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STATE OF SOUTH CAROLINA

SC SUPREME COURT

In The Supreme Court

ORIGINALS

APPEAL FROM SPARTANBURG COUNTY

Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD BERNARD MOORE,

APPELLANT

RECORD ON APPEAL

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Dr. John David Wren
Direct examination by Mr. Gowdy

1 The same thing happens on clothing too. You can see
2 sometimes soot deposition. You hardly ever see burning
3 powder for some reason. I just don't ever remember seeing
4 it. It probably because it's so small. And the clothing
5 already has little defects in it anyway from the weaving
6 process.

7 But once it passes from that distance anywhere away
8 from there up to miles or ever how far a bullet will travel,
9 it is called a distant gunshot wound.

10 Q Dr. Wren, somebody shot from the side with an exit
11 wound here, can you tell the ladies and gentlemen of the
12 jury how they died? How does that gunshot kill them? You
13 did the autopsy and testified as to the organs that the
14 bullet travelled through. Which organ causes someone to die
15 that has been injured or damaged?

16 A Well, any of them can. It depends on how fast you
17 bleed.

18 If you are shot in the head, you can die immediately.
19 Your heart can stop. Or if there are centers in the brain
20 that continue to cause the heart to beat, the heart will
21 beat until you actually bleed to death or you die from the
22 concussion or the swelling of the brain and bleeding in the
23 brain.

24 In the organs of the body, most of the time unless
25 there are -- there is a couple of nerves in the body that if

Dr. John David Wren
Direct examination by Mr. Gowdy

1 you pass through those, you can get sudden stoppage of the
2 heart. The vagus nerve is one of the ten cranial nerves,
3 and it actually goes all the way to the stomach.

4 And if you stimulate the vagus, the heart can stop. It
5 causes the heart to slow up anyway. It controls the heart
6 beat normally, but if you actually cut it off, the heart can
7 actually stop. That's called vasovagal reflex.

8 But if you don't hit that nerve, then most people bleed
9 to death. And you can bleed to death slowly or you can
10 bleed to death rather quickly.

11 If it goes through your aorta or through your heart and
12 blows the heart completely away, I mean, there are cases
13 where a bullet has passed through the heart and there was
14 nothing left of the heart, so it couldn't send blood out to
15 the body.

16 And when that happens a person loses consciousness at
17 about the same time. If they hadn't had a sudden concussion
18 or that sudden reflex, then they will lose consciousness at
19 about the rate that it takes a person to pass out from not
20 having oxygen, because that's -- I've seen instances of
21 people shot in the heart, and the heart couldn't pump
22 anything else.

23 And I have seen an instance where a person was shot at
24 the back of a supermarket and -- or at the front of a
25 supermarket and actually ran to the back of the supermarket,

Dr. John David Wren
Cross-examination by Mr. Morin

1 well over a hundred feet, and jumped a counter before he
2 collapsed. And he was just using his oxygen up before he
3 passed out.

4 But this person bled to death. And he bled to death by
5 bleeding into his chest cavity and bleeding around his heart
6 to where his heart couldn't expand any more. And he gave
7 out of blood. And that takes -- depends on how fast the
8 heart is beating and how much it can pump and how healthy it
9 is too.

10 This person probably survived six to ten, maybe 15,
11 minutes. He could have lived 15 minutes, but I would say
12 less than ten minutes.

13 Q Thank you, Dr. Wren.

14 MR. GOWDY: Your Honor, I don't have any further
15 questions for Dr. Wren.

16 Q Please answer any questions the Court or the defense
17 may have.

18 THE COURT: Cross-examination, Mr. Morin.

19 CROSS-EXAMINATION

20 BY MR. MORIN

21 Q Doctor, I understand that your last statement was that
22 he could have lived for ten minutes.

23 A Well, he wouldn't have been conscious, but he could
24 have lived that long, yeah.

25 Q Okay. As far as consciousness goes, how long, given

1 these, the severity of these wounds, would you say is most
2 likely?

3 A He would remain conscious? Well, you know, there is no
4 absolute answer. I can only say that everyone is a little
5 bit different. And even though we can tell exactly where a
6 bullet went and exactly what happened, we can't tell
7 whether, as I gave an instance that it didn't hit a branch
8 of the vagus nerve and cause an immediate loss of
9 consciousness.

10 I can say, however, that his heart did beat long enough
11 to put 1250 cc's, which is about five units of packed red
12 blood cells or transfusion -- five packs of blood into his
13 right chest -- left chest cavity. I'm sorry. 200 cc's at
14 least around his heart and a hundred cc's in his peritoneal
15 cavity. So he bled about six units of blood out before his
16 heart stopped beating.

17 Q When you looked at the wounds and measured them, did
18 you use a ruler or did you just estimate them based on your
19 previous experience?

20 A I use a, a metal, metal-worker's ruler that is
21 graduated in tenths and hundredths of an inch and is also
22 graduated in eighths and sixteenths of an inch on the other
23 side.

24 So I measure it. I do not use callipers, but I do use
25 a ruler and estimate it by putting it up against it.

1 I actually take pictures and have the law enforcement
2 take pictures of it with a ruler for comparisons. And there
3 is some distortion from the actual angles that they take it,
4 but I measure it as best I can without callipers.

5 Q Now, the entry to the arm, the wound to the arm, is it
6 your testimony that that is consistent with that being the
7 same bullet?

8 A I said with some difficulty I could pull that arm over
9 and pull it over it. I mean, it wasn't real easy, because
10 the person is stiff. And until they, like 48 hours or so to
11 where I could freely move it, I could do it. And there is a
12 good chance that it was.

13 But, on the other hand, if a bullet hits an object and
14 bounces off that, ricochets off that object and goes into
15 the arm, it could make the exact same defects in the skin.

16 Q And, as you testified, the body, you really can't say
17 what position he would have been in when he was shot.

18 A Well, no. You can't really say that. You can't, no.
19 I can't tell exactly where he was, no. You usually can't
20 unless there is something at a scene that contributes to it.

21 Q That's all I have.

22 MR. GOWDY: One follow up question, Your Honor.

23 THE COURT: All right.

24 REDIRECT EXAMINATION

25 BY MR. GOWDY

Dr. John David Wren
Redirect examination by Mr. Gowdy

1 Q Dr. Wren, I want to make sure that I -- like this. The
2 bullet on the side --

3 (Whereupon, the witness left the stand.)

4 A Yes.

5 Q -- is it higher or lower than the bullet that came out?

6 A It was lower. The bullet over here was an inch and
7 three quarters lower than this one. So, if you drew an
8 imaginary line between where it went in right about there
9 and where it came out right about here, and it was going
10 slightly forward, slightly upward and from his left to his
11 right, and if you take this arm and pull it over like that,
12 then it could have gone on in as it went through the body.

13 It didn't hit any ribs. It went -- it hit the bottom
14 of the right rib. But this caliber bullet has a good bit of
15 velocity and inertia, and it is not unusual for those
16 bullets to go completely through the body and keep going.

17 It did have a good bit of inertia to break his humerus
18 though, because that's a rather large bone. It's one of the
19 larger bones in the body.

20 And it did go in, not round like the usual bullet. It
21 went in like it is already distorted. So, it's a good
22 possibility that that was the one that went in his arm,
23 although I can't say for sure.

24 Q Doctor, while we can't say --

25 A The only way you can tell for sure is to find the

Dr. John David Wren
Redirect examination by Mr. Gowdy

1 weapon. And if there was only one bullet fired, then, and
2 there were no other weapons around, then that had to be it.

3 On the other hand, if there were two fired and you
4 didn't find a bullet anywhere else -- well, you have to find
5 a bullet somewhere else, because he has three holes and one
6 bullet.

7 One, if it was fired twice and you didn't find another
8 one, then there is something that doesn't match up. The
9 history doesn't go with the findings.

10 If you find another bullet and it was fired twice, then
11 it would have to be a different bullet. One went through
12 him and kept going somewhere. The other one hit him and
13 stayed in. That would be the scenario.

14 Q Doctor, while we are not able to tell exactly what
15 position James' body was in, if it was a single gunshot, his
16 arm would have to be like this.

17 A That's correct.

18 Q His body would have to be tilted somewhat to the left
19 to create the upward --

20 A He could have been like this too. He could have been
21 like that and shot. I mean, it just depends.

22 Anyway, you can imagine that weapon being fired toward
23 him and that position, he could have been lying on the floor
24 and he could have been shot down and could have been gone
25 in. He could have been leaned away and had his arm up like

Dr. John David Wren
Redirect examination by Mr. Gowdy

1 this shooting at somebody, just any way you can imagine.
2 You can get those three in a direct line, then that is
3 possible.

4 Q Can you grab my arm and shoot me like that?

5 A If your arm was like that and I shot you, yes, you
6 could do that and have your arm, or, you know, if you had --
7 could hold both of them and shoot him like that. He could
8 have been pulling away and shot.

9 Q Thank you, Dr. Wren.

10 THE COURT: Recross?

11 MR. MORIN: No, sir.

12 THE COURT: Thank you, Doctor. You may step down.
13 Are you asking he be excused?

14 MR. GOWDY: Yes, sir, Your Honor.

15 THE COURT: Without objection, you are excused, Dr.
16 Wren. Thank you for coming.

17 (Whereupon, the witness was excused.)

18 MR. WILLINGHAM: Your Honor, at this time the state
19 would move State's Exhibit Number Thirty-one for
20 Identification into evidence.

21 THE COURT: Any objection?

22 MR. MORIN: No, sir.

23 THE COURT: Without objection, it will be admitted as
24 State's Number Thirty-one.

25 (Diagram marked State's Exhibit Number Thirty-One.)

Motion

1 THE COURT: Next witness.

2 MR. GOWDY: Your Honor, may it please the Court, the
3 State of South Carolina rests.

4 THE COURT: Ladies and gentlemen of the jury, that
5 concludes the state's case in chief.

6 I am going to send you to the jury room for just a few
7 minutes.

8 While you are there, please, do not discuss this case
9 among yourselves. We will get you back in just a few
10 minutes.

11 The jury may retire. Everyone else remain seated,
12 please.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: All right. Any motions?

16 MR. MORIN: Just one moment.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. MORIN: Your Honor, I have a motion, but before
20 that, I wanted to clarify. There have been some
21 discussions, and I don't think any of them have been on the
22 record, regarding the jury viewing the scene.

23 THE COURT: No, sir.

24 I think that I said this morning when we got started
25 that I would take the necessary steps for the jury-view this

Motion

1 afternoon. And we discussed it at the bench, and then I
2 said we have been discussing at the bench, the jury-viewing,
3 and you had no objection to the jury-view.

4 MR. MORIN: Yes, sir.

5 THE COURT: And then I said that we would do it at the
6 appropriate time.

7 MR. MORIN: Okay. I'm sorry, Your Honor. I wanted to
8 be sure.

9 THE COURT: No problem. Yes, sir.

10 MR. MORIN: Your Honor, at this time we would move for
11 a directed verdict on behalf of the defendant in that the
12 state has provided some information, but it requires the
13 jury to do quite a bit of speculation with regard to several
14 pieces of evidence, and it would require them to do that in
15 order to find Mr. Moore guilty.

16 So, we move for a directed verdict at this time on all
17 three charges.

18 THE COURT: Solicitor.

19 MR. GOWDY: Your Honor, I think that there is an
20 abundance of both direct evidence, as well as circumstantial
21 evidence, Your Honor, on all of the charges in this case.

22 Your Honor has heard the testimony, the elements of
23 murder and unlawful killing with malice aforethought,
24 expressed or implied. There, frankly, Your Honor, is
25 evidence on both fronts.

Motion

1 We have Terry Hadden's testimony; we have ballistics;
2 we have conduct of this defendant both before and after the
3 shooting. And I think in the light -- in taking the
4 evidence in the light most favorable to the state that there
5 is an abundance of evidence on all of the charges against
6 this defendant.

7 THE COURT: Well, after listening to the testimony and
8 evidence, of course, the motion for a directed verdict is to
9 be viewed in the light most favorable to the nonmoving
10 party.

11 I think that the evidence that has been presented in
12 this case, both direct and circumstantial, would allow me to
13 send it to the jury, because I think that there is evidence
14 in both regards, and even substantial evidence in both
15 regards. And, as such, the motion for a directed verdict is
16 denied.

17 Now, insofar, gentlemen, as the manner in which we
18 proceed at this time, we're going to take a short break.
19 You will probably need to talk to your client about his
20 Fifth Amendment Rights.

21 Then I am going to -- we will come back and put that on
22 the record as to whether or not you intend to present
23 evidence. And then we will move forward.

24 The jury is going to take lunch, somewhere 12:30 to one
25 o'clock, when it gets here. And we will also make a

Defendant questioned

1 decision on the jury-view at the time.

2 All right. We will stand at ease for about ten
3 minutes.

4 (Whereupon, a recess was taken.)

5 THE COURT: All right. Mr. Morin.

6 MR. MORIN: Your Honor, Mr. Kelly and Mrs. Johnson and
7 I have met with Mr. Moore this morning.

8 Obviously, whether or not Mr. Moore was going to
9 testify at this stage of the trial is a conversation that he
10 and I have had on many occasions, and he understands his
11 rights.

12 It is our intention after lunch, regardless of whether
13 he testifies or not, to call Steve Denton as a witness.

14 THE COURT: Okay. All right. Mr. Moore, would you
15 stand, please, sir?

16 RICHARD BERNARD MOORE, having been
17 first duly sworn, was voir dired as follows:

18 THE COURT: Mr. Moore, at this time I am going to
19 explain to you certain of your rights. And if there is
20 anything that you do not understand, simply let me know, and
21 I'll attempt to clarify myself for you. Do you understand
22 that?

23 THE DEFENDANT: I understand.

24 THE COURT: We have now reached the stage of the trial
25 where you may present your own defense. And you have the

Defendant questioned

1 right to testify in your own behalf. However no one can
2 make you testify.

3 Now, in the event that you have a prior record for any
4 conviction involving dishonesty or false statement or for a
5 crime punishable by imprisonment for more than one year and
6 I determine that the probative value of admitting that
7 record outweighs its prejudicial effect to you, then the
8 state, the solicitor, would be able impeach you on your
9 prior record.

10 If you elect not to take the stand, I would charge the
11 jury that they are not to hold that against you and not to
12 infer anything from that in any way because you did not take
13 the stand.

14 It is entirely left up to you as to whether or not you
15 testify. You can talk with your attorney, family, friends
16 or anyone else, but the ultimate decision as to whether or
17 not you testify in this stage of the trial is left entirely
18 up to you. Do you understand that, sir?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Thank you, sir. You may be seated.

21 Now, insofar as him taking the stand, before we start
22 back into the defense's case I'm going to have to make sure
23 whether or not he's going to take the stand.

24 Do you understand, Mr. Moore, that you do have that
25 right?

Defendant questioned

1 And at this point in time, what is his intention?

2 MR. MORIN: At this point, I believe he is not going to
3 but --

4 THE COURT: Subject to change, is that correct?

5 MR. MORIN: Subject to change.

6 THE COURT: That's correct, sir?

7 THE DEFENDANT: Yes, sir, that's correct.

8 THE COURT: Okay. What I will do when we get back in
9 here though is, once again, ask him what his intention is
10 before you start your case, before I bring the jury back in.

11 And then when we get to the point, if he says that he
12 is not going to take the stand before I bring the jury back
13 in, and then if you decide to rest your case, then that's
14 going to be his answer to me.

15 MR. MORIN: Okay.

16 THE COURT: If there is a change, you need to ask me to
17 send the jury out.

18 MR. MORIN: Okay.

19 MR. GOWDY: Your Honor, Mr. Moore mentioned that he
20 planned to call Sheriff's Deputy Investigator Steve Denton.

21 I have no idea what he is going to ask him, Your Honor,
22 but I wanted to alert the Court to the possibility that the
23 testimony might try to elicit some exculpatory, self-serving
24 hearsay.

25 There were some comments that Mr. Moore made at the

Defendant questioned

1 hospital which would, if true, would tend to minimize or
2 exculpate his responsibility.

3 Now, I think the case law is absolutely clear that they
4 cannot elicit self-serving, exculpatory hearsay from the
5 case agent. We didn't call him.

6 THE COURT: I have had that before in a case like this.
7 I think it was the case of the State vs. Gary Debose Terry
8 wherein they wanted to use a defendant's statements without
9 him taking the stand. And that's not going to work if
10 that's what you are trying to do.

11 MR. MORIN: Well, that is not what we are trying to do,
12 but I --

13 THE COURT: You can't get around putting --

14 MR. MORIN: Yeah, I know.

15 THE COURT: -- him on the stand by trying to get his
16 statements in through someone else.

17 MR. MORIN: I understand that. Well, along those
18 lines, I would while we are here ask that I be allowed to
19 ask leading questions of this witness. He is the chief
20 investigator for the state.

21 THE COURT: Well, if you have a problem in getting an
22 answer out of him, I'll do that; but, no, sir, you know, he
23 might be the -- unless there is some evidence that he is
24 some type of a hostile witness -- then I can do that.

25 But just, you know, for the idea of saying, well, I am

Defendant questioned

1 going to ask leading questions the whole time, no, we are
2 not going to do that. If you have a problem, we can get
3 into that.

4 All right. The jury has their lunch. So what we are
5 going to do is be back here at 1:30. We will stand at ease
6 until that time.

7 (Whereupon, a recess was taken.)

8 THE COURT: All right. Is the defendant ready to
9 proceed?

10 MR. MORIN: Yes, sir.

11 THE COURT: Mr. Moore, would you stand, please, sir?

12 And I remind you that you are still under oath, Mr.
13 Moore.

14 I examined you on the record insofar as your rights
15 were concerned prior to our lunch break. And what is your
16 intention insofar as your testifying, or not?

17 THE DEFENDANT: No, sir, Your Honor.

18 THE COURT: You will not testify?

19 THE DEFENDANT: No, sir.

20 THE COURT: Thank you, sir. Have your seat.

21 All right. Let's bring our jury back.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: Thank you very much, Madam Foreperson,
25 ladies and gentlemen.

Steve Denton
Direct examination by Mr. Morin

1 I hope you had a nice lunch break.

2 As you know, the state has rested. We will now move to
3 the defense case.

4 Mr. Morin.

5 MR. MORIN: Your Honor, at this time the defense would
6 call Steve Denton.

7 STEVE DENTON, having been first
8 duly sworn, testified as follows:

9 THE COURT: Please state your name for the record, and
10 spell your last name, sir.

11 THE WITNESS: Good afternoon. My name is Stephen L.
12 Denton, D-E-N-T-O-N.

13 DIRECT EXAMINATION BY MR. MORIN

14 Q Officer Denton, how long have you been a police
15 officer?

16 A Approximately 16 years.

17 Q Okay. And you started out as a regular patrolman.

18 A No, sir.

19 Q Tell us how you started out 16 years ago in law
20 enforcement.

21 A I was originally assigned to the narcotics division of
22 the Spartanburg County Sheriff's Office. I was there for
23 approximately four to five years and then moved to the
24 detective division where I'm currently assigned to the
25 homicide division.

Steve Denton
Direct examination by Mr. Morin

1 Q How long have you been assigned to the homicide
2 division?

3 A How long?

4 Q Uh-huh.

5 A Since approximately around 1991, '92.

6 Q What was your involvement in this case?

7 A I was the investigator on call the week that this event
8 occurred.

9 Q Okay. Are you familiar with this item?

10 A I am.

11 Q Can you tell me what you know about that?

12 A This item appears to be a tire tool that was located
13 inside the crime scene, located on a desk behind the
14 counter.

15 Q You requested that this be sent to SLED for
16 fingerprints.

17 A I did.

18 Q Can you tell us why you did that?

19 A Well, mainly to ascertain, since at the time that I
20 investigated the crime scene, to ascertain if there were any
21 fingerprints belonging to it that wouldn't be normally on
22 the scene, be somebody's prints that normally wouldn't be
23 inside the store, that wouldn't work there.

24 Q Okay. And you picked this tire tool to be sent to SLED
25 for fingerprints because it wasn't normally there, is that

Steve Denton
Direct examination by Mr. Morin

1 right?

2 A That's correct.

3 Q Okay. I show you State's Exhibit Number Eighty-three
4 Do you recognize that?

5 A I do.

6 Q What is that?

7 A This was a -- it's been described as a meat cleaver,
8 knife, that was found on the floor inside the crime scene.

9 Q Did you send that to SLED?

10 A I had it send to SLED. I did.

11 Q And did you ask for fingerprints to be run on that?

12 A I asked for blood analysis on that.

13 Q But not fingerprints?

14 A That's correct.

15 Q And you went to the crime scene that day, is that
16 right?

17 A That's correct.

18 Q Okay. Does this store have a video surveillance system
19 in it?

20 A It does.

21 Q And it has a V. C. R. connected to it.

22 A Yes, it does.

23 Q And there is a video tape in it.

24 A There was.

25 Q Did you take that into evidence?

Steve Denton
Direct examination by Mr. Morin

1 A No, sir. It was, it was viewed on the scene. There
2 was nothing on it that was -- that had anything to do with
3 that crime. As far as it being taken into evidence, it's
4 possible that Paul Dorman may have. I did not.

5 Q Who viewed it?

6 A I did.

7 Q Anybody else?

8 A I believe Paul Dorman may have been there also.

9 Q Okay. Now, as the investigator who was called to this
10 scene, is it somewhat -- is it normal for you to speak to
11 witnesses as the investigator from homicide?

12 A It is.

13 Q Okay. Did you ever speak to Terry Hadden?

14 A I did.

15 Q You did?

16 A Yes, sir, I did.

17 Q When was that?

18 A I spoke to him briefly at the scene that night and then
19 briefly again at the office, which would be the same day but
20 during the daylight hours.

21 Q Okay. Is that when he made his first statement?

22 A That's when he would have probably made his first
23 written statement, yes, sir.

24 Q Now, this incident sort of has two. There is down
25 there at Nikki's, and then there is out at Hillside.

Steve Denton
Direct examination by Mr. Morin

1 A Correct.

2 Q Did you go to Hillside?

3 A I did.

4 Q And did you speak to any witnesses there?

5 A I did.

6 Q Who did you speak with?

7 A I spoke to Mr. George Gibson.

8 Q Did you speak to his roommate?

9 A The only person I spoke to at that location was Mr.
10 George Gibson.

11 Q Were you informed that there were other people there at
12 that house?

13 A No, sir, I was not informed of that at the time I spoke
14 with Mr. Gibson.

15 Q You spoke to Mr. Fowler at the scene.

16 A I did.

17 Q Did you ask him about that tire iron?

18 A I did.

19 Q He told you he had never seen it?

20 A That's correct.

21 Q That's all I have of this witness.

22 MR. WILLINGHAM: Nothing from the state, Your Honor.

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

24 THE WITNESS: Very well.

25 THE COURT: Next witness.

Motion

1 MR. MORIN: Your Honor, at this time the defense rests.

2 THE COURT: Anything in reply?

3 MR. GOWDY: No, sir, Your Honor.

4 THE COURT: Ladies and gentlemen of the jury, that
5 concludes all of the testimony and evidence that will be
6 received.

7 What remains in this case are the closing arguments of
8 the lawyers and then my charge or instruction on the law
9 that applies to this case.

10 We are going to take a short break while we prepare to
11 enter into that phase of the trial.

12 As I send you back to the jury room, please remember
13 that you are not to discuss this case among yourselves under
14 any circumstances or in any manner or fashion whatsoever.
15 We will get you back in the courtroom in a few minutes.

16 The jury may retire. Everyone else remain seated,
17 please.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Any motions?

21 MR. MORIN: At this time the defense would renew its
22 motion for a directed verdict, Your Honor.

23 THE COURT: Well, once again, I think that the
24 testimony and evidence as has been presented by the state
25 has certainly produced a question of fact to be determined

Motion

1 by the triers of fact in this case. There is substantial
2 direct and circumstantial evidence that allows me to send it
3 to the jury. And your motion is denied.

4 MR. GOWDY: Your Honor, the only other matter, I would
5 respectfully ask the Court to consider the possibility of
6 letting the jury view the scene at Nikki's.

7 THE COURT: Yes, sir.

8 MR. GOWDY: And, of course, whatever, however the Court
9 wants to do it, but if the Court would hear from us on that,
10 I would ask the Court to consider letting them do it before
11 we close.

12 THE COURT: Yes, sir. I am going to do that. I am.

13 MR. GOWDY: Okay. Thank you.

14 THE COURT: What we are going to do is I'm going to
15 bring them back in and tell them that we are going to send
16 them to view the scene, that that's simply a means for them
17 to better understand the evidence that has been presented
18 here in the courtroom, and that during that that they are
19 not to discuss it among themselves or with anyone else that
20 they are in contact with, and I give them the necessary
21 instructions and bring their jury custodians in here to
22 transport them.

23 Now, insofar as that is concerned, I assume, I would
24 prefer that the state and the defense accompany them at a
25 distance.

Requests to charge

1 You will not be in the actual building with them, but
2 just to accompany them so that there will be question in
3 your mind. And I fully intend to also go along and observe
4 and make sure that the process is proper.

5 MR. GOWDY: Your Honor, I can't speak for Mr. Morin and
6 Mr. Kelly. When I was there, there was a single solitary
7 customer. I don't know. I don't think it was terribly busy
8 when they were there, or not, either. But I have spoken
9 with the proprietor. She is more than happy to clear that
10 store if Your Honor wanted to send a SLED agent ahead of
11 time.

12 THE COURT: We'll do that then.

13 All right. How about sending Mr. Bevis in, the SLED
14 agent, Agent Bevis -- Bettzell. I'm sorry. Darrell
15 Bettzell.

16 MR. GOWDY: Your Honor, if it would be easier for the
17 Court and the defense, I am not going to go, but I know that
18 one of my deputies is. If everyone wanted to ride in my
19 Tahoe, I will be happy to give them a ride.

20 THE COURT: I think that maybe one of these deputies
21 will give me a ride. I'll let you-all -- anybody that wants
22 to can tag along. We will put all of you-all in the back.

23 (Bench conference off record with SLED agent.)

24 THE COURT: While we are making arrangements to -- for
25 the jury to view this area, why don't we talk about charges?

Requests to charge

1 (Pause.)

2 THE COURT: Let me have all of the agents up here,
3 please. Let me have all of you up here.

4 (The following takes place at the bench with the jury
5 custodians.)

6 THE COURT: What we are going to do is send the jury
7 out to view the scene where this occurred, and I have got
8 the sheriff's department. They are going to have a sweep of
9 the area and make sure that it is cleaned out, because the
10 other day when the solicitor went out there, there was a
11 fairly intoxicated man who had a definite opinion about how
12 the case should turn out and those type of things.

13 Y'all don't do anything, and clear things out and make
14 sure when you get out before you let anybody out everything
15 is clear.

16 We are going to get them to make sure the store is
17 cleared out too. I don't want anyone, store keeper, anyone
18 else. Y'all make sure everyone is outside.

19 And I am going to be out there. What we will do is
20 maybe get there before everybody else does and check it out.
21 We will bring them in before we do that.

22 (End of proceedings at the bench.)

23 THE COURT: All right. Insofar as requests for charge
24 are concerned, other than my standard charges on murder,
25 possession of a weapon during the commission of a violent

Requests to charge

1 crime, assault with intent to kill, armed robbery, of course
2 direct and circumstantial evidence, all of the other normal
3 things that I charge, what kind of specific requests do
4 you-all have?

5 MR. GOWDY: Your Honor, if it please the Court, this
6 may very well be in Your Honor's standard charge, but given
7 the facts in this case that the state is relying upon the
8 theory of this defendant arming himself during the
9 commission of the robbery, which if Your Honor please is
10 State vs. Keith, I'm also -- would like to ask the Court to
11 consider fashioning a charge something along the lines, and
12 I think the case law supports, that you can rob somebody who
13 actually has already expired, that there's --

14 THE COURT: Yes, sir. I don't think there is any
15 question about that.

16 MR. GOWDY: Yes, sir. And I have heard Your Honor's
17 malice charge, and I believe that Your Honor's malice charge
18 includes that it can be even for a brief moment of time.

19 THE COURT: Yes, sir. Malice need not exist any
20 particular time before the act.

21 MR. GOWDY: Yes, sir.

22 THE COURT: It just has to exist in the mind just
23 before and at the time the act is committed.

24 MR. GOWDY: Yes, sir.

25 MR. MORIN: Your Honor, I have two, and, of course, I

Requests to charge

1 also understand that it could be an armed robbery after a
2 person expires.

3 We would ask for a larceny charge. It's a lesser
4 included of armed robbery, and I think that's a factual
5 issue.

6 THE COURT: All right. Anything else?

7 MR. MORIN: Yes, sir. I would also ask for a
8 manslaughter charge. I think there is evidence that the
9 victim produced the weapon, which certainly would be legal
10 provocation. And there is evidence as to whether or not he
11 was shot, which would be sudden heat of passion.

12 THE COURT: And that's the extent of it?

13 MR. MORIN: That's all.

14 THE COURT: What says the state?

15 MR. GOWDY: Your Honor, I am holding up six or seven
16 cases, State vs. Tucker, State vs. Tyson.

17 Your Honor, there is just no factual basis to support a
18 manslaughter charge in this case. It's murder or nothing
19 based on the evidence.

20 I can't recall a single shred of evidence that would
21 tend to show that this was a killing based on sufficient
22 legal provocation or heat of passion. It's either murder,
23 or it's not.

24 I will be happy to hand these cases up, although I know
25 the Court is familiar with them.

Requests to charge

1 THE COURT: What do you have to say about that,
2 Mr. Morin?

3 MR. MORIN: Your Honor, the evidence, is -- there
4 hasn't been anybody whose -- there is no doubt that
5 Mr. Mahoney started out armed with all of these weapons.
6 That is not an issue.

7 He produced the weapon, and the only real -- the
8 question that I think is in is whether or not Mr. Moore was
9 shot. I mean, we know he was shot, but if he was shot
10 before he fired any rounds at Mr. Mahoney.

11 My position is that if Mr. Mahoney produces a weapon, a
12 gun, that's legal provocation itself. But once Mr. Moore is
13 shot and he reacts, that's certainly in sudden heat of
14 passion. Being shot, I think, covers this heat of passion.

15 MR. GOWDY: Your Honor, the only evidence in this case
16 on this point comes from Terry Hadden who was unequivocal in
17 saying that Richard Moore fired the first shot. I asked him
18 repeatedly. The first shot came from Richard Moore.

19 Your Honor, I would invite the Court's attention to the
20 State vs. Tucker, which in parenthesis, "Evidence that the
21 victim was defending himself from an armed robbery and got
22 killed in this process is not sufficient legal provocation
23 to warrant a voluntary manslaughter charge."

24 Your Honor, even under that fact, even under the facts
25 Mr. Morin just laid out, the only evidence is that Mr. Moore

Requests to charge

1 grabbed Mr. Mahoney's hands before anything else happened.
2 There is no other evidence. He would be entitled to defend
3 his home or his property, or his store in that case.

4 So, manslaughter is not appropriate in this case, Your
5 Honor. There is no evidence to support it other than his
6 opening statement, Your Honor.

7 THE COURT: Is that the Richard Tucker case? Which
8 case are you talking about?

9 MR. GOWDY: Your Honor, James Neal Tucker, 478, S. E.,
10 2d., 260; and State vs. Tyson actually, Your Honor, is the
11 case that's cited in the body of Tucker. I don't have a
12 copy for the defense, but I can get one. I'll be happy to
13 hand it up.

14 THE COURT: I have got one right here, or I should.

15 I really think that the case of -- the cases that you
16 have cited, Solicitor, the first one being State vs. Tucker,
17 and then contained within the Tucker case was the State vs.
18 Tyson, the Tyson case fits the factual scenario that we have
19 here a little bit better than the Tucker case to me, because
20 the Tyson case was an armed robbery similar to the one that
21 we have here, not that the Tucker case wasn't.

22 MR. GOWDY: Yes, sir.

23 THE COURT: But I am just trying to reconcile in my
24 mind. I think -- let me read this one more time.

25 I think from my, from my recollection of the, of the

Requests to charge

1 testimony, the thing that Mr. Hadden testified to was that
2 when he heard the quote, "What the hell do you think you are
3 doing," then he turned to see what was going on. The first
4 shot was fired at him. And the hands were held.

5 And I think that the Tucker case, as well as the Tyson
6 case, both stand for the proposition that evidence that a
7 victim was defending himself from an armed robbery and got
8 killed in the process is not sufficient legal provocation to
9 warrant a voluntary manslaughter charge.

10 Quite frankly, I don't know of any testimony that is
11 persuasive to me that would cause me to charge voluntary
12 manslaughter. And, as a result, your request is denied.

13 MR. MORIN: May it please the Court.

14 THE COURT: Uh-huh.

15 MR. MORIN: A matter to put on the record.

16 THE COURT: Yes, sir.

17 MR. MORIN: My objection.

18 And I would also like to say that there is no testimony
19 that says that prior to the guns being drawn that this was a
20 robbery.

21 The solicitor is making the assumption that because the
22 victim pulled his gun out that the robbery had occurred.

23 THE COURT: Well, I think that we have a circumstantial
24 case there.

25 MR. MORIN: Yes, sir.

Requests to charge

1 THE COURT: And I fully intend to charge, give the
2 circumstantial charge, in, in that regard. And that will,
3 of course, be the State vs. Grippon.

4 All right. Then insofar as our forms of verdict are
5 concerned as to count -- as to the charge for murder, and
6 then the count one, charge of murder, will be guilty or not
7 guilty; count two, possession of a firearm during the
8 commission of a violent crime, will be guilty or not guilty.

9 Assault with intent to kill will be the same.

10 And then armed robbery, you say that you are asking for
11 a larceny instruction. Is that correct? What do you say
12 about that, Solicitor?

13 MR. GOWDY: Your Honor, I think Deputy Willingham has
14 researched this better than I have.

15 THE COURT: All right.

16 MR. WILLINGHAM: Your Honor, it is clear that larceny
17 is the lesser included of armed robbery.

18 However, as we've pointed out before, there is evidence
19 that the money was taken by force, by a weapon in this case,
20 which killed the victim.

21 Had the victim not been shot and killed, the defendant
22 would not have been able necessarily to walk around and step
23 over the victim's body and take the money away from him.
24 Therefore, we believe armed robbery is the proper charge and
25 larceny should not be a lesser included.

Requests to charge

1 THE COURT: Let's just assume for a -- when we talk
2 about larceny, of course, the elements of larceny is that
3 there is a taking, that there was a taking of personal
4 property; that after being taken the property was carried
5 away; and that the taking and carrying away of the property
6 was done with the intent to steal. That would, in essence,
7 be as if someone just walks in and picks up something.

8 Here, I think that the difference, when we take it a
9 step farther, because contained within just common-law
10 robbery, let's say, is the idea that the elements are those
11 of larceny, plus the other two necessary to make out the
12 crime of robbery; that the property must be taken from the
13 person of another, or in his presence; and that the taking
14 and carrying away of the property must have been
15 accomplished by placing the other person in fear.

16 And then, of course, we all understand the leap that
17 must be made for the armed robbery charge, that it contains
18 all of those elements, plus being armed, and placing, in
19 addition --

20 MR. WILLINGHAM: And, Your Honor, there is no question
21 that he was armed, because the .45 caliber weapon was found
22 on Highway Nine --

23 THE COURT: Yes, sir.

24 MR. WILLINGHAM: -- away from the store with his blood
25 on it.

Requests to charge

1 THE COURT: I understand that.

2 I am going to deny the request for a charge on larceny.
3 I think that this is either an armed robbery case or
4 nothing. And, once again, it's a murder case or nothing.

