday morning at around 2:30am I drove to Harry Livingston residence to get cocaine from him. I went there to see Harry's housemate (George, but when I got to the house Yvette and Harry told me that he was not home but he would be back home in a little while. So I waited in the house with them. Then at around 2:30am Patricia Owens and John Glimp came to the house and picked Yvette up. She left with them at around 2:30am. While me and Harry Livingston was in the house I told him that I need to get some cocaine. Harry then told me that he only has three bags of cocaine. So I told him to let me have the three bags of cocaine and I was going to give him some crack cocaine. So when he did not agree with me to trade for the cocaine, I told him to let me have the three bags of cocaine and I will

Page 2 Defendant Affidavit

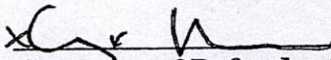
bring him back fifty dollars. I also told him that I would give him a dime (ten dollars) worth of crack cocaine. So I told me that I would be right back so I was walking towards the front door, he called his dog on me and told me not to leave with the drugs. So I told him not allowing his dog to attack me. So while I was standing in the kitchen I grabbed a knife and told him to get his dog away from me. So while his dog was barking at him, Harry had a stick in his hand threatening to hit me with it. So I then grabbed the stick and stabbed Harry on the side of his body near his stomach. Then we started fighting. So the dog then attack me and the dog was pulling on the stick that ~~was~~ me and Harry were holding. We then fell over the kitchen table. So while we were still fighting with each other I think that I stabbed him again. Also while we were fighting his dog was biting my shoes and legs. We then fell over the table and end up on the kitchen floor. While we were on the floor he kept telling his dog to attack me, so I kept punching him in the face and telling him to tell ~~his~~ his dog to stop attacking me. Then Harry passed out so I got up. I then saw a plastic bag that Harry had dropped, it had fifty dollars in it. So I picked it up and ran out of the house. When I left the house I saw blood on my clothes so he drove to Jeffrey Conners house. While there I got a pair of pants from him so I could wear it. Myself and Jeffrey then got high together. The shirt pants that I was wearing I hid it between the block steps and then I drove home. So when I got home I noticed some blood spots on my shirt, so I took it off and burned it

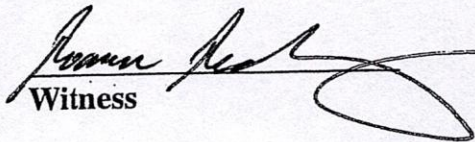
Page 3 Defendant Affidavit

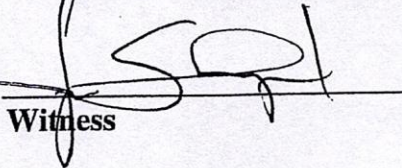
in the trash barrel that was in my yard. So I then went into the house and watched television. I then helped my kids get ready for school. I then went to work at South Carolina State College. I hope that he was still living. I did not want to kill him. Later on that day after the Sheriff's Office pick me up from work, I learned that I had killed Harry Livings because the knife that I used I left it on the kitchen floor in Harry's house. The stick that Harry had was a brown in color stick.

~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

I have read the above thoroughly. I have made the necessary corrections and initialed each to make this a factual and complete representation.


 Signature of Defendant


 Witness


 Witness

 Notary Public
 Sworn to before me this _____
 Day of _____, 20____
 My Commission expires _____

ATTACHMENT B

FILED FOR RECORD
WINNIFA B. CLARK

2017 NOV 14 P 12:57

CLERK OF COURT
ORANGEBURG, SC

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

RECEIVED
11-19-08

Inv. James Shumpert
Orangeburg County Sheriff's Office
P.O. Box 9000
Orangeburg, SC 29116

DNA ANALYSIS
November 18, 2008
SLED LAB: L06-13571
Your Case No: 2006012588
Incident Date: 9/29/2006
[V] Harry Livingston
[S] George Moses

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

3.1	Swab from blade of item 3 (knife)	3.1	No blood indicated.
3.2	Swab from handle of item 3 (knife)	3.2	Blood indicated. See DNA analysis.
4	Swab from light switch next to exit door	4	Blood indicated. See DNA analysis.
5	Swab from dresser in master bedroom	5	Blood indicated. See DNA analysis.
6	Swab from passenger door handle of vehicle driven by suspect	6	See DNA analysis.
7	Swab from passenger door below the window of vehicle driven by suspect	7	See DNA analysis.



Items Submitted:

- 8.1 Cutting from blue jean shorts
- 8.2 Cutting from blue jean shorts
- 8.3 Swab from pockets of blue jean shorts
- 9.1 Swab from blue jeans
- 9.2 Swab from belt in blue jeans
- 18 Fingernail clippings from Harry Livingston
- 19 Blood standard from Harry Livingston

Results of Examinations:

- 8.1 Blood indicated. See DNA analysis.
- 8.2 Blood indicated. See DNA analysis.
- 8.3 No analysis performed.
- 9.1 No analysis performed.
- 9.2 No analysis performed.
- 18 No analysis performed.
- 19 See DNA analysis.

DNA ANALYSIS

ITEMS ANALYZED:

- 19 Blood standard from Harry Livingston
- 3.2 Swab from handle of item 3 (knife)
- 4 Swab from light switch next to exit door
- 5 Swab from dresser in master bedroom
- 6 Swab from passenger door handle of vehicle driven by suspect
- 7 Swab from passenger door below the window of vehicle driven by suspect
- 8.1 Cutting from blue jean shorts
- 8.2 Cutting from blue jean shorts

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.



SLED LAB No. L06-13571
November 18, 2008

RESULTS

The DNA profile developed from items 8.1 and 8.2 matches the DNA profile of Harry Livingston. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 6.4 quadrillion.

The DNA profile developed from item 3.2 is a mixture of at least two individuals. Harry Livingston cannot be excluded as a possible contributor to this mixture.

The DNA profile developed from item 4 is a mixture of at least two individuals. The DNA profile developed from the major contributor to this mixture is from an unidentified male individual. No conclusive statement can be made regarding the inclusion or exclusion of Harry Livingston to this mixture.

The DNA profile developed from item 5 is from an unidentified female individual.

Insufficient human DNA was obtained from items 6 and 7 for STR PCR DNA analysis.

Please submit a standard from the subject for comparison.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Laura H. Mills
Laura H. Mills, Ph.D.
Forensic Scientist

cc: Orangeburg County Solicitor's Office



Table 1 – Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelogenin
19 Livingston	13,14	31,31.2	10,11	7,10	16,18	6,7	12	9,11	19	13,14	15,20	8,9	16,17	12,13	19,23	XY
3.2 Knife handle	13,14	31,31.2	10,(11)	(7),10	(14),15, 16,18	6,7, (9.3)	8,(11), 12	9,11, (12)	19	13,14	15,17	8,(9), (11)	17	11,12, 13	19,(22), (23)	XY
4 Light switch	12,13, 14,15	28,29, 31.2	(8),10, (11)	7,10, (12)	15,16, 18	7,8, 9.3	11,12, 13	9,10, 11,13	(16),(19), 20,24	(12),13, 13.2	15,16, 18	8,10	16,(18), 19	8,12, 13	(19),21, 22	XY
5 Dresser	14	28,31.2	8,11	8,12	15,18	7,8	11,12	10,11	16,17	12,15.2	15,16	10	18,19	12,13	19,30	X
8.1 Jean shorts	13,14	31,31.2	10,11	7,10	16,18	6,7	12	9,11	19	13,14	15,20	8,9	16,17	12,13	19,23	XY
8.2 Jean shorts	13,14	31,31.2	10,11	7,10	16,18	6,7	12	9,11	19	13,14	15,20	8,9	16,17	12,13	19,23	XY

() = alleles between 75 and 149 rfu **Bold** = major contributor



ATTACHMENT C

FILED FOR RECORD
WINNIFA B. CLARK

2017 NOV 14 P 12: 57

CLERK OF COURT
ORANGEBURG, SC

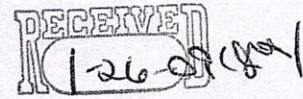
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director



Inv. James Shumpert
Orangeburg County Sheriff's Office
P.O. Box 9000
Orangeburg, SC 29116

DNA ANALYSIS
January 22, 2009
SLED LAB: L06-13571
Your Case No: 2006012588
Incident Date: 9/29/2006
[V] Harry Livingston
[S] George Moses

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

DNA ANALYSIS

ITEMS ANALYZED:

- 19 Blood standard from Harry Livingston
- 20 **Oral swab from George Moses**
- 3.2 Swab from handle of item 3 (knife)
- 4 Swab from light switch next to exit door
- 5 Swab from dresser in master bedroom
- 6 Swab from passenger door handle of vehicle driven by suspect,
- 7 Swab from passenger door below the window of vehicle driven by suspect
- 8.1 Cutting from blue jean shorts
- 8.2 Cutting from blue jean shorts

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.



SLED LAB No. L06-13571

January 22, 2009

RESULTS

The DNA profile developed from items 8.1 and 8.2 matches the DNA profile of Harry Livingston. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 6.4 quadrillion.

The DNA profile developed from item 3.2 is a mixture of at least two individuals. Harry Livingston cannot be excluded as a possible contributor to this mixture.

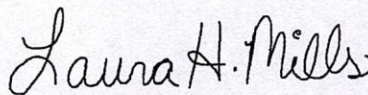
The DNA profile developed from item 4 is a mixture of at least two individuals. The DNA profile developed from the major contributor to this mixture is from an unidentified male individual. No conclusive statement can be made regarding the inclusion or exclusion of Harry Livingston to this mixture.

The DNA profile developed from item 5 is from an unidentified female individual.

Insufficient human DNA was obtained from items 6 and 7 for STR PCR DNA analysis.

George Moses is excluded as being a contributor to the DNA found on any of the evidentiary items submitted.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Laura H. Mills, Ph.D.
Forensic Scientist

Orangeburg County Solicitor's Office



Table 1 – Identifiler

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelogenin
19 Livingston	13,14	31,31.2	10,11	7,10	16,18	6,7	12	9,11	19	13,14	15,20	8,9	16,17	12,13	19,23	XY
20 Moses	14,15	29,31	11,13	10	15	7,9	11,12	12,13	17,19	11,13	17,18	7	14,19	11,12	22,23	XY
3.2 Knife handle	13,14	31,31.2	10,(11)	(7),10	(14),15, 16,18	6,7, (9.3)	8,(11), 12	9,11, (12)	19	13,14	15,17	8,(9), (11)	17	11,12, 13	19,(22), (23)	XY
4 Light switch	12,13, 14,15	28,29, 31.2	(8),10, (11)	7,10, (12)	15,16, 18	7,8, 9.3	11,12, 13	9,10, 11,13	(16),(19), 20,24	(12),13, 13.2	15,16, 18	8,10	16,(18), 19	8,12, 13	(19),21, 22	XY
5 Dresser	14	28,31.2	8,11	8,12	15,18	7,8	11,12	10,11	16,17	12,15.2	15,16	10	18,19	12,13	19,30	X
8.1 Jean shorts	13,14	31,31.2	10,11	7,10	16,18	6,7	12	9,11	19	13,14	15,20	8,9	16,17	12,13	19,23	XY
8.2 Jean shorts	13,14	31,31.2	10,11	7,10	16,18	6,7	12	9,11	19	13,14	15,20	8,9	16,17	12,13	19,23	XY

() = alleles between 75 and 149 rfu

Bold = major contributor



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STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF
COUNTY OF ORANGEBURG)	GENERAL SESSIONS
THE STATE,)	
Plaintiffs,)	
Vs.)	CASE NO. 2006-GS-38-02067 &
GEORGE MOSES,)	02068
<u>Defendant.</u>)	

AUGUST 28, 2019
ORANGEBURG, SOUTH CAROLINA

HONORABLE EDGAR W. DICKSON, JUDGE

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

BY: THOMAS B. SCOTT, III, ESQUIRE
Attorney for the Plaintiffs

BY: JOHN H. WALLER, JR, ESQUIRE
Attorney for the Defendant

KATHERINE A. SPIRES
REGISTERED PROFESSIONAL REPORTER

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Certificate of Reporter 27

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EX</u>
C-1	Subpoena		8
A-1	SLED DNA testing		14

1 MR. SCOTT: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. SCOTT: Your Honor, I call the Court's attention
4 to State verses George Moses. Your Honor, Mr. Moses --
5 these are indictment numbers are 2016-GS-38-2067 and
6 2068. Your Honor, Mr. Moses was charged in 2006 with
7 murder and armed robbery. This case proceeded to trial
8 in 2009. The defendant, I believe, was convicted of
9 armed robbery and voluntary manslaughter.

10 Your Honor, the defendant filed a motion for
11 postconviction DNA testing. That was in -- that was on
12 January 3rd of 2017. The State filed a response to the
13 defendant's motion in November of 2017. And we have
14 scheduled this hearing today pursuant to the Court's
15 request.

16 I think that the first matter that Your Honor needs
17 to address would be the fact that Mr. Moses filed
18 another petition with the court in June of this year
19 asking that his attorney who is present today, Mr. John
20 Waller, that his attorney be relieved from representing
21 him. So if we could deal with the attorney matter
22 first, I think that would be the best way to proceed.

23 THE COURT: Okay. All right. And, Mr. Waller?

24 MR. WALLER: Your Honor, I've spoken with my client,
25 I think he could probably better address. I believe

1 he's going withdraw that motion and we're going to go
2 forward today probably with me representing him. But
3 I'll let Mr. Moses speak to that.

4 THE COURT: All right. Mr. Moses?

5 MR. WALLER: Judge, Mr. Moses has had some health
6 issues, so if he's a little slow getting up and down.
7 Please bear with us.

8 MR. MOSES: Yes, sir, Your Honor. I reconsidered
9 that motion, but I would like to reserve the right to
10 revisit it at a later date if things don't go according
11 or we're not on the same page at any time. I will let
12 Mr. Waller continue representing me now.

13 THE COURT: Okay. Well, let me tell you how I will
14 handle that. Okay. And you tell me whether you want to
15 continue like this. Okay.

16 MR. MOSES: Yes.

17 THE COURT: Okay. If you want to withdraw the
18 motion for him and let him continue to represent you, I
19 will withdraw that motion. If you decide later on you
20 want to hire another attorney or try and represent
21 yourself, you'll have to file a new motion.

22 MR. MOSES: Okay.

23 THE COURT: Do you understand that?

24 MR. MOSES: Yes, sir.

25 THE COURT: Any problems with that?

1 MR. MOSES: No, not at all.

2 THE COURT: All right. Then what I will do is I
3 will note on the record and we can do a Form 4
4 withdrawing your motion to have Mr. Waller relieved as
5 your attorney.

6 MR. MOSES: Okay.

7 THE COURT: So now I'm going to let him speak on
8 your behalf.

9 MR. MOSES: All right.

10 THE COURT: Thank you, sir. All right.

11 MR. MOSES: If I may add, Your Honor, may I add one
12 more thing? Just from what the Solicitor said, when I
13 did file the application in 2017, there was other
14 motions attached to it that have never been addressed.
15 So if we can also address those before we do anything
16 else, I'd --

17 THE COURT: Well, I don't know about that. Have you
18 had an opportunity to talk with Mr. Waller about this?

19 MR. MOSES: Yes, sir.

20 THE COURT: Okay. All right. Then I'm going to let
21 Mr. Waller take it from there. Okay. Mr. Waller?

22 MR. WALLER: Judge, and kind of as some background,
23 this was filed in 2017. Judge, certainly these
24 applications are not a very common thing that gets filed
25 and I really don't think when it was initially filed, I

1 don't think anybody really knew what to do with it.
2 First they sent it to the Attorney General's office to
3 handle. They quickly realized that they're not the ones
4 to handle it, it's supposed to go back to the
5 Solicitor's office. I believe one of the members of the
6 Public Defender's office was initially appointed to
7 represent Mr. Moses.

8 Also, it kind of did cycle around. There were some
9 issues getting things filed. I think, again, just
10 nobody really knew where to put stuff from a case that
11 was, you know, over ten years old. So, Judge, we've
12 gotten those I think worked out and we're obviously here
13 today.

14 Judge, just a couple of house --

15 THE COURT: Just one housekeeping thing that I want
16 to make sure about because in among the many documents
17 that I have in this file -- well, my file is a separate
18 court file, but apparently Mr. Moses filed a motion for
19 writ of mandamus with the Supreme Court.

20 MR. WALLER: Judge, Mr. Moses has sent a few things
21 to the Supreme Court. There was, just off the top of my
22 head, I know there were two times or at least I think
23 when he initially filed his application, it was received
24 in the clerk's office and wasn't filed for some time.
25 And I think that that's the document that Your Honor

1 has. I think that's what that is addressing. And the
2 Supreme Court, I -- did step in at, I think, two
3 different times and directed the clerk's office to do
4 something.

5 THE COURT: And that's why we're here?

6 MR. WALLER: That is why we're here.

7 THE COURT: Okay.

8 MR. WALLER: The Supreme Court has been involved. I
9 think all those issues have been addressed.

10 THE COURT: Okay. All right. Continue.

11 MR. WALLER: Another housekeeping matter, Judge, I
12 sent a subpoena to the sheriff's office for some
13 personnel records. Judge, I don't believe anyone is
14 here in compliance with my subpoena with those
15 documents.

16 THE COURT: And I don't know. Mr. Scott, are you
17 aware of a subpoena sent to --

18 MR. SCOTT: I'm not aware of that subpoena, Your
19 Honor.

20 THE COURT: Yeah.

21 MR. WALLER: Judge, yes, sir. And I just wanted to
22 make the Court aware of that. I'd like to make it a
23 Court's Exhibit if I can. I just received the, you
24 know, affidavit of service back last night.

25 THE COURT: Was the subpoena documents affect how

1 you present your case?

2 MR. WALLER: I don't believe they will, Judge. They
3 are kind of a tangential issue and I don't even know
4 what they would have contained.

5 THE COURT: Okay.

6 MR. WALLER: But I would like to make it a Court's
7 Exhibit if I can.

8 THE COURT: Sure.

9 (WHEREUPON, Court's Exhibit Number 1 was marked and
10 entered)

11 MR. WALLER: Judge, I guess the second housekeeping
12 matter. One of the -- one of the requirements in
13 application for postconviction DNA testing is that the
14 items still exist. I've sent a couple of different
15 requests to the clerk's office and I have not received
16 confirmation whether these items still exist or not.
17 That's kind of a nonstarter if the evidence is still in
18 existence. So I wanted to put that on the record.

19 THE COURT: This is from a 2000, is this from an
20 event that happened 13 years ago?

21 MR. WALLER: Yes, Your Honor. I believe it was 2006
22 -- 2005.

23 MR. SCOTT: It happened in 2006, it was tried in
24 2009.

25 THE COURT: Yeah.

1 MR. WALLER: Yes.

2 MR. SCOTT: There's been plenty of PCR's and appeals
3 and everything else in this matter.

4 MR. WALLER: There has. I don't have confirmation.
5 I mean, Judge, that's the very first element for your
6 consideration is whether the items still exist. I just
7 wanted to, you know, put on the record that I don't have
8 confirmation despite my request just to confirm whether
9 it existed or not.