5 All right. It's my understanding that the sheriff's
6 department has the area secured out there.

7 THE OFFICER: Yes, sir. The unit is in place.

8 THE COURT: All right, sir.

9 In that regard, let me bring the jury back in. And
10 what I will do is tell the jury custodians that we will lead
11 the way out there.

12 So whoever is going to take me, if they would, just
13 be -- the jury is back here. So, let's just go down where
14 the judges go in and out, and the jury will just meet me
15 down there.

16 Let's bring our jury back, and our custodians.

17 (The following takes place in the presence of the jury
18 and the custodians.)

19 THE COURT: Ladies and gentlemen, I am not going to let
20 you get very comfortable.

21 I am going to allow the jury custodians to take you to
22 the scene that has been the subject of this trial, and for
23 the purposes of a jury-view. You will be taken to view the
24 scene of the alleged crime.

25 While you are on your way to and from the scene and at

Requests to charge

1 the scene, you are not to discuss this case among yourselves
2 or with anyone that you might come into contact with.

3 The lawyers and I will be in the area, but we will not
4 be there to answer any questions. This is very simply for
5 you to have the opportunity to better understand the
6 evidence as it has been presented in the courtroom by
7 viewing the scene of the alleged crime.

8 So if you have any questions about anything, that is
9 not something that you are going to be able to look to
10 someone and pose a question to. This is merely a mechanism
11 or a vehicle to help aid you in understanding the testimony
12 that has been presented.

13 The jury custodians will be taking you there. When you
14 get there, they will keep you in the vehicles until I give
15 them the authorization to take you out into the location.

16 While you are there, you may certainly look around as
17 long as you desire. Once you have completed, and when I say
18 once you have completed, all of you have completed your look
19 around, once again, without any discussions among yourselves
20 or anyone else, because the jury custodians will be there,
21 then you-all as a group will get back into your vehicles and
22 come back to the courthouse.

23 And then we will continue at that time and move into
24 the closing arguments, and then my charge or instruction on
25 the law that applies to this case.

Requests to charge

1 So, once again, as we leave the courthouse, please
2 understand that you are not to discuss this case among
3 yourselves, with your jury custodians or anyone else that
4 you might come in contact with.

5 Also, once again, each and every cautionary instruction
6 that I have given you still comes into play, that if anyone
7 that you might run into -- that area should be cleared. But
8 out of an abundance of caution, you are not to discuss this
9 matter with anyone. And also you are not to read, watch or
10 listen to any news accounts concerning this case.

11 I will see you out at the location, I am sure. We will
12 not be talking about anything, but I will see you out there.

13 The jury may retire to the jury room.

14 To the jury custodians, we will meet you downstairs at
15 your vehicles in just a few minutes.

16 (The following takes place outside the presence of the
17 jury.)

18 THE COURT: All right. I guess everyone needs to
19 congregate. Whoever wants to ride with me in the deputy's
20 car may feel free to do so. That way we can all go and come
21 at one time unless you want to go separately. I will leave
22 that up to you.

23 But we are going to adjourn here temporarily or recess
24 here temporarily until we go out there, because we should be
25 the only ones in the area. I'll see you out there.

Defendant questioned

1 (Whereupon, a recess was taken while the jury was
2 transported to the scene.)

3 THE COURT: All right.

4 Mr. Moore, could you stand again, please, sir?

5 (Whereupon, the defendant stood.)

6 THE COURT: I remind you, sir, that you are still under
7 oath.

8 Mr. Moore, in any criminal trial where the maximum
9 penalty could result in death and any separate proceeding
10 following such trial, you or your counsel shall have the
11 right to make the last argument. That's pursuant to Section
12 16-3-28.

13 I'm advising you at this time that you and your lawyer
14 have the right to address the jury at the conclusion of his
15 argument. You have the right to address the jury.

16 So, I need to explain to you that you do have that
17 right. The state is going to have the opening argument, and
18 then Mr. Morin or Mr. Kelly, whomever it might be, will have
19 the final argument.

20 And if Mr. Moore desires to address the jury, he may
21 also do so pursuant to the State vs. Charping. That's 313,
22 S. C., 147, 437, S. E. 2d., 553, a 1993 case.

23 Is that understood, sir?

24 THE DEFENDANT: Yes, it is.

25 THE COURT: And what is your desire?

Defendant questioned

1 THE DEFENDANT: At this moment I desire to speak with
2 my counsel.

3 THE COURT: All right.

4 (Pause.)

5 THE COURT: Now, you understand, Mr. Moore, that, of
6 course, in the closing argument that you would have to
7 address the issues that are presented, that have been
8 presented, in the evidence and revealed in the evidence and
9 testimony.

10 MR. MORIN: What I have explained to him, what
11 Mr. Kelly and I have explained to him, is that should he
12 choose to do so, he can comment on the evidence that is in
13 but he is not going to be allowed to add in anything new.

14 THE COURT: Correct. Do you understand that, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: What is your decision?

17 THE DEFENDANT: I shall speak.

18 THE COURT: All right, sir.

19 All right. Thank you very much.

20 Is the state ready?

21 MR. GOWDY: Yes, sir, Your Honor.

22 THE COURT: Is the defense ready?

23 MR. MORIN: Yes, sir.

24 THE COURT: Bring them back.

25 However you-all wish to proceed, you first, it doesn't

Defendant questioned

1 matter. I will let you-all work that out.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: Madam Foreperson, ladies and gentlemen of
5 the jury, as you know, we have reached the end of all of the
6 testimony and evidence that is to be presented in this case.
7 And what remains are the closing arguments of the parties
8 involved.

9 As we move into that process, I want you to give them
10 your undivided attention, because what they have to say to
11 you is extremely important.

12 However, I also want to remind you that what they have
13 to say in their closing arguments does not represent
14 evidence in this case. The evidence in this case comes from
15 the testimony of the sworn witnesses who appear on this
16 witness stand, together with any other evidence that has
17 been introduced into the case.

18 And if the parties make any comment as to the evidence
19 and it does not agree with what you find that the evidence
20 has revealed through the testimony or the presentation of
21 the evidence, then, of course, you will follow your own
22 recollections.

23 Also, if they make any comment as to the law in this
24 case and it differs with what I instruct you that the law
25 is, then, of course, you will follow the law as I instruct

Closing arguments

1 you.

2 The state will have the opening argument; and then the
3 defendant will have the final argument.

4 MR. GOWDY: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 MR. GOWDY: Good afternoon, Madam Forelady; good
7 afternoon, ladies and gentlemen of the jury.

8 We met during jury qualifications, but I'm going to
9 introduce myself again to you. My name is Trey Gowdy. I'm
10 the solicitor for the Seventh Judicial Circuit, which
11 includes Spartanburg and Cherokee Counties.

12 I know that I speak for the defense, as well as the
13 State of South Carolina, when I thank you for your service
14 in this case. Service in an ordinary criminal case is
15 difficult. Serving on a sequestered jury, being away from
16 your family and friends and putting your lives on hold, in
17 essence, for several days is extraordinary. And I know that
18 I thank you on behalf of everybody involved in this case.

19 Ladies and gentlemen of the jury, Judge Cleary is the
20 judge of the law. He wears a robe, and that's his job.

21 You are judges in this case also. And they used to
22 refer to you as judges without robes. And this may be the
23 only time you've ever served on a jury, but you are the
24 judge of the facts in this case. You decide what happened
25 on September the 16th of 1999.

Closing arguments

1 And just as Judge Clary is the judge of the law, nobody
2 can tell him what the law is. Nobody can tell you what the
3 facts are.

4 But I would like to argue to you. I would like to
5 submit or point out some things to you, ladies and
6 gentlemen, that I think are significant. And as Judge Clary
7 said, you go with your recollection, however you remember
8 it. You are the judge of the facts.

9 Each of you represent a different life experience or
10 different perspective. You have been brought together for
11 service on this jury. Many of you probably didn't know one
12 another before Monday of this week.

13 But as fate would have it, your paths have crossed.
14 You find yourselves on a Saturday afternoon in October of
15 2001 sitting in judgment of something that happened in
16 September of 1999. In essence, your paths crossed with one
17 another.

18 I want to talk to you for a minute about three other
19 people whose paths crossed on September the 16th, 1999.
20 Those three people, two of whom are victims -- Terry Hadden,
21 James Mahoney. Their paths crossed with the defendant's,
22 Richard Moore.

23 He left Nikki's Convenience Store, a little store that
24 Keith Fowler owns not five miles from here that he named
25 after his wife, Nikki.

Closing arguments

1 When he left the store sometime after 3:15, two men
2 were on the ground. One got up and came to this courtroom
3 yesterday and told you what he saw, and one man never got
4 up.

5 James Mahoney was killed on September the 16th, 1999.
6 James Mahoney was 5' 9" and weighed about 140 pounds. He
7 had crooked hands; he had bad eyesight; but he worked the
8 night shift at Nikki's Convenience Store. He worked it by
9 choice. He worked during what we refer to as the dark hours
10 of the day, serving hot dogs and giving people drinks and
11 keeping folks company. That was his job.

12 Terry Hadden had just gotten off work. He worked the
13 second shift at Wise's Foods. He got off work and took a
14 coworker home and went by Nikki's for some food and some
15 company.

16 And if you remember the testimony, ladies and
17 gentlemen, they were watching a hurricane that was fixing to
18 hit some part of the United States.

19 Terry Hadden left to go play a video game, and James
20 Mahoney waited on some other customers. In fact, at one
21 point a customer came in and needed help with a tire. And
22 there is the tire tool that he loaned him.

23 And then at three o'clock in the morning or sometime
24 between 3:00 and 3:15, Terry Hadden and James Mahoney's
25 paths crossed with a man that was so bent on getting money

Closing arguments

1 to support his cocaine habit that he would shoot another man
2 through the heart.

3 Ladies and gentlemen, criminal cases in some respect
4 are like puzzles. And if you are like me, you've got
5 puzzles at your home. Some of them don't have all of the
6 pieces, especially if you have children. Some of them don't
7 have all of the pieces.

8 It is rare to find a criminal case that has every piece
9 to the puzzle. That's not the issue in this case. If we
10 had a video recording of what happened on September the
11 16th, we would have every piece to this puzzle.

12 We don't have a recording. What we have is an
13 overwhelming amount of direct and circumstantial evidence.
14 And I want to go through that direct and circumstantial
15 evidence, and then I am going to sit down.

16 Terry Hadden came in here yesterday. He is a
17 unsophisticated man. And one of the first things he told
18 you is he is an unsophisticated man that lost an eye as a
19 child. He has one eye. But that one eye has been good
20 enough for him to drive a car, to drive a truck and work
21 since he was 16 years old.

22 And it's through his vision, through his eye, that we
23 have a glance of what happened in the early morning hours in
24 a little store that Keith Fowler named for his wife Nikki
25 not five miles from here.

Closing arguments

1 Terry Hadden is seated with his back to the entrance
2 playing a video game. He testified that this defendant
3 walked in, and their eyes met just for a moment, that their
4 eyes met.

5 And Mr. Moore walked to the left towards the cooler,
6 and Mr. Hadden went back to playing his game.

7 And the next thing that Mr. Hadden heard was James
8 Mahoney saying, "What the hell do you think you're doing?"

9 If you remember, ladies and gentlemen, he hadn't heard
10 any other conversation, but that was said in such a way and
11 with such volume that he turned around, and he paid
12 attention.

13 And what did he see? He saw this defendant with his
14 hand on both of James Mahoney's crooked little hands. He
15 saw this right here.

16 And then he saw this defendant say, "Don't move," and
17 he pointed the gun at him. And he fired almost simultaneous
18 with saying don't move.

19 And we found a .45 caliber slug up above the video
20 poker machine at Nikki's Convenience Store. That's the same
21 caliber that was fired by the same gun that shot James
22 Mahoney through the heart.

23 Terry Hadden was an eye witness to this crime. He's
24 also a victim, and sometimes maybe I haven't spent enough
25 time talking about him as a victim. He is a victim. He is

Closing arguments

1 a victim of assault with intent to kill.

2 But as I told you a few minutes ago, two men hit the
3 deck between 3:00 and 3:15 in Nikki's Convenience Store.
4 One of them got up, and one of them is not ever going to get
5 up.

6 The one that got up came in here yesterday and told you
7 what he remembered. Did he count the shots? No, he didn't
8 count the shots. And he shouldn't have guessed. But part
9 of your job as a juror is to determine who is telling you
10 the truth and who ain't. And you use a lot of different
11 standards and a lot of different life experiences to be able
12 to do that.

13 I submit to you that he had a better view of what
14 happened than anybody in the world. I submit to you he
15 doesn't have a motive or a bias to tell you anything other
16 than what he recalls.

17 How simple would it have been, ladies and gentlemen,
18 for him to come in here and stick by his first statement?
19 Who is going to contradict it?

20 But he didn't do it. He said I made a mistake. He had
21 never been shot at before, never seen a dead body before.
22 Can you imagine what it is like to go from playing a video
23 game, to being shot at, to seeing a guy that you just got
24 through being served a hot dog by lying on the ground
25 bleeding to death? And then everybody wants to come in and

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1 ask you what happened.

2 His statement is consistent in the material things that
3 matter in this case. Was it seven shots, was it nine shots,
4 was it 11 shots?

5 I can tell you about one shot, because it went through
6 James Mahoney's heart. And I can tell you about another
7 shot, because it's up above a video poker machine at Nikki's
8 Convenience Store.

9 He told you he didn't count them. He shouldn't have
10 guessed. But his testimony is consistent and reliable, I
11 submit to you, on the material parts of this case.

12 He has got no, no friend to reward, no foe to punish.
13 He is the only eye witness to this crime.

14 And after he watched James -- Richard Moore grab James
15 Mahoney's crooked hands and turn and shoot, I want us to
16 think about what the experts told us, what the doctor told
17 us, Dr. Ashley from Spartanburg Regional Medical Center.

18 He says Richard Moore was shot through the arm and
19 exited here and hit a bone and fragmented and may have
20 scraped across his chest.

21 I ask you is that not a hundred percent consistent with
22 what Terry Hadden saw. Hands like this, turned to fire, a
23 shot through that arm, through that arm and across the chest
24 and a projectile out there. That's exactly what the
25 evidence is in this case.

Closing arguments

1 Terry Hadden is unequivocal, and he stated it without
2 any hesitation, without any reservation, without any
3 qualification.

4 Richard Moore fired the first shot at Nikki's
5 Convenience Store two years ago. He fired the first shot,
6 and he did it after he grabbed James Mahoney's hands. And
7 then he hit the deck.

8 And the next thing he heard was Richard Moore saying
9 let's get the hell out of here. He heard Richard Moore say
10 two things. Don't move, simultaneous with being shot at,
11 and let's get the hell out of here.

12 What he didn't see, ladies and gentlemen, because his
13 head wasn't turned, he didn't see this defendant walk around
14 the counter and step over the broken dying body of James
15 Mahoney to steal somebody else's money, \$1,400 that belonged
16 to Nikki's Convenience Store. He had to step over his dead
17 body or dying body to get the money.

18 And while James Mahoney is bleeding out the front, he
19 has got the trickling, the likes of Richard Moore's blood on
20 his back. The D. N. A. proved to you this morning. Richard
21 Moore's blood is on James Mahoney's back where he stepped
22 over him to get to the money.

23 He didn't call 9-1-1 to say that we've had a shooting;
24 he didn't call the police. He didn't even -- there has been
25 no evidence that he checked on the condition of Terry Hadden

Closing arguments

1 or James Mahoney. He stepped over a dying, broken body to
2 get money to go back to George Gibson's house to get another
3 rock of crack cocaine.

4 Deputy Barnette told you in his opening that Richard
5 Moore is a desperate man. Crack cocaine will make you
6 desperate.

7 He went to George Gibson's house sometime earlier that
8 night, Richard Moore did. He had lost his job at Kohler two
9 weeks prior. He was pawning things for money, cash.

10 He comes into the store. After the shooting he steps
11 over a dead body, and he gets a blue vinyl bag. He's shot
12 in the arm and he's bleeding profusely.

13 And if you know anything about Spartanburg, you go down
14 221 and you get to Spartanburg Regional Medical Center
15 pretty quick. He didn't go to the hospital.

16 He went to George Gibson's house, the same house that
17 he went to five hours prior, and he told George Gibson I
18 done something wrong. He wanted crack cocaine, but he told
19 George I done something wrong.

20 And then as he is backing out, as George Gibson says
21 you're going to have to fend for yourself, because I am not
22 taking you to the hospital and I'm not going to get into it.

23 He backs into a telephone pole. Just by good fortune,
24 Deputy Rollins is there. And what did Richard Moore say to
25 him? "I did it, I did it, I give up, I give up."

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1 "I did it, I did it, I give up, I give up." He said it
2 so many times, ladies and gentlemen, if you remember Mark
3 Rollins' testimony, he finally had to tell this defendant to
4 shut up. He was saying, "I did it, I did it, I give up, I
5 give up."

6 I did what? What's the it? Just shot a man through
7 the heart and stepped over his dying body to get some money.
8 It's in front of a crack dealer's house. Bleeding from the
9 arm, not on the way to the hospital. On the way to get
10 drugs.

11 And we find his truck, and we find the cash, and we
12 find the blue vinyl bag. In the front seat we find a knife
13 that is open. It's setting right behind him. He is setting
14 on top of it.

15 Ladies and gentlemen, yesterday the defense put a
16 picture up here and showed you a cat. We showed you D. N.
17 A. We showed you ballistics.

18 The .45 caliber gun of Richard -- that Keith Fowler
19 owned was fired at least five times. The .44 caliber that
20 James Mahoney carried for protection was fired a single
21 time.

22 James Mahoney worked the night shift in a convenience
23 store in Spartanburg, South Carolina. He worked from
24 9:00 p.m. to 6:00 a.m. That's dangerous work. That's why
25 he carried a firearm. It turned out to be deadly for him.

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1 Ladies and gentlemen, Judge Clary is going to tell you,
2 I think, and you go with whatever he tells you. He is going
3 to tell you that murder is the unlawful killing or taking of
4 another's life with malice aforethought. And that malice
5 can be expressed or implied. That malice can be
6 premeditated three months, or it can be an instant.

7 Ladies and gentlemen, I have written them down. Pardon
8 me while I look at this. I don't want to miss. I only have
9 one chance to talk to you.

10 I have written down 20 do 25 items, any one of which
11 can tend to show malice, because that's the issue in this
12 case. It's not a question of who shot James Mahoney. Terry
13 Hadden told you who did it, and the D. N. A. confirmed that.
14 There is no question Richard Moore was in that store.

15 There is no question Richard Moore dripped his blood on
16 the dying, broken, fallen body of James Mahoney in his rush
17 to get to a blue bank bag. His blood is all over that.
18 There is no question who was in there. There's no question
19 what happened. James Mahoney was shot with malice.

20 There is a blood trail. And if you'll think back to
21 the evidence, you will see blood in front of the counter.
22 And you will see a trail around an entrance way back to
23 where the kitchen was.

24 Now, the defense may make a big deal about where the
25 bullet casings were. We had special Agent Whitaker tell us

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1 that he's dropped four different bullet casings, and I don't
2 think any of them went the same direction.

3 They'll talk about the bullet casing back there where
4 the kitchen was. I talked to you a little bit awhile ago
5 about puzzles.

6 The State of South Carolina doesn't have to prove
7 criminal cases beyond a shadow of a doubt. We have to prove
8 it beyond a reasonable doubt. Sometimes there are pieces of
9 a puzzle that are missing.

10 It wouldn't be right for me to stand in front of you
11 and say I know every single, solitary thing that happened
12 inside of Nikki's Convenience Store on September the 16th.
13 It wouldn't be right for me to do that. But I think based
14 on the evidence, ladies and gentlemen, we know enough of
15 what happened to be able to tell what happened based on
16 direct and circumstantial evidence.

17 Was James Mahoney shot from this side of the counter or
18 was he shot when he walked around back in the kitchen to get
19 the money -- was he shot? Is that why the .45 shell casing
20 is back there, because Richard Moore walked back there to
21 shot him?

22 I don't know the answer to that. I just know James
23 Mahoney was shot through the heart with a .45 caliber gun,
24 the same .45 caliber gun that this defendant took and threw
25 out into the road, the same .45 caliber gun that shot the

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1 shot that Terry Hadden said killed James Mahoney.

2 We have a trail of blood from the front to around to
3 where the money was. Why go get the money? Why go get the
4 money unless your intention all along was robbery?

5 The testimony was the money was in the drawer. The
6 testimony, as I recall it, and you go by what you recall,
7 was that one of those drawers was empty, opened, and one of
8 them wasn't.

9 To step over a broken, dying body to rifle through
10 somebody else's desk to get money is malice.

11 He told the police not 30 minutes to 45 minutes after
12 this shooting, "I did it, I did it, I give up, I give up."

13 He told George Gibson, "I have done something wrong and
14 I need to go turn myself in." That's malice.

15 He took the money with him. He didn't call 9-1-1. He
16 didn't call E. M. S. He didn't say there has been a
17 terrible shooting here. He went to a crack dealer's house.

18 This is murder, ladies and gentlemen. It's murder.
19 It's assault with intent to kill on Terry Hadden. It's
20 armed robbery. It's possession of a firearm during the
21 commission of a violent crime.

22 Ladies and gentlemen, I am going to ask Deputy
23 Willingham to turn on this projector, and, again, I get one
24 chance to talk to you. I don't want to sit down, because
25 this is the last chance that I have to talk to you about

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1 what happened that night.

2 I know I've got to sit down in a minute, but I want to
3 go over a couple of pieces of evidence. I don't want you to
4 take my word for it. I want to put it up there where you
5 can see it.

6 Ladies and gentlemen, that's a button. That's a button
7 that the SLED agent testified was consistent with the
8 buttons from James Mahoney's shirt that was found on the
9 counter.

10 And if you remember, ladies and gentlemen, I believe
11 the SLED agent testified that there was still some thread
12 that used to hold that button on his shirt. How does the
13 button get off his shirt? Is that how a button gets off the
14 shirt? Is that how a button gets off, you pulling it with
15 so much force that it pops the threads? They found the
16 button on the counter, and the button matches James
17 Mahoney's buttons on his shirt.

18 I want you to think back to what Terry Hadden saw. He
19 saw somebody putting his hands on James Mahoney's hands.
20 Now we got him that close. He pulled his shirt. Is that
21 when James Mahoney said, "What the hell are you doing?" I
22 don't know.

23 Ladies and gentlemen, I just know that James Mahoney's
24 button is on the counter and not on his shirt and that the
25 expert said it took force to get there. You see there is

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1 still a string, ladies and gentlemen.

2 Ladies and gentlemen, this is a .44 caliber handgun.
3 This was James Mahoney's gun. It was fired one single
4 solitary time. It's a revolver. It's easy to count how
5 many times it's shoot. The bullet casings. It was shot one
6 single solitary time.

7 This is the .45. This gun belonged to Keith Fowler.
8 He kept it behind the counter at Nikki's just if needed for
9 protection. This gun was fired at least five times; at
10 least, probably more. We know of one bullet up above the
11 video poker machine; we know of one bullet that went through
12 James Mahoney's heart and into his arm.

13 If we look at the facts in the light most conservative,
14 conservative, and let's say he was shot once, not twice, but
15 once. Let's say he did it. You remember Dr. Wren, and he
16 had my arm like this. And he said the body was contorted or
17 turned in some way. Is that consistent with somebody
18 pulling on your arm and shooting you like that when you
19 trying to get away?

20 I submit to you, ladies and gentlemen, based on the
21 evidence that this gun was fired at least five times. This
22 is the gun that Richard Moore threw into the roadway. This
23 is the gun that was taken from Nikki's Convenience Store by
24 this defendant when he took \$1,400 after he stepped over the
25 dying, broken, crooked-handed body of James Mahoney. This

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1 is the gun that he took with him. This is malice.

2 And we have a gun that was never touched, a .32 if my
3 memory serves me correctly. It was never touched.

4 These are two .45 caliber slugs. This one was taken
5 from the Spartanburg Regional Medical Center Morgue by Dr.
6 David Wren. It was taken out of the body of James Mahoney.

7 This .45 caliber slug was taken from behind the video
8 poker machine at Nikki's Convenience Store. Could Kenneth
9 Whitler say that that gun fired both of them? He said it
10 could. Could either one of the other guns have fired these
11 shots? He said no. Neither one of the other three guns
12 could have fired these two shots. A .45 caliber fired the
13 same shot at Terry Hadden that was fired at James Mahoney.

14 Ladies and gentlemen, that meat cleaver has Richard
15 Moore's blood on it, but so does everything else in that
16 trail around where the money was, a trail that starts right
17 there and goes right over another human being's body.

18 Did Richard Moore bring the meat cleaver into Nikki's
19 Convenience Store? I asked every other employee whether
20 that meat cleaver belonged to Nikki's Convenience Store.
21 And if you remember, they were all unequivocal in saying no,
22 nothing.

23 I don't know where that meat cleaver came from, ladies
24 and gentlemen. I am not going to stand in front of you and
25 act like I do. I know where it is, and I know where it was

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1 when James Mahoney's body was found. It was at his feet. I
2 know it didn't belong to Nikki's Convenience Store.

3 This is the truck that Richard Moore was driving. That
4 money right there belonged to Keith and Nanette Fowler.
5 That blue vinyl bank bag belonged to Keith and Nanette
6 Fowler. That blood belonged to Richard Moore.

7 Again, I want us to remember what Hugh Ashley testified
8 to, the surgeon. If there's an entry wound here, if there's
9 an exit wound here, that there are fragments in the arm
10 where the bullet hit the bone. We know some fragments came
11 out because there was an exit wound. We know there is a
12 laceration across the chest.

13 Is that consistent with being shot while you're doing
14 that right there, shooting Terry Hadden? I submit to you,
15 ladies and gentlemen, it is one hundred percent consistent
16 with malice.

17 Ladies and gentlemen, I believe we can make that out to
18 be a knife. That's this knife right here taken from Richard
19 Moore's truck in George Gibson's driveway on September the
20 16th in the early morning hours.

21 And I will tell you the same thing I tell you about the
22 meat cleaver, ladies and gentlemen. I don't know whether it
23 was used to rob James Mahoney. I know where it was found.
24 It was found right beside the money, right beside his blood,
25 right beside his wallet that had a bunch of pawn tickets in

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1 it from a desperate man who was drunk and out of work. It
2 was open.

3 No criminal case has every single piece of the puzzle.
4 That's not the issue. The issue is are there enough pieces
5 to the puzzle. Some puzzles you can have one piece and have
6 enough. If I had a puzzle of the Statute of Liberty and
7 showed you a bunch of green bricks, you might not know what
8 it was.

9 If I showed you a lady with a torch in her hand, every
10 one of you would know what it was. One picture is sometimes
11 enough. One picture.

12 The picture that Terry Hadden saw of and a man grabbing
13 the two crooked -- people arthritic hands in his one hand
14 and turning to fire a shot at him, that is malice. That is
15 murder, ladies and gentlemen.

16 And in his opening statement Deputy Barnette went
17 through the charges. And he asked to use your common sense.

18 I am going to tell you, ladies and gentlemen, the judge
19 is going to define for you reasonable doubt. I want you to
20 listen closely to what the judge says.

21 But it is not reasonable doubt, ladies and gentlemen,
22 to go back and talk about something. It is not reasonable
23 doubt to deliberate. That's what you are supposed to do.

24 The State of South Carolina is not required to prove
25 anything to you beyond a shadow of a doubt. We are required

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1 to prove it to you beyond a reasonable doubt.

2 Based on the overwhelming evidence in this case from
3 the smallest button on the counter that came from James
4 Mahoney's shirt to the cocaine that was in Richard Moore's
5 system at Spartanburg Regional Healthcare, I submit to you
6 the State of South Carolina has proven to you a motive to
7 commit this crime and the means to commit this crime, an eye
8 witness to this crime, the D. N. A. to confirm what the eye
9 witness says. The ballistics support it.

10 I am asking you as a Solicitor of the Seventh Judicial
11 Circuit to find Richard Moore guilty of murder, of assault
12 with intent to kill, of armed robbery, possession of a
13 firearm during the commission of a violent crime. The
14 evidence is overwhelming that supports it.

15 I thank you for your service and ask you to find him
16 guilty of all of the things that he is charged with. Thank
17 you.

18 THE COURT: Mr. Morin.

19 MR. MORIN: Ladies and gentlemen, yesterday morning I
20 stood before you, and I told you that in this case there
21 were undisputed facts, facts that didn't have any doubt. I
22 told you Richard entered the store and had no weapon.

23 Not one single shred of evidence disputed that. I told
24 you that Richard went to the cooler, got some beer, got some
25 cigarettes, got it from the back.

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1 Not only is the bag in evidence, but the items that
2 were in it. When you go back there you will notice that
3 there is a bullet hole through it that goes from
4 Mr. Mahoney's side of the counter to Mr. Moore's. The bag
5 has got blood on it. That's Mr. Moore's blood. Okay.
6 That's Mr. Moore who went in there and put that on the
7 counter and got shot. I told you that James Mahoney had
8 three weapons, three big guns. So, we know that.

9 The state through Investigator Denton and Mr. Dorman
10 developed a theory. And here it is. Okay. This is the
11 theory. Mr. Moore goes in there with this.

12 MR. GOWDY: Your Honor, I would object at this point
13 based on the evidence. I don't recall a single shred of
14 evidence to that effect, that that was anybody's theory.

15 THE COURT: Well, sir, the thing about it, and I'll
16 tell the jury, that what the lawyers say in their closing
17 arguments or what anyone says in the closing arguments does
18 not represent evidence.

19 The evidence in this case, ladies and gentlemen, has
20 come from the testimony that you have heard from the sworn
21 witnesses, together with the evidence that has been
22 introduced.

23 And, once again, you are the judges of the facts. I am
24 the judge of the law. And if you find that what the lawyers
25 say disagrees with what the evidence has revealed, then, of

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1 course, you will follow your own recollection.

2 You may continue.

3 MR. MORIN: Here is evidence, they said, that put it
4 there with him. And they take -- they find this at the
5 scene. Mr. Denton did.

6 All right. He asked Mr. Fowler whose is this. I don't
7 know. I never seen it before.

8 So what did they do with this? Send it to SLED. What
9 are they looking for? Fingerprints. Why are they looking
10 for fingerprints? Why are they looking for fingerprints on
11 this item that Mr. Fowler said did not belong to the store
12 and he doesn't know about it?

13 Now, Mr. Gowdy has asked you already. He must have
14 gone in there to rob. He must have.

15 But what happened three weeks ago? Something important
16 about this piece of evidence happened three weeks ago.
17 Mr. Hadden, being with these gentlemen for the first time,
18 revealed Jamie. That's Jamie's. So much for that theory.

19 All right. So, now, what are we going to do? Wait a
20 minute. There is a meat cleaver. It's on the floor. And
21 guess what? Mr. Fowler doesn't know about this either. Of
22 course this piece of evidence wasn't sent for fingerprints
23 because at the time they had built their staff with this.

24 Richard Moore goes into that store, gets that beer,
25 walks to that counter. Something happens. We don't know

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1 what. Y'all saw that store; y'all saw those pictures; y'all
2 saw that bar, table, counter.

3 Where did Mr. Fowler say that gun was? Up under the
4 counter next to that, on that desk. Is there any possible
5 way a person on that side of the counter could see that gun,
6 could see it, let alone reach all the way across it and get
7 it? No, there is not.

8 James Mahoney had to reach and get that gun. Mr. Moore
9 could not have brought that gun into play from his side of
10 the counter.

11 And Mr. Gowdy says, well, Mr. Hadden said he heard
12 Jamie and turned and saw it. Okay. Mr. Hadden's playing a
13 video poker machine. He hears somebody say, "What the hell
14 are you doing," and he turns like that.

15 Okay. In order for you to believe that scenario, what
16 you have got to do is you have got to say what the hell are
17 you doing. And in the time it took him to turn around and
18 see, because the implication is that was when Mr. Moore was
19 grabbing that.

20 In those fractions of a second it took Mr. Hadden to
21 turn around, they want you to believe Jamie -- and they made
22 a long thing about Mr. Mahoney's hands were not that great.
23 He wasn't a strong man.

24 But in that much time he reached. He got the gun. Mr.
25 Moore took it away from him, pinned his hands to the floor,

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1 to the table, and turned and stood like this. From the time
2 he said, "What the hell are you doing," and it took
3 Mr. Hadden to turn around, all of that happened.

4 Even if it could have, as Mr. Gowdy pointed out, he
5 wants you to say he's holding it. He doesn't know where
6 that butcher knife came from.

7 Ladies and gentlemen, y'all listened to that evidence.
8 They are trying to say that's what he brought in there.
9 Well, where is that if he's holding his hands after he has
10 gotten the gun and taken the gun and now he has turned and
11 holding his hands and he has got the knife?

12 A piece of the puzzle. That's what Mr. Gowdy calls it.
13 He calls it a piece of the puzzle. What I call it is is
14 evidence he is supposed to prove to you beyond a reasonable
15 doubt. I just call it the same thing that George Bush
16 talked about when he said they hate us for our freedom, the
17 freedom presumed innocent, the freedom to have the
18 government prove beyond a reasonable doubt. He is calling
19 it a piece of the puzzle.

20 He talked about the bullets. You know, he talked about
21 the bullet that landed right there. But you see the .45
22 fired two shots, and I am not saying. And I understand that
23 Mr. Hadden didn't count them. I have never contested that.
24 I am sure that he had a lot of things to think about besides
25 how many bullets were being fired.

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1 But this time, and I asked Officer Dorman how many
2 bullets fired from this here this way. And he said at least
3 three. And he got a live round right here on the counter.
4 Why is that there?

5 Once again, I don't know why Jamie reached down there
6 and got that gun. But he got it. And he fired it. And it
7 went there, and the other bullet that you have in evidence
8 went here and bounced out and went out into the driveway.

9 That leaves the question about this bullet that's on
10 the counter. And I asked Officer Dorman, and Mr. Kelly
11 asked Officer Whitler, about stovepipping and how that
12 bullet could have gotten there.

13 And Officer Dorman, you know, if you have this gun and
14 you fire it and you let it go back like this, this slide
15 will hit you and it will jam. They told you Jamie, James
16 Mahoney, was not a strong man.

17 Then what would happen? Well, you have to work this
18 thing out to get this bullet out. Then that bullet would
19 fall out. Then Jamie, he has got another gun which is
20 closer than the first gun. He has got that right here.

21 He takes that out and shoots Mr. Moore, because he is
22 bleeding right here, right through his stuff, right there.
23 And then they start shooting. Mr. Moore is shot.

24 Now, Dr. Wren, tells about people who can run through
25 stores with no blood pressure, but the fact of the matter is

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1 he, Richard, is shot, and he fires back. And then he hits
2 the person who has already fired at him, and he hit him.

3 And he says murder, just because someone gets shot and
4 dies, that doesn't make murder. What that means is two
5 people shooting at each other, and we don't know why.

6 Which gets me to Officer Dorman. I asked him. Officer
7 Dorman, was there a video surveillance system in this store?
8 And he said yep. Did it work? No.