10 THE COURT: Okay. All right. Well, that's number
11 one on the list. Okay.

12 MR. WALLER: Judge, there were numerous items tested
13 and taken for potential testing in this case. The two
14 items that we're requesting are item 8.3 and 19. And,
15 Judge, those were the -- a swab of the inside of a
16 pocket of the shorts that were tested. There were other
17 testing done from kind of the body of those shorts that
18 did match the victim in this case Mr. Livingston, Judge,
19 but the --

20 THE COURT: That was 8.3?

21 MR. WALLER: 8.3, Judge.

22 THE COURT: Was the swab from the inside pocket of
23 the shorts?

24 MR. WALLER: Yes, sir. And it was taken to
25 establish ownership of the shorts. That was never

1 tested. Judge, the other items we're seeking testing of
2 is item 19 and that was the scrapings under the
3 fingernails.

4 THE COURT: Okay.

5 MR. WALLER: Judge, there were particularly as it
6 relate to the shorts, there was some discrepancies as to
7 when those items were -- the swabs were actually taken.
8 They were originally submitted to SLED in 2006. Then
9 again in 2008 there was my resubmitted. Judge, the
10 documents read as they were new swabs done in 2008 which
11 doesn't quite make sense when they were already swabbed
12 but not processed in 2000 -- they were processed in
13 2008, but they were -- there's documents that they were
14 also processed in 2006. The testing was never actually
15 conducted.

16 Judge, as it relates to identity being an issue,
17 Mr. Moses has always maintained he gave a statement to
18 law enforcement -- he gave multiple statements to law
19 enforcement. He testified at the trial that there was
20 an altercation. That he was defending himself from
21 Mr. Livingston and a large dog. And that he picked up a
22 knife to defend himself and swung it, but had no
23 knowledge or anything of ever actually making contact
24 with anybody. He's maintained that throughout the
25 entire time. He did say that he was able to kind of

1 wrestle away a large -- I think they described it as an
2 ax handle with no ax head on it away from Mr. -- from
3 the victim in this case. He did strike him with that,
4 but the stab wounds are what, I think, ultimately led to
5 his death.

6 Judge, the -- well, the indictment was amended at
7 the trial to include blunt force trauma. But the
8 original investigation centered around the stabbing,
9 Your Honor.

10 Judge, he -- from the beginning and the transcript
11 reflects that there was a pretty contentious *Jackson*
12 *verse Denno* hearing. Mr. Moses has maintained that he
13 had repeated requests for a lawyer before speaking with
14 law enforcement both times. That he was kind of coerced
15 into making the statements. Promised that he was not
16 going to be arrested. Things of that nature.

17 Judge, even during his testimony at the *Denno*
18 hearing as well as during the trial, he maintained that
19 the statement that was written by Investigator
20 Rodriguez, the investigator took the statement, my
21 apologies if I got that name wrong, had been changed in
22 certain ways. It was not what he testified to.

23 Judge, actually there was a directed verdict motion
24 was made that the only evidence presented was his
25 statement that he can't be prosecuted without

1 corroborating evidence. So I certainly think that
2 identification is not as cut and dry as the State
3 believed.

4 Judge, there is lengthy testimony in the record
5 that, I think, you know, bears that out or Mr. Moses is
6 certainly here today to answer any questions the Court
7 has. I have some of the discovery documents if the
8 Court would like to see them as far as the testing and
9 things of that nature just so Your Honor can see some of
10 the discrepancies.

11 THE COURT: If you have stuff that you want me to
12 look at, do you have it marked like that?

13 MR. WALLER: I don't have it marked yet, Your Honor.

14 THE COURT: Okay. Would you show copies --

15 MR. WALLER: Yes, sir. Absolutely.

16 THE COURT: Okay. Now, before you do that, let me
17 ask a question.

18 MR. WALLER: Sure.

19 THE COURT: Okay. Now, you said there were *Jackson*
20 *v. Denno* contentious hearing, he made a directed verdict
21 motion, was that issue appealed?

22 MR. WALLER: Your Honor, I -- beg the Court's
23 indulgence.

24 THE COURT: Yeah.

25 MR. WALLER: Yes, Your Honor, my client tells me it

1 was. I apologize.

2 THE COURT: Okay. So that issue was appealed and
3 addressed by either the Court of Appeals or the Supreme
4 Court?

5 MR. WALLER: Yes, Your Honor.

6 THE COURT: Do you know how they ruled on that?

7 MR. WALLER: Your Honor, obviously -- the Court
8 ruled on the voluntariness of the statement.

9 THE COURT: Obviously.

10 MR. WALLER: Yes, sir.

11 THE COURT: And then so it came in, the jury got to
12 decide whether -- he testified, so they got to consider
13 voluntariness again; correct?

14 MR. WALLER: Yes, sir, they did.

15 THE COURT: Okay. His attorney made a motion, a
16 directed verdict motion and I'm assuming because we're
17 here, the judge denied it?

18 MR. WALLER: Yes, sir. And --

19 THE COURT: And it was appealed?

20 MR. WALLER: -- the outcome of the appellate review
21 is -- we're still here.

22 THE COURT: All right. Go ahead then. Okay. I
23 didn't mean to interrupt you. You want to put those --
24 those are Applicant's Number One?

25 MR. WALLER: Yes, Your Honor.

1 THE COURT: Okay. If you come down here, the court
2 reporter will put it down as Applicant's Number One, but
3 if you'd tell me how many pages it is and what basically
4 it is so that we can have it on the record pretty
5 clearly.

6 MR. WALLER: It's 26 pages. It is SLED
7 documentation surrounding the DNA testing that was
8 conducted. What was submitted to them, the analysis of
9 what they actually processed and what they did not
10 process. That's all it contains, Your Honor.

11 THE COURT: All right. Okay. Any objection, Mr.
12 Scott? Anything you want to put on the record?

13 MR. SCOTT: I have plenty I'd like to put on the
14 record, but I have no objection to that being a Court's
15 Exhibit.

16 THE COURT: Okay. Well, actually it's going to be
17 Applicant's Exhibit One.

18 (WHEREUPON, Applicant's Exhibit Number 1 was marked
19 and entered)

20 THE COURT: And I believe, Mr. Waller -- well, go
21 ahead. Katherine, tell me when it's marked so I can
22 start asking something again, okay?

23 MS. SPIRES: Okay. Yes, sir.

24 THE COURT: Mr. Waller, the -- okay, we put that in.
25 I got those. You can continue. Okay -- oh, Mr. Scott,

1 something you want to say before we --

2 MR. SCOTT: I'll let him finish and then I'd like to
3 speak.

4 THE COURT: Oh, yeah. Okay. All right. Mr.
5 Waller?

6 MR. WALLER: Your Honor, essentially, I mean, that's
7 the Applicant's case. This was -- this was a drug
8 house. There were -- the victim in the case was, you
9 know, was actively dealing drugs as was Mr. Moses.

10 Judge, the, you know, the DNA has to show there's
11 potential other identity out there. And, Judge, we
12 think that the -- certainly the things we've requested
13 are tailored to that and limited to that. Obviously,
14 the fingernail clippings is a big factor. Because if
15 Mr. Livingston was involved in any other altercation
16 that's going to show that. If he has other DNA under
17 his fingernails that's certainly -- would be evidence of
18 that.

19 Judge, the discrepancies in the -- what was
20 submitted as far as the blue jean shorts, the blue
21 jeans, the different times they were -- the record show
22 they were processed. Judge, that's the question about
23 the identity of the blue jeans. The shorts, Mr. Moses
24 told, you know, told law enforcement where to find the
25 shorts. So his concern there is more whether they are

1 accurate, you know, whether it was accurately done or
2 not.

3 Judge, I don't believe any of this has ever -- the
4 two items that we're requesting has ever been tested.
5 You know, the State assumed that they had. Identity
6 kind of nailed down from Mr. Moses' statement. I would
7 disagree with that to some extent.

8 Judge, everything was submitted to SLED only certain
9 items were tested. You know, I know that the counties
10 that submit items to SLED have limits. But this was,
11 you know, a very serious allegation, very serious crime,
12 and something we need to get right. So the applicant
13 would just request that these two items be retested or
14 tested for the first time.

15 THE COURT: All right. Thank you, sir. All right.
16 Mr. Scott, they want these two items tested by SLED.
17 What's the State's position?

18 MR. SCOTT: Thank you, Your Honor. Your Honor, the
19 State's position is identity is not an issue in this
20 case. Absolutely one hundred percent it is not an issue
21 in this case. He gave a statement to law enforcement
22 saying he was involved in this altercation with the
23 victim. I know he contested that at trial. There was a
24 *Jackson v. Denno* hearing. I believe Investigator
25 Rodriguez was the one who took the defendant's statement

1 and I believe that is probably why Mr. Waller sent a
2 subpoena a week ago for Investigator Rodriguez's
3 personnel file.

4 We're not here to talk about the voluntariness of
5 the statement that the defendant gave to law enforcement
6 at the time of his arrest. And I would point out, Your
7 Honor, that at trial, the defendant took the stand. So,
8 you know, forget about the written statement he gave to
9 law enforcement. He took the stand right here in this
10 courtroom and testified that he was involved in an
11 altercation with the victim.

12 And he testified and I have the transcript from the
13 trial if you would like to read it. I've gone through
14 it and I've made just a very lengthy factual synopsis of
15 this case. He said at trial, this is his testimony,
16 Your Honor, he says he went to the house to buy drugs.
17 He stated he got into an altercation after the drug
18 transaction was completed. The defendant, he testified
19 he started to leave the residence when the victim and
20 the victim's dog blocked him from leaving.

21 He said the victim picked up a stick at this point
22 and began hitting him, the defendant. The defendant
23 testified he was able to pick up a knife and that he
24 began swinging it primarily at the dog, but he can see
25 that he may have struck the victim in the process.

1 The defendant said that the victim knocked the knife
2 out of his hand. So the defendant grabbed the stick
3 that the victim was holding and as they were tussling,
4 they both fell over a chair.

5 The defendant said he got up and he tried to leave
6 again, but the dog was still blocking his exit. The
7 defendant said that the victim grabbed the defendant's
8 leg to prevent the defendant from leaving. The
9 defendant said it was at this point that the victim
10 yelled, "Kill him, Bowser! Kill him! Kill him!"
11 Talking to the dog.