9 And I said, well. And after a few questions he said,
10 well, yeah, the cameras worked, but the monitor was off.
11 And I said, well, are you sure. He said yeah.

12 So then I got a picture, and I had to put it up here,
13 and you will have it back there in the jury room, to show
14 him, no, see, the monitor is on. He took a picture of it
15 while it was on.

16 Well, there wasn't a tape. Well, I asked. First, I
17 asked Mr. Fowler, and then I asked all of the other
18 employees about that. Yeah. There is a tape. Now, you
19 have to turn it on, but there is a tape.

20 Then I had to call, I had to call the lead
21 investigator. I was hoping that we could straighten out
22 some of these missing pieces. He is the lead investigator.

23 Do you know anything about this tape? Yeah. There was
24 a tape. Did you look at it? Yes, I looked at it. Did
25 anybody look at it with you? Officer Dorman. What was on

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1 it? Oh, well, we didn't decide. There wasn't anything on
2 there about this case, so I don't know what we did. It went
3 away.

4 That's your job. Look at all of this evidence that
5 they have collected for you. They've got pictures; they've
6 got blood. Officer Dorman took 57 blood swabs just from the
7 store.

8 I told you in opening statements it's undisputed Mr.
9 Moore was in there, and Mr. Moore got shot, and he bled.

10 But, so, I asked officer -- when Mr. Hadden was sitting
11 up here at the beginning, walked back there and stood right
12 next to Mr. Denton to make sure that we were straight on
13 this.

14 You ever seen this man in your life? Had him stand up.
15 No, sir, I have never seen him. Seemed kinda strange to me
16 the eye witness didn't talk to the investigating officer.
17 So, when he was up here, I asked him. Did you talk to him?
18 Oh, yeah, I talked to him a couple of days afterwards. That
19 was before we started sending firearms down to SLED for
20 fingerprints.

21 Then before I get to that, now, Mr. Hadden doesn't have
22 any reason to lie. No doubt. And this is very traumatic,
23 you know. No doubt about that.

24 When I asked him what happened when he went down to the
25 station that night to give a statement, he said, man, I

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1 don't know what happened. I don't know what happened. And
2 he gave a statement. The police officer wrote it out for
3 him, and he read or didn't read it.

4 And then he came back about two weeks later and he
5 said, no, no, no. Some of this stuff is not right. And he
6 changed it and went off and came back and talked to the
7 guys -- Mr. Barnette. No, no, no, no. Something is not
8 right.

9 I'm sure he believes that what he saw was Mr. Moore
10 holding that gun, because, just like when I stood up here at
11 the beginning and I told you Jamie Mahoney had three weapons
12 and Mr. Moore had none, and you see Mr. Moore sitting over
13 there, that doesn't make any sense, but that's what
14 happened.

15 Officer Rollins. Yes. You were out at the Hillside.
16 You talked to Mr. Gibson, right? Yes. Did you talk to
17 anybody else in the house? Yes. Do you know their names?
18 No, sir. I didn't record them. I told the investigator.

19 Okay. Mr. Denton, you are the investigator. Did you
20 talk to those fellows out there? Nobody told me about any
21 other people out there.

22 And now we come to the star witness, Mr. Gibson.
23 Ladies and gentlemen, it's unbelievable, the things that
24 Mr. Gibson can say. He wants you to believe that a man who
25 had been shot and was bleeding as much as, and that's

Closing arguments

1 undisputed, as Mr. Moore was came to his house and said I
2 been shot. I need to go to the hospital. But before I do,
3 I want some crack.

4 Mr. Gowdy called it a crack house in his own closing.
5 When it helps him, it's a crack house. But the fact of the
6 matter is he never said anything to any police about, or
7 authorities about, any drugs being mentioned.

8 Mr. Barnette asked him after I sat down did you ever
9 talk to anybody after the police, and he said, oh, yes.
10 Somebody from the solicitor's office, an investigator, came
11 out there and talked to me about three days later.

12 He didn't say one single thing about any drugs being
13 mentioned. But he did remember it three weeks ago when he
14 met with them again.

15 What changed? Well, 18 months ago he got a charge for
16 trafficking crack. Eighteen months ago. And has anything
17 happened to that? No. That case is still pending. But, by
18 the way, I just remember that before Mr. Moore said he
19 needed help, he wanted to talk about the crack.

20 Look at the photograph in State's Exhibit Twenty-three.
21 Okay. This is a photograph taken from Mr. Gibson's house.
22 Mr. Gibson says, well, the first time he says, I was on my
23 porch and I looked out in the street and I saw Richard
24 laying on the ground.

25 How? I see a truck. I see bushes. I see bushes that

Closing arguments

1 are almost twice as tall as the truck. At 3:30 at night
2 could he see it? No. He couldn't see it.

3 And then on redirect I asked him another question about
4 seeing it, and he said, well, I didn't really go out. It
5 doesn't matter if he went out or he was in. He couldn't see
6 what he said he saw. There is the evidence for it right
7 there.

8 He is not telling the truth. He doesn't want to be
9 involved. He doesn't want to be involved. He has got a
10 pending drug charge as it is.

11 Then they brought in Officer Lambert from SLED this
12 morning who said there is D. N. A. over here. There is
13 blood, and it is definitely Richard's. It is definitely
14 Richard's. Jamie shot him.

15 They want to put that cart right before the horse.
16 They want to say he came in and he was going to rob him and
17 he might have had a weapon and it might have been a tire
18 iron, it might have been a butcher knife, it might have been
19 an open pocketknife that he was sitting on.

20 All of that right there, ladies and gentlemen, is a
21 major part of this case. He's calling it a missing piece.
22 What happened? Why did Jamie grab that gun? They say we
23 guess it was robbery. We guess it was. But they don't know
24 that.

25 And before you get to that, because once Jamie is

Closing arguments

1 pulling out guns and shooting, Richard's just somebody who
2 got shot and is trying not to get shot himself.

3 Now, so, he walked around there. The blood, Richard's
4 blood, is just going everywhere. He picks up some money,
5 and he leaves. And he is bleeding. And when he gets to
6 Hillside and talks to Officer Rollins, he actually passes
7 out.

8 Now, it fits in Mr. Gowdy's description that he has got
9 his hand here and he is like this. The only problem with
10 this theory is how did Jamie shoot if Mr. Hadden is correct
11 that he was holding both of his hands?

12 Mr. Hadden didn't come up here and not tell the truth.
13 He is trying to remember what happened, but that night he
14 didn't know what happened.

15 And over the two years he has had to think about it,
16 just like Mr. Gowdy, he assumed, well, it must have been a
17 robbery and he must have shot at me.

18 But what did Richard bring in there? What proof, what
19 evidence, anything at all to say Richard went in there to do
20 anything except put that on the counter, because he couldn't
21 reach that gun. He couldn't.

22 Richard came in here presumed innocent. They had to
23 prove beyond a reasonable doubt that Richard acted with
24 malice. He got shot. He managed to get a weapon and defend
25 himself.

Closing arguments

1 The direct evidence that they have, they either didn't
2 check for what they would have or guessed at it. And they
3 talk about circumstantial evidence, good circumstantial
4 evidence.

5 Well, I am aware of the story about circumstantial
6 evidence to illustrate where the gentleman was that fell out
7 of favor with someone's brothers and wanted to get rid of
8 him. But they couldn't, because they were going to upset
9 their father. So they took him out one day. They took his
10 coat off and put some blood on it and went back to their
11 father and said, father, Jacob has been eaten by the lions.
12 He wasn't. That's circumstantial evidence.

13 They come to you. They say, see, we have got a knife
14 lying around or a tire iron or something else. That's how
15 we know he meant to rob him. That's how we know he acted
16 with malice.

17 That's not what happened. They don't know what
18 happened, and they are asking you to guess. And in order
19 for you to find Richard guilty you are going to have to
20 guess, and that's not reasonable doubt.

21 I submit to you they haven't proven their case. Jamie
22 Mahoney is dead. But that doesn't prove it's a murder.
23 That proves that he got shot.

24 And I almost forget. Mr. Gowdy pointed out he did some
25 sort of body proportion after Dr. Wren tried to tell him.

Closing arguments

1 He can't really tell, but he did it anyway. He said, well,
2 if you were holding your arm like this and you had your gun
3 in the other hand, you could shoot it right up close.

4 What did Dr. Wren say? Dr. Wren started way back with
5 contact and said it is not a contact and it wasn't within so
6 much. It was probably back. Dr. Wren also said it was just
7 as likely he was like this.

8 This is answering Mr. Gowdy's technical question.
9 Well, he could have been like this, like he was going to
10 shoot.

11 That's not important in saying, well, he had his arm
12 pulled back like this and then he shot. That's Dr. Wren
13 answering Mr. Gowdy's question, this weapon right here with
14 the grips that shot Richard Moore.

15 Okay. Richard could not have had a gun unless Jamie
16 pulled it out and Richard managed to get it away from him.
17 Then he got this gun and shot. That's the case, that's this
18 case. Undisputed, Jamie had a gun. Jamie pulled the gun.
19 We don't know why. They want you to guess.

20 You saw that store. You see those pictures. That gun
21 did not come out until Jamie got it. Richard took it away
22 from him somehow, and then Jamie shot him with the second
23 gun.

24 MR. GOWDY: Your Honor, I hate to object, but this is
25 beginning to sound a look like testimony and not argument.

Closing arguments

1 THE COURT: Well, sir, as long as you submit it to the
2 jury and it is not a fact from the testimony --

3 MR. GOWDY: Yes, sir.

4 THE COURT: So, please understand that.

5 Ladies and gentlemen, I will remind you, once again,
6 the testimony in this case has come from the witnesses who
7 appeared on this stand, together with the evidence that has
8 been introduced; and that what the lawyers say does not
9 represent evidence. It is only their contention as to what
10 is revealed.

11 MR. MORIN: The reason I say that is that bag with that
12 blood and that trail that he is so proud of shows Richard
13 shot over here.

14 Richard and Mr. Kelly and Mrs. Johnson and I appreciate
15 the attention you have given in this case. When you go back
16 and you begin your deliberations, look at the evidence. Ask
17 these questions.

18 The judge is going to tell you that a reasonable doubt
19 is one that would make a person hesitate to act. And that
20 night Richard didn't have any time to hesitate. He got a
21 gun pulled on him and managed to get that away and got shot.
22 Talk about it. There is a lot of evidence.

23 As Mr. Gowdy said, if it is not the way, you remember
24 it different than me, then by all means do so. You are the
25 jury. I don't mean to interfere with that. I made

Closing arguments

1 statements about tire irons and theories. I think I have
2 shown where the evidence -- what I am talking about.

3 Richard is not guilty of murder. Thank you.

4 THE COURT: Ladies and gentlemen, under the South
5 Carolina Code of Laws the defendant is entitled to address
6 you at this time in closing arguments.

7 Mr. Moore.

8 THE DEFENDANT: Thank you, Your Honor.

9 I need some help with the actual wallet. What number
10 was it, my wallet?

11 MR. MORIN: I think it is in here.

12 THE DEFENDANT: Thank you.

13 I am very nervous. All I can do is tell you that I am
14 not guilty of murder.

15 MR. GOWDY: Your Honor, I am going to object. Your
16 Honor, he is testifying, and he is not making an argument.

17 THE COURT: Yes, sir.

18 You need to limit yourself to the evidence that has
19 been produced. You cannot testify. You must limit yourself
20 to the evidence that has been produced, Mr. Moore.

21 THE DEFENDANT: I hear what you are saying, but I don't
22 know if I am going to be able, but I am going to try.

23 THE COURT: Well, sir, if you are not able to, then I
24 will have to stop you. So, operate within those perimeters.

25 THE DEFENDANT: I am going to try, Your Honor.

Closing arguments

1 THE COURT: All right, sir.

2 THE DEFENDANT: These are two pawn tickets that Mr.
3 Gowdy introduced into evidence.

4 Mr. Gowdy also said that I done this to get crack. If
5 you were to read -- if Mr. Gowdy had read to you the dates
6 on these tickets, you would know, as well as him, that while
7 these tickets were taken from the pawn shop, I was working.

8 These tickets from the pawn shop does not say I was
9 using cracks. You have a Mr. Gibson saying that. You have
10 an R. N. from the hospital saying that. You don't have no
11 test results to support that.

12 Now, I can say anything, as well as Mr. Smith and
13 Mrs., I mean, Mr. Gibson. I am nervous. I am shaking up
14 here because I don't know what to say. All I know is my
15 life is in jeopardy here a second time.

16 MR. GOWDY: Your Honor, that is improper argument at
17 this stage. I would object.

18 THE COURT: Sustain the objection.

19 Yes, sir. You are to limit yourself to the testimony
20 and evidence. And they are to determine the guilt or
21 innocence, sir.

22 THE DEFENDANT: The state is seeking the death penalty
23 on me, which means my very life is at stake.

24 MR. GOWDY: Your Honor, that's --

25 THE COURT: Sir, one moment. We are in the guilt

Closing arguments

1 phase. They are simply determining the guilt or innocence
2 of the crimes charged at this point in time. That's all
3 they are doing in this stage of the trial. So, please limit
4 it to that.

5 THE DEFENDANT: Your Honor, I am having trouble.

6 THE COURT: Yes, sir.

7 THE DEFENDANT: Please bear with me.

8 See what I am trying to do, put my hand in my pocket.
9 I have no feeling in this hand.

10 MR. GOWDY: Objection, Your Honor. That is not in
11 evidence.

12 THE COURT: I am going to let you talk to your lawyer
13 just one moment, please, Mr. Moore.

14 (Pause.)

15 THE COURT: Ladies and gentlemen of the jury, while
16 they are doing that, I am going to allow you to go to the
17 jury room.

18 While you are there, please do not discuss this case
19 among yourselves. We will get you back in just a moment.

20 The jury may retire.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: Now, Mr. Moore, I want you to understand
24 that you certainly have the right to make the closing
25 argument to the jury. That's provided for by law.

Closing arguments

1 But, once again, you have to do it within the confines
2 of the testimony and evidence that has been presented. You
3 cannot go beyond that. You cannot, since you elected not to
4 take the stand, you cannot testify.

5 You can make comments upon the evidence that has been
6 presented and what it's revealed, but beyond that, you
7 cannot do so, sir. I cannot allow you to, in essence, go
8 around the rules to testify and to bring out things that are
9 not revealed from the testimony and evidence.

10 Mr. Morin, I want you and Mr. Kelly to please explain
11 that to him. We are going to take a short break. And then
12 we will come back and finish up with this.

13 (Whereupon, a recess was taken.)

14 THE COURT: Mr. Moore, certainly you have the right
15 under Section 16-3-28 to address the jury in closing
16 argument. You may not testify. You gave that right up.
17 You can comment on the facts, what the evidence has revealed
18 in this case.

19 Insofar as mentioning punishment, you are not to
20 mention that, because we are not about that right now.

21 And if there are any violations of what I am laying out
22 at this time, you are going to stand over here. Then I am
23 going to stop your argument. And then we will proceed into
24 the charge on the law.

25 But, now, I told you Mr. Morin, I told Mr. Kelly. I

Closing arguments

1 will tell you. As long as you operate within the confines
2 of what the lawyers operate in, because sometimes they try
3 to get outside of the box, and I stop them, particularly
4 when you are here addressing the jury. I cannot allow you
5 to testify.

6 So, if you want to comment on what you've seen develop
7 throughout the course of the trial, that is fine. But
8 beyond that, you can't go beyond that.

9 Okay. All right. Let's bring them back, Cotton.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: Thank you very much, Madam Foreperson and
13 ladies and gentlemen.

14 You may continue, Mr. Moore.

15 THE DEFENDANT: Ladies and gentlemen of the jury,
16 please forgive me for the mistakes I made in this
17 presentation here.

18 I have seen a knife which is on display here, the tire
19 tool. I have heard people say that they, they've, they are
20 part of this case. They may be. It doesn't tie to me.

21 I don't want to offend Your Honor any longer, so I am
22 not going to say any more. I think I have said enough.

23 I just ask that you be fair and don't guess, because
24 that's what you are being asked to do, guess. Thank you.

25 THE COURT: Thank you, Mr. Moore.

Jury charge

1 Ladies and gentlemen of the jury, the indictments
2 charge the defendant, Richard Bernard Moore, with murder,
3 possession of a weapon during the commission of a violent
4 crime, assault with intent to kill and armed robbery.

5 I remind you that the fact that the defendant was
6 arrested, charged and indicted in this case is not evidence
7 in this case and cannot be considered by you as evidence of
8 guilt in this case, nor does it create any presumption or
9 inference of guilt.

10 These documents are simply the formal written
11 instruments which contain the charges made against the
12 defendant. They are the formal documents by which this case
13 is brought into this court.

14 Now, as you know, these indictments in this case allege
15 several different offenses against the defendant. On one
16 indictment he is charged with murder and possession of a
17 weapon during the commission of a violent crime; in a
18 separate indictment with assault with intent to kill; and in
19 a separate indictment, armed robbery.

20 Each indictment and each count therein charges a
21 separate and distinct offense. You must decide each
22 indictment and count separately on the evidence and the law
23 applicable to it uninfluenced by your decision as to any
24 other indictment.

25 The defendant may be convicted or acquitted on any or

Jury charge

1 all of the offenses charged. You will be asked to write a
2 separate verdict of guilty or not guilty for each indictment
3 and for each count on the indictment that lists two charges.

4 Now, the defendant has pled not guilty to these
5 indictments, and that plea puts the burden on the state to
6 prove the defendant guilty.

7 A person charged with committing a criminal offense in
8 South Carolina is never required to prove himself innocent.
9 I charge you that it is an important rule of the law that
10 the defendant in a criminal trial, no matter how great or
11 serious the charge may be, will always be presumed to be
12 innocent of the crime for which the indictment was issued
13 unless guilt has been proven by evidence satisfying you of
14 that guilt beyond a reasonable doubt.

15 This presumption of innocence does not end when you
16 begin your deliberations. But it accompanies the defendant
17 throughout the trial until you reach a verdict of guilty
18 based upon evidence satisfying you of that guilt beyond a
19 reasonable doubt.

20 The presumption of innocence is like a robe of
21 righteousness placed about the shoulders of the defendant
22 which remains with the defendant until it has been stripped
23 from the defendant by evidence satisfying you of the
24 defendant's guilt beyond a reasonable doubt.

25 The presumption of innocence is not a mere legal

Jury charge

1 theory. It's not just a legal phrase. It is a substantial
2 right to which every defendant is entitled unless you, the
3 jury, are satisfied from the evidence of the defendant's
4 guilt beyond a reasonable doubt.

5 Now, what is a reasonable doubt? A reasonable doubt is
6 the kind of doubt that would cause a reasonable person to
7 hesitate to act. Now, the state has the burden of proving
8 the defendant guilty beyond a reasonable doubt.

9 Now, some of you may have served as jurors in civil
10 cases where you were told that it is only necessary to prove
11 that a fact is more likely true than not true such as by the
12 greater weight or the preponderance of the evidence.

13 In criminal cases the state's proof must be more
14 powerful than that. It must be beyond a reasonable doubt.
15 Proof beyond a reasonable doubt is proof that leaves you
16 firmly convinced of the defendant's guilt.

17 Now, there are very few things in this world that we
18 know with absolute certainty, and in criminal cases the law
19 does not require proof that overcomes every possible doubt.

20 If, based on your consideration of the evidence, you
21 are firmly convinced that the defendant is guilty of the
22 crime charged, then you must find the defendant guilty.

23 If, on the other hand, you think there is a real
24 possibility that the defendant is not guilty, you must give
25 the defendant the benefit of the doubt and find him not

Jury charge

1 guilty.

2 Now, I remind you that during this trial you and I have
3 certain duties to perform. As the trial judge it is my
4 responsibility to preside over the trial of this case, and I
5 also have the duty to rule on the admissibility of evidence
6 offered during this trial.

7 You are to consider only the competent evidence before
8 you. If there was any testimony ordered stricken from the
9 record in this case during this trial, you must disregard
10 that testimony. You are to only consider the testimony
11 which has been presented from the witness stand, any
12 exhibits which have been made part of the record in this
13 case.

14 I also have the additional duty to charge you the law
15 applicable to this matter. As the presiding judge, I am the
16 sole judge of the law in this case. And it is your duty as
17 jurors to accept and apply the law as I now state it to you.

18 If you already have any idea as to what the law is or
19 what the law ought to be and it does not agree with what I
20 tell you now that the law is, you must abandon this idea,
21 because you are sworn to accept the law and apply the law
22 exactly as I state it to you.

23 In every case tried in this court before a jury the
24 jury becomes the sole and exclusive judge of the facts in a
25 case. A trial judge cannot intimate, state, comment on or

Jury charge

1 make any statement to a trial jury about the facts in a
2 case.

3 Since you, the jury, are the sole judges of the facts
4 in this case, you are not to infer from what I have said
5 during the progress of this trial in ruling upon the
6 admissibility of the evidence or otherwise or anything that
7 I say now during the course of this instruction to you that
8 I have any opinion about the facts in this case.

9 The law does not allow me to have an opinion about the
10 facts in this case. This is a matter solely for you, the
11 jury, to determine. As jurors it is your duty to determine
12 the effect, value, weight and truth of the evidence
13 presented during this trial.

14 Now, there are two types of evidence which are
15 generally presented during a trial, direct evidence and
16 circumstantial evidence.

17 Direct evidence is the testimony of a person who claims
18 to have actual knowledge of a fact such as an eye witness.
19 It is evidence which immediately establishes the main fact
20 to be proved.

21 Circumstantial evidence is proof of a chain of facts
22 and circumstances indicating the existence of a fact. It is
23 evidence which immediately establishes collateral facts from
24 which the main fact may be inferred. Circumstantial
25 evidence is based upon inference and not on personal

Jury charge

1 knowledge or observation.

2 The law makes absolutely no distinction between the
3 weight or value to be given to either direct or
4 circumstantial evidence, nor is a greater degree of
5 certainty required of circumstantial evidence than that of
6 direct evidence.

7 You should weigh all of the evidence in the case. And
8 after weighing all of the evidence if you are not convinced
9 of the guilt of the defendant beyond a reasonable doubt,
10 then you must find the defendant not guilty.

11 Conversely, if you are convinced of the guilt of the
12 defendant beyond a reasonable doubt, then you must find the
13 defendant guilty.

14 Now, necessarily, you must determine the credibility of
15 the witnesses who have testified in this case. Credibility
16 simply means believability. It becomes your duty as jurors
17 to analyze and to evaluate the evidence and determine which
18 evidence convinces you of its truth.

19 In determining the believability of witnesses who have
20 testified in this case you may believe one witness over
21 several witnesses, or several witnesses over one witness.

22 You may believe a part of the testimony of a witness
23 and reject the remaining part of the testimony of that same
24 witness. You may believe the testimony of a witness in its
25 entirety or reject the testimony of a person or witness in

Jury charge

1 its entirety.

2 You may consider whether any witness has exhibited to
3 you any interest, bias, prejudice or other motive in this
4 case. You may also consider the appearance and manner of a
5 witness while on the witness stand.

6 Now, the rules of evidence ordinarily do not permit
7 witnesses to testify as to their opinion or conclusions. An
8 exception, however, to this rule does exist as to those whom
9 we call expert witnesses. Expert witnesses are witnesses
10 who by education and experience have become expert in some
11 art, science, profession or calling.

12 These witnesses may state their opinions as to relevant
13 and material matter in which they profess to be an expert
14 and may also state their reasons for the opinion.

15 You should consider expert opinion received in evidence
16 in this case and give it such weight as you may think it
17 deserves. If you should decide that the opinion of an
18 expert witness is not based upon sufficient education and
19 experience or if you should conclude that the reasons given
20 in support of the opinion are not sound, or if you feel that
21 it is outweighed by other evidence, you may disregard the
22 opinion entirely.

23 Now, I charge you that the testimony of a witness may
24 be discredited or impeached by showing that he previously
25 made statements which are inconsistent with his present

Jury charge

1 testimony.

2 The earlier contradictory statements are admissible to
3 establish the truth of these statements. It is the province
4 of you, the jury, to determine the credibility, if any, to
5 be given the earlier statements and to be given the
6 testimony of the witness who has been impeached.

7 If a witness has shown knowingly to have testified
8 falsely concerning any material matter, you may consider
9 this in determining whether to trust such witness's
10 testimony in other particulars. You may reject all of the
11 testimony of that witness or give all or part of such
12 testimony the credibility you think it deserves.

13 Now, I charge you further, Madam Foreperson and members
14 of the jury, that the fact that a defendant elects not to
15 testify in his own behalf cannot and must not be considered
16 against him under any circumstances or in any manner
17 whatsoever.

18 The decision of any defendant not to take the witness
19 stand and testify in his own behalf does not create any
20 inference against him. And I tell you now that you must not
21 permit that fact to weigh in even the slightest degree
22 against the defendant. You should not permit this fact to
23 enter into the discussions or deliberations of the issues in
24 this case.

25 Now, ladies and gentlemen, as you are well aware, the

Jury charge

1 defendant is charged with murder. The state must prove
2 beyond a reasonable doubt that the defendant killed another
3 person with malice aforethought.

4 Malice is hatred, ill will or hostility towards another
5 person. It is the intentional doing of a wrongful act
6 without just cause or excuse and with an intent to inflict
7 an injury or under circumstances that the law will infer an
8 evil intent.

9 Malice aforethought does not require that malice exist
10 for any particular time before the act is committed, but
11 malice must exist in the mind of the defendant just before
12 and at the time of the act being committed. Therefore there
13 must be a combination of the previous evil intent and the
14 act.

15 Malice aforethought may be expressed or inferred.
16 These terms, expressed and inferred, do not mean different
17 kinds of malice but merely the manner in which malice may be
18 shown to exist, that is either by direct evidence or by
19 inference from the facts and circumstances which are proved.

20 Expressed malice is shown when a person speaks words
21 which expresses hatred or ill will for another or when the
22 person prepared beforehand to do the act which was later
23 accomplished. For example, lying in wait for a person or
24 any other act of preparation going to show that the deed was
25 done within the defendant's mind would be expressed malice.

Jury charge

1 Malice may be inferred from conduct showing a total
2 disregard for human life. Inferred malice may also arise
3 when the deed is done with a deadly weapon. A deadly weapon
4 is any article, instrument or substance which is likely to
5 cause death or great bodily harm. Whether an instrument has
6 been used as a deadly weapon depends on the facts and
7 circumstances of each case.

8 Now, the following are examples of instruments which
9 may be deadly weapons. A pistol, a shotgun, a rifle, a
10 dirk, a dagger, a knife, a slingshot, metal knuckles, a
11 razor, gasoline, a fire bomb, a Molotov cocktail or lighter
12 fluid.

13 Now, the defendant is charged with possession of a
14 weapon during the commission of a violent crime. The state
15 must prove beyond a reasonable doubt that the defendant was
16 in possession of a firearm or visibly displayed what
17 appeared to be a firearm during the commission of a violent
18 crime.

19 A firearm means any machine gun, automatic rifle,
20 revolver, pistol or any weapon which will or is designed to,
21 or may readily be converted to, expel a projectile.

22 In order to find the defendant guilty of possession of
23 a weapon during the commission of a violent crime you must
24 first find the defendant guilty of committing a violent
25 crime.

Jury charge

1 And I charge you that murder is a violent crime as
2 provided in Section 16-1-60 of the Code of Laws of the State
3 of South Carolina, 1976 as amended.

4 Now, the defendant is also charged with assault with
5 intent to kill. In order to prove assault with intent to
6 the kill the state must prove beyond a reasonable doubt that
7 the defendant with malice aforethought unlawfully attempted
8 or offered to commit a violent injury upon the person of
9 another and had the present ability to complete the
10 attempted injury.

11 An assault is the intentional creation of a reasonable
12 fear of immediate bodily harm. It is not necessary that the
13 attempted injury or harm actually take place. For example,
14 if I walk up to you and when we are within arm's reach, if I
15 draw back to hit you, that is an assault.

16 Malice is hatred, ill will or hostility towards another
17 person. It is the intentional doing of a wrongful act
18 without just cause or excuse and with an intent to inflict
19 an injury or under circumstances that the law will infer an
20 evil intent.

21 Now, once again, malice aforethought does not require
22 that malice exist for any particular time before the act is
23 committed, but malice must exist in the mind of the
24 defendant just before and at the time, of the act is being
25 committed. Therefore, there must be a combination of the

Jury charge

1 previous evil intent and the act.

2 Malice aforethought may be expressed or inferred.

3 These terms, expressed and inferred, do not mean different
4 kinds of malice but merely the manner in which malice may be
5 shown to exist. That is either by direct evidence or by
6 inference from the facts and circumstances which are proved.

7 Expressed malice is shown when a person speaks words
8 which express hatred or ill will for another or when the
9 person prepared beforehand to do the act which was later
10 accomplished.

11 Malice may be inferred from conduct showing a total
12 disregard for human life. Inferred malice may also arise
13 when the deed is done with a deadly weapon.

14 And a deadly weapon is any article, instrument or
15 substance which is likely to cause death or great bodily
16 harm. Whether an instrument has been used as a deadly
17 weapon depends on the facts and circumstances of each case.

18 If facts are proved beyond a reasonable doubt
19 sufficient to raise an inference of malice to your
20 satisfaction, this inference would simply be an evidentiary
21 fact to be considered by you, the jury, along with the other
22 evidence in the case. And you may give it the weight you
23 decide it should receive.

24 A specific intent to kill is not an element of assault
25 with intent to kill, but there must be a general intent to

Jury charge

1 commit serious bodily injury. Intent means intending the
2 result which actually occurs, not accidentally or
3 involuntarily. Intent may be shown by the acts and conducts
4 of the defendant and other circumstances from which you may
5 naturally and reasonably infer intent.

6 Evidence of the character of the assault, the character
7 of the instrument used, the manner in which it was used and
8 the purpose to be accomplished may be considered in
9 determining intent -- which the assault was committed.

10 Now, the defendant is also charged with armed robbery.
11 In order to prove this offense the state must first prove
12 beyond a reasonable doubt that the defendant took personal
13 property from the person or presence of another person.
14 Property is in the presence of a purpose -- excuse me.
15 Property is in the presence of a person if it is within the
16 person's reach, inspection, observation or control so that
17 the person could, if not overcome with violence or prevented
18 by fear, keep possession of the property.

19 The state must also prove beyond a reasonable doubt
20 that the defendant carried the property away intending to
21 permanently deprive the owner of the property and to keep
22 the property for the defendant's own use.

23 The slightest removal of the property or the complete
24 possession of the property, even for an instant, by the
25 defendant is sufficient to show a taking and carrying away

Jury charge

1 of the property. The taking and carrying away of the
2 property must have done -- must have been done with violence
3 or by putting the owner of the property in fear of violence.

4 Finally, the state must prove beyond a reasonable doubt
5 that the defendant was armed or became armed with a deadly
6 weapon during the robbery. A deadly weapon is any article,
7 instrument or substance which is like to cause death or
8 great bodily harm. Whether an instrument has been used as a
9 deadly weapon depends on the facts and circumstances of each
10 case.

11 Now, in order to establish criminal intent, excuse me,
12 criminal liability, criminal intent is required. For
13 example, the mental state required to be proven by the state
14 for a particular crime might be purpose, intent, knowledge,
15 recklessness or criminal negligence.

16 Criminal intent must be proven by the state beyond a
17 reasonable doubt. Criminal intent is always a matter that
18 must be determined by the jury from the circumstances
19 surrounding the situation.

20 There is no way to prove intent to a mathematical
21 certainty. There is no way medical science can dissect a
22 person's brain and determine what the person had in mind.

23 So the law says that criminal intent may be inferred
24 from the circumstances shown to have existed. This is how
25 you make a determination of whether or not the element

Jury charge

1 requiring intent was present.

2 It is not necessary to establish intent by direct and
3 positive evidence, but intent may be established by
4 inference in the same way as any other fact, by taking into
5 consideration the acts of the parties and all of the facts
6 and circumstances of the case. Criminal intent is a mental
7 state, a conscious wrongdoing. It is up to you to determine
8 what the defendant intended to do based on the circumstances
9 shown to have existed.

10 Ladies and gentlemen of the jury, you have been
11 selected as fair and impartial jurors sworn to impartially
12 try and determine the facts of this case. And when you
13 comply with your oath to do so, then no one will have a
14 right to criticize your verdict, and you will have fully
15 discharged your duty as jurors.

16 You are to decide this case according to the testimony
17 that you have heard from the lips of the sworn witnesses,
18 along with the other evidence that has been introduced.

19 I charge you that as jurors you must decide the issues
20 in this proceeding without bias and without prejudice to any
21 party. You cannot allow yourself to be governed by
22 sympathy, by prejudice, by passion, by public opinion or any
23 other arbitrary factor.

24 Both the state and the defendant have the right to
25 expect that each of you will carefully and impartially

Jury charge

1 consider all of the evidence in this case and that you will
2 follow the law as I have explained it to you.

3 Now, ladies and gentlemen, I thank you very much for
4 the attention that you have paid throughout the course of
5 this trial to the lawyers, to the witnesses and to me. And
6 I want to direct your continued attention to me as I go over
7 the indictments and the forms of verdict in these cases.

8 Now, ladies and gentlemen of the jury, there are three
9 separate indictments. The first indictment that I am going
10 to consider, and, please, attach no significance to the fact
11 that I list one indictment or charge before the other or
12 that I list one verdict before the other. It is very simply
13 that one must be listed first.

14 I hold in my hand Indictment 2000-GS-42-0617, which is
15 a charge, count one, of murder; count two, possession of a
16 firearm during the commission of a violent crime.

17 As to count one, and I have placed on the back of the
18 indictment in a space which is entitled verdict, count one
19 and count two.

20 Now, ladies and gentlemen of the jury, there are two
21 possible verdicts that you may reach as to each count of the
22 indictment, guilty or not guilty.

23 And, Madam Foreperson, once all 12 members of the jury
24 have unanimously agreed to one of those two verdicts, either
25 guilty or not guilty as to count one, murder, you will write

Jury charge

1 out the word guilty or not guilty.

2 Then as to count two, possession of a firearm during
3 the commission of a violent crime, please infer nothing from
4 what I explained to you. It is very simply that in order
5 for the defendant to be -- to even consider this count of
6 possession of a firearm during the commission of a violent
7 crime, you would have to find that he was guilty of murder.

8 If he was found not guilty of murder, then you would
9 not even consider count two. However, if he was found
10 guilty of murder, then you would consider count two. And
11 the verdicts that you may reach are either guilty or not
12 guilty.

13 And once you unanimously reach one of those two
14 verdicts, Madam Foreperson, you would write out either
15 guilty or not guilty in the space provided. Sign your name
16 as the foreperson of the petty jury and date it today, which
17 is October the 20th, 2001.

18 Then, ladies and gentlemen, Indictment 2000-GS-42-0619
19 charges the defendant, Richard Bernard Moore, with assault
20 with intent to kill.

21 Once again, there is a space on the back of the
22 indictment, Madam Foreperson and ladies and gentlemen,
23 entitled verdict. There are two possible verdicts that you
24 may reach as to this indictment.

25 Once again, please attached no significance to the fact

Jury charge

1 that I list one before the other. It is very simply that
2 one must be listed first. The possible verdicts are guilty
3 or not guilty.

4 And, madam foreperson, once all 12 of the jurors, of
5 you jurors, unanimously agree with one of those two
6 verdicts, you will write out either the word guilty or the
7 words not guilty in the space provided, sign your name as
8 the foreperson and date it today.

9 Then in Indictment 2001-GS-42-2460, ladies and
10 gentlemen, that is the charge of armed robbery. Once again,
11 in the lower left-hand corner of the indictment is the form
12 of verdict. There are two possible verdicts. And please
13 attach no significance to the fact that I list one before
14 the other. It's very simply that one must be listed first.

15 The verdicts are guilty or not guilty. Once you
16 unanimously reach one of those two verdicts as to this
17 indictment for armed robbery, simply write the word guilty
18 or not guilty in the space provided. Sign your name as the
19 foreperson, date it today. And your deliberations would be
20 concluded.

21 Now, ladies and gentlemen, as you have heard me say
22 throughout the course of my instruction to you on these
23 indictments, your verdicts must be unanimous. They must be
24 the verdict of all 12 of you.

25 The word verdict comes from the Latin word veredicto,

Jury charge

1 which means to speak the truth.

2 And once you reach a verdict to which you all 12 agree,
3 then it will speak the truth of you collectively as a jury,
4 as well as individually.

5 Now, Madam Foreperson and ladies and gentlemen, before
6 I send you to the jury room for your deliberations, let me
7 instruct you that you are not to begin your deliberations
8 until I instruct you to do so.

9 It may be necessary for me to bring you back into the
10 courtroom for further instructions. If I do that, it will
11 be very quickly. So be prepared for that.

12 If it is not necessary for me to bring you back into
13 the courtroom for further instructions, I am going to send
14 the indictments with the forms of verdict, together with all
15 of the evidence that has been introduced into this case,
16 back to the jury room. And you will then be instructed to
17 begin your deliberations.

18 If you happen to have a question during the course of
19 your deliberations, Madam Foreperson, you will have paper
20 and a pad back there. Simply write out the question, sign
21 your name as the foreperson, knock on the door, give it to
22 the bailiff and he will see that it's delivered to me, and I
23 will address it as I am permitted under the law of the State
24 of South Carolina.

25 Once again, once you have reached a verdict to which

Jury charge

1 you all 12 agree and you have filled out the verdict forms
2 as I have instructed you, Madam Foreperson, simply knock on
3 the door. Tell the bailiff that you have reached a verdict
4 in these cases. We will bring you back into the jury room
5 to publish those verdicts. Once again, please keep in mind
6 that your verdicts must be unanimous. They must be the
7 verdict of all 12 of you.

8 And please do not begin your deliberations until I
9 instruct you to do so.

10 I am going send you to the jury room, once again, with
11 the instructions that you are not to begin your
12 deliberations until I instruct you to do so.

13 And please hold the two alternates just outside the
14 courtroom.

15 The jury may retire.

16 (Whereupon, the jury retired to deliberate at
17 5:17 p.m.)

18 THE COURT: Exceptions or additions from the state?

19 MR. GOWDY: No objections, no exceptions, Your Honor.

20 THE COURT: From the defendant?

21 MR. MORIN: Your Honor, at this time we would renew our
22 motion for manslaughter and larceny.

23 THE COURT: Yes, sir.

24 MR. MORIN: Your Honor, we are also -- the defense is
25 somewhat -- when you instructed the jury to fill out their

Jury charge

1 verdict, you told them to put today's date.

2 We would object to that because it seems at this late
3 hour that you told them that they need to make a decision
4 today.

5 THE COURT: No, sir. I haven't told them anything;
6 that if they can't reach a verdict today, they go home and
7 sleep on it. They will write tomorrow's date on there, and
8 I would reinstruct them at that time.

9 So, your exceptions are noted.

10 And when we talk about it being late, it is only 5:17.
11 By most standards that's not very late, Mr. Morin.

12 All right. Gentlemen, I want you to go over all of the
13 evidence. Make sure that it's properly before the Court
14 before we send it back to the jury room.

15 (Pause.)

16 THE COURT: All right. Is the state in agreement as to
17 all of the exhibits and to the indictments as they have been
18 prepared by the Court, and the verdict forms?

19 MR. GOWDY: Yes, sir, Your Honor.

20 THE COURT: The defendant?

21 MR. MORIN: Yes, sir.

22 THE COURT: All right. Mr. Bailiff, if you would,
23 please, take the indictments and the evidence to the jury,
24 and tell the jury that they may begin their deliberations.

25 If you would, please get Mr. McCloud or someone, one of

Jury charge

1 the custodians, to step out here, please.

2 Jury custodian, please. I want the jury custodian out
3 here.

4 THE BAILIFF: Okay.

5 THE COURT: If you would, please, make sure the
6 alternates are sequestered from the jury during their
7 deliberations.

8 THE JURY CUSTODIAN: Yes, sir. That is being attended
9 to now.

10 (Whereupon, the exhibits and verdict forms were
11 submitted to the jury at 5:27 p.m.)

12 THE COURT: All right. Now the jury is going to
13 commence their -- now that the jury is commencing their
14 deliberations, we are going to stand at ease until we get a
15 question or a verdict.

16 Let me tell everyone that is in the courtroom, when
17 a -- when the jury renders its verdict, if you do not feel
18 that you can control your emotions, you need to stay
19 outside, because I will not tolerate any outbursts
20 whatsoever.

21 If there are any violations of my orders, please
22 understand. I think the solicitor and the defense lawyers
23 will tell you that I am as good as my word. I will see that
24 you are taken into custody. And we will have a contempt
25 hearing after this trial is completed, because I have a

Question from the jury

1 couple of more to go.

2 We will stand at ease.

3 MR. GOWDY: Thank you, Your Honor.

4 THE COURT: Thank you, gentlemen.

5 (Whereupon, a recess was taken.)

6 THE COURT: Can we proceed without, Mr. Kelly?

7 MR. MORIN: Yes, sir. We are going to have Mr. Moore
8 brought around.

9 THE COURT: Yes, sir. We are going to get Mr. Moore in
10 here for sure. Or we can wait on Mr. Kelly. He should be
11 back. Whatever you want to do.

12 MR. MORIN: No. I think I can handle this.

13 THE COURT: Thank you.

14 (Whereupon, the defendant was returned to the
15 courtroom.)

16 THE COURT: All right. Let the record reflect I have
17 received a question from the jury, "Could you tell us where
18 Hillside Drive is in reference to Nikki's Store?"

19 I am going to bring them back and tell them that they
20 are the judges of the facts and I am the judge of the law
21 and it would be impermissible for me to make any comment as
22 to the facts in the case, that they will have to recall from
23 the testimony that has been presented to determine the
24 answer to their question; and send them back to continue
25 their deliberations.

Question from the jury

1 Bring them back, Cotton.

2 (Whereupon, the jury returned to the courtroom at
3 5:54 p.m.)

4 THE COURT: Madam Foreperson, I received your note
5 where you ask the question, "Could you tell us where
6 Hillside Drive is in reference to Nikki's Store?"

7 As I have told you throughout the course of this week
8 and throughout the course of this trial, you are the judges
9 of the facts. I am the judge of the law.

10 It is improper and impermissible for me to make any
11 comment as to the facts in a case.

12 This is a factual question which you have asked, and
13 you will have to recall from the testimony and evidence
14 that's been presented the answer to the question that you
15 pose, because that is not something that I can give you,
16 given the question that you have presented to me.

17 And with that and in that regard, if you can recollect
18 a particular witness to whom you could attribute this
19 information, and we could replay that for you, let the court
20 reporter replay the tape, we would be more than happy to.

21 However, that is not something that as the judge of the
22 law that I can provide to you as to whether or not it has
23 been revealed throughout the course of the testimony.

24 So with all of that, I am going to send you back to the
25 jury room to continue your deliberations.

Verdict

1 (Whereupon, the jury retired to deliberate at
2 5:55 p.m.)

3 (Question from the jury marked Court's Exhibit Number
4 Ten.)

5 THE COURT: Anything else from the state?

6 MR. GOWDY: No, sir.

7 THE COURT: From the defense?

8 MR. KELLY: No, sir.

9 THE COURT: All right. We will stand at ease for a
10 little bit longer.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Let me remind everyone in the
13 courtroom the jury has reached a verdict.

14 Once again, if you do not feel that you can control
15 your motions, you need to remove yourself from the
16 courtroom, because I will not tolerate any outbursts
17 whatsoever.

18 Let's bring them back, please..

19 (Whereupon, the jury returned to the courtroom to
20 report its verdict at 7:30 p.m.)

21 THE COURT: Madam Foreperson, it's my understanding
22 that you have reached a verdict to which you all 12 agree.
23 Is that correct?

24 THE FOREPERSON: Yes, sir.

25 THE COURT: And you filed out the verdict forms as I

Verdict

1 instructed?

2 THE FOREPERSON: Yes, sir.

3 THE COURT: Please hand them to the bailiff, ma'am.

4 All right. Madam clerk, you may publish the verdict.

5 THE CLERK: Indictment Number 2000-GS-42-617, the State
6 vs. Richard Bernard Moore, indictment for murder and
7 possession of a firearm during the commission of a violent
8 crime, count one guilty; count two, guilty.

9 Indictment Number 2000-GS-42-619, the State vs. Richard
10 Bernard Moore, indictment for assault with intent to kill,
11 verdict, guilty signed by the forelady.

12 Indictment Number 2001-GS-42-2460, the State vs.
13 Richard Bernard Moore, indictment for armed robbery, the
14 verdict, guilty, signed by the forelady.

15 Madam Forelady and ladies and gentlemen of the jury,
16 are these your verdicts and still your verdicts, so say
17 y'all?

18 THE COURT: If that is your verdict, would you please
19 raise your right hand?

20 (Whereupon, all jurors responded in the affirmative.)

21 THE COURT: Thank you very much.

22 Let the record reflect that each and every juror has
23 raised their hand in response to the clerk's question and
24 the Court's question.

25 Anything further from the state before I send the jury

Motion

1 back to the jury room?

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

3 THE COURT: From the defense?

4 MR. MORIN: No, sir.

5 THE COURT: Ladies and gentlemen of the jury, at this
6 point in time I'm going to return you to the jury room.

7 Once again, you are not to discuss any facet of this
8 case as I return you to the jury room.

9 You may take them back to the jury room.

10 (Whereupon, the jury was excused from the courtroom.)

11 THE COURT: All right. Any motions?

12 MR. MORIN: Yes, sir.

13 At this time the defense would make a motion for a new
14 trial based on the evidence not supporting the verdict that
15 has been received by the Court.

16 THE COURT: Of course, Mr. Morin, throughout the course
17 of the trial I have received various motions and ruled upon
18 them.

19 I have allowed the jury to consider the testimony and
20 the evidence and apply the law as I instructed. I felt like
21 there was ample evidence both of a direct and circumstantial
22 nature on which the jury could render their verdict.

23 The jury has deliberated now for a couple of hours, and
24 they have reached their verdict; and, as such, your motion
25 is denied.

Motion

1 Now, insofar as the manner in which we proceed, of
2 course, the defendant has 24 hours which he can either
3 accept or waive insofar as proceeding with the trial.

4 What is the -- gentlemen, as you know, under the law of
5 our state and by statute a defendant has a right to invoke a
6 24-hour cooling-off period.

7 And as such, I will ask you if you want to discuss that
8 with your client at this time. He certainly has the right
9 to ask for that or to waive it. So, would you please
10 advise?

11 MR. KELLY: Your Honor, if it please the Court, we
12 would like our 24 hours.

13 THE COURT: That is your decision also, Mr. Moore?

14 THE DEFENDANT: Yes, it is, Your Honor.

15 THE COURT: All right. Thank you very much, gentlemen.

16 What I will do, gentlemen, since we are at 7:35 on
17 Saturday evening, I am going to bring the jury back. And I
18 will advise the jury custodians. I am going to bring them,
19 as well as the two alternates, back, advise them that we
20 have a 24-hour waiting period.

21 Rather than us starting tomorrow night at around eight
22 o'clock, which would be kinda counterproductive, we will
23 pick back up Monday morning at 9:00 a.m. and start at that
24 time.

25 Before we disburse here tonight, there are some things

Comments by the Court

1 that I will need to talk with you all about insofar as
2 finalizing our preparations for Monday morning.

3 So, with that, let's bring the jury back, including the
4 alternates.

5 (The following takes place in the presence of the
6 jury.)

7 THE COURT: Madam Foreperson, ladies and gentlemen of
8 the jury, as a result of the jury's verdict in this case, we
9 now proceed to the sentencing phase of the trial.

10 There is a 24-hour cooling-off period that's prescribed
11 by statute here in South Carolina. And, as such, given the
12 fact that we are at 7:35 or 36 in the evening here on
13 Saturday night, rather than starting back tomorrow night and
14 working for a short period of time, we're going to start
15 back Monday morning at 9:00 a.m. in the second phase, the
16 sentencing phase, of our trial.

17 As I send you away for this evening, let me remind you,
18 first of all, that you are not to discuss this case among
19 yourselves in any manner or fashion whatsoever.

20 Also, you are not to discuss it with your jury
21 custodians or anyone else that you might come in contact
22 with.

23 Furthermore, you are not to read, watch or listen to
24 any news accounts concerning this case. And if anyone
25 should attempt to contact you concerning this case, I want

Comments by the Court

1 you to gather as much information about that person or
2 persons as you possibly can, and report that to your jury
3 custodians immediately. And they will see that I am
4 properly notified.

5 As you know, you are going to be -- I think
6 arrangements have already been made for your dinner for
7 tonight. The jury custodians will be in charge of you
8 tomorrow.

9 During this 24-hour period they will take very good
10 care of you and see that you are properly cared for, and
11 I'll look forward to seeing you back here Monday morning at
12 9:00 a.m.

13 The jury is excused. Everyone else remain seated while
14 they exit the courtroom, please.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: Mr. Bailiff, let's make sure that all of
18 the evidence is brought back into the courtroom at this
19 time, please, sir.

20 While they are in the process of bringing that back in,
21 I need to get from the state your statutory aggravating
22 circumstances. If you have those prepared, I would like to
23 have them; and any statutory mitigating circumstances,
24 gentlemen. This won't necessarily be your final list, but
25 certainly I would like to have what you intend at this time

Comments by the Court

1 to be offering.

2 I think the state would probably be in a better
3 position than maybe the defense insofar as all of them are
4 concerned, but I am sure that this is something that
5 everyone has been involved with.

6 During the intervening time, of course, I will be in
7 the process of preparing the necessary forms so that I will
8 have those for you on Monday. Hopefully by the time that we
9 start I will have you a copy of the charge that I intend to
10 use in the sentencing phase, provided I have all of the
11 statutory aggravating and mitigating circumstances.

12 So, we may not have all of that right at the time that
13 we start on Monday morning, but by the time that we reach
14 the middle part of the day on Monday I will have them to
15 you.

16 All right. Anything else from the state prior to us
17 breaking for the night?

18 MR. GOWDY: Your Honor, would the Court allow us to
19 approach for one moment and discuss something?

20 THE COURT: Yes, sir. Come right on up.

21 (Bench conference held off the record.)

22 THE COURT: All right. Given where we are, gentlemen,
23 and we have had a bench conference trying to discuss exactly
24 what our prospects would be for things tomorrow, I know that
25 you all have a lot to work on. Y'all have a lot to work on.

Comments by the Court

1 I have some things to work on.

2 I have given you my home phone number if you need me
3 for any particular reason, any problems that might come up.

4 The jury custodians -- I will be in touch with them. I
5 know that they do have plans. I had already discussed with
6 them that in the event we got a verdict later in this day
7 that we would not start until Monday morning, because it's
8 just -- if we had got something earlier in the day, we could
9 have started tomorrow afternoon. But it is just not worth
10 it to try to do that.

11 So we will be back here on Monday morning at 9:00 a.m.
12 I will look forward to seeing you then.

13 Thank you very much. We will stand in recess until
14 then.

15 END OF PROCEEDINGS OCTOBER 20, 2001
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Volume Ten -- Trial --
Sentencing Phase

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Richard Bernard Moore,) 00-GS-42-617;618;619
6 Defendant.) October 15 - 22, 2001
7 Spartanburg, South Carolina

8
9 B E F O R E:

10 HONORABLE GARY E. CLARY, JUDGE; and a jury
11
12

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

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19 JENNIFER JOHNSON, ESQUIRE
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20
21
22

23 LINDA D. MOFFITT
24 Circuit Court Reporter
25

Conference with juror

1 (Proceedings October 22, 2001)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Let me see Ms. Lindsay, please, Juror 160.
5 The lawyers may approach.

6 (The following takes place at the bench with Juror
7 Number 160.)

8 THE COURT: Good morning, Ms. Lindsay.

9 I understand from the jury custodians that your friend,
10 Ms. Cash, that we received the call about has passed away.

11 THE JUROR: Yeah.

12 THE COURT: Do you know anything concerning the
13 arrangements or anything?

14 THE JUROR: No, sir. I can't get in touch with the
15 family.

16 THE COURT: Could you -- you know I am willing to do
17 whatever you want to do. If you feel like you need to be
18 away, certainly I can take that into consideration.

19 If you want to stay with us and let us try to find out
20 whatever we can about the arrangements --

21 THE JUROR: That will be fine. I don't expect them to
22 be doing anything before Wednesday.

23 THE COURT: So you will remain with us.

24 THE JUROR: Yes, sir.

25 THE COURT: If you all will, kind of check on the

Motion

1 arrangements and everything.

2 (Whereupon, the juror was excused from the courtroom.)

3 THE COURT: All right. Let the record reflect that I
4 have examined Juror 160, one of our alternates, Ms. Lindsay.

5 We had received a message the other day about a friend
6 of hers that had been very ill, and she has passed away.

7 I wanted to check with Ms. Lindsay to see what the
8 status was, because she was very close to this lady.

9 She desires to remain with us. We are going to try to
10 find out as much as we can about the arrangements and advise
11 her of that as we go along.

12 All right. Before we get started, anything from the
13 state?

14 MR. GOWDY: Your Honor, we would obviously move to
15 incorporate all of the evidence from the guilt phase into
16 the penalty phase at this point.

17 THE COURT: All right. Anything from the defense?

18 MR. KELLY: Well, Judge, I understand that to be the
19 law in this case.

20 THE COURT: Yes, sir.

21 The state's motion to incorporate the evidence from the
22 guilt phase to the sentencing phase is granted.

23 The manner in which we will proceed, of course, I have
24 some introductory instructions that I will give the jury.
25 Then we will, once again, proceed in the same manner with

Motion

1 the opening statements from the state and the defense, and
2 then the presentation of evidence as is customary.

3 Is the state ready to proceed?

4 MR. GOWDY: Yes, sir, Your Honor.

5 THE COURT: Is the defense ready?

6 MR. KELLY: Yes, sir, Your Honor.

7 THE COURT: All right. Cotton, let's bring them back.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Polling of the jury by the state?

11 MR. GOWDY: The state would waive, Your Honor.

12 THE COURT: By the defense?

13 MR. KELLY: The defense waives, Your Honor.

14 THE COURT: Madam Foreperson, ladies and gentlemen,
15 welcome back.

16 Ladies and gentlemen of the jury, the defendant,
17 Richard Richard Moore, was convicted on October 20, 2001, of
18 the offense of murder and the offenses of possession of a
19 weapon during the commission of a violent crime, assault
20 with intent to kill and armed robbery.

21 It therefore becomes necessary for us to hold this
22 additional proceeding which will determine the punishment
23 that the Court is to impose upon the defendant.

24 Section 16-3-20 of the South Carolina Code of laws as
25 amended provides in part as follows: A person who is

Comments by the Court

1 convicted of or pleads guilty to murder must be punished by
2 death or imprisonment for life.

3 That section as further amended also provides in part
4 upon conviction of a defendant of murder the Court shall
5 conduct a separate sentencing proceeding to determine
6 whether the defendant should be sentenced to death or life
7 imprisonment.

8 So our purpose in conducting the proceeding in which we
9 are now engaged is to determine whether the defendant,
10 Richard Bernard Moore, should be sentenced by the Court to
11 death or to life imprisonment.

12 With respect to your particular role in this
13 proceeding, you will be asked to recommend to the Court
14 whether it should sentence the defendant, Richard Bernard
15 Moore, to death or to life imprisonment.

16 During this sentencing proceeding the state and the
17 defendant will have an opportunity to introduce additional
18 evidence in aggravation, extenuating or mitigation. And
19 both sides will have an opportunity to present arguments for
20 and against the death penalty.

21 Should you recommend a sentence of life imprisonment or
22 should you recommend a sentence of death, that is the only
23 issue involved here.

24 After the last argument has been made to you concerning
25 the punishment that should be imposed upon the defendant,

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1 the Court will give you certain instructions. And you will
2 then retire to determine whether a death sentence or a life
3 sentence is to be recommended.

4 We will now begin the trial.

5 Opening statement, Solicitor.

6 MR. WILLINGHAM: May it please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 MR. WILLINGHAM: I want to begin, ladies and gentlemen,
9 by thanking you, thanking you for the attention that you
10 have given the testimony, the evidence in this case.

11 Thank you for the sacrifices that you and your family
12 had to make in order for you to be here today, and thank you
13 for your work.

14 In South Carolina, as the judge has told you, told you
15 during jury qualification, the state is allowed to seek the
16 death penalty in certain cases, not in every murder case,
17 but only in a murder that has aggravating circumstances.
18 And the judge told you a little bit during jury
19 qualification of what aggravating circumstances are.

20 In this case we have a murder, and we have the
21 aggravating circumstance of the murder being committed
22 during the commission of a robbery through the use of a
23 deadly weapon.

24 Ladies and gentlemen, when he was found guilty of
25 murder and armed robbery, murder, and the aggravating

Opening statements

1 circumstance has already been found.

2 I could sit down right now --

3 MR. KELLY: Objection, Your Honor.

4 THE COURT: Yes, sir.

5 MR. KELLY: May we approach, Your Honor?

6 THE COURT: Yes, sir.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 THE COURT: Ladies and gentlemen of the jury, I would
10 instruct you that your purpose in this proceeding will be to
11 determine whether or not there is the presence of an
12 aggravating circumstance that has accompanied the charge --
13 crime of murder of which you have found the defendant
14 guilty. And that is what we are to be about. And
15 thereafter you will make a recommendation after considering
16 any and all aggravating circumstances, as well as mitigating
17 circumstances.

18 MR. WILLINGHAM: Thank you, Your Honor.

19 Ladies and gentlemen, you will have before you during
20 this penalty phase all of the same evidence and all of the
21 same testimony that you had during the guilt phase.

22 And I submit to you that evidence proves that he is
23 guilty of murder and of armed robbery, which is an
24 aggravating circumstance.

25 We could stop there. And we could argue to you, ladies

Opening statements

1 and gentlemen, that at this point, at that point, we show
2 that evidence to you again, that he is death eligible or
3 death qualified. And we could sit down and stop.

4 But there is more. South Carolina law has an
5 additional aggravating circumstance that accompanies a
6 murder, that makes a defendant death qualified or death
7 eligible. That additional circumstance is by his actions he
8 put more than one person at risk of death in a public place.

9 The evidence of his actions toward Terry Hadden fit
10 that aggravating circumstance, that aggravating
11 circumstance. Again, murder with that aggravating
12 circumstance, sit down again, and he is death eligible, he
13 is death qualified.

14 But there is more. In South Carolina the law says that
15 an additional aggravating circumstance is a murder committed
16 for monetary gain. This case, a murder committed for
17 \$1,480. Again, he is death eligible and death qualified.

18 But there is more. You as ladies and gentlemen of this
19 jury are entitled to hear more about the victim, about what
20 makes him unique, what makes James Mahoney, James Mahoney;
21 and what effect this crime and this man's actions have had
22 on James Mahoney's family, friends and coworkers.

23 It's called victim impact. You have a right to hear
24 that.

25 But there is more. You also get to learn not only what

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1 the victim contributed to society. You get to hear about
2 this man's contributions.

3 This man contributions to society date back to 1985;
4 his contribution to society, his criminal history, dating
5 back to 1985, and reaching as far as the State of Michigan.
6 You have a right to hear about that, and you will.

7 And you will hear from the victims, some of the victims
8 that he has left in his path.

9 When you have heard all of the evidence you will
10 understand and know why the state is seeking the death
11 penalty. When you have heard all of the evidence, you will
12 understand and know what punishment fits this crime. When
13 you have heard all of the evidence you will know what
14 punishment fits this defendant.

15 Thank you.

16 MR. KELLY: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 MR. KELLY: Thank you, Judge.

19 Madam forelady and ladies and gentlemen of the jury, I
20 too thank you for your attention and appreciate you being
21 here.

22 I want to tell you right up front today that it may
23 well be an emotional day. We anticipate that the state, of
24 course, is the one, as Mr. Willingham said, is going to tell
25 you about Richard's criminal history. Whether it be a

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1 driving offense or anything else, we anticipate they are
2 going to tell you about it.

3 We anticipate that the state is going to put up the
4 victim impact testimony, which is proper in this state; that
5 some family members, possibly some coworkers and others may
6 take the stand and tell you about the uniqueness of the
7 victim. I submit that's going to be emotional.

8 We anticipate that the state may well put in other
9 photographs that the Court allows, and that may be
10 emotional.

11 You will hear about life and death today. We are not
12 here about guilt or innocence. That's been decided. That's
13 done. You are here about life or death.

14 Now, Judge Clary has told you on several occasions, and
15 specifically today, the state is going to try to introduce
16 what they call and prove to you. They have not proven that.
17 They have not proven a statutory aggravating circumstance
18 beyond a reasonable doubt. They must do so, and it must be
19 unanimous as the state seeks to prove one or more of those,
20 in this instance, I believe three they specifically
21 innumerate.

22 Judge Clary is going to tell you. He has already told
23 you, and is going to tell you again later, that even if they
24 establish one or more of those that you as a jury can come
25 back with life.

James Mahoney
Direct examination by Mr. Gowdy

1 The state is not requiring you to return a verdict of
2 death. You have to understand it's in the jury's hands.
3 There is no law that says if they prove something like a
4 piece of evidence, then you must find for death. The law
5 says it's up to you.

6 Now, we have a right to put in what's called mitigating
7 circumstances. And those do not have to be proven beyond a
8 reasonable doubt. It's just something out there, a reason
9 to spare him.

10 Again, I thank you for your attention. It's a somber
11 moment, very somber, very serious moment. Thank you.

12 THE COURT: Call your first witness, please, Solicitor.

13 MR. GOWDY: Your Honor, may it please the Court, the
14 State of South Carolina would call James Mahoney.

15 JAMES MAHONEY, having been
16 first duly sworn, testified as follows:

17 THE COURT: Please state your name for the record, sir,
18 and spell your last name.

19 THE WITNESS: James Mahoney, M-A-H-O-N-E-Y.

20 MR. GOWDY: May it please the Court, Your Honor. Thank
21 you.

22 DIRECT EXAMINATION BY MR. GOWDY

23 Q Good morning, Mr. Mahoney.

24 A Good morning, sir.

25 Q Could you let the jury know what relation you are to

James Mahoney
Direct examination by Mr. Gowdy

1 the victim, James Mahoney?

2 A Yes, sir. I am the father of the victim.

3 Q How many children did you have, Mr. Mahoney?

4 A Four. James was the oldest; and Kathy was the middle
5 child; and the twins are the youngest.

6 Q How long have you been married, Mr. Mahoney?

7 A Forty-five and a half years.

8 Q Where do you live now?

9 A We presently live in Blanding, Pennsylvania, although
10 we were formerly residents of Spartanburg County for about
11 24 years.

12 Q And at least one of your children, I guess maybe more
13 than one, decided to stay in Spartanburg after you and Mrs.
14 Mahoney left.

15 A Actually James and Kathy remained here.

16 Q Mr. Mahoney, I want to ask you a couple of questions
17 about your son. I want you to tell the ladies and gentlemen
18 of the jury what kind of son James was and what kind of
19 relationship you had with him.

20 A He was a good boy. He was -- he was hardworking, very
21 determined, very proud individual.

22 He was not in the best of health. In fact, several
23 years ago we offered to bring him to Pennsylvania with us
24 and live with us because of his health, and he declined. He
25 preferred to live in his little house in Boiling Springs.

James Mahoney
Direct examination by Mr. Gowdy

1 He was self-sufficient and very independent. He said he
2 could get along fine. He had a job. And he just preferred
3 to stay here near his sister.

4 Q Are you all a close-knit family, Mr. Mahoney?

5 A Yes, sir, we were. When we lived in the -- we lived in
6 the Boiling Springs area. We were very close-knit. The
7 children were involved in all of the local schools and
8 activities. We used to always go and support them and be
9 with them. We had big family Christmases and things of this
10 nature.

11 Q And can you tell the ladies and gentlemen of the jury
12 what impact your son's death has had on you and your wife?

13 A It has been very devastating. It's an absolute loss.
14 You've lost one of your children. And it's extremely hard
15 to explain to you unless you've experienced this yourself.
16 Part of you is gone never to return. You don't have this
17 person here anymore. The only opportunity we have now is to
18 go to the cemetery and talk to him.

19 Q How old was James when he died, Mr. Mahoney?

20 A Forty-two.

21 Q Do you remember the last time you talked to him before
22 he died?

23 A Yes. It was probably several weeks before he died. He
24 always was a big fan of -- was a NASCAR fan. And we used to
25 always kid him about Jeff Gordon because that was his

Kathy Pinson
Direct examination by Mr. Gowdy

1 favorite. We discussed that on the telephone.

2 Q Now, at the time you-all discussed it you weren't much
3 of a NASCAR fan, were you?

4 A No. I never was much of a NASCAR fan. I was in to
5 baseball and football. But actually since James was killed
6 I find myself watching these races on Sunday and really
7 rooting for this guy who I don't even know.

8 Q Thank you, Mr. Mahoney.

9 THE COURT: Cross-examination.

10 MR. KELLY: No questions, Judge.

11 THE COURT: Thank you, Mr. Mahoney. You may step down,
12 sir.

13 Next witness.

14 MR. GOWDY: Your Honor, the state would call Kathy
15 Pinson.

16 KATHY PINSON, having been
17 first duly sworn, testified as follows:

18 THE COURT: Please state your name for the record, and
19 spell your first and last name, ma'am.

20 THE WITNESS: My name is Kathy Pinson, P-I-N-S-O-N.

21 THE COURT: Is your first name spelled with a K or a C?

22 THE WITNESS: K.

23 THE COURT: Thank you, ma'am.

24 MR. GOWDY: Thank you, Your Honor.

25 DIRECT EXAMINATION BY MR. GOWDY

Kathy Pinson
Direct examination by Mr. Gowdy

- 1 Q Good morning, Ms. Pinson.
- 2 A Good morning.
- 3 Q Can you tell the ladies and gentlemen of the jury what
4 your relation to James was?
- 5 A James was my big brother.
- 6 Q Do you live in Spartanburg, Ms. Pinson?
- 7 A Yes, I do.
- 8 Q How long have you lived here?
- 9 A Thirty-four years.
- 10 Q Do you have children?
- 11 A Yes, I do.
- 12 Q And how many?
- 13 A I have three daughters.
- 14 Q Can you tell the ladies and gentlemen of the jury what
15 impact your brother's death has had on you?
- 16 A It has left a terrible ache in my heart, one that will
17 never heal. Part of me is gone, and I can't get it back. I
18 can't talk to him any more. I can't visit him.
- 19 Q Y'all were in Spartanburg together?
- 20 A Yes, we were.
- 21 Q Did you see one another very often?
- 22 A Yes. We saw each other all of the time. He came over
23 every Sunday for dinner.
- 24 Q You testified you had three children. Did your
25 children have a relationship with James?

Kathy Pinson
Direct examination by Mr. Gowdy

1 A Yes, they did. He was the godfather to my oldest
2 daughter, as well as their uncle.

3 He took them places. He helped to teach my oldest
4 daughter to drive. On their birthdays he would take them to
5 the mall and let them buy whatever they wanted to buy.

6 In fact, a week before he was killed he told my
7 youngest daughter that he would take her to Nikki's when
8 they relocated, and they would have lunch together. They
9 would have hot dogs. And now that will never happen.

10 Q Did he celebrate holidays with your family?

11 A Yes, he did.

12 In fact, he was there at our house the Christmas before
13 he was killed. And the Thanksgiving after he was killed,
14 the entire family was at our house except him, of course.

15 And we waited all day and looked out the windows just
16 waiting for him, just like we normally did, expecting him to
17 walk through our door saying happy Thanksgiving, happy
18 birthday to our mother, whose birthday happened to be that
19 day. He never came.

20 Q Did he have a close relationship with your children?

21 A Yes, he did, very close.

22 He would come over when they were younger on Thursday
23 evenings and quiz them on their spelling words. And then he
24 would call back a couple of days later to make sure they did
25 good on their spelling test. He was very involved with the

Kathy Pinson
Direct examination by Mr. Gowdy

1 children.

2 Q Has his death had an impact on their life as well as it
3 has yours?

4 A Absolutely. My youngest daughter cannot understand why
5 her uncle is not here any more. And for the rest of my life
6 I will never be able to explain to her why he is not.

7 MR. KELLY: Can we approach, Your Honor?

8 (Bench conference held off the record in the presence
9 of the jury but out of the hearing of the jury.)

10 THE COURT: Ladies and gentlemen of the jury, I have a
11 matter of law that I need to take up with the attorneys.

12 As I send you to the jury room, once again, please do
13 not discuss this case among yourselves. We will get you
14 back in just a very few minutes.

15 The jury may retire. Everyone else remain seated,
16 please.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: All right. Mr. Kelly, I will be glad to
20 hear from you, sir.

21 MR. KELLY: Judge, one of the three photographs that
22 the prosecutor intends to offer into evidence is a
23 photograph -- do you want us to mark it, Judge, so we can
24 identify it?

25 THE COURT: Well, I mean, you can just tell me what it

Kathy Pinson
Direct examination by Mr. Gowdy

1 is. All of this marking for identification and everything
2 wastes a lot of time. If it is going to come in, I mean, I
3 am either going to let it in or I'm not.

4 MR. KELLY: Yes, sir. Okay, Judge.

5 This is a photograph that depicts what appears to be
6 Christmas. It has some children in it. The other two
7 photographs do not. That also has a Christmas photograph,
8 but it doesn't have the small children in it, which we think
9 is consistent. I'm specifically talking about the one
10 photograph.

11 And, Judge, I would submit for the Court's
12 consideration that this photograph is -- is overly
13 prejudicial to the defendant in this particular case.

14 This lady has, of course, testified to that. And I
15 think we all understand as jurors that the children are
16 small and that the children are never going to get to see
17 their uncle again at Christmas.

18 I would respectfully submit that the probative value of
19 this particular photograph is overly prejudicial to them.

20 THE COURT: All right. Solicitor.

21 MR. GOWDY: Your Honor, if it please the Court, State
22 vs. Rocheville, State vs. Johnson, State vs. James Neal
23 Tucker all stand for the proposition that photographs
24 showing the victim impact are admissible, Your Honor,
25 including -- one of those cases involves a victim holding a

Kathy Pinson
Direct examination by Mr. Gowdy

1 godchild, and other cases involve Christmas decorations.

2 This witness has testified that this was the only uncle
3 living in the area for her children, and the picture depicts
4 them at Christmas opening presents.