12 The defendant said he told the victim to let go of
13 his leg and when the victim refused, the defendant said
14 he hit the victim with the stick a couple of times and
15 told the victim let go.

16 The defendant said he was then able to position some
17 chairs between him and the dog and he was able to exit.

18 Your Honor, after leaving, the defendant said he saw
19 blood on his pants and he wanted to get this blood off
20 of him, so he went to a friend's house by the name of
21 Jeffrey Connor and he took those pants off. Referring
22 to the pants, the defendant testified, quote, "I didn't
23 want to leave them at Mr. Connor's house again, because
24 if there was blood on them it might have been somebody
25 else's blood and I thought that would be just rude or

1 nasty just to leave a pair of bloody pants laying around
2 somebody's house. So I just took them outside. And he
3 did haven't a trash can, so I just stuck them in the
4 side of the porch right there and I said I would just
5 come back and dispose of them tomorrow or something."

6 And police, Your Honor, they recovered those shorts.
7 The defendant said he stuck inside of the house. And
8 when they recovered those shorts, Your Honor, they sent
9 them to SLED. And that was item 8 when it was logged in
10 at SLED.

11 And if you look at the State's response that
12 Ms. Cornwell provided, Your Honor. I had it right here.
13 If you look at the State's response --

14 THE COURT: And just --

15 MR. SCOTT: There's a copy of the DNA report
16 attached as an exhibit.

17 THE COURT: Okay. What I'm trying to do is --

18 MR. SCOTT: It's one of the two documents that was
19 kind of turned sideways when it was handed up.

20 THE COURT: Oh. Okay. The State's response --

21 MR. SCOTT: Yes.

22 THE COURT: It was filed, it looks like, was it
23 November?

24 MR. SCOTT: Yes, Your Honor. November of 2017.

25 THE COURT: Okay. And --

1 MR. SCOTT: If you go to Attachment B, you can see
2 all the different items that were sent to SLED for
3 testing.

4 THE COURT: Okay. And just hold on just one second.
5 Mr. Waller, do you have a copy of that?

6 MR. WALLER: I do, Your Honor.

7 THE COURT: Okay. Just wanted to make sure. Go
8 ahead.

9 MR. SCOTT: So when you look at item 8, that is the
10 shorts. And I don't know if you know how SLED does it
11 when they get things at the lab, but if they have one
12 item such as shorts and they want to test different
13 areas on that item, what they do is they make cuttings
14 or they take swabs from different areas of the shorts.
15 And they will label those cuttings or they will label
16 those swabs as point something.

17 So they have the shorts which is item 8, they take
18 two cutting, one is 8.1, one's 8.2, and then they take a
19 swab from inside the pocket and that's 8.3.

20 So when he says the shorts haven't been tested,
21 that's not correct. There were two spots on the shorts
22 that were tested. Shorts that the defendant said he
23 stuck inside of Mr. Jeffrey Connor's house that have the
24 victim's blood on it.

25 Your Honor, it's just -- this is not a case for

1 subsequent forensic DNA testing. This is not an
2 identity case. They have not met their burden. The
3 Defendant testified in this courtroom that he acted in
4 self-defense and the jury did not believe that argument
5 and they found him guilty. And, Mr. Moses, you know, I
6 understand why he does it, I mean, he files for an
7 appeal, he files for PCR, and those didn't pan out for
8 him and so now he's trying to use this vehicle to get a
9 new trial. And this is not the vehicle for a new trial.

10 If you look at his application on page 3, he says,
11 "The evidence was not subject to DNA testing due to
12 ineffective assistance of counsel." You know, that's
13 not why we're here, ineffective assistance of counsel.

14 I would submit that identity is clearly not an issue
15 in this case. The items they want tested, at least as
16 far as 8.3 -- I mean, item 8, was tested. It had the
17 victim's blood on it.

18 Fingernail scrapings. I don't necessarily think
19 that would prove anything regarding this assault. I
20 mean, you know, there could be corroborating evidence
21 there, there could be non-corroborating evidence there.
22 But, you know, the bottom line is it's not a whodunit
23 sort of case.

24 There were several witnesses in the house that night
25 that left -- that they testified that when they left,

1 the only two people remaining in the house were the
2 defendant and the victim. And the victim's body was
3 discovered early, early that morning, Your Honor. You
4 know, within, I believe, if I remember correctly, within
5 five or six hours, I believe.

6 And I do have a copy of the transcript if you would
7 like to make that a Court's Exhibit, I'm happy to do
8 that or a State's Exhibit.

9 THE COURT: Yeah, I'd like to make that a Court's
10 Exhibit. Have you got a copy of the transcript?

11 MR. WALLER: I do, Your Honor.

12 THE COURT: Okay. All right. Do we have it in
13 electronic form or do you know?

14 MR. WALLER: I have electronic I'd be happy to
15 provide the Court.

16 THE COURT: Okay. Well, let's just note for the
17 record that an electronic copy of that will be Court's
18 Two. Okay. And if y'all would send that to me.

19 MR. WALLER: Judge, if I can just clarify very
20 briefly and respond and clarify one thing, I think I
21 misspoke about the second item number. I think I called
22 it 19, it's actually 18, Judge. Nineteen was the blood
23 standard of the victim in the case. Eighteen is the
24 fingernail scrapings.

25 THE COURT: Okay.

1 MR. WALLER: Judge, just almost to reiterate what
2 Mr. Scott said. I would ask that you read the portions
3 of the transcript that revolve around the statements and
4 Mr. Moses' testimony. You know, item 8, the shorts were
5 -- portions of them were tested, but there were three,
6 you know, three subparts done and only two of those
7 subparts were tested. So certainly item 8 was tested in
8 some fashion, but not everything that they had taken
9 from there.

10 Judge, I would just ask you to read the statement,
11 read the testimony before reaching your decision.

12 THE COURT: And I will be happy to do that. But let
13 me ask you a question, if I've got blue jean shorts and
14 blood was taken from two different areas in the shorts,
15 the -- taking a swab from the pockets, what do you hope
16 that's going to show?

17 MR. WALLER: The pocket or sometimes they'll do the
18 inside of the waistband is looking for the identity of
19 the person wearing them. You stick your hands in your
20 pockets or your waistband might touch your skin. The
21 blood that was tested was to show the identity of the
22 victim, Your Honor.

23 THE COURT: To show -- these shorts were the
24 victim's shorts?

25 MR. WALLER: No, sir. Those shorts were --

1 THE COURT: Those were the defendant's shorts;
2 right?

3 MR. SCOTT: The blood on the shorts.

4 MR. WALLER: The blood on the shorts was the
5 victim's. The testing or the swab done of the inside of
6 the pockets was taken to show the identity of who was
7 wearing them.

8 THE COURT: Okay. So the record indicates that
9 those were not his shorts? Or y'all just saying -- I'm
10 just kind of curious what you're trying to get at.

11 MR. WALLER: Judge, he switched clothes and he left
12 the residence, the victim's residence about 3 o'clock in
13 the morning, went to someone else's home and switched
14 pants. And stuffed a pair of shorts in the stairs of
15 the porch or something like that. With the
16 discrepancies in when they were tested, the amount of
17 blue jeans that were tested, Your Honor, Mr. Moses
18 contends that there is a discrepancy in whose shorts
19 contained all the blood.

20 THE COURT: Okay. All right. Thank you,
21 Mr. Waller.

22 MR. WALLER: Thank you, Your Honor.

23 MR. SCOTT: I liked your question, I'm not sure we
24 got an answer to it. I mean, he admitted that he took
25 these blue jean shorts and stuffed them inside of the

1 house. They were recovered and they had the victim's
2 DNA on it. The victim's blood on it. That was his
3 statement to law enforcement which a court and a jury
4 found was voluntarily given. And it was also his
5 testimony in court. That he stuffed some blue jean
6 shorts because they had blood on them inside Jeffrey
7 Connor's house.

8 THE COURT: Okay. What I'll do is if y'all will
9 make sure I get the copy of the transcript, I will read
10 those things, I will review the file, and I will get
11 back to y'all with my decision. Okay.

12 MR. SCOTT: I would just ask that you read
13 Ms. Cornwell's response, too.

14 THE COURT: Oh, no, I've got that. I've got that.
15 And I've got his application which I'm going to read,
16 too. Okay.

17 MR. WALLER: Thank you, Your Honor.

18 THE COURT: All right. Thank you.

19 MR. SCOTT: Thank you, Your Honor.

20 MR. MOSES: Before we leave, can I address you,
21 please, sir?

22 THE COURT: I'm sorry. What?

23 MR. MOSES: Can I address you before we leave?

24 THE COURT: What's he --

25 MR. MOSES: It's just in response to the question

1 that you just asked. And my issue with the shorts is,
2 in the DNA, in the SLED reports, Your Honor, it
3 indicates that there were two pair of shorts that were
4 tested. I have reports here from SLED that shows though
5 cuttings from those shorts and those shorts were
6 submitted to SLED in 2006. And the cuttings were made.

7 Then I have another report from SLED that the lady,
8 the analysis or whoever you call her, she said that she
9 made cuttings on shorts in 2008. So it shows that
10 there's two different pairs of shorts that they
11 submitted into evidence instead of the one pair.

12 THE COURT: Okay. I'll look over the SLED report
13 and see. But --

14 MR. SCOTT: One thing I don't think they're touching
15 on is how is identity an issue in this case?

16 MR. MOSES: Because if they weren't my shorts --

17 THE COURT: Okay. All right. Thank y'all. I'll
18 read over everything and get back to y'all. Okay.
19 Thank y'all very much.

20 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

21

22

23

24

25

1

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Orangeburg County, South Carolina, on the 28th of August, 2019.