5 If it is prejudicial, I hate that for Mr. Kelly. But
6 the fact is he had a relationship with these three children,
7 and this picture depicts that.

8 And, frankly, Your Honor, the picture is not
9 prejudicial. The picture is three kids watching an uncle
10 opening Christmas presents.

11 THE COURT: Well, I think we all understand the issues
12 that are presented in a sentencing phase of a case involving
13 wherein the state seeks the death penalty. And that's what
14 we are now engaged in.

15 And I think that certainly victim impact evidence under
16 the case of Payne vs. Tennessee, as well as the South
17 Carolina cases of State vs. Humphrey, State vs. Byram and a
18 whole host of others. My good friend Judge Henry Floyd
19 tried the Humphries case over in Greenville. I tried the
20 Byram case down in Richland County.

21 Certainly I understand the motion that you make,
22 Mr. Kelly, that the probative value is not outweighed by the
23 prejudice to the defendant, but the thing that is unique
24 about cases such as this as opposed to a trial in which the
25 state does not seek the death penalty is that nothing ever

Kathy Pinson
Direct examination by Mr. Gowdy

1 comes out about the victim in those other cases, and that's
2 what makes these cases unique.

3 From my view of the photograph in question, I find
4 there is absolutely nothing wrong with that photograph. I
5 think it depicts this individual.

6 And, as such, I find that the probative value certainly
7 outweighs any prejudice to the defendant; and I, quite
8 frankly, don't find any prejudice in that regard.

9 As such, they will be admitted if you want to go ahead
10 and mark them.

11 MR. KELLY: Thank you, Judge.

12 MR. GOWDY: Thank you, Your Honor.

13 THE COURT: Well, wait just one second, because the
14 court reporter can't -- she is good, but even Linda Moffitt
15 is not that good.

16 All right. Madam reporter, how about marking those?
17 Then we will let you speed things along.

18 (Photographs marked State's Exhibits Numbers
19 Forty-five, Forty-six and Forty-seven for Identification.)

20 MR. WILLINGHAM: May it please the Court, Your Honor.

21 THE COURT: Yes, sir.

22 MR. WILLINGHAM: As far as the autopsy photographs and
23 other victim photographs of the scene, I will pass up to the
24 Court four pictures.

25 Your Honor, the first picture depicts the victim as he

Kathy Pinson
Direct examination by Mr. Gowdy

1 was found at the scene. That's a better shot of his arm
2 with the broken humerus that Dr. Wren has testified and
3 would testify to again.

4 The other photograph that is already in evidence,
5 State's Exhibit Number Thirty-four, does not depict that
6 injury, and I think the jury would be able to understand.

7 The other three pictures show the entry wound to the
8 chest, the exit wound from the chest and the entry wound to
9 the arm. Therefore, we believe it proper.

10 MR. KELLY: May it please the Court, Your Honor.

11 THE COURT: Yes, sir.

12 MR. KELLY: Judge, at this time the defense would argue
13 that the prejudicial effect is greater than the probative
14 value of the photograph that depicts the decedent -- the
15 decedent's face.

16 And in the alternative we would ask the Court the
17 photograph be cropped at that point if the intent of the
18 state is to show the wound. There would be no objection to
19 cropping that.

20 MR. WILLINGHAM: I would like to have the picture as it
21 is, Your Honor.

22 THE COURT: I understand what you would like to have.

23 All right. I am going to ask you to crop the
24 photograph in question. The rest of them are admissible.

25 MR. KELLY: Thank you, Your Honor.

Kathy Pinson
Direct examination by Mr. Gowdy

1 MR. WILLINGHAM: Your Honor, as far as other items we
2 may intend to introduce along the way here, we have
3 certified copies of his convictions from Michigan. We have
4 the custodian, the clerk of court, from Michigan for their
5 review.

6 We also will introduce the certified copy of the
7 indictments from South Carolina. And, again, we will have a
8 representative of the clerk's office here to do that.

9 There was a presentence investigation, Your Honor, that
10 was completed by a fellow by the name of David Saad from the
11 Macomb County Probation Department. He did a presentence
12 investigation to present to the Court before the sentencing
13 of the attempted breaking and entering in 1987. We intend
14 to introduce that as well through Mr. Saad.

15 MR. KELLY: My understanding, Your Honor, under the law
16 of this state, those will come in if the people are here to
17 testify to it.

18 THE COURT: Yes, sir. All right. They are coming in.

19 MR. WILLINGHAM: Thank you, Your Honor.

20 There is one indictment I do need to bring the Court's
21 attention to. That's Indictment 96-1959 -- GS-42-1959.
22 It's a South Carolina indictment. The indictment is for C.
23 S. C. first degree. He pled guilty to assault and battery
24 of a high and aggravated nature.

25 What we are going to do is only introduce the assault

Kathy Pinson
Direct examination by Mr. Gowdy

1 and battery of a high and aggravated nature. I don't
2 believe it will be proper for us to introduce C. S. C. I
3 wanted to make that aware to the Court so that when we pass
4 this up to you, you will understand what we are doing.

5 THE COURT: Yes, sir.

6 MR. KELLY: Well, Judge, that's exactly my position.
7 They can introduce the ABHAN part of it, but the victim in
8 that is deceased.

9 MR. WILLINGHAM: What we would do, Your Honor, is
10 instead of introducing that indictment, is ask the clerk
11 what he's convicted of, when it occurred and who the victim
12 was.

13 THE COURT: All right.

14 MR. KELLY: But not what he is charged with, Your
15 Honor?

16 MR. WILLINGHAM: The original charge --

17 THE COURT: The original charge is not coming in. Just
18 make sure the clerk is aware of that.

19 All right. Okay. Let's bring our jury back.

20 MR. GOWDY: Thank you, Your Honor.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: Thank you very much, Madam Foreperson and
24 ladies and gentlemen.

25 You may continue, Solicitor.

Kathy Pinson
Direct examination by Mr. Gowdy

1 MR. GOWDY: May it please the Court, Your Honor.

2 Q Ms. Pinson, let me show you what has been marked as
3 State's Exhibits Forty-six, Forty-seven and Forty-five and
4 ask you whether or not you recognize those three pictures.

5 A Yes, I do.

6 Q Are those pictures that you were familiar with and
7 that, in fact, were in your possession until you gave them
8 to me?

9 A Yes, they were.

10 MR. GOWDY: Your Honor, we would move Forty-five and
11 Forty-six and Forty-seven into evidence.

12 THE COURT: Noting the previous objection and the prior
13 ruling of the Court, it will be admitted.

14 (Photographs marked State's Exhibits Numbers
15 Forty-five, Forty-six and Forty-seven.)

16 MR. GOWDY: Your Honor, could I ask permission to
17 publish these to the jury?

18 THE COURT: Yes, sir.

19 MR. GOWDY: Thank you, Your Honor.

20 Q Before I do that, Ms. Pinson, let me ask you one quick
21 question. What do you miss most about your big brother?

22 A Miss his future with us; miss holidays. I miss him
23 coming over on Sundays. But more than anything, I miss his
24 voice; not being able to talk to him, to hear him, to hear
25 him knock on my back door on Sunday as he entered my house

Jeff Mahoney
Direct examination by Mr. Gowdy

1 and call out to me and say, hey, Sue, what's for supper. I
2 will never hear that again.

3 Q Thank you, Ms. Pinson. I have no further questions.

4 MR. KELLY: No questions, Your Honor.

5 THE COURT: Thank you, ma'am. You may step down.

6 Next witness.

7 MR. GOWDY: Your Honor, the state would call Jeff
8 Mahoney.

9 JEFF MAHONEY, having been
10 first duly sworn, testified as follows:

11 THE COURT: Sir, please state your name for the record,
12 and spell your last name.

13 THE WITNESS: My name is Jeff Mahoney, M-A-H-O-N-E-Y.

14 DIRECT EXAMINATION BY MR. GOWDY

15 Q Good morning, Mr. Mahoney. I notice from your uniform
16 that you are in the armed services. Can you tell the ladies
17 and gentlemen of the jury what branch you serve in?

18 A I'm in the United States Army.

19 Q How long have you been in the Army?

20 A Approximately 15 years.

21 Q Where are you stationed?

22 A I'm currently station in Quantan in the Republic of
23 South Korea.

24 Q And what is your relation to James Mahoney, the victim?

25 A James is my oldest brother.

Jeff Mahoney
Direct examination by Mr. Gowdy

1 Q And what's the age difference between you and your
2 brother?

3 A Six years.

4 Q Can you give the ladies and gentlemen of the jury a
5 sense of what impact his death has had on you?

6 A The devastation, the loss that was created produced
7 emotions that I am not quite certain that can be described
8 in the language that we speak. I don't know that there is a
9 word for it.

10 Small, little things that he did, such as my sister
11 testified to, little comments, little facial gestures,
12 actions, words that will never be around.

13 For me as -- well, starting as children, my father had
14 spoken that James was a huge NASCAR fan. As I can remember
15 a little boy, he was a huge NASCAR fan, and he constantly
16 had these small tester or revel models. He had a huge model
17 collection that he was very, very proud of.

18 He would build models of the old-time NASCAR guys --
19 Buddy Baker, Cale Yarborough. Those are two that come to
20 mind. The Pearson, David Pearson.

21 He was extremely proud of that. He would spend
22 countless hours putting the decals on the cars in a
23 meticulous fashion, painting them up.

24 And then my twin brother and I, just to tease him,
25 would take pieces off his car and move them around, as

Jeff Mahoney
Direct examination by Mr. Gowdy

1 little brothers will do. That was something that we always
2 did.

3 As Jack and I grew up, again, James' interest in
4 vehicles and NASCAR continued. Everything that I know about
5 vehicles, which is a very little bit, but I learned that
6 from him from the time that he was old enough to drive.

7 He actually took an engine in a vehicle and tore it
8 down and rebuilt it and did it exactly what he wanted it to
9 be. And my twin and I assisted him with that as much as we
10 could. And he taught us along the way, this is how it was
11 supposed to be.

12 Q Jeff, there was some testimony Friday and Saturday
13 about James' physical condition, his height, his weight, his
14 hands.

15 Growing up with him, was he always small for his age?
16 Do you, do you remember there ever being a point in time
17 where he wasn't small or where his health wasn't as bad as
18 what the testimony was?

19 A James was in poor health for as long as I can recall.
20 The diabetes that he had was a major factor. And, again,
21 I'm no medical expert, I'm assuming it played a major role
22 in why he was not a sizeable man.

23 There was a point in time where, yes, when he was the
24 big brother he was larger than Jack and myself. But as we
25 grew up, we surpassed his size. But, no, I cannot remember

Jeff Mahoney
Direct examination by Mr. Gowdy

1 a time when health was not an issue with James.

2 Q Jeff, can you tell the ladies and gentlemen of the jury
3 one or two things that you miss the most about your brother?

4 A The thing I miss the most is talking with him.

5 My line of work has kept me away from the family quite
6 a bit. The times that I would get to come back, James was
7 very interested in what I did. He was very proud that I
8 served in the military. He always wanted to be in the
9 military, but he knew he never could be because of his
10 health.

11 So, we would spend countless hours late into the night
12 just talking about helicopters, the military in general, the
13 functions, the purpose, how things occur.

14 He was very inquisitive and generally interested in how
15 it operated. And I think that would be the thing that I
16 miss the most, is just quiet quality time talking with him.
17 And I am never going to have that again.

18 Q Thank you, Jeff.

19 MR. KELLY: No questions.

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

21 Next witness.

22 MR. KELLY: Your Honor, while he is coming to the
23 stand, may we approach, please?

24 THE COURT: Yes, sir.

25 (Bench conference held off the record in the presence

Jeff Mahoney
Direct examination by Mr. Gowdy

1 of the jury but out of the hearing of the jury.)

2 THE COURT: Ladies and gentlemen of the jury, once
3 again, I'm going to -- I have a matter of law that I need to
4 take up with the attorneys.

5 As I told you when we started this case, the reason
6 that I send you out of the courtroom when I am discussing
7 matters of law with the attorneys is because you are the
8 judge of the facts. I'm the judge of the law.

9 Sometimes when I'm ruling on matters of law, it might
10 be necessary for me to make some comment as to the facts. I
11 am not supposed to do that in front of you. That's the
12 reason that I send you to the jury room at these times.

13 I know that you are passing around some exhibits. If
14 you would just leave them in your seat, you can look at them
15 when you get back.

16 The jury may retire. We'll get you back in just a few
17 minutes. Please do not discuss this case while you are in
18 the jury room.

19 (The following takes place outside the presence of the
20 jury.)

21 THE COURT: Yes, sir. Mr. Kelly.

22 MR. KELLY: Judge, at this time we understand that the
23 state intends to call other than immediate family members or
24 family members at all. In fact, we understand the state
25 intends to call the coworkers, owner of the business, two or

Jeff Mahoney
Direct examination by Mr. Gowdy

1 three witnesses along those lines. I don't know, exactly
2 sure, but at least now they have called one.

3 And we would urge the Court that under Payne, which our
4 Court adopted in Lucas vs. Evett and also in State vs.
5 Johnson, we would urge the Court that that uniqueness and
6 those things that are allowed under victim impact evidence
7 is limited to the family members.

8 I am not aware of any South Carolina Supreme Court case
9 that has expanded that holding and allowed others to so
10 testify. And for that reason, I would respectfully object
11 to anyone other than the family members testifying, Your
12 Honor.

13 THE COURT: Solicitor, do you want to be heard?

14 MR. GOWDY: Your Honor, I may let the deputy that is
15 handling this witness respond.

16 THE COURT: All right. I will be glad to.

17 MR. BARNETTE: Your Honor, obviously he worked with
18 these people. And these are friends, plus coworkers of his.

19 They should have the opportunity to speak on his behalf
20 too regarding the situation that he dealt with, plus that
21 have been in the situation.

22 I believe that would be victim impact information, as
23 well as family members also.

24 And it would go to the uniqueness of the individual in
25 this case, Your Honor. And we should be able to show to the

Jeff Mahoney
Direct examination by Mr. Gowdy

1 jury also.

2 MR. KELLY: Your Honor, as an additional point, we
3 would urge the Court that its probative value certainly
4 would be outweighed by the prejudice to the defendant.

5 MR. GOWDY: He doesn't know what he is going to say
6 yet, Your Honor. I'm not sure how he knows which outweighs
7 the other.

8 THE COURT: Well, I understand that, Solicitor. If you
9 are going to let Mr. Barnette argue it, I'll be glad to hear
10 from him on it.

11 MR. BARNETTE: Yes, sir. Basically, he doesn't know
12 what he is going to say at this point. How could he know if
13 it's prejudicial or relevant?

14 THE COURT: Well, of course, Mr. Barnette, my concern
15 is not to guess about what we are doing. My concern is to
16 have a clean trial.

17 I don't care what the state's motives are or the
18 defense motives are. My concern is to have a clean record
19 in the case. And, you know, that's my issue.

20 I have other things that I have to look at, and
21 certainly as officers of the court we all have issues to
22 look at to try to make sure that we try a case that is as
23 pristine as it can be.

24 MR. BARNETTE: Yes, sir. Your Honor, also, I would
25 site to you the State vs. Jason Byram on the basis that it

Jeff Mahoney
Direct examination by Mr. Gowdy

1 says the victim impact testimony is --

2 THE COURT: Wait just a minute. You got to slow down,
3 Mr. Barnette.

4 MR. BARNETTE: Yes, sir.

5 THE COURT: I think I probably got the same thing that
6 you have got that you are reading from. So, slow it down a
7 little bit.

8 MR. BARNETTE: Yes, sir. I will go ahead and let Your
9 Honor read it.

10 THE COURT: You can go ahead and read it, because I'm
11 looking for some case law rather than just some feelings.

12 MR. BARNETTE: Yes, sir. I understand.

13 State vs. Byram, Your Honor, states the following
14 victim impact testimony held not excessive. And teachers
15 assistant testified the victim was a wonderful teacher of
16 emotionally handicapped children. And the victim's students
17 was devastated to learn of their teacher's death. Vickie
18 Wells, apparently one of the victim's students, testified
19 the victim had a positive impact on her son. And victim's
20 sister testified about the effects of the victim's death
21 upon herself and the victim's three children. And the
22 victim's husband testified about the impact of his wife's
23 death on their children.

24 THE COURT: Mr. Kelly, I think that -- of course I am
25 very aware of the case of the State vs. Byram. I tried that

Jeff Mahoney
Direct examination by Mr. Gowdy

1 case in Richard County in 1995. And these were issues in
2 that case that two very fine lawyers, Doug Stricker and Lee
3 Coggiola, presented to the Court.

4 And at that time I made the determination that the
5 impact that someone has on others' lives is not strictly
6 limited to family members.

7 I think a very careful reading of Payne and its
8 progeny, looking also at State vs. Humphries, Byram and a
9 whole host of cases in this state, but most particularly
10 Byram, there was testimony in that case by coworkers,
11 students, any number of people, including family members, of
12 the great loss of this lady to her family and to her
13 community.

14 And I believe that is relevant victim impact evidence.
15 I think that that's the key to it, is that we refer to
16 victim impact evidence. It is not just family impact
17 evidence, because any number of people can be a victim as a
18 result of crime. So, your objection is noted, and it is
19 overruled.

20 MR. KELLY: Thank you, Judge.

21 THE COURT: All right. Let's bring our jury back, and
22 then we will swear him.

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: Thank you very much, ladies and gentlemen.

Keith Fowler

Direct examination by Mr. Barnette

1 You may swear the witness.

2 KEITH FOWLER, having been
3 first duly sworn, testified as follows:

4 THE COURT: State your name for the record, and spell
5 your last name, sir.

6 THE WITNESS: My name is Keith Fowler, F-O-W-L-E-R.

7 MR. BARNETTE: Thank you, Your Honor. May it please
8 the Court.

9 DIRECT EXAMINATION BY MR. BARNETTE

10 Q Mr. Fowler, I know you've testified before, but, if you
11 would, tell the jury again where you work at or what you've
12 done.

13 A I work at Nikki's Speedy Mart, which is owned by my
14 wife.

15 Q And James Mahoney worked for you all, is that correct?

16 A Yes, sir, he did.

17 Q And how long did he work for you?

18 A Approximately three years.

19 Q Did you know him before that?

20 A Yes, sir. I knew James in school, in junior high
21 school.

22 Q And did he also, did he work somewhere else before he
23 came to Nikki's?

24 A Yes, sir. He worked at the Robo car wash right beside
25 us. It's really right beside us there. Yes, sir.

Keith Fowler
Direct examination by Mr. Barnette

1 Q And did you get to see him when he worked at the car
2 wash?

3 A Yes, sir. He came in quite often and talked with us,
4 and he would order food. And a lot of times he was in a big
5 hurry, you know. He had a lot of customers, and he would
6 order and run back over there.

7 Most of the time I would run his food to him to save
8 him from having to go back and forth across the road like he
9 did.

10 Q And what happened to him at that job?

11 A He had an accident over there and broke his leg. And
12 he wasn't able to perform the job any more.

13 Q And then did he come to work for you all?

14 A Yes, sir; yes, sir. He came in, and we talked. And it
15 just came around, you know. He came to work for us.

16 Q And what kind of worker was he?

17 A He was an excellent worker. He was above and beyond
18 anyone you ever want to meet on a job like that.

19 Q What kind of person was he? What kind of character did
20 he have?

21 A He was, I guess, to me he was a good-ole boy. He was
22 my friend. I had some problems in the summer of '99. I was
23 diagnosed with diabetes, and James was my Achilles heel
24 through that. He helped me more than a doctor did. He
25 stayed on me and told me what to do, what not to do. He

Nikki Fowler
Direct examination by Mr. Barnette

1 was, he was a good friend.

2 Q Did y'all have a third shift at Nikki's any more?

3 A No, sir. We will never have a third shift again.

4 Q And why is that, sir?

5 A Because I lost a good friend due to the third shift,
6 and I just never want it to happen again.

7 Q Thank you, sir.

8 A Yes, sir.

9 MR. KELLY: No questions.

10 THE COURT: Thank you, sir. You may step down,
11 Mr. Fowler.

12 Next witness.

13 MR. BARNETTE: I would like to call Nikki Fowler to the
14 stand.

15 NIKKI FOWLER, having been
16 first duly sworn, testified as follows:

17 THE COURT: Please state your name for the record, and
18 spell your last name, ma'am.

19 THE WITNESS: Nanette Fowler, F-O-W-L-E-R.

20 REDIRECT EXAMINATION BY MR. BARNETTE

21 Q Ms. Fowler, you own Nikki's, is that correct?

22 A That's right.

23 Q And how long did you know James?

24 A Well, since we opened in '95.

25 Q Did he work at the car wash?

Nikki Fowler

Direct examination by Mr. Barnette

1 A At the car wash.

2 Q And you got to know him through coming over to your
3 business?

4 A Yes.

5 Q And he came and worked for you later, is that correct?

6 A That's right.

7 Q And, if you would, tell the jury what kind of person he
8 was to you.

9 A He was a very hard worker. He really did more than he
10 was called on to do. He would always try to make things
11 easier, really.

12 Q What kind of -- how was his health when he first
13 started there, and how did it progress as he worked there?

14 A Well, I know he had trouble with his hands and his
15 eyes. They were getting worse through the time.

16 Q And how often would you see him? Would you see him
17 every day?

18 A I saw him every day.

19 Q And how did he interact with other coworkers and other
20 people? How did he react with other people in the store as
21 that you saw?

22 A He always acted real fine. He always treated people
23 right.

24 Q And y'all don't have a third shift any more.

25 A No.

Nikki Fowler

Direct examination by Mr. Barnette

1 Q And what is your reason why you don't have a third
2 shift any more?

3 A Just can't handle that. I don't know how to explain
4 it.

5 MR. BARNETTE: One moment, Your Honor.

6 (Pause.)

7 Q Ms. Fowler, what do you miss most about James Mahoney?

8 A It's really hard to put into words. Just seeing him
9 every day, the way he greeted us. I have a daughter. He
10 always called her the boss and went on with her. Just
11 really hard to put into words.

12 Q Did he have any names or affections he called you or
13 Keith?

14 A When we would come in in the mornings a lot of times he
15 would say hi, hey mom and dad, just going on with us.

16 Q Thank you.

17 MR. KELLY: No questions.

18 THE COURT: Thank you, ma'am. You may step down
19 Ms. Fowler.

20 Next witness.

21 MR. BARNETTE: Thank you, Your Honor. May it please
22 the Court. I would like to call Ann Yarbrough to the stand,
23 please.

24 ANN YARBROUGH, having been
25 first duly sworn, testified as follows:

Ann Yarbrough
Direct examination by Mr. Barnette

1 THE COURT: Please state your name for the record. And
2 spell your last name, ma'am.

3 THE WITNESS: Ann Yarborough, Y-A-R-B-R-O-U-G-H.

4 MR. BARNETTE: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. BARNETTE

6 Q Ms. Yarborough, what shift did you work at Nikki's?

7 A I worked the second shift.

8 Q And how long did you know James Mahoney?

9 A Since '96.

10 Q And did he used to come at the end of your shift, or do
11 you know?

12 A Only on Saturdays.

13 Q And what kind of person was he to you?

14 A He was -- he loved to joke around with people. He had
15 a lot of friends, a lot of friends; and a lot of people came
16 in and left their number for me to give him.

17 He always told people how to work on their cars and
18 everything. If anybody had something wrong, they would call
19 him.

20 Q Would he go help people?

21 A He would tell them what to do. He could tell them what
22 to do over the telephone.

23 Q And would he help people when they was in trouble?

24 A Yeah.

25 Q Do you know of an instance where he helped somebody

Ann Yarbrough
Direct examination by Mr. Barnette

1 when --

2 A He helped people change tires. He helped me. I lived
3 a half a mile from the store, so a lot of times at night I
4 would go by and see him. I went to get boxes one time and
5 he had already put them in the dumpster; that he went and
6 got into the dumpster and got boxes out for me, and things
7 like that.

8 Q Did he -- would he help people with medical problems?

9 A He would talk to -- I know that he talked to Keith a
10 lot about his medical problems.

11 Q Would he help customers too that came into the store at
12 times?

13 A There was one of our customers that came on all shifts.

14 He came in one night having chest pains, and James
15 closed the store and took him to the hospital and called his
16 family. He knew he could get him there faster than the
17 ambulance could get there to pick him up.

18 Q Thank you, ma'am.

19 MR. KELLY: No questions.

20 THE COURT: Thank you, ma'am. You may step down,
21 Ms. Yarborough.

22 MR. KELLY: Can we approach, Your Honor?

23 THE COURT: Yes, sir.

24 (Bench conference held off the record in the presence
25 of the jury but out of the hearing of the jury.)

Jacqueline Walker
Direct examination by Mr. Willingham

1 MR. WILLINGHAM: May it please the Court, the state
2 would call Jacqueline Walker.

3 JACQUELINE WALKER, having been
4 first duly sworn, testified as follows:

5 THE COURT: Ma'am, if you would, please state your name
6 for the record, and spell your first and last names.

7 THE WITNESS: My name is Jacqueline Walker,
8 J-A-C-Q-U-E-L-I-N-E W-A-L-K-E-R.

9 THE COURT: Thank you, ma'am.

10 DIRECT EXAMINATION BY MR. WILLINGHAM

11 Q Ms. Walker, tell the jury where you work.

12 A I work for the Frank Murphy Hall of Justice in Detroit,
13 Michigan, in the criminal division for Ms. Julia Penn who is
14 the deputy administrator.

15 Q Okay. Is it safe to say you work in the clerk of
16 court's office in Michigan?

17 A Yes. Wayne County Clerk, yes.

18 Q And whereabouts in Michigan?

19 A In Detroit, Michigan.

20 Q Okay. And is that the Third Judicial Circuit?

21 A Yeah, the Third Judicial Circuit Court.

22 Q As the clerk of court do you normally keep possession
23 and custody of public records?

24 A Yes, I do.

25 Q And in the clerk of court's office you keep civil

Jacqueline Walker
Direct examination by Mr. Willingham

1 papers --

2 A Yes.

3 Q -- and criminal papers?

4 A Yes.

5 Q Did you or someone in your office provide us with a
6 certified copy of a record involving Richard Bernard Moore?

7 A Yes.

8 Q I am going to show you what's been marked as State's
9 Exhibit Number Forty-eight and ask if you recognize that.

10 A Yes, I do.

11 Q What is it?

12 A It's a certified copy of an exemplified copy of his
13 court papers like order of probation, petition for
14 discharge, information complaint and warrant.

15 Q And is that paperwork kept in your normal course of
16 business?

17 A Yes, it is.

18 Q And is it a public record available to the public?

19 A Yes.

20 Q The original of that, where is it kept?

21 A It's on microfilm.

22 Q Is that a certified true copy of what's present on
23 their microfilm?

24 A Yes, it is.

25 MR. WILLINGHAM: Your Honor, at this time I move

Jacqueline Walker
Direct examination by Mr. Willingham

1 State's Exhibit Number Forty-eight into evidence.

2 THE COURT: Any objection?

3 MR. KELLY: No objection.

4 THE COURT: Without objection, State's Exhibit Number
5 Forty-eight will be admitted.

6 (Defendant's prior record from Michigan marked State's
7 Exhibit Number Forty-eight.)

8 Q Viewing State's Exhibit Number Forty-eight, is it true
9 that Richard Bernard Moore has a conviction for an offense
10 in 1985 for unlawful possession of a weapon?

11 A Yes.

12 Q And that is from your Third Judicial Circuit in the
13 State of Michigan.

14 A Yes, it is.

15 Q Ms. Walker, thank you for answering my questions.
16 Would you answer any questions the Court or the defense may
17 have for you?

18 THE COURT: Cross-examination.

19 MR. KELLY: No questions.

20 THE COURT: Thank you, ma'am. You may step down
21 Ms. Walker.

22 MR. WILLINGHAM: Your Honor, we would ask that she be
23 excused to go back to Michigan.

24 THE COURT: Without objection, you are excused. I
25 appreciate you coming, ma'am.

Bill Nixon
Direct examination by Mr. Willingham

1 Next witness.

2 (Whereupon, the witness was excused.)

3 MR. WILLINGHAM: Your Honor, we would call Bill Nixon.

4 BILL NIXON, having been first
5 duly sworn, testified as follows:

6 THE COURT: Please state your name for the record, sir,
7 and spell your last name.

8 THE WITNESS: Bill Nixon, N-I-X-O-N.

9 DIRECT EXAMINATION BY MR. WILLINGHAM

10 Q Mr. Nixon, tell the jury where you work.

11 A I work for the County of Macomb, State of Michigan,
12 Chief Deputy Clerk.

13 Q And as one of your responsibilities as Chief Deputy
14 Clerk do you keep up with the public records and public
15 documents in your office?

16 A That is correct.

17 Q And do you keep up with criminal records?

18 A Yes, I do.

19 Q Where are there kept?

20 A They're kept in the county clerk's office.

21 Q And how long are they kept?

22 A They are kept for 25 years.

23 Q What happens to them after 25 years?

24 A They are microfilmed.

25 Q How long are the microfilms kept?

Bill Nixon
Direct examination by Mr. Willingham

- 1 A Indefinitely.
- 2 Q At our request did you or someone in your office
3 provide a certified copy of a criminal record involving
4 Richard Bernard Moore?
- 5 A Yes.
- 6 Q And I show you State's Exhibit Number Forty-nine and
7 ask if you recognize that.
- 8 A Yes, I do.
- 9 Q What is it?
- 10 A It's part of a court file.
- 11 Q What part of it?
- 12 A It is a people's exhibit in which the defendant answers
13 a series of questions and makes a statement.
- 14 Q Is it additionally a part of the records, his charge
15 and his conviction?
- 16 A Yes, it is.
- 17 Q And what was his charge?
- 18 A A B & E.
- 19 Q What's a B & E?
- 20 A Breaking and entering.
- 21 Q What type of --
- 22 A With intent.
- 23 Q Does it say what type of a -- what we broke into?
- 24 A Yes.
- 25 Q What I am referring to specifically is count one. It

Bill Nixon

Direct examination by Mr. Willingham

1 says -- is that a true and correct copy of what you have in
2 your file, on file, in your office in Michigan?

3 A Yes, it is.

4 MR. WILLINGHAM: Your Honor, at this time I move
5 State's Exhibit Number Forty-nine into evidence.

6 MR. KELLY: May we approach the bench, Your Honor?

7 THE COURT: Yes, sir.

8 (Bench conference held off the record in the presence
9 of the jury but out of the hearing of the jury.)

10 THE COURT: All right. Any objection to State's Number
11 Forty-nine?

12 MR. KELLY: Yes, sir, Your Honor. If it please the
13 Court, we submit that the first part of the document is
14 proper but that the back part is not proper.

15 THE COURT: Your objection is noted. It is overruled.
16 It is be admitted as State's Number Forty-nine.

17 MR. KELLY: Thank you, Your Honor.

18 (Defendant's record from Michigan marked State's
19 Exhibit Number Forty-nine.)

20 Q Mr. Nixon, does this document show that he had count
21 one breaking and entering of a building with intent?

22 A Yes, it does.

23 Q And does it show he was convicted on 5/15, 1987?

24 A That is correct.

25 Q Mr. Nixon, the second page of this document your office

Bill Nixon
Cross-examination by Mr. Kelly

1 provided to us, is that a form that the defendant is advised
2 of his rights?

3 A Yes.

4 Q As part of that form -- ask the defendant in his own
5 words to say what he did?

6 A Yes. It does state that.

7 Q If you will, read that to the jury.

8 A "Pushed open front door of Broadway Market. Entered
9 store and removed two handguns and \$10 in quarters. When
10 officers arrived -- but I ran away."

11 Q Who is that signed by?

12 A Richard Moore.

13 Q If you would, answer any questions the defense or the
14 judge would have for you.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. KELLY

18 Q Let me ask you about this, please. I am not sure I
19 will understand it, but I'm hoping you can help me, sir.

20 Mr. Moore entered a plea of guilty, correct?

21 A Yes, that's correct.

22 Q Okay. And he entered a plea of guilty to attempt to
23 break and enter, is that right?

24 A That's correct.

25 Q So, he was not convicted of breaking and entering, is

David Saad
Direct examination by Mr. Willingham

1 that correct?

2 A That is correct.

3 MR. KELLY: Thank you, Judge.

4 MR. WILLINGHAM: I have no other questions of this
5 witness.

6 THE COURT: Thank you, sir. You may step down,
7 Mr. Nixon.

8 Are you asking that he be excused?

9 MR. WILLINGHAM: Please, Your Honor.

10 THE COURT: Without objection, you are excused. I
11 appreciate you coming, sir.

12 (Whereupon, the witness was excused.)

13 THE COURT: Next witness.

14 MR. WILLINGHAM: We would call David Saad.

15 DAVID SAAD, having been first
16 duly sworn, testified as follows:

17 THE COURT: Sir, please state your name for the record,
18 and spell your last name.

19 THE WITNESS: My name is David Saad, S-A-A-D.

20 THE COURT: Solicitor.

21 DIRECT EXAMINATION BY MR. WILLINGHAM

22 Q Mr. Saad, where do you live?

23 A I live in Sterling Heights, Michigan.

24 Q And what do you do in Michigan?

25 A I'm a parole and probation officer from the Michigan

David Saad
Direct examination by Mr. Willingham

1 Department of Corrections.

2 Q How long have you worked for the Department of
3 Corrections?

4 A Thirty years now.

5 Q Prior to Richard Moore being sentenced for attempted
6 breaking and entering did you prepare a presentence
7 investigation report for the Court?

8 A Yes, I did.

9 Q Is that a record you prepare and keep in your normal
10 course of business?

11 A Yes, it is.

12 Q And did you provide a copy of that report to our office
13 upon our request?

14 A Yes, I did.

15 Q And I show you what's been marked as State's Exhibit
16 Number Fifty and ask if you recognize that.

17 A This is the presentence report I did prepare.

18 Q Is that a true and correct copy of the report you
19 prepared?

20 A Yes, it is.

21 MR. WILLINGHAM: Your Honor, at this time I move
22 State's Exhibit Number Fifty into evidence.

23 MR. KELLY: May we approach, Your Honor?

24 THE COURT: Yes, sir.

25 (Bench conference held off the record in the presence

David Saad
Direct examination by Mr. Willingham

1 of the jury but out of the hearing of the jury.)

2 THE COURT: The objection is sustained --

3 MR. KELLY: Thank you, Judge.

4 THE COURT: -- as to Number Fifty.

5 MR. WILLINGHAM: Thank you, Your Honor.

6 Q Mr. Saad, as part of your job in preparing a
7 presentence investigation did you have an opportunity to
8 talk to the defendant?

9 A Yes, we did.

10 Q And as part of that did you find out what the defendant
11 Richard Moore's version of the facts were?

12 A That's a mandatory part of the report, yes.

13 Q Do you have -- will you tell this Court what this
14 defendant's version of the 1987 offense was?

15 A As I recall speaking with Mr. Moore, he told me that he
16 had broken into a building, just picked it out at random.
17 He had stolen from the building two handguns and a roll of
18 quarters.

19 He was caught at the time of the offense but broke away
20 and gave himself up later knowing that there was a warrant
21 out for his arrest.

22 I asked him what was the cause of his behavior, and he
23 said he was using -- was addicted to cocaine, both in crack
24 and powder form.

25 Q If you would, answer any questions the defense or the

Michelle Crowder
Direct examination by Mr. Willingham

1 Court may have.

2 MR. KELLY: No questions.

3 THE COURT: Thank you, sir. You may step down,
4 Mr. Saad.

5 Any objection to him being excused?

6 MR. KELLY: No, sir.

7 THE COURT: Without objection, you are excused. I
8 appreciate you coming, sir.

9 MR. WILLINGHAM: Thank you, Your Honor.

10 (Whereupon, the witness was excused.)

11 MR. WILLINGHAM: The state would call Michelle Crowder.

12 MICHELLE CROWDER, having been
13 first duly sworn, testified as follows:

14 THE COURT: Ma'am, state your name for the record, and
15 spell your first and last names.

16 THE WITNESS: Michelle Crowder, M-I-C-H-E-L-L-E
17 C-R-O-W-D-E-R.

18 MR. WILLINGHAM: Thank you.

19 DIRECT EXAMINATION BY MR. WILLINGHAM

20 Q Ms. Crowder, where do you live now?

21 A Columbia, South Carolina.

22 Q And where did you live before you moved to Columbia?

23 A Spartanburg, South Carolina.

24 Q And when was that?

25 A When did I move?

1 Q When did you live here?

2 A I've lived in Spartanburg from June 1988 until
3 September of 1999.

4 Q In September of 1991 did you have an occasion to meet
5 the defendant, Richard Moore?

6 A Yes, I did.

7 Q And tell the jury about that.

8 A I had walked into a Sub Station with my fiancée at the
9 time. And Mr. Moore walked in and walked around and stood
10 behind me.

11 At that time the lady behind the counter said if you
12 wanted to play some--

13 MR. KELLY: Objection to what the lady behind the
14 counter said.

15 THE COURT: Yes, sir. I sustain the objection. Just
16 tell us what you know, ma'am, not what someone else said.

17 A He went around. He ordered a drink and came back and
18 stood behind me.

19 A few minutes later he proceeded to grab my purse.
20 When he grabbed my purse, the strap part hit my arm and
21 broke in two.

22 I turned around. He punched me in the left side of my
23 neck, and I fell. When I fell, I fell on my purse.

24 He proceeded to kick me up and down my back, on my
25 head.

Michelle Crowder
Direct examination by Mr. Willingham

1 At that time my fiance came from across the other side
2 of the restaurant and proceeded to try to tackle him.

3 He then beat my fiance on the back, on the head, in the
4 ribs, and sent him to the hospital.

5 He walked -- Mr. Moore then slowly just walked out of
6 the restaurant into the car and drove away. And that was
7 the time that we got the tag number.

8 Q Ms. Crowder, do you see Richard Moore in the courtroom
9 today?

10 A Yes, I do.

11 Q Point him out for me.

12 A Right there.

13 Q Tell me what he is wearing.

14 A What he is wearing today?

15 Q Uh-huh.

16 A He has a suit on, a tie. There's a pin on his left
17 side of the suit.

18 Q Is he white or black?

19 A He is black.

20 Q Answer any questions that the defendant or the Court
21 may have.

22 MR. KELLY: No questions, Judge.

23 THE COURT: Thank you, ma'am. You may step down,
24 Ms. Crowder.

25 Any objection to her being excused?

Michelle Crowder
Direct examination by Mr. Willingham

1 MR. KELLY: None.

2 THE COURT: You may be excused, ma'am. I appreciate
3 you coming.

4 (Whereupon, the witness was excused.)

5 THE COURT: Let me see the lawyers just one moment,
6 please.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 THE COURT: Ladies and gentlemen of the jury, even
10 though I sent you out of the courtroom a couple of times,
11 all of the participants have been in here for some time.
12 We're going to take our morning break.

13 As I send you back to the jury room, once again, please
14 understand that you are not to discuss this case among
15 yourselves under any circumstances or in any manner or
16 fashion whatsoever. We will get you back in the courtroom
17 in just a few minutes.

18 The jury may retire. Everyone else remain seated,
19 please.

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

22 THE COURT: All right. We are going to stand at ease
23 while we take a break, and we will be back.

24 I assume this jury may want to smoke; probably in about
25 15 or 20 minutes.

Valorie Elaine Wisniewski
Direct examination by Mr. Willingham

1 (Whereupon, a recess was taken.)

2 THE COURT: All right. Is the state ready to proceed?

3 MR. GOWDY: Yes, sir, Your Honor.

4 THE COURT: Is the defense ready?

5 MR. KELLY: Yes, sir, Your Honor.

6 THE COURT: Bring our jury back, please.

7 Mr. Cottonareau.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Thank you very much, ladies and gentlemen
11 of the jury.

12 Call your next witness, please, Solicitor.

13 MR. WILLINGHAM: Your Honor, the state calls Valorie
14 Wisniewski.

15 VALORIE ELAINE WISNIEWSKI,
16 having been first duly sworn, testified as follows:

17 THE COURT: Ma'am, please state your name for the
18 record, and spell your last name for us.

19 THE WITNESS: Valerie Elaine Wisniewski,
20 W-I-S-N-I-E-W-S-K-I.

21 THE COURT: Thank you.

22 Solicitor.

23 DIRECT EXAMINATION BY MR. WILLINGHAM

24 Q Ms. Wisniewski, I need for you to speak where I can
25 hear you back over here.

1 Okay. Where do you live?

2 A Myrtle Beach, South Carolina.

3 Q And how long have you lived in Myrtle Beach?

4 A Since August the 11th of this year.

5 Q Before you went to the beach did you live in
6 Spartanburg County?

7 A Yes, sir.

8 Q How long did you live in Spartanburg?

9 A Twenty-nine years.

10 Q Did you live here in Spartanburg in 1991?

11 A Yes, sir.

12 Q Where did you work back in September of 1991?

13 A Rack Room Shoes.

14 Q What did you do for them?

15 A I was the cashier.

16 Q Back on September the 13th, 1991, did you have an
17 opportunity to meet Richard Moore?

18 A Yes, I did.

19 Q Tell the jury about that.

20 A It was around closing time, about 8:58, 55 at night.
21 He came into the store. He jumped over the door where I
22 was, threw me against the counter and told me to open the
23 register and give him the money.

24 Q Do you remember what his exact words --

25 A He said, "Bitch, open the register and give me the

Valorie Elaine Wisniewski
Direct examination by Mr. Willingham

1 money." And I just started screaming for the assistant
2 manager, David Kivet. And Mr. Moore had me cornered against
3 the counter.

4 Q Tell the jury when you say he had you cornered, tell
5 them exactly what you mean.

6 A I was here, and his body was against mine here, and the
7 register was here. And David came up and opened the
8 register for him.

9 Q And did he get any money?

10 A Yes, he did.

11 Q And what happened then?

12 A After David opened the register, he left the box and
13 jumped over the -- it was a thing that turns as you walk in.
14 He jumped over that and ran out the door toward the BP
15 station. And I was instructed to go -- or told to go lock
16 the door.

17 Q Ms. Wisniewski, do you see Richard Moore in this
18 courtroom today?

19 A Yes, I do.

20 Q Will you point him out for us?

21 A That man over there.

22 Q Tell me what he looks like and what he is wearing.

23 A He is wearing khaki pants and a blue blazer.

24 Q Is he white or black?

25 A Black.

Gail Moffitt
Direct examination by Mr. Barnette

1 Q Answer any questions the defense lawyers or the Court
2 may have for you.

3 MR. KELLY: No questions, Judge.

4 THE COURT: Thank you, Ms. Wisniewski. You may step
5 down.

6 MR. WILLINGHAM: Your Honor, we would ask that she be
7 excused.

8 THE COURT: Without objection, you are excused ma'am.
9 Thank you for coming.

10 (Whereupon, the witness was excused.)

11 THE COURT: Next witness.

12 MR. BARNETTE: Thank you, Your Honor. May it please
13 the Court.

14 I would like to call Gail Moffitt to the stand, please.

15 GAIL MOFFITT, having been
16 first duly sworn, testified as follows:

17 THE COURT: Please state your name for the record, and
18 spell your last name, ma'am.

19 THE WITNESS: Gail Moffitt, M-O-F-F-I-T-T.

20 THE COURT: Solicitor.

21 MR. BARNETTE: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MR. BARNETTE

23 Q Ms. Moffitt, what do you do, ma'am?

24 A I employed in the Clerk of Court's Office, Assistant
25 Clerk of Court for Spartanburg County.

Gail Moffitt

Direct examination by Mr. Barnette

1 Q And what's your duty there, ma'am?

2 A We maintain records, civil and criminal records.

3 Q Okay. You keep all records for Spartanburg County?

4 A That's correct.

5 Q Let me show you these that have been marked as State's
6 Exhibits Fifty-one through Fifty-nine. If you would, take a
7 look as those, ma'am.

8 Are those certified records or certified copies of
9 indictments in the Clerk of Court's Office?

10 A Yes, it is. It is certified copies, and that is saying
11 that we have the true copies on record.

12 Q And where would the original indictments --

13 A They would be in the Office of the Clerk of Court.

14 Q And is that in this building here?

15 A That's correct.

16 MR. BARNETTE: Your Honor, I would like to have State's
17 Exhibits Fifty-one through Fifty-eight introduced into
18 evidence at this time. Fifty-nine is for I. D. purposes
19 only.

20 THE COURT: Any objection?

21 MR. KELLY: None, Your Honor.

22 THE COURT: It will be admitted, Fifty-one through
23 Fifty-eight; and Fifty-nine is for I. D., correct?

24 MR. BARNETTE: Yes, sir.

25 (Copies of indictments marked State's Exhibits Numbers

Gail Moffitt

Direct examination by Mr. Barnette

1 Fifty-one through Fifty-eight; copy of indictment marked
2 State's Exhibit Number Fifty-nine.)

3 Q Ms. Moffitt, let me show you State's Exhibit Number
4 Fifty-one. Can you give me the indictment number on that,
5 please?

6 A It's 92-GS-42-2606; state's Exhibit Number Fifty-one.

7 Q And what was -- who was the defendant on that
8 indictment?

9 A Richard Bernard Moore.

10 Q Okay. And what was Mr. Moore convicted of?

11 A Common-law robbery.

12 Q And what year was he convicted of that?

13 A August the 23rd, 1994.

14 Q And who was the victim in that case?

15 A David Cavet.

16 Q And what store was it, ma'am?

17 A Rack Room Shoes.

18 Q Let me show you State's Exhibit Number Fifty-two. Can
19 you give me the indictment number on that one, please?

20 A This is 92-GS-42-6359; State's Exhibit Number
21 Fifty-two.

22 Q And was that also Richard Moore?

23 A That is correct, against Richard Bernard Moore.

24 Q And what was he convicted of, ma'am?

25 A D. U. S. second offense.

Gail Moffitt
Direct examination by Mr. Barnette

- 1 Q And what year was he convicted?
- 2 A September the 15th, 1993.
- 3 Q Let me show you State's Exhibit Number Fifty-three. Is
- 4 that also Richard Bernard Moore?
- 5 A That's correct.
- 6 Q And what was the indictment number on that?
- 7 A 93-GS-42-1804.
- 8 Q And what was he convicted of?
- 9 A That's State's Exhibit Number Fifty-three. He was
- 10 convicted of habitual traffic offender.
- 11 Q Let me show you State's Exhibit Number Fifty-four,
- 12 ma'am. Was this also Richard Bernard Moore?
- 13 A That's correct.
- 14 Q And what was the indictment number on that, please?
- 15 A 93-GS-42-1805; State's Exhibit Number Fifty-four.
- 16 Q And what was he convicted of?
- 17 A D. U. S. third offense.
- 18 Q And D. U. S., is that driving under suspension?
- 19 A That's correct.
- 20 Q And what year was he convicted of that, what day?
- 21 A September the 15th, 1993.
- 22 Q I would like to show you State's Exhibit Number
- 23 Fifty-five. Was that also involving Richard Bernard Moore?
- 24 A That's correct.
- 25 Q And could you give me the indictment number, please?

Gail Moffitt

Direct examination by Mr. Barnette

1 A That's 94-GS-42-3666; State's Exhibit Number

2 Fifty-five.

3 Q And what was he convicted of?

4 A Violation of habitual traffic offender.

5 Q And when was he convicted of that, ma'am?

6 A August the 23rd, 1994.

7 Q Okay. I would like to show you State's Exhibit Number

8 Fifty-six, ma'am. Is that also Richard Bernard Moore?

9 A That's correct.

10 Q And what was the indictment number on that?

11 A 95-GS-42-160. That is State's Exhibit Number

12 Fifty-six.

13 Q And what was he convicted of?

14 A Driving under suspension third offense.

15 Q And what was the date of that conviction?

16 A July the 13th, 1995.

17 Q I would like to show you State's Exhibit Number

18 Fifty-seven. Is that also Richard Moore?

19 A That's correct.

20 Q Could you give me the indictment number, please?

21 A 95-GS-42-3836. That State's Exhibit Number

22 Fifty-seven.

23 Q And what was he convicted of at that time?

24 A Driving under suspension sixth offense.

25 Q And what date was he convicted of that, ma'am?

Gail Moffitt
Direct examination by Mr. Barnette

- 1 A January the 18th, 1996.
- 2 Q Let me show you State's Exhibit Number Fifty-eight. Is
3 this also Richard Moore?
- 4 A That's correct.
- 5 Q And what was the indictment number on that, ma'am?
- 6 A 96-GS-42-387.
- 7 Q And what was he convicted of?
- 8 A Driving under suspension fifth offense. That's State's
9 Exhibit Number Fifty-eight.
- 10 Q And when was he convicted of that, ma'am?
- 11 A January the 18th, 1996.
- 12 Q Let me show you State's Exhibit Number Fifty-nine
13 marked as I. D. purposes only. Is that Richard Bernard
14 Moore?
- 15 A That's correct.
- 16 Q And what was the indictment number on that, ma'am?
- 17 A 96-GS-42-1959; that's State's Exhibit Number
18 Fifty-nine.
- 19 Q And what was he convicted of?
- 20 A Assault and battery of a high and aggravated nature.
- 21 Q And when was he convicted of that, ma'am?
- 22 A August the 7th, 1997.
- 23 Q And, if you would, please tell us who the victim was.
- 24 A Sonja Harrison.
- 25 MR. BARNETTE: One moment, Your Honor, please.

Gail Moffitt
Direct examination by Mr. Barnette

1 THE COURT: Yes, sir.

2 (Pause.)

3 MR. BARNETTE: May we approach the bench for a second,
4 Your Honor?

5 THE COURT: Yes, sir.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 THE COURT: All right. You can continue.

9 UNIDENTIFIED JUROR: Judge Clary, could common-law
10 robbery be --

11 THE COURT: Wait just one minute. If you have a
12 question, I am going to need to get you to -- I'm going to
13 send you to the jury room and get you to write that out for
14 me.

15 I cannot entertain verbal questions. So, if you have a
16 question, I am going to send the jury to the jury room in
17 just a moment. If you would, write that question out.

18 I do not know that it's something that I will be able
19 to clear up or answer for you. But if you would simply
20 write that out for me, I will do that.

21 I am going to send the jury to the jury room with the
22 understanding that you are not to discuss this case among
23 yourselves. If you would, write that question, Madam
24 Foreperson.

25 Then knock on the door and give it to the bailiff. And

Gail Moffitt
Direct examination by Mr. Barnette

1 they will see that it is delivered to me.

2 The jury may retire. Everyone else remain seated,
3 please.

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

6 THE COURT: Why don't you go ahead and take care of
7 these exhibits as we discussed?

8 I think, so that the record is clear, the state had
9 attached sentencing sheets to these exhibits.

10 The defense had objected to the sentencing sheets. I'm
11 sustaining that objection as to the sentencing sheets. They
12 will be removed.

13 MR. KELLY: Thank you, Judge.

14 MR. BARNETTE: Thank you, Your Honor.

15 (Pause.)

16 THE COURT: What I am also going to do is wait and see
17 what that question is from the jury, because we have a
18 specific mechanism by which I need to deal with this.

19 The lawyers may approach.

20 (Bench conference held off the record.)

21 THE COURT: All right. Let the record reflect that the
22 foreperson of the jury has sent me a question, "Could
23 common-law robbery be explained?" And, of course, I'm going
24 to tell them that, no, I cannot explain that to them,
25 because, once again, that could be a comment as to the

Gail Moffitt
Direct examination by Mr. Barnette

1 particular facts of this case.

2 And I am going to also instruct them about them posing
3 a question and what I can and cannot do, and give them that
4 charge.

5 And then she also says, "Could you please ask the
6 witnesses to speak louder?"

7 Witnesses, lawyers, please speak up. You know, if they
8 can't hear, the court reporter can't hear, we're in a lot of
9 trouble. So, please, understand that the first thing that
10 you should tell your witnesses before they, before you start
11 a trial is for them to speak up.

12 All right. Let's bring our jury back. Let me see the
13 lawyers while the jury is coming back in.

14 (Bench conference held off the record.)

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: Madam Foreperson, ladies and gentlemen of
18 the jury, you have indicated the desire to ask a question;
19 and normally this is outside of your role as a juror.

20 For that reason, the law requires that I evaluate your
21 question and discuss it with the lawyers before it can be
22 asked.

23 I have sent you to the jury room so that you could
24 respond to me in a written form, and you have done that.
25 You have sent it to me through the bailiff.

Gail Moffitt
Direct examination by Mr. Barnette

1 And the lawyers and I have discussed it on the record
2 outside of your presence.

3 As I have told you throughout the course of this trial,
4 and you have heard me say, you are the judges of the facts
5 in this case. I am the judge of the law.

6 Please understand that there can be many reasons that
7 would prevent me from allowing this question, and some of
8 them are of a very technical reason. And none of the
9 reasons has anything to do with what the answer -- that
10 might be given by a witness.

11 So, please, understand that when I consider your
12 question that it's not in an effort to -- in any way for me
13 to prevent you from knowing certain information. It is just
14 that I am constrained by the law as to what is admissible in
15 a case.

16 I would also like to point out to you that these -- the
17 introduction of evidence on the behalf of the state and the
18 defense, that is something that they do, and they have to do
19 within the constraints of the law under which we all
20 operate.

21 The question that you have presented to me, "Could
22 common-law robbery be explained," is not something that I
23 can answer for you, because that would be a comment not only
24 on the law but also the particular facts of a case, and I
25 cannot do that.

Gail Moffitt

Direct examination by Mr. Barnette

1 "Could you please ask the witnesses to speak louder?"

2 Yes, I can, and I have already done that. We will take care
3 of that.

4 Madam reporter, if you will, please mark that as a
5 court's exhibit.

6 (Question from the jury marked Court's Exhibit Number
7 Eleven.)

8 THE COURT: Solicitor, you may continue.

9 MR. BARNETTE: Thank you, Your Honor. May it please
10 the Court.

11 Q Ms. Moffitt, one question I wanted to make sure was
12 answered.

13 The victim, who was the victim on the
14 assault-and-battery-of-a-high-and-aggravated-nature
15 conviction.

16 A Sonya Harrison.

17 Q Thank you, ma'am. Please answer any questions
18 Mr. Kelly may have for you, or the Court.

19 MR. KELLY: No questions.

20 THE COURT: Thank you, ma'am. You may step down,
21 Ms. Moffitt.

22 MR. WILLINGHAM: We would call Dr. Wren.

23 DR. JOHN DAVID WREN, having
24 been first duly sworn, testified as follows:

25 THE COURT: Please state your name for the record.

Dr. John David Wren
Direct examination by Mr. Willingham

1 THE WITNESS: John David Wren, W-R-E-N.

2 THE COURT: Thank you, sir.

3 Solicitor.

4 DIRECT EXAMINATION BY MR. WILLINGHAM

5 Q Dr. Wren, you've already testified in the guilt phase
6 of this trial, is that correct --

7 A Yes.

8 Q -- and been qualified as an expert in forensic
9 pathology, is that correct?

10 A Yes, sir.

11 MR. WILLINGHAM: Your Honor, we would ask that he
12 continue to be qualified in that area.

13 MR. KELLY: No questions.

14 THE COURT: Without any objection, he is -- you may
15 continue.

16 Q Showing you what has been marked as State's Exhibit
17 Number Fifty, a series of four photographs. Do those four
18 photographs assist you in explaining to the jury the
19 injuries suffered by James Mahoney?

20 A Yes. He had a few abrasions to his body that I can go
21 through, but most of them were minor. One photograph here
22 shows --

23 Q Hang on just a minute, Doctor, if you would.

24 MR. WILLINGHAM: Your Honor, at this time I move
25 State's Exhibit Number Sixty into evidence.

Dr. John David Wren
Direct examination by Mr. Willingham

1 THE COURT: Subject to the prior objection, it will be
2 admitted.

3 MR. WILLINGHAM: Thank you, Judge.

4 (Four photographs marked State's Exhibit Number Sixty.)

5 Q If you will, come down.

6 (Whereupon, the witness left the stand.)

7 Q Dr. Wren, what would cause an injury like -- I mean,
8 what happened there with that arm to be like that?

9 A This is the wound. This was a result of the wound
10 that, I said, where it fractured his right humerus and
11 where it sharply angulated in an unusual way where the break
12 was.

13 It was not what's called a compound fracture. It was
14 just a comminuted fracture, which the skin wasn't broken
15 except by the bullet. The fracture was right about there.

16 Turn it up in there. This is the gunshot wound that I
17 described in his axillary line region, posterior axillary
18 line region. I think that is the outline of part of his arm
19 there.

20 This is the gunshot wound that is slightly oval in this
21 picture. I described it as .38 inches in diameter. You can
22 see a little bit of discoloration around it, although you
23 can't tell right there. You can see the underlying tissue.

24 And this, I thought, could be powder stippling, but
25 when you look at the actual photograph, it's maybe

Dr. John David Wren
Direct examination by Mr. Willingham

1 hemorrhage or something of that nature. I don't think it's
2 tattooing.

3 And this is the gunshot wound. The bullet was actually
4 travelling in this direction. This is that gunshot wound to
5 the arm, close up of it. And it is irregular. No, no, I am
6 sorry. Turn it up and down this way.

7 Q That way?

8 A Yes. This is his right nipple on his breast. This is
9 the exit. I believe it was that way.

10 At any rate, it was below the nipple. And you can see
11 that it's irregular and slit like. There was tissue
12 protruding from that. And this is actual hemorrhage
13 surrounding that exhibit wound which came out of his chest.
14 And actually the entrance would have been over in this
15 direction and went up that way.

16 And then this is the one in his arm. This is his right
17 arm. That's his armpit there.

18 This is about the area of the elbow. And you can see
19 that it's irregular. And this is an abrasion type border
20 here that could have been a barrel imprint, but it wasn't
21 split. It's just irregular, and it's so irregular that it
22 could have been a reentry wound. But you just can't tell in
23 some cases.

24 And actually the bone running down here is where it was
25 fractured. And I found the bullet right behind there.

Dr. John David Wren
Direct examination by Mr. Willingham

1 Q If you would, take your seat back, please, sir.

2 (Whereupon, the witness returned to the stand.)

3 Q Dr. Wren, we got into this a little bit during the
4 guilt phase, but were those injuries -- how long would it
5 take for someone to die with those injuries?

6 A Well, as I said before, if it happens to hit the vagus
7 nerve, it's possible you could -- the heart could stop right
8 away, but he had 1250 cc's or five units of packed red blood
9 cells or equivalent to that, about 250 cc's, in a unit of
10 blood; not one they draw but a unit that they give.

11 He had about 1250 cc's in his right plural cavity. He
12 had about 200 cc's in his pericardial sac and about a
13 hundred cc's in his abdomen.

14 I describe where it went. It went through-and-through
15 the stomach, through-and-through the liver,
16 through-and-through the heart and the lung.

17 And, generally speaking, the heart puts out about five
18 liters of blood a minute. And if you are -- your heart is
19 beating 60 times a minute, that's about 80 cc's a heart
20 beat.

21 Now, the -- for him to have bled that much more into
22 his pleural cavity than he did into his heart, it probably
23 hit an artery, although it's extremely difficult after a
24 person dies to trace all of the arteries that go out to the
25 lungs. But it wasn't a large artery that it hit, but it was

Dr. John David Wren
Direct examination by Mr. Willingham

1 bleeding rather freely.

2 But the hole in his heart, every time the heart would
3 contract, it would partially occlude just by the contraction
4 process.

5 So at about 80 cc's a minute, if you are losing, say, a
6 quart of that in your heart, that would be 20, I mean, 80
7 cc's a beat. If your heart rate goes up, it will actually
8 decrease the amount of blood that is expelled each beat. So
9 he probably would have not filled up his heart for a couple
10 of minutes.

11 Now, the pleural cavity would have been a little bit
12 longer. So, I would say he lived six to ten minutes before
13 everything stopped.

14 Q The entry and exit wound to the chest, on a scale of
15 one to ten, ten being the least -- one being the least and
16 ten being the most -- the injury to the chest and exit to
17 the chest, how painful would that have been?

18 A Just that injury?

19 MR. KELLY: Objection, Your Honor. It calls for
20 speculation.

21 THE COURT: Overruled.

22 A Just that injury?

23 Q Yes.

24 A Well, it went through the lower border of his eighth
25 rib as it went in, just like a rib fracture.

Dr. John David Wren
Direct examination by Mr. Willingham

1 Most people, I mean, there is a variation in pain, but
2 for that and the other places it went through, I would say
3 probably about maybe a six to eight. I don't think it would
4 be devastatingly painful, but/and some people, some people
5 tolerate pain better than others.

6 Now, I know some people that it would probably be a
7 ten, but I don't think it was so bad until he started
8 getting short of breath, assuming he was conscious, that it
9 would have been unbearable.

10 Q And then the injury to the arm, the gunshot injuries to
11 the arm and the breaking of the humerus, on a scale of one
12 to ten, how painful?

13 A I think that would be a seven, possibly up to eight and
14 a half, something like that, because it did distort it. It
15 wasn't a puncture wound. Like I said, this bone didn't
16 actually protrude through the skin, but it would have
17 been -- I've never had a broken bone except my nose, and I
18 didn't like that very much, but I could stand it. But I
19 think this one would have been much worse than that.

20 Q I have no other questions, Dr. Wren. Answer any
21 questions the defense or the Court has.

22 MR. KELLY: No questions, Judge.

23 THE COURT: Thank you, Dr. Wren. You may step down.
24 Are you asking that he be excused?

25 MR. WILLINGHAM: Please, Your Honor.

Dr. John David Wren
Direct examination by Mr. Willingham

1 THE COURT: Without objection, you are excused. I
2 appreciate you coming, Dr. Wren.

3 (Whereupon, the witness was excused.)

4 THE COURT: Next witness.

5 MR. GOWDY: Your Honor, the State of South Carolina
6 rests.

7 THE COURT: Ladies and gentlemen of the jury, that
8 concludes the state's presentation of its evidence in chief
9 in this case.

10 I am going to be sending you to the jury room for just
11 a moment. While you are there, please, do not deliberate or
12 discuss this case in any manner or fashion whatsoever.

13 We will get you back in the courtroom in just a few
14 minutes.

15 The jury may retire. Everyone else remain seated.

16 (The following takes place outside the presence of the
17 jury.)

18 THE COURT: All right. I was just talking with Agent
19 McCloud, one of the jury custodians, about lunch. The
20 jury's lunch is going to be ready around 12:30.

21 I know the state has completed their case. I had put
22 the defense on notice that we would start between 1:30 and
23 2:00. We will still do that; closer to 1:30 rather than
24 2:00.

25 I am going to bring the jury back and explain to them

Colloquy

1 the process that we are going to do their lunch and let them
2 take a break. And we'll let them take them to -- we've got
3 a few smokers. Let them go smoke and stretch their legs
4 prior to their lunch coming. And then when it gets here,
5 they can eat, and give them a few more minutes to relax, and
6 then we will start into the defense portion of the case.

7 Now, let's also understand that the defense is going to
8 start their phase of the presentation at around 1:30 or a
9 quarter of two.

10 Certainly the defendant, Mr. Moore, has the right to
11 testify during that phase of the trial, and I want you to
12 discuss that with him. Once again, I will do that, once
13 again, on the record and make sure that we have that
14 properly documented for the record.

15 Anything else before I bring the jury back from the
16 state?

17 MR. GOWDY: No, sir, Your Honor.

18 THE COURT: From the defense?

19 MR. KELLY: No, Judge, not at this time.

20 THE COURT: Let's bring them back in, please.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: Madam Foreperson and ladies and gentlemen,
24 as you know, the state has rested its case in chief in the
25 sentencing phase. And the next phase that we will move into

Colloquy

1 will be that of the defense case.

2 I think that we are at an appropriate point right now
3 to stop and allow you to have a little bit of a break. Your
4 lunch should be here in the next 25 minutes or so.

5 I am going to allow the jury custodians to -- for those
6 of you who wish to go to the courtyard and stretch your
7 legs, some of you may desire to smoke. Although I wouldn't
8 encourage that, I will let you do that. That is your
9 prerogative. Then we will be back here or they will be back
10 here with your lunch somewhere around 12:30 or so. We are
11 going to try to start back between 1:30 and a quarter of
12 2:00. That will give everyone time to get lunch and get
13 back here and get started.

14 As you are together during your lunch break, once
15 again, you are not to discuss this case among yourselves in
16 any manner or fashion whatsoever or with anyone else that
17 you might come in contact with, whether it be your jury
18 custodians or anyone else. And I will look forward to
19 seeing you back here between 1:30 and a quart of 2:00.

20 The jury may retire to the jury room. The custodians
21 can take the necessary steps with them. You may retire.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: All right. Let's just plan on reconvening
25 down here around 1:30. And we will try to get started at

Colloquy

1 that particular point in time.

2 And depending on how far we get today, we will make a
3 determination as to whether or not we can argue and charge.
4 And/but we will do that as we go along.

5 All right. We will stand at ease until 1:30.

6 (Whereupon, a recess was taken.)

7 THE COURT: All right. I think you said you had some
8 motions, gentlemen, from the defense perspective.

9 MR. KELLY: Just one moment.

10 THE COURT: Yes, sir. Take your time.

11 (Pause.)

12 MR. KELLY: Judge, may it please the Court, first of
13 all, in an abundance of caution, he would like to again
14 renew all motions and all objections previously made so that
15 we have the record protected.

16 THE COURT: All right, sir. Insofar as motions that
17 have been made, of course, we are at the -- have completed
18 the state's showing in the sentencing phase.

19 Of course what is to be determined, as I told the jury,
20 in the case is they are to determine punishment which will
21 either be life imprisonment or death.

22 And the state certainly has presented ample evidence
23 from which they can make that determination. As such, all
24 motions are denied.

25 MR. KELLY: Thank you, Judge.

Defendant questioned

1 THE COURT: All right. Mr. Moore, if you would stand,
2 please, sir.

3 (Whereupon, the defendant stood.)

4 THE COURT: I will remind you, sir, that you are still
5 under oath.

6 Mr. Moore, we have, once again, reached the stage of
7 the trial where you may present your own defense, and you
8 may also take the stand.

9 Now, once again, whether or not you take the stand is
10 left entirely up to you. Once again, the state, even though
11 they have already introduced evidence into this case of your
12 prior record, if you take the stand, then they would be able
13 to use your prior record for impeachment purposes only.

14 And in the event that you decide not to take the stand,
15 I would instruct the jury that they are not to give that
16 fact any consideration whatsoever, and there is to be
17 absolutely no prejudice to you because you did not take the
18 stand and testify.

19 Once again, it will be left entirely up to you as to
20 whether or not you testify. You can talk to your attorney
21 or family, friends or anyone else, but the ultimate decision
22 is left entirely up to you. Do you understand that, Mr.
23 Moore?

24 THE DEFENDANT: Yes, sir, I do.

25 THE COURT: And what is your intention?

Defendant questioned

1 THE DEFENDANT: At this moment, I shall not testify.

2 THE COURT: All right, sir. Thank you very much. But
3 you do understand that you have that right in this juncture
4 of the trial.

5 THE DEFENDANT: Oh, yes, sir.

6 THE COURT: Thank you, sir.

7 MR. KELLY: May we approach, Your Honor?

8 THE COURT: Yes, sir.

9 (Bench conference held off the record.)

10 THE COURT: All right. Is the defense ready to
11 proceed?

12 MR. KELLY: We are, Your Honor.

13 THE COURT: Is the state ready?

14 MR. GOWDY: Yes, sir, Your Honor.

15 THE COURT: Let's bring them back, Cotton.

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: Thank you very much, Madam Foreperson,
19 ladies and gentlemen.

20 We are going to continue with the case.

21 Call your first witness, please, Mr. Kelly.

22 MR. KELLY: The defense calls Lynda Byrd.

23 LYNDA BYRD, having been first
24 duly sworn, testified as follows:

25 THE COURT: Please state your name for the record, and

Lynda Byrd
Direct examination by Mr. Kelly

1 spell your last name.

2 THE WITNESS: Lynda Byrd, B-Y-R-D.

3 DIRECT EXAMINATION BY MR. KELLY

4 Q Ms. Bird, I am going to stand way over here, and I want
5 you to speak up so that I can hear you. And if I can hear
6 you, then hopefully everybody else will be able to. Okay?

7 A All right.

8 Q And I would ask you to pull a little closer to the
9 microphone if you need to there. You don't have to hold it
10 or anything, but just speak close.

11 You are Lynda Byrd, right?

12 A Yes.

13 Q And you know Richard Moore.

14 A Yes.

15 Q How long have you known Richard?

16 A Since 1989.

17 Q Okay. Now, where were you living in 1989?

18 A Michigan.

19 Q And after meeting him in 1989 did you have the occasion
20 to move from Michigan to some place else?

21 A South Carolina, yes.

22 Q How did that come about?

23 A A job offer.

24 Q All right. You got a job offer to come here, or did
25 Richard have one?

Lynda Byrd
Direct examination by Mr. Kelly

- 1 A I did.
- 2 Q And at that point in time did you and he become a
3 couple?
- 4 A Yes, we did.
- 5 Q When you came here in 1989, where were you working?
- 6 A We came here in 1991.
- 7 Q I'm sorry. 1991. Where were you working?
- 8 A T. W. Services.
- 9 Q Okay. And when you got here did Richard get a job?
- 10 A Yes, he did.
- 11 Q And where was he working if you remember?
- 12 A I believe it was Adidas.
- 13 Q Adidas?
- 14 A Yes.
- 15 Q Okay. And did he work there for a long period of time
16 or a short period of time?
- 17 A It was through a temp agency. I'm not quite sure how
18 long it was.
- 19 Q When you came here did you have a child?
- 20 A Yes, I did.
- 21 Q And that child is whom?
- 22 A James Byrd.
- 23 Q And how old is James?
- 24 A Now he is 16.
- 25 Q All right. He was a small child at that point in time,

Lynda Byrd
Direct examination by Mr. Kelly

- 1 correct?
- 2 A Correct.
- 3 Q Does James associate or know his real father?
- 4 A No.
- 5 Q Who does he consider to be his father?
- 6 A Richard Moore.
- 7 Q Has Richard been a father to him?
- 8 A Most definitely.
- 9 Q James is in school now, is that right?
- 10 A Correct.
- 11 Q Where does he go to school?
- 12 A Spartan High.
- 13 Q What grade is he in?
- 14 A Eleventh.
- 15 Q And in growing up did he -- was he active in sports or
- 16 anything?
- 17 A Yeah. He has been active in baseball, basketball.
- 18 Q Okay. And before he was playing -- let me ask you
- 19 this. Was he playing baseball or basketball for the school?
- 20 A Not right now. They haven't had tryouts yet.
- 21 Q Okay. Did he play last year?
- 22 A No.
- 23 Q Has he played other -- has he played those sports in
- 24 like a recreation league or other type of activity?
- 25 A Yes, little league.