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

March 11, 2020

Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter



August 21, 2019

Orangeburg County Sheriff's Office
P.O. Box 9000
Orangeburg, SC 29116-9000

Re: State of South Carolina vs. George Napoleon Moses
Indictment Nos: 2006-GS-38-2568, 2006-GS-38-2067

To Whom It May Concern:

Please find enclosed a subpoena in the above referenced case for service upon your office.

If you have any questions, please do not hesitate to ask. My telephone number is 803-520-7278.

Sincerely,

Jonathan D. Waller

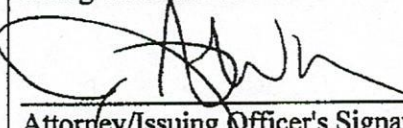
Enclosures

Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201

803-520-7278
www.wallerlawgroup.com
jonathan@wallergroupsc.com



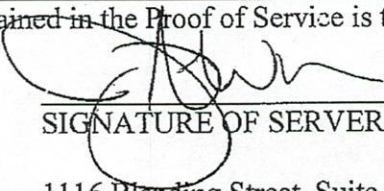
SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA COURT OF GENERAL SESSIONS	COUNTY ORANGEBURG
STATE OF SOUTH CAROLINA V. GEORGE N. MOSES	CASE NO. 2006-GS-38-2568, 2006-GS-38-2067
	SUBPOENA FOR <input checked="" type="checkbox"/> PERSON <input checked="" type="checkbox"/> DOCUMENT(S) OR OBJECT(S)
TO: Orangeburg County Sheriff's Office	
<input checked="" type="checkbox"/> YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.	
PLACE Orangeburg County Courthouse 1406 Amelia St Orangeburg, SC 29115	COURTROOM Judge Dickson
	DATE AND TIME August 28, 2019
<input checked="" type="checkbox"/> YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).	
LIST DOCUMENT(S) OR OBJECT(S) Deputy Ramon Rodriguez personnel file	
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.	
 _____ Attorney/Issuing Officer's Signature Attorney for Defendant Attorney's Address And Telephone Number 1116 Blanding Street, Suite 2B, Columbia, SC 29201	8/21/2019 Date
	Jonathan D. Waller Print Name
803-520-7278 Clerk of Court or	DATE
(By) Deputy Clerk	
Pro Se Defendant's Name, Address and Telephone Number (If Issued by Clerk for Pro Se Defendant)	

PROOF OF SERVICE

SERVED Orangeburg County Sheriff's Office	DATE 8/21/2019	PLACE 1520 Ellis Avenue Orangeburg, SC 29118
SERVED ON (PRINT NAME)		MANNER OF SERVICE United States Postal Service
SERVED BY (PRINT NAME) Jonathan D. Waller		TITLE Attorney

DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.	
Executed on <u>8/21/2019</u>	 <hr/> SIGNATURE OF SERVER
	<u>1116 Blanding Street, Suite 2B, Columbia, SC</u> <u>29201</u> ADDRESS OF SERVER

EVIDENCE PROCESSING WORKSHEET

SLED Lab Number: L06-13571
 Agency: Orangeburg CSO
 Victim(s): [V] Harry Livingston
 Subject(s): [S] George Moses
 Assigned To: Betty W. Butler
 Assisted By:
 Processing Rm: I
 Date Processed: 5/7/08

Quality Control Tests Performed: Phen. Lot #7284-22, H2O2 Lot #H324-500

Item 8.0 *Blue jean shorts* – Brand “Roc-a-wear” size 36. See diagram for cuttings. Representative samples taken.

8.1 Cutting (+) Phen.

8.2 Cutting (+) Phen.



8.3 Swab from scraping of pockets, ownership.

Item 9.0 *Blue jeans with brown belt* – Brand “Levi’s Carpenter loose straight” size W34 X 30. Numerous areas negative for Phen.

9.1 Swab from scraping of pockets, ownership.

9.2 Swab from ends of belt, ownership.



Victim/Suspect

Lab #: 106-13571

Item #: 8.0

Examiner: AWA

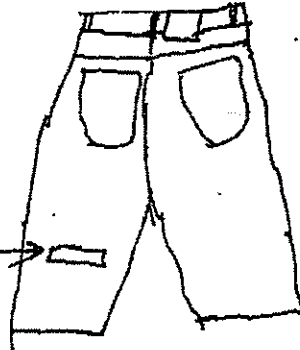
Date: 5/7/08

Blue Jean Shorts



Cutting
8.1 (+)
Phen.

Front



Cutting
8.2 (+)
Phen.

Back

Notes: 8.1 + 8.2 (+) Phen-cutting.
Representative samples taken.

8.3 - swab for ownership.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION ⁶⁶⁷



Case Jacket for L06-13571

LHM

Lab Control Number L06-13571 **Case Type** DEATH INVESTIGATION
Offense Date 9/29/2006
Offense Location [REDACTED]
County [REDACTED]
Investigating Agencies
 Orangeburg County Coroner's Office
 Orangeburg County Sheriff's Office

Case Names

<u>Name Type</u>	<u>Last Name</u>	<u>First Name</u>	<u>Middle Name</u>	<u>Sex</u>	<u>Race</u>	<u>DOB</u>
V	Livingston	Harry		M	B	[REDACTED]
S	Moses	George		M	B	

Submissions

<u>Sub #</u>	<u>Date</u>	<u>Submitted By</u>	<u>Submitting Agency</u>	<u>Type</u>	<u>Comments</u>
1	10/2/2006	Rod Green	Orangeburg County Sheriff's Office		
2	10/9/2006	Deputy Coroner	Orangeburg County Coroner's Office	Hand Delivered	

Items

<u>Sub #</u>	<u>Lab Item #</u>	<u>Type</u>	<u>Description</u>	<u>Location</u>	<u>Service Request</u>
2	0.EP	File		BJW2	
2	0.TOX	File		FILE	
1	1	Digital Media	One CD bearing crime scene photos serial#	PHOTONEG	Digital Media Storage
1	2	Miscellaneous	Two pieces of broken chair found near victim	RET	Processing
1	3	Miscellaneous	Knife found beneath victim	RET	Processing
1	3.1	Swab(s)	Swab of blood from blade of item 3	RET	
1	3.2	Swab(s)	Swab of blood from handle of item 3	RET	
1	4	Swab(s)	Swab of blood from light switch next to exit door	RET	DNA Analysis
1	5	Swab(s)	Swab of blood from dresser in master bedroom	RET	DNA Analysis
1	6	Swab(s)	Swab of blood from passenger door handle of vehicle driven by	RET	DNA Analysis
1	7	Swab(s)	Swab of blood from passenger door below the window of	RET	DNA Analysis
1	8	Clothing	Bloody shorts found at [REDACTED] Myers Rd.	BJW2	
1	8.1	Cutting(s)	From blue jean shorts	DNAR	
1	8.2	Cutting(s)	From blue jean shorts	DNAR	
1	8.3	Swab(s)	From pockets of blue jean shorts	DNAR	

Items (Continued)

<u>Sub #</u>	<u>Lab Item #</u>	<u>Type</u>	<u>Description</u>	<u>Location</u>	<u>Service Request</u>
1	9	Clothing	Pair of blue jeans collected at 4515 Bushy Rd.	BJW2	
1	9.1	Swab(s)	From blue jeans	DNAR	
1	9.2	Swab(s)	From belt in blue jeans	DNAR	
1	10	Miscellaneous	Pay stub belonging to Harry Livingston, collected at 1698	RET	Storage
2	11	Blood (Toxicology)	labeled "Harry Livingston FA06-617"	DISPOSED	Analysis by (HSGC and/or HSGC/MS), Blood Drug Screen (ELISA), Blood Drug Screen (FPIA), Cocaine, TOX-Coroner Case
2	12	Urine		DISPOSED	Analysis by (HSGC and/or HSGC/MS), TOX-Coroner Case
2	13	Ocular fluid		DISPOSED	Analysis by (HSGC and/or HSGC/MS), TOX-Coroner Case
2	14	Bile		DISPOSED	No Analysis Performed, TOX-Coroner Case
2	15	Gastric		DISPOSED	No Analysis Performed, TOX-Coroner Case
2	16	Brain		DISPOSED	No Analysis Performed, TOX-Coroner Case
2	17	Liver		DISPOSED	No Analysis Performed, TOX-Coroner Case
★ 2	18	Fingernail clippings	Harry Livingston	RET	DNA Analysis
2	19	Blood standard	Harry Livingston	RET	DNA Analysis

Assignments

<u>Seq#</u>	<u>Section Assigned</u>	<u>Analyst</u>	<u>Date Assigned</u>	<u>Comments</u>
2	EC		10/2/2006	
3	EP	BJW2	5/7/2008	
6	DNA		10/9/2006	

Approved Reports

<u>Rpt #</u>	<u>Section</u>	<u>Analyst Assigned</u>	<u>Date Assigned</u>	<u>Date Completed</u>	<u>Turn Around</u>
0	PH	ALS1	10/2/2006	10/2/2006	1
1	CTCR	IWJI	10/2/2006	10/16/2006	15
2	LP	RAG1	10/2/2006	10/17/2006	16
3	TOX	DWS1	10/9/2006	10/26/2006	18

End of Case Jacket for L06-13571

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Roman Rodriguez
Orangeburg County Sheriff's Office
P. O. Box 9000
Orangeburg, SC 29116

EVIDENCE PROCESSING
May 29, 2008
SLED LAB: L06-13571
Your Case No: FA06-617
Incident Date: 9/29/2006
(V) Harry Livingston
(S) George Moses

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 8 Blue jean shorts

RESULTS:

Potential evidence collected and sent to the DNA Department.

Item: 9 Blue jeans with belt

RESULTS:

No blood detected.
Potential evidence collected and sent to the DNA Department.



SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Chain Of Custody

L06-13571

12/11/08 11:08 B Evidence Disposition Returned to Agency in person

Kim Pugh

Kimberly Pugh-Orangeburg CSO

Item 8: One(1) sealed cardboard box containing clothing described as Bloody shorts found at 1698 Myers Rd.

Submissions

Date	Time	Submitted by
10/2/06	11:08	Rod Green of the South Carolina Law Enforcement Division
9/23/08	13:49	Kimberly Pugh of the Orangeburg County Sheriff's Office

Kim Pugh

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/2/06	11:08	C	Forensic Scientist	Roderick Green
10/2/06	11:16	C	Forensic Technician	Nikki Perry
10/2/06	11:16	C	Evidence Room (150)	Proc evidence intake storage
6/27/07	14:44	C	Forensic Technician	Selena Kinard
6/27/07	14:46	C	Temporary Evidence Room (156)	Proc evidence intake storage
7/16/07	11:45	C	Forensic Technician	Selena Kinard
7/16/07	11:46	C	Temporary Evidence Room (156)	Proc evidence intake storage shelf P
3/3/08	15:53	C	Forensic Technician	Amy Stephens

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Chain Of Custody

L06-13571

3/3/08	15:58	C	Evidence Room (150)	Large Evidence Processing Intake Shelf 2
5/5/08	15:11	C	Forensic Technician	Amy Stephens
5/5/08	15:11	C	Forensic Technician	Betty W. Butler
5/21/08	15:48	C	Forensic Technician	Selena Kinard
5/21/08	15:50	C	Evidence Room (150)	Bin 15 Shelf B
5/29/08	11:06	C	Forensic Technician	Selena Kinard
5/29/08	11:07	C	Evidence Disposition	Returned to Agency in person
<div style="border: 1px solid black; padding: 5px; display: inline-block; margin-top: 10px;"> </div>				
Gerald Carter-Orangeburg CSO				
9/23/08	13:49	C	Forensic Technician	Amy Stephens
9/23/08	16:34	C	Evidence Room (150)	EP Intake Shelf 278

Item 8.1: One(1) sealed heat sealed pouch containing Cutting(s) described as From blue jean shorts

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
5/7/08	16:43	C	Forensic Technician	Betty W. Butler
5/7/08	16:45	H	Forensic Technician	Betty W. Butler
5/8/08	14:59	H	Forensic Technician	Sheree J. Brown
5/13/08	9:37	H	DNA Department	DNA Refrigerator fourth floor (Room 445)

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Chain Of Custody

L06-13571

7/11/08	8:44	H	Forensic Scientist	Laura H. Mills, Ph.D.
12/1/08	16:16	H	Forensic Technician	Patricia H. Crooks
12/1/08	16:54	H	Evidence Room (150)	Bin 8 Shelf D
12/11/08	11:04	H	Forensic Technician	Selena Kinard
12/11/08	11:05	H	Evidence Room (150)	Drugs For Return File Cabinets Kimberly Pugh-Orangeburg CSO
12/11/08	11:07	H	Forensic Technician	Selena Kinard Scanned the incorrect location. Items were supposed to be scanned to "Returned to Agency in Person". Rescanned to reflect correct location 10/11/08sk
12/11/08	11:08	H	Evidence Disposition	Returned to Agency in person
				<div style="border: 1px solid black; width: 150px; height: 50px; display: flex; align-items: center; justify-content: center;"> </div>
				Kimberly Pugh-Orangeburg CSO

Item 8.2: One(1) sealed heat sealed pouch containing Cutting(s) described as From blue jean shorts

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
5/7/08	16:43	C	Forensic Technician	Betty W. Butler
5/7/08	16:45	H	Forensic Technician	Betty W. Butler
5/8/08	14:59	H	Forensic Technician	Sheree J. Brown
5/13/08	9:37	H	DNA Department	DNA Refrigerator fourth floor (Room 445)
7/11/08	8:44	H	Forensic Scientist	Laura H. Mills, Ph.D.
12/1/08	16:16	H	Forensic Technician	Patricia H. Crooks

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Chain Of Custody

L06-13571

12/1/08	16:54	H	Evidence Room (150)	Bin 8 Shelf D
12/11/08	11:04	H	Forensic Technician	Selena Kinard
12/11/08	11:05	H	Evidence Room (150)	Drugs For Return File Cabinets Kimberly Pugh-Orangeburg CSO
12/11/08	11:07	H	Forensic Technician	Selena Kinard Scanned the incorrect location. Items were supposed to be scanned to "Returned to Agency in Person". Rescanned to reflect correct location 10/11/08sk
12/11/08	11:08	H	Evidence Disposition	Returned to Agency in person
Kimberly Pugh-Orangeburg CSO				

Kimberly Pugh

Item 8.3: One(1) sealed heat sealed pouch containing Swab(s) described as From pockets of blue jean shorts

Submissions

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
5/7/08	16:43	C	Forensic Technician	Betty W. Butler
5/7/08	16:43	H	Forensic Technician	Betty W. Butler
5/8/08	14:59	H	Forensic Technician	Sheree J. Brown
5/13/08	9:37	H	DNA Department	DNA Refrigerator fourth floor (Room 445)
7/11/08	8:44	H	Forensic Scientist	Laura H. Mills, Ph.D.
12/1/08	16:16	H	Forensic Technician	Patricia H. Crooks
12/1/08	16:54	H	Evidence Room (150)	Bin 8 Shelf D
12/11/08	11:04	H	Forensic Technician	Selena Kinard

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Chain Of Custody

L06-13571

12/11/08	11:05	H	Evidence Room (150)	Drugs For Return File Cabinets Kimberly Pugh-Orangeburg CSO
----------	-------	---	---------------------	--

12/11/08	11:07	H	Forensic Technician	Selena Kinard Scanned the incorrect location. Items were supposed to be scanned to "Returned to Agency in Person". Rescanned to reflect correct location 10/11/08sk
----------	-------	---	---------------------	--

12/11/08	11:08	H	Evidence Disposition	Returned to Agency in person
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Kimberly Pugh

Kimberly Pugh-Orangeburg CSO

Item 9: One(1) sealed cardboard box containing Clothing described as Pair of blue jeans collected at 4515 Bushy Rd.

Submissions

Date	Time	Submitted by
10/2/06	11:08	Rod Green of the South Carolina Law Enforcement Division
9/23/08	13:49	Kimberly Pugh of the Orangeburg County Sheriff's Office

Kimberly Pugh

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/2/06	11:08	C	Forensic Scientist	Roderick Green
10/2/06	11:16	C	Forensic Technician	Nikki Perry
10/2/06	11:16	C	Evidence Room (150)	Proc evidence intake storage
6/27/07	14:44	C	Forensic Technician	Selena Kinard
6/27/07	14:46	C	Temporary Evidence Room (156)	Proc evidence intake storage
7/16/07	11:45	C	Forensic Technician	Selena Kinard



**SLED LABORATORY
FORENSIC SERVICES REQUEST**

L06-13571

Sub# 5 Received (9/25/2008)
Orangeburg County Sheriff's Office
Agency Case #: FR08B17

Resubmit

Name of Investigating Officer: James Shumpert

Agency: Orangeburg Co SO Phone No: (803) 533-5810

Fax No: (803) 533-5840 Email: _____

Mailing Address: P.O. Box 9000

City: Orangeburg State: SC Zip Code: 29116

CC: _____

Agency ID/ORI No: 380000

Case No: 2006012588

Case Type: Homicide

Offense Date: 9/28/06

County: Orangeburg

Officer Involved Shooting Yes

Rush Yes

Has other evidence on this case been submitted to this lab?
 Yes No
If yes, Lab Number: L06-13571

Is this evidence related to another lab number?
 Yes No
If yes, Lab Number: _____

Death: Yes No if yes: Traffic Fatality Child Fatality Accidental Natural Unknown

Traffic Fatality: Driver Passenger Pedestrian Motorcyclist Bicyclist Boating Other _____

Other Causes: Gunshot Stabbing Beating Strangulation/Suffocation Drug/Poison/Alcohol Fire Disease
 Carbon Monoxide Hanging Electrocutation Heart Related Drowning Other _____

DUI: Felony Yes No (if felony resulted in death Victim's name is required)

Breath test given: Yes No if yes, reading: _____

Drugs Suspected: Yes No if yes, list drugs _____

Subject(s)	Sex	Race	DOB	SSN
<u>Mack, Moses</u>	<u>m</u>	<u>B</u>		

Victim(s)	Sex	Race	DOB	SSN
<u>Livingston, Harry</u>	<u>M</u>	<u>B</u>	<u>[REDACTED]</u>	

(10)ram

This Space Reserved For Lab Receipt Barcode.
LHM



**SLED LABORATORY
FORENSIC SERVICES REQUEST**

SLED LAB No. L06-13571
Submission: 5/9/25/2008 9:54:11AM

Name of Investigating officer: <u>Inv. James Shumpert</u>	ORI No: <u>SC0380000</u>
Agency: <u>Orangeburg County Sheriff's Office</u> Phone No: <u>531-4647</u>	Agency Case No: <u>2006012588</u>
Fax No: _____ Email: _____	Offense: <u>DEATH</u> <u>INVESTIGATION</u>
Mailing Address: <u>P.O. Box 9000</u>	County: <u>Orangeburg</u>
City / State / Zip: <u>Orangeburg, SC 29116</u>	Offense Date: <u>09/29/2006</u>
CC: _____	Officer Involved Shooting <input type="checkbox"/> Yes
	Rush: <input type="checkbox"/> Yes

Is this evidence related to another lab number?
 Yes No
 If yes, Lab Number: _____

Agency Item No.	Description of Evidence	Analysis Requested
18	Fingernail clippings - Harry Livingston	DNA ANALYSIS
19	Blood standard - Harry Livingston	DNA ANALYSIS

Subject(s)	Sex	Race	DOB	SSN
George Moses	M	B		

Victim(s)	Sex	Race	DOB	SSN
Harry Livingston	M	B	[REDACTED]	

Comments

All sealed evidence packages accepted by the laboratory are assumed to contain what they are "said to contain" by the submitter. The laboratory does not conduct a detailed inventory of evidence package contents during the evidence intake process.