Lynda Byrd
Direct examination by Mr. Kelly

1 Q Little league?

2 A Yes.

3 Q And when he did so, who would coach the team?

4 A He has been on several teams, several different
5 coaches. One year Richard was the coach of his basketball
6 team.

7 Q About how long ago was that?

8 A That was in elementary school, fifth or sixth grade.

9 Q Five or six years ago, maybe?

10 A Yeah.

11 Q In addition to those activities have Richard and James
12 done other things together?

13 A Yeah.

14 Q Well, have they, have they, have they had a chance to
15 go fishing together?

16 A Yeah, they did go fishing together, yes.

17 Q And more than once?

18 A Yeah, I believe so.

19 Q Okay. Watch T. V. sports together?

20 A Definitely.

21 Q Richard has had some problems with the law, hasn't he?

22 A Yes, he has.

23 Q And when he, when he had some problems -- well, let me
24 ask you. In September of 1999 when this incident occurred
25 Richard was incarcerated, wasn't he?

Lynda Byrd
Direct examination by Mr. Kelly

1 A Yes, he was.

2 Q And he has been there since then, has he not?

3 A Correct.

4 Q Now, since then, since September of 1999, have you had
5 the occasion to go see him?

6 A Yes. I do.

7 Q How many times would you say you have been?

8 A On the average, scheduled for once a week, twice a
9 week.

10 Q All right. Have you gone once or twice a week since
11 then?

12 A I tried to make them. Yes, I have.

13 Q In addition to going there, is there a procedure for
14 you to leave some money or something for his use?

15 A Yes.

16 Q Tell the jury about that a little bit.

17 A Try to just leave him a couple of dollars so that he
18 can call home to talk to his children and so that he has
19 soap and deodorant and toothpaste, necessities.

20 Q Okay. And when he calls home -- does he call home to
21 talk to his children?

22 A Every day.

23 Q The children that you are talking about he calls, in
24 addition to James, do we have other children?

25 A He and I have two children together.

Lynda Byrd
Direct examination by Mr. Kelly

- 1 Q What are their names and ages, please, ma'am?
- 2 A Alexander is eight years old, and a son, Lindall, who
- 3 just turned seven.
- 4 Q And are they in public school too?
- 5 A Yes.
- 6 Q Where do they go to school?
- 7 A Chapman Elementary.
- 8 Q Both of them?
- 9 A Yes.
- 10 Q And do those children get report cards?
- 11 A Yes.
- 12 Q And have you had the occasion to take a report card to
- 13 Richard?
- 14 A I have to make copies and mail them to him.
- 15 Q Right. I'm sorry. You have to turn the report card
- 16 back in to the school.
- 17 A Right.
- 18 Q Is that right?
- 19 A Right.
- 20 Q All right. But have you made photocopies of the report
- 21 cards and provided them to Richard?
- 22 A I have.
- 23 Q And has he made comments to you about the report cards?
- 24 A To me?
- 25 Q Yes.

Lynda Byrd
Direct examination by Mr. Kelly

1 A Yes.

2 Q And without asking you what he might have said to a
3 child -- I'm not going to ask you for that -- but has he
4 made comments to the child about how proud he is of their
5 grades?

6 A Very much, yes.

7 Q And they do make good grades, don't they?

8 A Yes, excellent.

9 Q And are they also involved in sports or other
10 activities at the school?

11 A They are in the boys and girls club.

12 Q I believe they get some kind of certificate, do they
13 not?

14 A Yes. They are always bringing home some kind of
15 certificates.

16 Q And have you made copies of those for Richard?

17 A He has some.

18 Q And has some?

19 A Yes.

20 Q Has he made comments to you about that?

21 A Yes.

22 Q Richard -- since you guys moved here when he worked at
23 Adidas, did he work at other places?

24 A Yeah. He was always working. Like I say, when we
25 first moved here, his job was through a temp agency. And

Lynda Byrd
Direct examination by Mr. Kelly

1 they -- he stayed as Adidas until that assignment ended, but
2 he stayed working.

3 Q And when he would work would he bring his paycheck
4 home --

5 A Yes, sir.

6 Q -- and contribute to the family?

7 A Yes, sir.

8 Q Help buy groceries?

9 A Definitely.

10 Q At the time that this incident occurred, there is
11 evidence that Richard was out of a job. Do you remember
12 that?

13 A Yes.

14 Q Was he out of a job at Kholer at that point in time as
15 far as you know?

16 A Maybe for a few days.

17 Q Okay. Had he been without a job before? I mean, was
18 this the first time he had been without a job?

19 A No.

20 Q Okay. Was he always able to secure another job? If he
21 got -- ended at one for -- the job quit through the temp
22 agency, could he usually get another one fairly quickly?

23 A Yes.

24 Q There is evidence before the Court that there was some
25 pawn, or that there are pawn tickets in evidence before the

Lynda Byrd
Direct examination by Mr. Kelly

1 Court dating back to June, I think, of 1999. To your
2 knowledge was Richard pawning stuff out of the house?

3 A No, sir.

4 Q There is also evidence before the Court that Richard
5 had a drug problem or may have had a drug problem at one
6 point. Are you familiar with that?

7 A I'm familiar with it.

8 Q And he did have a problem at one time, did he not?

9 A Yes.

10 Q When he was using some drugs, is that when he would
11 lose a job or be out of work or something?

12 A No.

13 Q Okay. Did he ever bring that problem to your house?

14 A Never.

15 Q He didn't allow it to be brought to your house, is that
16 right?

17 A No.

18 Q Did he ever expose the children to that?

19 A Never.

20 Q Even though he had a problem, he managed to still work
21 and contribute to the family, is that right?

22 A Yes, he did.

23 Q You said that James and Richard have a close
24 relationship. What about the other two children?

25 A They adore their father.

Lynda Byrd
Direct examination by Mr. Kelly

1 Q Even though James is not his natural son, he, all three
2 children are considered by him to be his children.

3 A Yes.

4 Q The things that you have done about taking the report
5 cards and boys and girls clubs' certificates and things to
6 the jail or copies to the jail, has that maintained or
7 helped to maintain a relationship with James and his
8 children?

9 A To Richard?

10 Q I am sorry. Richard and his children.

11 A Yeah. They look forward to talking to him and telling
12 him what they have done in the case of their report cards
13 and their certificates. They can't wait to share that with
14 him. He is a very positive influence on them.

15 Q In addition to those things do they also write him
16 letters?

17 A Yeah.

18 Q Do they actually mail them, or do you carry them, take
19 the children and let them give them to him in some way?

20 A No. I have to mail them.

21 Q Okay. And do they send him pictures like a school
22 picture?

23 A Yeah.

24 Q Do they send one of their school pictures?

25 A Just school pictures. And they draw pictures back and

Lynda Byrd
Direct examination by Mr. Kelly

1 forth. They actually -- right now Richard and my daughter
2 are teaching each other Spanish through the mail.

3 MR. WILLINGHAM: Your Honor, may we approach?

4 THE COURT: Yes, sir.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 Q Have -- you indicated earlier about the telephone
8 calls. How many times a week would Richard call your house
9 now?

10 A At least seven times a week.

11 Q Okay. Lynda, do you have a basis for asking this jury
12 to spare Richard's life?

13 A Yes.

14 Q Would you tell us what it is?

15 A He has three children who need him, adore him. They --
16 even though he has been incarcerated, he continues to
17 provide a very strong support base to these children. They
18 depend on him, his guidance.

19 He stresses to the children to be the best that they
20 can be, not follow his path in all directions, but to be the
21 best that they can be.

22 They love him to death. They go to see him all of the
23 time. They run to the phone when it rings hoping that it's
24 him. They need him in his life (sic).

25 Q Thank you, Lynda.

James Byrd
Direct examination by Mr. Kelly

1 MR. KELLY: That is all I have.

2 THE COURT: Cross-examination.

3 MR. WILLINGHAM: No questions, Your Honor.

4 THE COURT: Thank you, ma'am. You may step down.

5 Next witness.

6 JAMES BYRD, having been first
7 duly sworn, testified as follows:

8 THE COURT: Sir, please state your name for the record,
9 and spell your last name.

10 THE WITNESS: James Byrd, B-Y-R-D.

11 THE COURT: Thank you. Mr. Kelly.

12 MR. KELLY: Thank you, Your Honor.

13 DIRECT EXAMINATION BY MR. KELLY

14 Q James, I am going to stand way over here, and I'm going
15 to ask you to speak loudly so that I might hear you and
16 therefore the other people in the courtroom can hear you.
17 Okay. You've going to have to answer verbally. I notice
18 you are nodding up there. But this lady is recording. If
19 you will speak up, she would be able to capture that. Okay?

20 A All right.

21 Q Thank you, sir.

22 James, you live with your mom at this point in time in
23 Spartanburg, do you not?

24 A Yes.

25 Q How old are you?

James Byrd
Direct examination by Mr. Kelly

1 A Sixteen.

2 Q About how old were you when you came to South Carolina
3 with your mother?

4 A Six.

5 Q James, do you have a relationship with your natural
6 father?

7 A No.

8 Q Who is the man that you refer to as your father?

9 A Richard.

10 Q What do you call him? Do you call him Richard or
11 daddy?

12 A Richard.

13 Q During the last several years since you have been here
14 in South Carolina have you played any football, baseball,
15 soccer, anything like that?

16 A Yeah.

17 Q All right. Tell me a little bit about it.

18 A Play baseball and basketball.

19 Q All right. Was there ever an occasion where Richard
20 was the coach of your team?

21 A Yeah. One year I played for the league at Chapman.
22 Our coach died. He was in a car accident. And Richard
23 replaced him for the rest of the year.

24 Q Okay. So he just came in when there was a problem
25 there.

James Byrd
Direct examination by Mr. Kelly

- 1 A Yeah.
- 2 Q And other than coaching that one year, has he attended?
- 3 A Yeah. He goes whenever he can be at the practices and
- 4 at the games.
- 5 Q So he would be in practices, as well as the games.
- 6 A Yeah.
- 7 Q Was that supportive to you?
- 8 A Yeah.
- 9 Q Since 1999 Richard has been unable to attend any such
- 10 activity, right?
- 11 A Right.
- 12 Q Has he written letters to you encouraging you in any
- 13 way in your academics?
- 14 A Yeah, all of the time.
- 15 Q Has he encouraged you in your athletics?
- 16 A Uh-huh.
- 17 Q Do you write letters to him?
- 18 A Sometimes.
- 19 Q Do you talk to him on the phone?
- 20 A Every day.
- 21 Q You obviously can't call him, right?
- 22 A Uh-uh.
- 23 Q He has to call you.
- 24 A Right.
- 25 MR. BARNETTE: Objection, Your Honor. I believe he is

James Byrd
Direct examination by Mr. Kelly

1 leading.

2 THE COURT: Sustain the objection. Rephrase your
3 question, please, sir.

4 MR. KELLY: Thank you, Judge.

5 Q Does he call you?

6 A Yes.

7 Q And what do you guys talk about when he calls you?

8 A Talk about things that are going on -- football,
9 basketball, school.

10 Q How about your grades, James? Good grades?

11 A Yeah, pretty good.

12 Q Do you give a copy of your report card to Richard?

13 A Yeah. My mom. She mails them.

14 Q Does he write a comment or anything on them?

15 A Yeah. We talk about them.

16 Q Okay. You talk about them on the phone visits?

17 A Yeah.

18 Q What about your brother and sister? What grades are
19 they in?

20 A My sister is in the third grade and my brother is in
21 the first.

22 Q And do you help them with their homework a little bit?

23 A No. They help themselves.

24 Q Okay. Does Richard talk with your brother and sister
25 about their report cards?

James Byrd
Direct examination by Mr. Kelly

1 A Uh-huh.

2 Q Does -- do you know whether or not he encourages them
3 to do well?

4 A I know he does.

5 Q Do they write letters as well?

6 A All of the time. And he writes them back.

7 Q Do they draw pictures and send them to daddy?

8 A Yes.

9 Q How about a visit, James? Do you have an opportunity
10 to visit with Richard?

11 A Yeah. I go and visit, but it depends. They go every
12 week, but you can only have like four people. And it's me
13 and my brother and sister. And sometimes they don't let me
14 in to see him.

15 Q Sometimes you go to see him and you don't get to.

16 A Yeah. But whenever I can go, I see him.

17 Q James, do you have a basis for asking this jury to
18 spare Richard's life?

19 A Yeah.

20 Q Tell them what it is, please.

21 A It's like he is the only dad I ever had. You know, if
22 he is gone, I just couldn't take it. My brother and sister,
23 they couldn't take it either. I don't know what to say.

24 MR. KELLY: That's all I have, Your Honor.

25 THE COURT: Cross-examination.

James Byrd
Direct examination by Mr. Kelly

1 MR. BARNETTE: Nothing from the state, Your Honor.

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

4 MR. KELLY: Can I approach, Your Honor?

5 THE COURT: Yes, sir.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 MR. KELLY: The defense rests, Your Honor.

9 THE COURT: Ladies and gentlemen of the jury, that
10 concludes the defendant's case. What remains in this case
11 are the closing arguments of the parties and then my charge
12 or instruction on the law that applies to this matter.

13 I'm going to send you to the jury room as we begin our
14 preparations for that, those closing arguments, and then my
15 charge or instruction on the law that applies.

16 As I send you to the jury room, please remember that
17 you are not to discuss this case among yourselves. We will
18 get you back in just a few minutes.

19 The jury may retire.

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

22 THE COURT: All right. Insofar as the aggravating
23 circumstances are concerned, I have three that the state is
24 relying upon.

25 And those would be -- let me get to them. That the

Requests to charge

1 murder was committed while in the commission of the
2 following crimes or acts: One, robbery while armed with a
3 deadly weapon; two, that the offender by his act of murder
4 knowingly created a great risk of death to more than one
5 person in a public place by means of a weapon or a device
6 which normally would be hazardous to the lives of another
7 person; and, three, the offender committed murder for
8 himself or another for the purpose of receiving money or a
9 thing of money or value.

10 Is that the way I understand the aggravating
11 circumstances that have been submitted?

12 MR. GOWDY: Yes, sir, Your Honor.

13 THE COURT: That insofar as mitigating circumstances
14 are concerned, we have presented from the testimony and
15 evidence the 2-6-7 combination that is required to be
16 charged by the judge, even absent a request where there is
17 an allegation of intoxication or drug use, that being that
18 the murder was committed while the defendant was under the
19 influence of a mental or emotional disturbance, the capacity
20 of the defendant to appreciate the criminality of his
21 conduct and to conform his conduct to the requirements of
22 the law, substantially impaired, and the age or mentality of
23 the defendant at the time of the crime.

24 Is that correct, gentlemen?

25 MR. KELLY: Yes, sir, Your Honor.

Requests to charge

1 THE COURT: And, of course, I will also tell them that
2 they may also consider any nonstatutory mitigating
3 circumstances.

4 MR. KELLY: Yes, sir.

5 THE COURT: All right. I'm going to get my clerk. I
6 have got a couple of more things I need to do on the charge
7 to give you a copy of that before I actually enter into the
8 charge just to give you an idea of what it entails.

9 I will explain to them, once again, about their role as
10 the finders of the fact and me as the judge of the law; but
11 that they also in this case or in this particular portion of
12 the trial will have the added responsibility of determining
13 the sentence; talk about the credibility of the witnesses;
14 once again, also direct and circumstantial evidence under
15 the State vs. Grippon.

16 I will also instruct them about the defendant not
17 taking the stand, that they are not to hold that against him
18 in any manner or fashion whatsoever.

19 I will also instruct them that the fact that the
20 defendant and the deceased are of different races must not
21 be considered by them; that their oath requires that their
22 verdict be supported by the evidence and the testimony
23 properly introduced in the trial.

24 Are there any other requests for charge?

25 MR. GOWDY: Not from the state, Your Honor.

Requests to charge

1 MR. KELLY: Yes, Your Honor, future endangerment from
2 the defendant, if it please the Court.

3 THE COURT: What says the state in that regard? Have
4 you got something to hand up, Keith? I will be glad to --

5 MR. KELLY: My handwritten notes, Judge. I can hand
6 these up.

7 MR. WILLINGHAM: Your Honor, I don't know that future
8 dangerousness is an issue here.

9 We did discuss his prior criminal history as it went to
10 character and not to his future dangerousness. There has
11 been no evidence of how he adapted in prison and whether or
12 not he could conform to life in prison. There has been no
13 testimony offered to discuss how he did on probation or
14 parole. It has simply been his prior character through his
15 prior convictions.

16 THE COURT: You know, gentlemen, this is an issue that
17 has been tussled and tangled about for a number of years
18 now.

19 And I guess that where it really came down was in the
20 State vs. Simmons where there was an issue as to future
21 dangerousness in that case. Future dangerousness was made
22 an issue.

23 And, of course, the U. S. Supreme Court decided on
24 March the 20th of 2001 in the case of Shaffer vs. South
25 Carolina that rather than reversing the sentence outright

Requests to charge

1 that the Court's seven justice majority agreed that because
2 the South Carolina Supreme Court did not home in on the
3 question of whether the prosecutor's evidentiary submissions
4 or closing arguments, in fact, placed Shaffer's future
5 dangerousness at issue; that the South Carolina Supreme
6 Court should directly consider the question as to whether
7 the prosecutor's arguments placed Shaffer's future
8 dangerousness in issue. That was the issue in that
9 particular case.

10 I think that from the testimony and evidence that has
11 been produced here today there is nothing any different in
12 this case than the other 11 that I have tried insofar as
13 future dangerousness is concerned. That has not been an
14 issue in the other cases that I have tried.

15 I think that where the state makes it an issue, is one
16 that I have no alternative but under the Simmons case to
17 charge it.

18 But I think that when you have evidence of a prior
19 record of prior misconduct, I will charge the jury that they
20 are not to consider that evidence as evidence of any
21 aggravating circumstances but merely as to the character of
22 the defendant.

23 And unless the state in their closing argument -- and
24 we will take at a break before I charge the jury so that we
25 can put everything on the record -- unless they broach that

Requests to charge

1 issue of future dangerousness, I am not inclined at this
2 particular point in time to charge it.

3 I know on November the 26th the U. S. Supreme Court is
4 going to hear oral arguments in a case that I tried down in
5 Lexington County a couple of years ago, the State vs.
6 William Arthur Kelly, and that future dangerousness is an
7 issue, once again, because of the solicitor's closing
8 argument basically.

9 So, Solicitor, with that said, I will say this insofar
10 as future dangerousness is concerned.

11 Now, what you have given me, Mr. Kelly, is out of the
12 code. If the state seeks the death penalty and a statutory,
13 aggravating circumstance is found beyond a reasonable doubt
14 and a recommendation of death is not made, then the trial
15 judge must impose a sentence of life. For the purposes of
16 this section, life imprisonment means until the death of the
17 offender.

18 If I am going to charge anything, that's what I will
19 charge, not all of that good conduct and credit and
20 everything else, because I think that that adequately
21 describes what life imprisonment is if they find an
22 aggravating circumstance.

23 Now, if they do not find an aggravating circumstance, I
24 tell them in my charge that I would sentence the defendant
25 under the law and the appropriate code section. And that's

Requests to charge

1 where the state Supreme Court and the U. S. Supreme Court
2 have apparently had their misunderstanding, because the
3 state Supreme Court has taken the position that if an
4 aggravating circumstance is not found, then he could be
5 sentenced to 30 years to life. And so, in essence, that is
6 a misinformation.

7 But I think that what I am inclined to do, gentlemen,
8 given the way that I view the landscape at this particular
9 point in time, is rather than what we normally do, the old
10 charge that, when a defendant would request it, that the
11 terms life imprisonment and death sentence are to be
12 understood in their plain and ordinary meaning, the old
13 State vs. Norris language, at 285, S. C., 86, 328, S. E. 2d,
14 339, a 1985 case, is to say that a sentence of life
15 imprisonment is life in prison if there is the presence of a
16 statutory aggravating circumstance. And I think that there
17 is probably some very good reasons for us to do that.

18 So I will give that charge, so, if the state seeks that
19 life means until the death of the offender.

20 MR. KELLY: Judge, I know the Court has not ruled yet,
21 although on a few things, but I know the Court's position to
22 that. Can I be heard further on that if it please the
23 Court?

24 THE COURT: On what?

25 MR. KELLY: On the future dangerousness.

Requests to charge

1 THE COURT: Well, what do you want me to do about
2 future dangerousness other than what I am doing?

3 MR. KELLY: Judge, in addition to the Shaffer case, I
4 respectfully submit that a 1995 in footnote four of the
5 Kevin Young case, which is 459 S. E. 2d., 84, footnote four
6 says that evidence was presented concerning Young's
7 character and his prior criminal record such as was relevant
8 in the sentencing phase without regard to future
9 dangerousness. And, of course, then it cites Simmons.

10 Then in 2000 the Fourth Circuit, Judge King writing for
11 the Court, specifically cites this note. And he says, "That
12 we agree with Young that the state did, in fact, referring
13 to Young's future dangerousness at the resentencing phase,
14 although state did so without specifically relying upon the
15 future dangerousness as a basis for seeking the death
16 penalty and that the references were sufficient to place
17 Young's future dangerousness at issue." And then it cites
18 that back to this particular footnote.

19 And I just respectfully submit for the Court's
20 consideration that with that new language from the Fourth
21 Circuit that one could take it that the mention of the prior
22 record now constitutes --

23 THE COURT: Well, Mr. Kelly, are you misunderstanding
24 me? I'm telling you that I'm going to charge that, charge
25 what you are asking, that if you sentence the defendant to

Requests to charge

1 death, you must assume that the sentence of the court will
2 be carried out.

3 If a recommendation of death is not made, then the
4 defendant shall be sentenced to life imprisonment without
5 the possibility of parole and that that means, life
6 imprisonment means, for the remainder of his natural life.

7 MR. KELLY: Yes, sir.

8 THE COURT: I don't know what else I can do other than
9 that.

10 MR. KELLY: That's great, Judge. Thank you.

11 THE COURT: All right. We will stand at ease until I
12 can get my paperwork done.

13 Let's say we will try to start back at a quarter of
14 3:00.

15 MR. GOWDY: Thank you, Your Honor.

16 THE COURT: And then I want to talk with the defendant
17 about his ability to address the jury before we get started
18 back.

19 (Whereupon, a recess was taken.)

20 THE COURT: All right. Now, insofar as the documents
21 that I have given you gentlemen, I think that I have given
22 you the statutory instructions, a copy of that; the form of
23 aggravating circumstances will be submitted to the jury;
24 then the recommendation of sentences as to life or death,
25 which will go to the jury. Those are the four documents

Defendant questioned

1 that will be presented to the jury.

2 All right. Insofar as the remainder is concerned, of
3 course in the closing arguments in a sentencing phase the
4 defense may open if you desire, then the state's argument,
5 and then the defense will close.

6 Of course, Mr. Moore, would you stand, please, sir?

7 (Whereupon, the defendant stood.)

8 THE COURT: As is the case in the sentencing phase, as
9 well as the guilt phase that we have already been through,
10 you certainly have the right, along with your attorney, to
11 have a closing argument regarding the sentence imposed.

12 Now, once again, this is your right, Mr. Moore, to
13 address the jury; and once again, the statement that you
14 would make to the jury would have to be confined to the
15 evidence that has been presented and to the issues
16 concerning the sentence imposed.

17 Do you understand that you have this right, sir?

18 THE DEFENDANT: Yes, sir, I do.

19 THE COURT: And what is your decision?

20 THE DEFENDANT: I shall not speak, Your Honor.

21 THE COURT: You will not speak to the jury?

22 THE DEFENDANT: No, sir.

23 THE COURT: But you understand that that is your right.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right, sir. Thank you very much,

Defendant questioned

1 Mr. Moore.

2 So insofar as the defense is concerned, if you
3 gentlemen wish to split up your argument, one open, the
4 other one close, you may do so. Or if you want the state to
5 open and you to close, that would be the way we would
6 proceed.

7 MR. KELLY: We would like the state to open, and we
8 will close, Judge.

9 THE COURT: Are you ready, Solicitor?

10 MR. GOWDY: Yes, sir, Your Honor.

11 THE COURT: And, gentlemen, are you ready?

12 MR. KELLY: Yes, sir.

13 THE COURT: Let's bring our jury back.

14 (The following takes place in the presence of the
15 jury.)

16 THE COURT: Madam foreperson, ladies and gentlemen of
17 the jury, as you know, we have received all of the testimony
18 and evidence that will be presented in this sentencing phase
19 of this trial. And what remains are the closing arguments.

20 And during the closing arguments, let me remind you
21 that what the lawyers say does not represent evidence in the
22 case. The evidence in this case is coming from the
23 testimony of the sworn witnesses who have appeared on the
24 witness stand, together with all of the other evidence that
25 has been introduced.

Closing arguments

1 I want you to give them your undivided attention. But
2 if there is any discrepancy in what they say, in their
3 recollection as to what the testimony and the evidence has
4 revealed and it does not agree with what you find has come
5 from the witness stand, then, of course, you will follow
6 your own recollection.

7 Also if the lawyers make any reference to the law or
8 comment upon the law and it differs with what I instruct you
9 that the law is, then, of course, you will follow the law as
10 I instruct you.

11 The state will have the opening argument; the defense
12 will have the final argument.

13 Solicitor.

14 MR. GOWDY: May it please the Court, Your Honor.

15 THE COURT: Yes, sir.

16 MR. GOWDY: Good afternoon, Madam Forelady; and good
17 afternoon, ladies and gentlemen of the jury.

18 This will be the final time that anybody representing
19 the State of South Carolina will stand before you. And I
20 would be remiss if I didn't, as I did in my closing in the
21 guilt phase, thank you for your service in this very
22 difficult, very somber case.

23 I guess it was about a week ago that we all met in this
24 courtroom. It looked bigger. It was larger back then --
25 and began the process of overall qualification.

Closing arguments

1 And then I suppose it was three or four days ago that
2 you were separated or sequestered from your family and began
3 to serve in this case.

4 And I know that I speak on behalf of everybody in both
5 sides of this case when I thank you for the sacrifices that
6 you made. Our system doesn't work without juries, and I
7 thank you for that.

8 Ladies and gentlemen, you have already found Richard
9 Bernard Moore guilty of murder; you have found him guilty of
10 armed robbery; you have found him guilty of possession of a
11 firearm during the commission of a violent crime; you have
12 found him guilty of assault with intent to kill. He has
13 been found guilty of those four crimes.

14 And what's left for us, ladies and gentlemen, is to
15 determine what the appropriate punishment is. And each one
16 of you that came and sat in this chair told His Honor that
17 you could give death in the appropriate case and that you
18 could give life in the appropriate case. And all that's
19 left to do in this case is to determine what's appropriate,
20 what is appropriate based on the facts and circumstances of
21 this case.

22 Ladies and gentlemen, as Deputy Willingham told you
23 this morning, the State of South Carolina has to allege and
24 prove beyond a reasonable doubt aggravating circumstances or
25 aggravating factors. We have alleged three.

Closing arguments

1 This murder was committed during the commission of an
2 armed robbery; that during the commission of this murder
3 another person was endangered in a public place, that being
4 Terry Hadden who was shot at; and that the purpose of this
5 crime, the purpose of this murder, was to obtain money, and,
6 indeed, that was the only purpose of this murder.

7 I am not going to dwell on the aggravating factors and
8 circumstances. I will submit to you this evidence that we
9 went through in the guilt phase is overwhelming that all
10 three of those aggravating factors have been met. And,
11 again, what we are left to decide is what is the appropriate
12 punishment in this case.

13 And to do that I am not going to spend the remainder of
14 my time talking about aggravating factors or aggravating
15 circumstances. I am going to talk about the circumstances
16 of this crime on September the 16th, a little bit more than
17 two years ago. I am going to talk about the impact this
18 crime had on a family that stretches from Pennsylvania to
19 the west side of Spartanburg. And I am going to talk about
20 the character of Richard Bernard Moore.

21 On September the 16th, 1999, James Mahoney was doing
22 his job. He was doing his job at a little convenience store
23 that Keith Fowler named for his wife Nikki not five miles
24 from here. And he had a right to do his job.

25 He worked the third shift. Some people call it the

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1 dark shift, the night shift. He loved that work. They
2 asked him to move, and he didn't want to move. He loved
3 that work.

4 And on September the 16th, 1999, we find out that Terry
5 Hadden -- it seemed to be an ordinary night of work. People
6 were coming in for hot dogs. People were coming in for
7 this. Somebody came in and borrowed his tire arm.

8 The hands that were so small and so crooked that they
9 couldn't chop an onion went and got his own tire iron and
10 loaned it to a stranger. And the eyesight that required a
11 magnifying glass to read a label was watching T. V. to find
12 out about a hurricane. It was an average night.

13 Terry Hadden came in like he did every other night, he
14 testified; got off work from Wise Foods and sat down and
15 played video game, video poker.

16 Sometime after 3:00 a.m. something happened that
17 changed the course of forever for these people and ended the
18 life of a 40-something-year-old man. And I ask you for what
19 purpose. What was accomplished by this crime? It was as
20 senseless and violent and nonsensical as any crime you can
21 imagine.

22 Richard Moore walks into the front door. He glances at
23 Terry Hadden. He goes to the cooler. He comes to the
24 checkout stand.

25 Terry Hadden hears James Mahoney say, "What the hell do

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1 you think you are doing," and he turns around to see those
2 crooked, crippled hands on that defendant's hands, and a gun
3 is pointed right squarely at him, and he shot at him.

4 Why shoot at Terry Hadden? What had he done? He is as
5 innocent as any bystander can be. He is sitting there
6 playing a video game, and this defendant simultaneous with
7 saying don't move, fires a .45 caliber slug at Terry Hadden
8 and misses.

9 And we know from the evidence, ladies and gentlemen,
10 that James Mahoney got off a shot. We know that his gun was
11 fired a single solitary time. I cannot stand before you and
12 tell you that he fired that shot in defense of Terry
13 Hadden's life. He may have. I can't stand before you and
14 say that he fired that shot to protect another human being,
15 although the evidence circumstantially supports that.

16 I can tell you, ladies and gentlemen, that he has a .45
17 caliber hole through his heart, his lungs, his stomach and
18 his liver. I can tell you that it happened like that in
19 less than the time it would take me to talk over to the
20 defense table. A man's life ended for \$1,400. It was a
21 selfish, senseless, violent crime.

22 And as Richard Moore walks out of Nikki's Convenience
23 Store, there are two men on the ground. Terry Hadden gets
24 up and identifies him. James Mahoney is not getting up.
25 James Mahoney bled to death on a concrete kitchen floor of

Closing arguments

1 Nikki's Convenience Store.

2 And as the life bled out of him, I submit to you,
3 ladies and gentlemen, it bled out of his mama and daddy and
4 his sister and his brothers.

5 How do you describe to people what the impact of losing
6 a child is? And it doesn't matter how old that child is.
7 It is still your child.

8 James Mahoney did his best this morning to tell you
9 what it's like to lose a son. And I was struck by the
10 testimony that they asked him to come home. His eyesight,
11 his diabetes, his arthritis was so bad. Come home, James.

12 What did he tell them? This was his home. Spartanburg
13 was his home, and Nikki's Convenience Store was his home,
14 and, more specifically, the third shirt as Nikki's
15 Convenience Store was his home. And he stayed.

16 If you remember, James Mahoney wasn't a NASCAR fan.
17 Mr. Mahoney wasn't a NASCAR fan. His son was. But now that
18 his son is gone he watches the Number 24 car as it goes
19 around the track because that's the connection he has with
20 his son.

21 He didn't get to tell his son goodbye, didn't get to
22 tell his son I love you; didn't get to patch up any
23 differences if he had any differences. He watches the
24 little race car ride around the track. That's the
25 connection with a 40-year-old child that he wasn't able to

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1 protect on September the 16th.

2 And then we hear from his sister Kathy, a Spartanburg
3 County resident. And I asked her what will you miss. She
4 will miss his voice coming over for dinner on Sunday night;
5 she will miss the voice saying happy birthday, mom, when
6 they celebrated Ms. Mahoney's birthday.

7 Ladies and gentlemen, there was testimony James Mahoney
8 was a small man, 5' 9" and 140 pounds at the outside. But I
9 submit to you he was small only in size, because he was a
10 big enough man to call out spelling words for somebody
11 else's children. He was a big enough man to drive somebody
12 to the hospital even if it meant closing the store.

13 And there has been testimony that he had bad eyesight,
14 and he may have had bad eyesight, but I submit to you that
15 his vision was good, his vision was good enough to see the
16 good in the people that came into Nikki's Convenience Store
17 on the third shift, people like Terry Hadden, people that
18 needed help with their cars, people that would call and say
19 my car is doing this and what does that man, James.

20 He was a small man in size only, and he was a blind
21 man, but he saw the good in other people. And he did not
22 deserve to die on September the 16th, two years ago. And I
23 submit to you he did not deserve to die in the circumstances
24 that he did, alone and by himself while this defendant is
25 dripping blood on his back.

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1 The hopes and the goals and the dreams of a 40-year-old
2 man are coming out of the heart, and the cold, wet drops of
3 blood of a career criminal are dripping on his back.

4 Those are the circumstances of this crime. And as he
5 drips blood on the back of a fellow human being that he has
6 just shot, he is rifling through somebody else's property
7 and taking somebody else's money, somebody else's gun.

8 And he never stops to call 9-1-1; he doesn't call E. M.
9 S. He says, "Let's get the hell out of here," as he goes to
10 buy some more crack cocaine. That's what James Mahoney's
11 life was worth. Crack addiction. Those are the
12 circumstances of this crime, impact.

13 You heard from Mr. Mahoney; you heard from Kathy
14 Pinson; you heard from James' brother who served in the
15 armed services. You heard him say that James himself wanted
16 to serve in the Army. Of course he couldn't. He was too
17 small and his health was too bad.

18 But can you imagine a more exciting time for a big
19 brother to talk to a little brother than right now that's in
20 the armed service?

21 They had their last conversation. How do you put an
22 impact on the death of a sibling or a child? You can't do
23 it. How do you put an impact on the death of a friend?
24 Keith and Nikki Fowler were his employers. They were also
25 friends.

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1 There is no third shift at Nikki's Convenience Store
2 any more. That's just a small example of something that's
3 changed since September the 16th. These people's lives will
4 never be the same, never. Think about it.

5 Richard Moore wasn't working, even though he could, on
6 September the 16th. James Mahoney was working, even though
7 he really shouldn't have been.

8 Richard Moore has experienced what it's like to be
9 loved by his spouse. James Mahoney will never experience
10 what it's like to be loved by his spouse.

11 This defendant can tell his children goodbye. James
12 Mahoney never had time to tell them hello. At age 40 he is
13 killed for crack cocaine.

14 Ladies and gentlemen, on one end of the spectrum we
15 have mercy, and we have all benefited from mercy at some
16 point in our lives. We have all needed mercy. We have all
17 received mercy.