[Handwritten signature]

SLED Lab No. 100 13571

Agency Item No.	Description of Evidence	Analysis Requested
1	BLOOD-077	TOXICOLOGY
2	URINE-078	TOXICOLOGY
3	OCULAR-079	TOXICOLOGY
4	BILE- 083	TOXICOLOGY
5	GASTRIC-082	TOXICOLOGY
6	BRAIN-084	TOXICOLOGY
7	LIVER-085	TOXICOLOGY
8	CLIPPED FINGER NAILS FROM EACH HAND	SEROLOGY/DNA
9	BLOOD	SEROLOGY/DNA
Comments		
FA08-017	HARRY LIVINGSTON	Orangeburg

Stanley B. Caldwell
Print Name of Delivering Officer

Stanley B. Caldwell
Signature of Delivering Officer

⑧ mm



**DEPARTMENT OF
FORENSIC DNA ANALYSIS**

Evidence Worksheet

Lab #: L06-13571
 Analyst: Laura H. Mills, Ph.D.
 Date: 11/10/08
 Victim: Harry Livingston
 Subject: George Moses

85
11/10/08

3.1	Swab of blood from blade of item 3		=					
3.2	Swab of blood from handle of item 3		+				NO	
4	Swab of blood from light switch next to exit door		+				YES	2 swabs
5	Swab of blood from dresser in master bedroom		+				YES	2 swab
6	Swab of blood from passenger door handle of vehicle driven by suspect, has been treated with LCV						UNKNOWN	2 swabs covered in bright blue/purple stain Phe was inconclusive due to color
7	Swab of blood from passenger door below the window of vehicle driven by suspect, has been treated with LCV						UNKNOWN	2 swabs covered in bright blue/purple stain No Phe performed
8.1	Cutting from blue jean shorts			+			YES	
8.2	Cutting from blue jean shorts			+			YES	
8.3	Swab from pockets of blue jean shorts							NAP – no standard from the subject

Lo-13571

[Redacted]								
9.1	Swab from blue jeans							NAP – no standard from the subject
9.2	Swab from belt in blue jeans							NAP – no standard from the subject
18	Fingernail clippings-Harry Livingston							NAP – no standard from the subject
19	Blood standard-Harry Livingston							Purple top – on paper 10-13-06 by SJB

Phenolphthalin SR 1170
3% H₂O₂ SR 1118
Quality Control OK

AP Spot SC
Quality Control

210
2007

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Chain Of Custody

L06-13571

Date	Time	Submitted by
10/9/06	10:30	Deputy Coroner Stanley B. Caldwell of the Orangeburg County Coroner's Office

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/9/06	10:30	F	Forensic Technician	Karonda M. Williams

10/9/06	10:48	F	Evidence Room (150)	Toxicology evidence intake storage
---------	-------	---	---------------------	------------------------------------

10/9/06	15:32	F	Forensic Technician	Brandon A. Williams
---------	-------	---	---------------------	---------------------

10/9/06	15:39	F	Toxicology Department	Refrigerator
---------	-------	---	-----------------------	--------------

10/10/06	15:56	F	Forensic Scientist	Dustin Smith
----------	-------	---	--------------------	--------------

5/1/07	13:09	F	Toxicology Department	Disposal of evidence in Biohazard trash
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Item 18: One(1) sealed Autopsy packet containing Fingernail clippings described as Harry Livingston

Submissions

Date	Time	Submitted by
10/9/06	10:30	Deputy Coroner Stanley B. Caldwell of the Orangeburg County Coroner's Office

9/25/08	9:54	Kimberly Pugh of the Orangeburg County Sheriff's Office
---------	------	---

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/9/06	10:30	G	Forensic Technician	Karonda M. Williams

10/9/06	10:49	G	Evidence Room (150)	DNA evidence intake storage
---------	-------	---	---------------------	-----------------------------

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Chain Of Custody

L06-13571

12/1/08	16:19	G	Forensic Technician	Patricia H. Crooks
12/1/08	16:54	G	Evidence Room (150)	Bin 8 Shelf D
12/11/08	11:04	G	Forensic Technician	Selena Kinard
12/11/08	11:05	G	Evidence Room (150)	Drugs For Return File Cabinets Kimberly Pugh-Orangeburg CSO
12/11/08	11:07	G	Forensic Technician	Selena Kinard
12/11/08	11:08	G	Evidence Disposition	Returned to Agency in person

Kimberly Pugh-Orangeburg CSO

Kimberly Pugh

Item 19: One(1) sealed Autopsy packet containing Blood standard described as Harry Livingston

Submissions

Date	Time	Submitted by
10/9/06	10:30	Deputy Coroner Stanley B. Caldwell of the Orangeburg County Coroner's Office
9/25/08	9:54	Kimberly Pugh of the Orangeburg County Sheriff's Office

Stanley B. Caldwell

Kimberly Pugh

Item Chain of Custody

Date	Time	Container	Custody Of	Location / Person
10/9/06	10:30	G	Forensic Technician	Karonda M. Williams
10/9/06	10:49	G	Evidence Room (150)	DNA evidence intake storage
10/9/06	11:39	G	Forensic Technician	Sheree J. Brown

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
 Governor



ROBERT M. STEWART
 Chief

DNA ANALYSIS DEPARTMENT

Roman Rodriguez
 Orangeburg County Sheriff's Office
 P.O. Box 9000
 Orangeburg, SC 29116

October 16, 2006
 SLED Lab Number: L06-13571
 Your Case Number: 2006012588
 Incident Date: 09/29/2006
 [V] Harry Livingston
 [S] George Moses

Dear Officer:

The evidence in the above referenced case was received from your agency and the contents have been preserved. No further analysis will be conducted until blood standard(s) from the victim(s)/subject(s) are submitted.

If further analysis is needed, please contact the Department of Forensic DNA Analysis at (803) 896-7383.

If the case remains inactive, the evidence may be returned to your agency. If additional examination is needed, the evidence should be resubmitted.

Your cooperation in this matter is appreciated.

Sincerely,

Ira W. Jeffcoat
 Forensic Scientist

cc: Orangeburg County Solicitor's Office



(Handwritten initials)

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Inv. James Shumpert
Orangeburg County Sheriff's Office
P.O. Box 9000
Orangeburg, SC 29116

DNA ANALYSIS
November 18, 2008
SLED LAB: L06-13571
Your Case No: 2006012588
Incident Date: 9/29/2006
[V] Harry Livingston
[S] George Moses

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

3.1	Swab from blade of item 3 (knife)	3.1	No blood indicated.
3.2	Swab from handle of item 3 (knife)	3.2	Blood indicated. See DNA analysis.
4	Swab from light switch next to exit door	4	Blood indicated. See DNA analysis.
5	Swab from dresser in master bedroom	5	Blood indicated. See DNA analysis.
6	Swab from passenger door handle of vehicle driven by suspect	6	See DNA analysis.
7	Swab from passenger door below the window of vehicle driven by suspect	7	See DNA analysis.



<u>Items Submitted:</u>		<u>Results of Examinations:</u>	
8.1	Cutting from blue jean shorts	8.1	Blood indicated. See DNA analysis.
8.2	Cutting from blue jean shorts	8.2	Blood indicated. See DNA analysis.
8.3	Swab from pockets of blue jean shorts	8.3	No analysis performed.
9.1	Swab from blue jeans	9.1	No analysis performed.
9.2	Swab from belt in blue jeans	9.2	No analysis performed.
18	Fingernail clippings from Harry Livingston	18	No analysis performed.
19	Blood standard from Harry Livingston	19	See DNA analysis.

DNA ANALYSIS

ITEMS ANALYZED:

- 19 Blood standard from Harry Livingston
- 3.2 Swab from handle of item 3 (knife)
- 4 Swab from light switch next to exit door
- 5 Swab from dresser in master bedroom
- 6 Swab from passenger door handle of vehicle driven by suspect
- 7 Swab from passenger door below the window of vehicle driven by suspect
- 8.1 Cutting from blue jean shorts
- 8.2 Cutting from blue jean shorts

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.



SLED LAB No. L06-13571
November 18, 2008

Page 3 of 4

RESULTS

The DNA profile developed from items 8.1 and 8.2 matches the DNA profile of Harry Livingston. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 6.4 quadrillion.

The DNA profile developed from item 3.2 is a mixture of at least two individuals. Harry Livingston cannot be excluded as a possible contributor to this mixture.

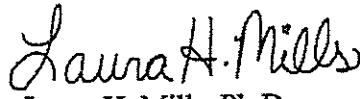
The DNA profile developed from item 4 is a mixture of at least two individuals. The DNA profile developed from the major contributor to this mixture is from an unidentified male individual. No conclusive statement can be made regarding the inclusion or exclusion of Harry Livingston to this mixture.

The DNA profile developed from item 5 is from an unidentified female individual.

Insufficient human DNA was obtained from items 6 and 7 for STR PCR DNA analysis.

Please submit a standard from the subject for comparison.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.


Laura H. Mills, Ph.D.
Forensic Scientist

cc: Orangeburg County Solicitor's Office



Table 1 – Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	Amelogenin
19 Livingston	13,14	31,31.2	10,11	7,10	16,18	6,7	12	9,11	19	13,14	15,20	8,9	16,17	12,13	19,23	XY
3.2 Knife handle	13,14	31,31.2	10,(11)	(7),10	(14),15, 16,18	6,7, (9,3)	8,(11), 12	9,11, (12)	19	13,14	15,17	8,(9), (11)	17	11,12, 13	19,(22), (23)	XY
4 Light switch	12,13, 14,15	28,29, 31.2	(8),10, (11)	7,10, (12)	15,16, 18	7,8, 9,3	11,12, 13	9,10, 11,13	(16),(19), 20,24	(12),13, 13.2	15,16, 18	8,10	16,(18), 19	8,12, 13	(19),21, 22	XY
5 Dresser	14	28,31.2	8,11	8,12	15,18	7,8	11,12	10,11	16,17	12,15.2	15,16	10	18,19	12,13	19,30	X
8.1 Jean shorts	13,14	31,31.2	10,11	7,10	16,18	6,7	12	9,11	19	13,14	15,20	8,9	16,17	12,13	19,23	XY
8.2 Jean shorts	13,14	31,31.2	10,11	7,10	16,18	6,7	12	9,11	19	13,14	15,20	8,9	16,17	12,13	19,23	XY

() = alleles between 75 and 149 rfu

Bold = major contributor



SJ

SOUTH CAROLINA LAW ENFORCEMENT DIVISION FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

RECEIVED
1-26-09

Inv. James Shumpert
Orangeburg County Sheriff's Office
P.O. Box 9000
Orangeburg, SC 29116

DNA ANALYSIS
January 22, 2009
SLED LAB: L06-13571
Your Case No: 2006012588
Incident Date: 9/29/2006
[V] Harry Livingston
[S] George Moses

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

DNA ANALYSIS

ITEMS ANALYZED:

- 19 Blood standard from Harry Livingston
- 20 Oral swab from George Moses
- 3.2 Swab from handle of item 3 (knife)
- 4 Swab from light switch next to exit door
- 5 Swab from dresser in master bedroom
- 6 Swab from passenger door handle of vehicle driven by suspect,
- 7 Swab from passenger door below the window of vehicle driven by suspect
- 8.1 Cutting from blue jean shorts
- 8.2 Cutting from blue jean shorts

RECEIVED
JAN 26 2009
@2:43pm

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.



FROM : SOLICITOR

FAX NO. : 8035336004

SLED LAB No. L06-13571
January 22, 2009

Page 2 of 3

RESULTS

The DNA profile developed from items 8.1 and 8.2 matches the DNA profile of Harry Livingston. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 6.4 quadrillion.

The DNA profile developed from item 3.2 is a mixture of at least two individuals. Harry Livingston cannot be excluded as a possible contributor to this mixture.

The DNA profile developed from item 4 is a mixture of at least two individuals. The DNA profile developed from the major contributor to this mixture is from an unidentified male individual. No conclusive statement can be made regarding the inclusion or exclusion of Harry Livingston to this mixture.

The DNA profile developed from item 5 is from an unidentified female individual.

Insufficient human DNA was obtained from items 6 and 7 for STR PCR DNA analysis.

George Moses is excluded as being a contributor to the DNA found on any of the evidentiary items submitted.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Laura H. Mills
Laura H. Mills, Ph.D.
Forensic Scientist

Orangeburg County Solicitor's Office



FROM : SOLICITOR

FAX NO. : 8035336004

Page 3 of 3

SLED LAB No. L06-13571
 January 22, 2009

Table 1 — Identifier

Item	D8S1178	D7S828	CSF1FO	D3S1338	TH01	D15S117	D16S118	D18S119	D19S119	D18S118	VWA	TPOX	D18S118	D18S118	FGA	Amplifier
19 Livingston	13,14	31,31.2	7,10	16,18	6,7	12	9,11	19	13,14	13,14	15,20	8,9	16,17	12,13	19,23	XY
20 Moses	14,15	29,31	10	15	7,9	11,12	12,13	17,19	11,13	11,13	17,18	7	14,19	11,12	22,23	XY
32 Kwik-Bondic	13,14	31,31.2	(7),10	(10),15, 16,18	6,7, (9,3)	8,(11), 12	9,11, (12)	19	13,14	13,14	15,17	8,(9), (11)	17	11,12, 13	19,(22), (23)	XY
4 Light switch	12,13, 14,15	28,29, 31.2	7,10, (12)	15,16, 18	7,8, 9,3	11,12, 13	9,10, 11,13	(16),(19), 20,24	(12),13, 13.2	15,16, 18	16,(18), 19	8,10	16,(18), 19	8,12, 13	(19),21, 22	XY
5 Drawer	14	28,31.2	8,12	15,18	7,8	11,12	10,11	16,17	12,15,2	14,16	14,16	10	18,19	12,13	19,30	X
8.2 Jean shorts	13,14	31,31.2	7,10	16,18	6,7	12	9,11	19	13,14	13,14	15,20	8,9	16,17	12,13	19,23	XY
8.2 Jean shorts	13,14	31,31.2	7,10	16,18	6,7	12	9,11	19	13,14	13,14	15,20	8,9	16,17	12,13	19,23	XY

() = alleles between 75 and 149 rfs Bold = major contributor



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7309 Fax (803) 896-7351

Applicant stated that he and Victim got into a verbal altercation regarding the terms of an exchange of narcotics. Applicant told law enforcement that as he was leaving the residence Victim commanded his dog to attack Applicant. Applicant said the Victim armed himself with a stick and began to threaten Applicant. In response, Applicant stated he armed himself with a knife. Applicant stated he grabbed Victim's stick and stabbed Victim with the knife. As the two tussled, Applicant said he continued hitting Victim until Victim passed out. Applicant took money belonging to Victim and left the residence. He admitted he went to Conner's residence afterwards and hid his bloody shorts. In addition, he confessed to burning his shirt when he got home.

An autopsy was performed on Victim on September 29, 2006. The forensic pathologist noted four nonfatal stab wounds of the abdomen and back as well as contusions, abrasions and lacerations of the head. The examination determined that Victim was beaten, resulting in a closed-head injury and subarachnoid hemorrhaging which caused his death. The pathologist also noted a number of defensive type injuries on the back of each hand, the back of the left forearm and on the right forearm.

Multiple items of evidence were collected during the course of the investigation, which were subsequently sent to the forensic laboratory at the South Carolina Law Enforcement Division ("SLED") for DNA analysis. These items included swabs from a knife, swabs from various areas in Victim's residence, swabs from the Applicant's vehicle, fingernail clippings from Victim (Item 18), and the shorts located at Conner's residence (Item 8). An evidence technician at SLED processed the shorts by taking multiple cuttings (Item 8.1 and 8.2) as well as a swab from the pocket of the shorts (Item 8.3). The fingernail clippings (Item 18) were not analyzed. Analysis of the cuttings revealed the presence of blood with a DNA profile matching that of Victim. The swab from the same pair of

2/5 

shorts (Item 8.3) was not analyzed.

In February of 2009, the State called this case for trial. During the trial, Applicant testified that he acted in self-defense after Victim threatened him with a stick. Applicant stated he armed himself with a knife and began swinging it primarily at Victim's dog but also at Victim. Applicant conceded he may have struck the victim in the process. Applicant testified he then grabbed Victim's stick and they fell over a chair. As Applicant was getting up to exit the residence, Victim grabbed his leg. Applicant stated he hit Victim with the stick until Victim let go and then departed.

During his testimony, Applicant admitted that he went to Conner's residence after the incident. He explained how and why he discarded the shorts he was wearing at Conner's residence:

I didn't want to leave them in Mr. Conner's house, again because if there was blood on them it might have been somebody else's blood, and I thought that would be just rude or nasty just to leave a pair of bloody pants laying around somebody's house, so I just took them outside, and he didn't have a trash can, so I just stuck them in the side of the porch right there, and I said I would just come back and dispose of them tomorrow or something.

On February 12, 2009, Applicant was convicted of voluntary manslaughter and armed robbery. Based on Applicant's prior record, he was sentenced to life without parole in accordance with S.C. Code Section 17-25-45. On January 3, 2017, Applicant filed a motion requesting the State perform DNA testing on additional items: swabs taken from the pockets of the blue jean shorts (SLED Item 8.3) and fingernail clippings taken from Victim (SLED Item 18). Applicant claimed this testing would prove his innocence.

Analysis

An application for post-conviction DNA testing under the Act requires, *inter alia*, an applicant to (a) demonstrate that identity was a significant issue during the original court proceedings; (b) explain how testing of DNA would provide a substantially more probative result

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than evidence submitted at trial; and (c) explain how any exculpatory DNA results would constitute new evidence that would probably change the result of defendant's conviction if a new trial was granted. S.C. Code Ann. §17-28-40(C)(5)-(8).

Applicant's request for additional DNA testing fails to meet any of the statutory requirements listed above. First, Applicant is unable to assert an issue of identity in this case. During the investigation, Applicant admitted to law enforcement that he and Victim were involved in a physical altercation. Furthermore, at trial Applicant testified on his own behalf and admitted that he swung a knife at Victim and beat him with a stick, albeit in self-defense. Applicant's own account of the events demonstrates that identity was not, nor should it have been a significant issue at trial.

Second, Applicant fails to explain how additional DNA testing would provide substantially more probative results than the evidence submitted at trial. Applicant requested additional testing on Victim's fingernail clippings (SLED Item 18) and a swab from the pockets of a pair of shorts found at Conner's residence (SLED Item 8.3). Testing these items could have no significant bearing on this case. Applicant admitted on multiple occasions that he was involved in a physical confrontation with Victim. Thus, testing the fingernail clippings would not provide any additional probative value. With regards to Item 8.3, which came from the shorts Applicant admitted he discarded at Conner's residence, two areas from these shorts (Items 8.1 and 8.2) have been tested and confirmed to contain Victim's blood. Examination of a third area from the same pair of shorts would not provide further probative value.

Finally, additional testing would likely not change the result of the conviction if a new trial were granted. As stated above, the identity of individuals involved was not an issue in this case. The primary issue presented to the jury was whether Applicant acted in self-defense and examination of

4/5 

additional items would have no bearing on the issue of self-defense. Any results obtained from testing these materials would merely be cumulative to Applicant's own testimony that he and Victim were involved in the altercation.

Conclusion

For the reasons discussed above, the Court finds that Applicant has failed to meet the statutory requirements for post-conviction DNA testing provided by the Act. Accordingly, the application is DENIED.



Edgar W. Dickson,
Presiding Judge

Date: Dec. 16, 2019
Orangeburg, SC.