18 And mercy can come in the form of any number of things.
19 It can come in the form of probation or relatively small
20 prison sentences. As you look back through his record,
21 1985, 1987, 1991, which is where he said get out of the way,
22 Bitch. Michelle Crowder. He pushes her down and assaults
23 her over a pocketbook. 1993, 1994, more 1993, '94, '95,
24 '96, '97, assault and battery of a high and aggravated
25 nature, '99 murder, armed robbery, assault with intent to

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1 kill, possession of a firearm during a violent crime.

2 That is a steady, continuous, gradual pattern of
3 escalating violence. Mercy is at this end of the spectrum.
4 It can be shown with small prison sentences; it can be shown
5 with probation; it can be shown with second chances.

6 There is a time for mercy, ladies and gentlemen. That
7 time has come and gone.

8 At the other end of the spectrum we have vengeance, and
9 sometimes we want to strike out at somebody. Sometimes we
10 want retribution.

11 I am not asking you for retribution. I am not asking
12 you to strike out. I'm standing in the middle of mercy and
13 vengeance on a platform called justice. And I am telling
14 you that justice demands accountability.

15 He has had chance after chance after chance. James
16 Mahoney had no chance. Why is it that the people who come
17 before you and ask for mercy will not ever show any mercy?
18 Why is it the people that come before you and ask for
19 compassion will never show any compassion?

20 He has had ample opportunity, 16 years of escalating
21 violent acts. There have been too many people hurt too bad
22 for too long for mercy in this case.

23 Ladies and gentlemen, the circumstances of this crime,
24 the nature of this defendant, the aggravating factors in
25 this case all lead us to the conclusion that enough is

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1 enough, is enough. 1985 till 1999 he has been shown mercy
2 and second chances.

3 And I stand before you on behalf of the State of South
4 Carolina, and I am asking you to give him what he has earned
5 for 15 years. He has earned it. Fifteen years of
6 victimizing people; 15 years of disregarding other people's
7 well-being.

8 Push a woman down for her pocketbook and stomp on her;
9 push a woman aside and call her the name that he called her
10 for money that doesn't belong to him; to fire a shot at
11 somebody playing a video game in a convenience store, to
12 shoot somebody through the heart for crack cocaine.

13 Ladies and gentlemen, he has earned a sentence of
14 death. You told the judge that in the appropriate case you
15 could give death. This is the appropriate case.

16 I'll tell you again, ladies and gentlemen, that people
17 that come and stand before this rail and ask for mercy never
18 show mercy. They never show mercy.

19 He wants to come and ask you for compassion, step over
20 a crippled, crooked dying body and drip blood on their back
21 and want you to show them passion.

22 I ask you to show them justice. I ask you to sentence
23 him to what he has earned for a lifetime of violent crimes.
24 Death.

25 THE COURT: Mr. Kelly.

Closing arguments

1 MR. KELLY: Thank you, Your Honor.

2 Madam forelady and ladies and gentlemen of the jury,
3 this will be my last opportunity to speak with you.

4 The prosecutor wants to talk about the past criminal
5 record and how somebody has earned the death penalty. I
6 don't know that you can earn the death penalty. We are not
7 here talking about a guilt or innocence. That's been
8 decided. We are here now to talk about what we are going to
9 do.

10 Now, there are two possible sentences, as you well
11 know. Judge Clary is going to tell you in his instructions
12 called charges later that there is death, and that you
13 should consider that it will be carried out, and that there
14 is life without parole.

15 Now, listen to Judge Clary who is going to tell you.
16 We are not talking about sparing a man's life who is going
17 to add something else to this sheet of paper. We are
18 through. That's all done. We are not going to have to
19 worry about that any more.

20 He is talking about what's going to happen. Is he
21 going to spend whatever time he has left in a natural
22 process incarcerated doing life, or is he going to face
23 death?

24 Now, you understand that the prosecutor talked to you
25 about aggravating and mitigating circumstances and what this

Closing arguments

1 one means and what that one means, whether they have proved
2 one of those aggravating circumstances -- well, they must
3 prove one. If they do not prove one of those factors to
4 your satisfaction beyond a reasonable doubt, then you must
5 give life.

6 THE COURT: No, sir. That is not a correct statement
7 of the law. If one is not proven, then this Court would
8 sentence, and that is my instruction.

9 MR. KELLY: Then this Court would sentence, and the
10 result would be life.

11 THE COURT: No, sir. Not under the law.

12 MR. KELLY: The result would be other than death.

13 If one of those aggravating circumstances is proven
14 beyond a reasonable doubt, then at that point the choice is
15 yours. The law of this state does not require you to vote
16 death; the law of this state does not require you to vote
17 life. The choice is yours.

18 Judge Clary is going to tell you about some mitigating
19 circumstances, some things that tend to make it less severe.
20 And I think there are three we've asked that they be
21 charged.

22 You do not have to find one of those beyond a
23 reasonable doubt. It needn't be at that level of proving.
24 And it does not need to be unanimous. One person can find
25 one mitigating circumstance, and for that reason vote life.

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1 One person or all can vote life for no reason.

2 Now, what we are talking about here is Richard Moore.
3 Mr. Willingham got up in his opening, and he said Richard
4 Moore has contributed to the community this, 15 or 16 years
5 of criminal activity. That's all he has contributed. That
6 was the implication.

7 But Lynda Byrd came in here and told you in about 1991
8 or two, some date, and I didn't write it down. I am sorry.
9 But in the early 1990's she and Richard came here from
10 Michigan. And they brought with them her six-year-old son
11 who does not know his father but considers this man to be
12 his father.

13 In the time period that they have been here two
14 children have been born of this union, and they are Lindel
15 or Lindell and Alexandria. And if I got this right, it is
16 the first and the third grade students.

17 And Lynda has told you and James has told you that
18 Richard Moore was a daddy, that Richard Moore was a coach,
19 that Richard Moore was a worker, that he provided. He
20 bought groceries. He contributed to the family.

21 Unfortunately, he has suffered with an addiction
22 problem. I just tell you. No reason to hide it. Not
23 talking about not doing drugs. And he has had a problem,
24 but that's over, because where Richard is going after today,
25 you don't have to worry about that. We haven't had to worry

Closing arguments

1 about it since 1999.

2 But since 1999 while he has been in jail those children
3 have been able to write letters. Those children have been
4 able to sent a photocopy of a report card. And Richard,
5 according to Lynda and James, has been able to talk with the
6 children and has been able to encourage them, do the right
7 thing, Lynda said. He encourages them to do the right thing
8 because he knows what it is like to do the wrong thing.

9 Now, we've got an eleventh grader, a first grader and a
10 third grader as citizens that understands that better than
11 he does.

12 Now, James has sent his father, Richard, his father
13 figure, stuff like letters that I said. And in the future
14 that young man at some point, I think he said he is in the
15 eleventh grade. He will graduate.

16 I submit he will be able to send Richard a copy of his
17 diploma. Richard will then be able to encourage him. Go on
18 in school. Do something good.

19 Those other children likewise have been continuing to
20 send him copies of report cards, boys and girls' club
21 certificates, any other activity they may be in.

22 And Richard, as he has done in the past, will be able
23 to continue to encourage them, do the right thing.

24 You can draw that all the way to any other conclusion,
25 all the way down to people announcement weddings, when they

Closing arguments

1 announce grandchildren born. But if you give him life,
2 Richard at least in writing and in phone conversations can
3 encourage those people to continue to do the right thing.

4 That is being a productive member of society. It is
5 not as productive as it could be, but that is something. I
6 submit to you that is something.

7 Mr. Willingham told you at the very beginning this man
8 is death eligible and death qualified. I tell you he is
9 life eligible and he is life qualified. There is a
10 presumption of life. He wants to live. He wants to
11 continue to write those cards. He wants to be able to
12 continue to make those encouraging statements.

13 Richard Moore, I submit to you, is a man worth living.
14 He is a man worth saving. The man you see today is not the
15 man that you would have seen September of 1999. But this
16 man today is at least worth life without the possibility of
17 parole. I am here about mercy; I am here about mercy. I am
18 making a general plea for your mercy for his life. Not the
19 possibility of parole.

20 THE COURT: Madam Foreperson and members of the jury,
21 you have heard the testimony and evidence and arguments of
22 the state and the defendant.

23 I will now explain to you the law that applies to this
24 case. Under the constitution and laws of South Carolina you
25 are the finders of the facts in this case. I do not have

Jury charge

1 the right to pass upon the facts or even to express any
2 opinion that I might have as to them.

3 You are also the judges, the sole judges, of the
4 credibility, the believability of the witnesses who have
5 testified in this case.

6 In passing upon their credibility you may take into
7 consideration many things, such as the following: The
8 demeanor or manner of testifying, whether the witness had
9 reason to be biased or prejudiced, whether a witness'
10 testimony was contradicted on the one hand or supported and
11 corroborated on the other hand.

12 Now, you certainly do not determine this credibility or
13 believability by counting the number of witnesses for either
14 side. You may believe a small portion of a witness'
15 testimony and disregard the larger, or vice versa.

16 You may believe one witness against many, or many
17 against one. All of these things you will consider, bearing
18 in mind that you should give the defendant the benefit of a
19 reasonable doubt.

20 Now, there are two types of evidence which are
21 generally presented during a trial, direct evidence and
22 circumstantial evidence. Direct evidence is the testimony
23 of a person who asserts or claims to have actual knowledge
24 of a fact such as an eye witness. Circumstantial evidence
25 is proof of a chain of facts and circumstances indicating

Jury charge

1 the existence of a fact.

2 And the law makes absolutely no distinction between the
3 weight or value to be given to either direct or
4 circumstantial evidence, nor is a greater degree of
5 certainty required of circumstantial evidence than that of
6 direct evidence.

7 You should weigh all of the evidence in this case. And
8 after weighing all of the evidence, you must be convinced
9 that the sentence you recommend for the defendant is beyond
10 a reasonable doubt.

11 I charge you further, Madam Foreperson and members of
12 the jury, that the fact that a defendant elects not to
13 testify in his own behalf cannot and must not be considered
14 against him under any circumstances or in any manner
15 whatsoever.

16 The decision of any defendant not to take the witness
17 stand and testify in his own behalf does not create any
18 inference against him. And I tell you now that you must not
19 permit that fact to weigh in even the slightest degree
20 against the defendant. You should not permit this fact to
21 enter into the discussions or deliberations of the issues in
22 this case.

23 Now, the rules of evidence ordinarily do not permit
24 witnesses to testify as to their opinion or conclusions. An
25 exception however to this rule does exist as to those whom

Jury charge

1 we call expert witnesses. Those are witnesses who by
2 education and experience have become expert in some art,
3 science, profession or calling.

4 These witnesses may state their opinions as to relevant
5 and material matter in which they profess to be an expert
6 and may also state their reasons for the opinion.

7 You should give the -- you should consider expert
8 opinion received in evidence in this case and give it such
9 weight as you may think it deserves. If you should decide
10 that the opinion of an expert witness is not based upon
11 sufficient education and experience or if you should
12 conclude that the reasons given in support of the opinion
13 are not sound, or if you feel that it is outweighed by the
14 other evidence, you may disregard that opinion entirely.

15 I further instruct you that the fact that the defendant
16 and the deceased are of different races must not be
17 considered by you. Your oath requires that your verdict be
18 supported by evidence and testimony properly introduced in
19 this trial.

20 Now, by the same constitution and laws which makes you
21 the finders of the facts and the evidence as I have
22 discussed with you, I am as the judge made the sole and the
23 only instructor in the law.

24 And, finally, I charge you in this regard, that you
25 should not be concerned about what you think the law ought

Jury charge

1 to be but rather what I charge you the law to be.

2 Now, ladies and gentlemen of the jury, I charge you
3 that evidence of prior misconduct by the defendant should
4 not be considered and may not be used as proof of any
5 aggravating circumstance, any statutory aggravating
6 circumstance, about which I will instruct you shortly.
7 However, you may consider such evidence only as to the
8 defendant's character, his characteristics, but not as proof
9 of the alleged statutory aggravating circumstances.

10 Now, Madam Foreperson and members of the jury, it now
11 becomes your duty to decide what sentence you will recommend
12 that this Court impose upon the defendant, Richard Bernard
13 Moore.

14 There are two verdicts you are to consider in this
15 case. One is the death penalty, which in this state is by
16 electrocution or lethal injection, and the other is life
17 imprisonment.

18 If you sentence the defendant to death you must assume
19 that the sentence will be carried out.

20 If a recommendation of death is not made, the defendant
21 shall be sentenced to life imprisonment without the
22 possibility of parole. Life imprisonment means until the
23 death of the offender.

24 Please understand that your sentencing recommendation
25 will be followed by this Court. The order in which I

Jury charge

1 explain these sentences is in no way a recommendation by the
2 Court as to which sentence you should choose to recommend.
3 It is simply that one must be stated first.

4 By this recommendation-of-sentence form which I hold in
5 my hand you, the jury, may recommend that this Court
6 sentence the defendant to death. Please observe that
7 immediately below the body of the recommendation there are
8 12 lines.

9 This is where you should -- this is where you -- this
10 is where, should you decide to recommend the death penalty,
11 each one of you would sign your name.

12 It is the law of this state, Madam Foreperson and
13 members of the jury, that a recommendation or imposition of
14 the death penalty must be a unanimous recommendation and
15 that each and every juror sign his or her name to the
16 recommendation form. And please remember that your
17 sentencing recommendation will be followed by this Court.

18 I will now read to you the text of this form, and I
19 quote: "We, the jury, in the above entitled case, having
20 found beyond a reasonable doubt the existence of the
21 following statutory aggravating circumstance or
22 circumstances, to wit."

23 At this point there is a place provided for you to
24 write such circumstances about which I will instruct you
25 further.

Jury charge

1 Quote, "Now recommend to the Court that the defendant,
2 Richard Bernard Moore, be sentenced to death." End quote.

3 Now, for this recommendation to be made, that is that
4 the defendant be sentenced to death, you must first find a
5 statutory aggravating circumstance existed beyond a
6 reasonable doubt.

7 What is a statutory aggravating circumstance? It is a
8 fact, an incident, a detail or an occurrence which the South
9 Carolina General Assembly has declared by statute would make
10 worse, that is aggravate, the offense of murder when the two
11 occur together. In other words, it's something which
12 increases the enormity or adds to the injurious consequences
13 of the offense.

14 Now, upon this sheet of paper which I hold in my hand
15 are written the words statutory instructions. You will have
16 this paper in your jury room during your deliberations.

17 The body of this form states, and I quote: "In
18 determining whether to recommend that the defendant, Richard
19 Bernard Moore, be sentenced by the Court to life
20 imprisonment or to death you may consider the following
21 statutory aggravating circumstances."

22 And they are as follows: "That the defendant, Richard
23 Bernard Moore, did murder James Mahoney while in the
24 commission of the crime or act of robbery while armed with a
25 deadly weapon; two, that the defendant, Richard Bernard

Jury charge

1 Moore, by his act of murder knowingly created a great risk
2 to more than one person in a public place by means of a
3 weapon or device which normally would be hazardous to the
4 lives of more than one person; and, three, that the
5 defendant, Richard Bernard Moore, committed the murder of
6 James Mahoney for himself or another for the purpose of
7 receiving money or a thing of monetary value." End quote.

8 Let me emphasize to you that these are the only
9 circumstances you may consider as aggravating circumstances.
10 Should you find, and it must be a unanimous finding, that is
11 a finding by each and every one of you -- should you find
12 that the state has proven beyond a reasonable doubt the
13 existence of one or more of the circumstances listed on this
14 sheet of paper, then you would be authorized, which is to
15 say permitted, to consider recommending to this Court that
16 the defendant be sentenced to death.

17 Now, what do I mean by the term proven beyond a
18 reasonable doubt? As I have previously instructed you, a
19 reasonable doubt is the kind of doubt that would cause a
20 reasonable person to hesitate to act. And the state has the
21 burden of proving the aggravating circumstances beyond a
22 reasonable doubt.

23 Now, as I have previously told you, some of you may
24 have served as jurors in civil cases where you were told
25 that it is only necessary to prove that a fact is more

Jury charge

1 likely true than not true.

2 In criminal cases the state's proof must be more
3 powerful than that. It must be beyond a reasonable doubt.
4 Proof beyond a reasonable doubt is proof that leaves you
5 firmly convinced.

6 There are very few things in this world that we know
7 with absolute certainty, and in criminal cases the law does
8 not require proof that overcomes every possible doubt. And
9 please pay particular attention to this. You are never
10 required to recommend the death penalty, even if you find
11 that a statutory aggravating circumstance existed at the
12 time the offense occurred.

13 However, if you find the existence of a statutory
14 aggravating circumstance, you are to list that circumstance
15 or circumstances on the form entitled aggravating
16 circumstances. And all 12 jurors would sign this form.
17 This is the form of aggravating circumstances which I hold
18 in my hand that you will also have in your jury room.

19 Now, as I have told you, the three aggravating
20 circumstances that the state alleges in this case, and it's
21 important for me to explain to you now that murder while in
22 the commission of a crime of armed robbery -- excuse me.
23 Murder while in the commission of the crime or act of
24 robbery while armed with a deadly weapon is one of the
25 issues which the state alleges is an aggravating

Jury charge

1 circumstance. And the state must prove beyond a reasonable
2 doubt that the defendant killed another person with malice
3 aforethought. And I have previously explained to you that
4 malice is hatred, ill will or hostility towards another
5 person.

6 It is the intentional doing of a wrongful act without
7 just cause or excuse and with an intent to inflict an injury
8 or under circumstances that the law would infer an evil
9 intent.

10 Malice aforethought does not require that malice exist
11 for any particular time before the act is committed, but
12 malice must exist in the mind of the defendant just before
13 and at the time the act is committed. Therefore there must
14 be a combination of the previous evil intent and the act.

15 Malice aforethought may be expressed or inferred, and
16 these terms expressed or inferred do not mean different
17 kinds of malice but merely the manner in which malice may be
18 shown to exist, that is either by direct evidence or by
19 inference from the facts and circumstances which are proved.

20 Expressed malice is shown when a person speaks words
21 which express hatred or ill will for another and when the
22 person prepared beforehand to do the act which was later
23 accomplished.

24 Malice may be inferred from conduct showing a total
25 disregard for human life. Inferred malice may also arise

Jury charge

1 when the deed is done with a deadly weapon. And a deadly
2 weapon is any article, instrument or substance which
3 likely -- which is likely to cause death or great bodily
4 harm. Whether an instrument has been used as a deadly
5 weapon depends upon the facts and circumstances of each
6 case.

7 Now, armed robbery. In order to prove this offense the
8 state must first prove beyond a reasonable doubt that the
9 defendant took personal property from the person or presence
10 of another. And property is in the presence of a person if
11 it's within that person's reach, inspection, observation or
12 control so that the person could, if not overcome with
13 violence or prevented by fear, keep possession of the
14 property.

15 The state must also prove beyond a reasonable doubt
16 that the defendant carried the property away intending to
17 permanently deprive the owner of the property and to keep
18 the property for the defendant's own use.

19 The slightest removal of the property or the complete
20 possession of the property even for an instant by the
21 defendant is sufficient to show a taking and carrying away
22 of the property.

23 The taking and carrying away must have been done with
24 violence or by putting the owner of the property in fear of
25 violence.

Jury charge

1 Finally, the state must prove beyond a reasonable doubt
2 that the defendant was armed or became armed with a deadly
3 weapon during the robbery. And a deadly weapon is any
4 article, instrument or substance which is likely to cause
5 death or great bodily harm. Whether an instrument has been
6 used as a deadly weapon depends on the facts and
7 circumstances of each case.

8 The state must also prove beyond a reasonable doubt
9 that the defendant by his act of murder knowingly created a
10 great risk of death to more than one person in a public
11 place by means of a weapon or device which normally would be
12 hazardous to the lives of more than one person.

13 The state must also prove beyond a reasonable doubt
14 that the defendant committed the murder of the victim for
15 the purpose of receiving money or a thing of monetary value.

16 Now, I instruct you further that should you find that
17 the state has not proven that an aggravating circumstance
18 existed, that is to say you should find that you still have
19 a reasonable doubt as to the existence of such a
20 circumstance, then you would not make a recommendation of
21 sentence. The Court would then sentence the defendant under
22 the law of this state.

23 Now, should you find beyond a reasonable doubt that one
24 of the aggravating circumstances listed on the sheet of
25 statutory instructions which I have previously showed you

Jury charge

1 existed at the time of the murder or during the commission
2 of the crime of murder, and should you decide after
3 considering the elements in favor of a recommendation of
4 life imprisonment, about which I will instruct you shortly,
5 that the recommendation of the jury is to be that the
6 defendant be sentenced to death, then it would be your duty,
7 Madam Foreperson, to write on the recommendation-of-sentence
8 form, entitled recommendation-of-the-sentence-of-the-death-
9 penalty, the statutory aggravating circumstance or
10 circumstances that you found that were attached to this
11 previous form.

12 Then, Madam Foreperson, you and each and every juror
13 would sign your names in the places provided. Do you
14 understand?

15 And that, Madam Foreperson and ladies and gentlemen,
16 there are places for all 12 jurors to sign as to the
17 aggravating circumstances, if any, that you find and also as
18 to the recommendation-of-sentence-of-death-penalty if that
19 be your sentence.

20 Now, ladies and gentlemen of the jury, by this
21 recommendation-of-sentence form which I hold in my hand,
22 you, the jury, can recommend to this Court that the
23 defendant be sentenced to life imprisonment. Please note
24 that although you must unanimously agree to recommend life
25 imprisonment, only the foreperson is required to sign this

Jury charge

1 recommendation form.

2 I will now read to you the text of this recommendation
3 form. And I quote: "We, the jury, in the above entitled
4 case having found the -- in the above entitled case, having
5 found the existence of aggravating circumstances, to wit,
6 recommend to the Court that the defendant, Richard Bernard
7 Moore, be sentenced to life imprisonment." End quote.

8 I will now instruct you on what you may consider in
9 making your decision as to which sentence to recommend. As
10 I previously instructed you, if you find the existence
11 beyond a reasonable doubt of a statutory aggravating
12 circumstance, then you are permitted but not required to
13 recommend the death penalty.

14 There are three conditions you should consider in
15 reaching your decision; first, whether the existence of a
16 statutory mitigating circumstance was supported by the
17 evidence; second, whether the existence of any other
18 nonstatutory mitigating circumstance was supported by the
19 evidence; and, third, whether for any reason you can think
20 of or for no reason at all the defendant should be sentenced
21 to life imprisonment.

22 What is a statutory mitigating circumstance? It is a
23 fact, an incident, a detail or an occurrence which the South
24 Carolina General Assembly has declared by statute would
25 reduce the severity of the offense of murder. In other

Jury charge

1 words, it is a circumstance recognized by statute as one
2 which in fairness and mercy may be considered as extenuating
3 or as reducing the degree of moral culpability for the
4 commission of the act of murder.

5 A mitigating circumstance is neither justification nor
6 excuse for the murder. It simply lessens the degree of
7 one's guilt, that is makes him less blameworthy or less
8 culpable.

9 Now, what statutory mitigating circumstances should you
10 consider in this case? I refer, once again, to this sheet
11 of paper entitled statutory instructions.

12 Now, immediately below the listing of statutory
13 aggravating circumstances, which I have previously discussed
14 and read to you earlier, the text continues.

15 Quote, "You may consider the following statutory
16 mitigating circumstances: One, that the murder was
17 committed while the defendant was under the influence of
18 mental or emotional disturbance; two, that the capacity of
19 the defendant to appreciate the criminality of his conduct
20 or to conform his conduct to the requirements of the law
21 were substantially impaired; and, three, the age or
22 mentality of the defendant at the time of the crime. You
23 may also consider any nonstatutory mitigating
24 circumstances." End quote.

25 A nonstatutory mitigating circumstance is one which is

Jury charge

1 not provided by statute but is one which the defendant
2 claims serves the same purpose, that is to reduce the degree
3 of his guilt in the offense.

4 While there must be some evidence which supports a
5 finding by you that a statutory or nonstatutory mitigating
6 circumstance exists, and it is not necessary for you to find
7 the existence of such a circumstance unanimously nor beyond
8 a reasonable doubt.

9 In reaching your decision as to which sentence to
10 recommend, you will consider the aggravating and mitigating
11 circumstances. While an aggravating circumstance must be
12 found before you can even consider recommending the death
13 penalty or life imprisonment, once such a finding is made
14 beyond a reasonable doubt you may recommend the death
15 sentence even though you find the existence of a statutory
16 mitigating circumstance or a nonstatutory mitigating
17 circumstance or both.

18 In other words, the existence of an alleged statutory
19 mitigating circumstance, an alleged nonstatutory mitigating
20 circumstance or both is not a bar to the imposition of the
21 death penalty.

22 The third element you may consider if you should
23 unanimously conclude beyond a reasonable doubt that a
24 statutory aggravating circumstance exists is whether the
25 defendant should be sentenced to life imprisonment for any

Jury charge

1 reason or for no reason at all.

2 This is what has been traditionally referred to as a
3 recommendation of mercy. And should you -- and should such
4 be your decision, you would so indicate by returning to the
5 Court the recommendation-of-life-imprisonment form which
6 would be signed by the foreperson.

7 In other words, you may choose to recommend life
8 imprisonment if you find a statutory or nonstatutory
9 mitigating circumstance; or you may choose to recommend life
10 imprisonment as an act of mercy if you have unanimously
11 found beyond a reasonable doubt the existence of a statutory
12 aggravating circumstance or circumstances.

13 In any instance, should you choose to recommend life
14 imprisonment, you still must find the existence of a
15 statutory aggravating circumstance or circumstances. Your
16 decision must be a unanimous one. However, only the
17 foreperson would be required to sign the recommendation form
18 for life imprisonment.

19 I will now summarize what I have just told you. You
20 will have in your jury room during your deliberations four
21 forms: Recommendation-of-life-imprisonment form;
22 recommendation of death form; statutory instructions;
23 aggravating circumstances.

24 The statutory instructions state and include the only
25 aggravating circumstances you shall consider in this case.

Jury charge

1 Should you fail to find beyond a reasonable doubt that one
2 of these circumstances existed at the time the murder was
3 committed, then you would go no further. You would make no
4 recommendation and the Court would sentence the defendant
5 according to the law.

6 Should you find beyond a reasonable doubt the existence
7 of an aggravating circumstance or circumstances, you would
8 then be authorized to consider recommending the death
9 penalty.

10 In your deliberations you will consider any statutory
11 or nonstatutory mitigating circumstances which are supported
12 by the evidence. You will consider the aggravating
13 circumstance or circumstances you found and the mitigating
14 circumstances. And you will then decide whether you will
15 recommend the death penalty.

16 You may also consider any other factors in mitigation
17 of the offense. And you can recommend a sentence of life
18 imprisonment for no reason at all.

19 If you decide to recommend the death penalty, you will
20 complete the proper form. You must write out the
21 aggravating circumstances, circumstance or circumstances,
22 that you found. And all 12 jurors must sign the
23 recommendation.

24 Should you decide to recommend life imprisonment, you
25 must also write out the aggravating circumstance or

Jury charge

1 circumstances that you found and sign that form by each and
2 every member of the jury, and the foreperson must then sign
3 the recommendation-for-life-imprisonment form only.

4 Whatever your recommendation is, it must be a unanimous
5 one, that is to say it must be the verdict of each and every
6 juror. Please remember your sentencing recommendation will
7 be followed by this Court.

8 Now, in considering whether to recommend the defendant
9 is to be sentenced to death or life imprisonment, I charge
10 you that as jurors you must decide the issues involved in
11 this proceeding without bias and without prejudice to any
12 party.

13 You have been selected as fair and impartial jurors
14 sworn to impartially try and determine the facts of this
15 case. And when you comply with your oath to do so, then no
16 one will have a right to criticize your verdict, and you
17 will have fully discharged your duty as jurors.

18 You are to decide this case according to the testimony
19 that you have heard from the lips of the sworn witnesses,
20 along with the other evidence that has been introduced.

21 I charge you that as jurors you must decide the issues
22 in this proceeding without bias and without prejudice to any
23 party. You cannot allow yourself to be governed by
24 sympathy, by prejudice, by passion, by public opinion or any
25 other arbitrary factor.

Jury charge

1 Both the state and the defendant have the right to
2 expect that each of you will carefully and impartially
3 consider all of the evidence in the case and that you will
4 follow the law as I have explained it to you.

5 Now, ladies and gentlemen of the jury, once again, I'm
6 going to go over the forms that I have provided for you.
7 And what I would suggest in your deliberations is that you
8 read over the statutory instructions from start to finish,
9 Madam Foreperson. I have included those on a two-page
10 document that I have signed.

11 After considering the statutory instructions, I would
12 then suggest that you move to the consideration of
13 aggravating circumstances, and those are listed on the
14 statutory instructions.

15 Keep in mind that you must find a statutory -- to find
16 a statutory aggravating circumstance you must find that that
17 has been proven by the state beyond a reasonable doubt. For
18 whatever aggravating circumstance or circumstances that you
19 find that the state has proven beyond a reasonable doubt,
20 Madam Foreperson, you would write those out in the spaces
21 provided. And then you would sign your name as the
22 foreperson. And each and every juror would sign their names
23 thereafter.

24 Thereafter, Madam Foreperson, you would then be in a
25 position to consider the two forms of penalty which are

Jury charge

1 contained in the recommendations of sentences, one being
2 life imprisonment and the other being a recommendation of
3 sentence of the death penalty.

4 Once again, if the jury after considering the existence
5 of aggravating circumstances, and you find beyond a
6 reasonable doubt that at least one of those circumstances
7 existed, you may consider the imposition of the death
8 penalty, though you are not required to impose it.

9 If that is your decision and if you unanimously agree
10 that the defendant should be sentenced to death, then you
11 would write the aggravating circumstances that you had
12 placed on this form, and each one of you would sign in the
13 space provided. And then each and every juror would sign on
14 the line provided here on the recommendation-of-sentence-of-
15 death-penalty form.

16 Now, once again, if a recommendation of sentence of
17 life imprisonment is found, keep in mind that there must be
18 the finding of at least one aggravating circumstance in
19 order to impose this sentence.

20 But only you, Madam Foreperson, would have to sign this
21 sentence which simply says that we, the jury, in the above
22 entitled case recommend that the Court -- to the Court that
23 the defendant, Richard Bernard Moore, be sentenced to life
24 imprisonment. You would sign it and date it with the
25 appropriate date on each of these documents.

Jury charge

1 Now, ladies and gentlemen of the jury, once again, if
2 you do not find the existence of an aggravating, at least
3 one aggravating, circumstance, you can make no
4 recommendation. That sentence would then fall to the Court
5 for the sentence to be imposed in accordance with our state
6 law.

7 Now, ladies and gentlemen of the jury, I am going to be
8 sending you to the jury room in just a moment. At this time
9 I am going to instruct you that you are not to begin your
10 deliberations until I instruct you to do so.

11 If it's necessary for me to bring you back into the
12 courtroom for further instructions, I will do that very
13 quickly. If it is not necessary for me to bring you back
14 into the jury room for further instructions, I'm going to
15 send all of the evidence in this case, together with the
16 four forms that I have previously discussed with you, the
17 two recommendation-of-sentence forms, the aggravating-
18 circumstances forms, form, and the statutory-instruction
19 form. And you will then be instructed to begin your
20 deliberations.

21 Now, once again, ladies and gentlemen, if you have a
22 question during the course of your deliberations, I want,
23 Madam Foreperson, for you to write that question out. Sign
24 your name as the foreperson, knock on the door, give it to
25 the bailiff. And he will see that it's delivered to me.

Jury charge

1 And I will address it as I am permitted under the law of
2 this state.

3 Once you reach a verdict to which all 12 of you agree
4 and you have filled out these forms as I instructed you,
5 Madam Foreperson, simply knock on the door. Tell the
6 bailiff that you have reached a verdict in this case. And
7 we will receive you back into the courtroom to publish your
8 verdict.

9 Once again, ladies and gentlemen, please keep in mind
10 that the verdict that you reach as to life or death must be
11 unanimous, as well as the finding of any aggravating
12 circumstances. That must also be unanimous.

13 The word verdict comes from the Latin word veredicto,
14 which means to speak the truth. And once you have reached a
15 verdict to which all 12 of you agree, then it will speak the
16 truth of you collectively, as well as individually.

17 I'm going to send you to the jury room. Once again,
18 please do not begin your deliberations until I instruct you
19 to do so.

20 And, please, remember that your verdict must be
21 unanimous.

22 The jury may retire.

23 Please hold the alternates just outside the courtroom.

24 (Whereupon, the jury retired to deliberate at

25 4:20 p.m.)

Jury charge

1 THE COURT: Exceptions or additions from the state,
2 Solicitor?

3 MR. GOWDY: No exceptions and no objections, Your
4 Honor.

5 THE COURT: From the defendant?

6 MR. KELLY: No objections and no exceptions, Your
7 Honor.

8 THE COURT: Gentlemen, I want you -- I think that you
9 have been provided with the statutory documents, the
10 instructions, the aggravating circumstances, the
11 recommendation of sentence of death penalty and the
12 recommendation of sentence of life imprisonment. And you
13 are in agreement with those.

14 MR. GOWDY: Yes, sir, Your Honor.

15 MR. KELLY: No objections and no exceptions.

16 THE COURT: All right. Then I think that all of the --
17 I think that all of the exhibits have remained in the same
18 position that they were in when they came out.

19 Madam Reporter, I assume that they're all still there.
20 Why don't you check them before we send them back?

21 (Pause.)

22 THE COURT: All right. Is the state and the defendant
23 in agreement on the exhibits to go back to the jury?

24 MR. KELLY: Yes, Your Honor.

25 MR. GOWDY: Yes, sir.

Jury charge

1 THE COURT: And you have reviewed the statutory
2 instructions, the aggravating circumstances, recommendation-
3 of-sentence-of-death-penalty and recommendation-of-sentence-
4 of-life-imprisonment forms.

5 MR. GOWDY: Yes, sir, Your Honor.

6 THE COURT: And you are in agreement with those.

7 MR. KELLY: Yes, sir, Your Honor.

8 MR. GOWDY: Yes, sir, Your Honor.

9 THE COURT: All right. Bailiffs, if you would, please
10 take the exhibits. Give that to the foreperson. And tell
11 her that they may begin their deliberations.

12 And, if I could, have a jury custodian in here, please.

13 (Whereupon, the exhibits were submitted to the jury for
14 deliberations at 4:32 p.m.)

15 (Copy of statutory instructions and copy of jury charge
16 marked Court's Exhibit Number Twelve.)

17 THE COURT: Mr. Jury Custodian, please take the
18 alternates to the separate locations.

19 And before anyone disburses, I have a couple of
20 announcements to make.

21 All right. First of all, let me thank the state and
22 the defense for the fine manner in which you have tried this
23 case. Now that we have been going on for a week now, I have
24 enjoyed trying the case with you. I thank that all of you
25 performed very well.

Verdict

1 And I appreciate your cooperation in a very difficult
2 case. Every case is difficult. These are more difficult
3 than others.

4 Also, anyone in the courtroom -- when a verdict is
5 returned, if you do not feel that you can control your
6 emotions, once again, please remove yourself from the
7 courtroom, because I will not tolerate any outburst
8 whatsoever. And I will make that announcement one more time
9 before the jury comes back. But please understand that.

10 Solicitor, I'm going to need to talk with you about
11 planning purposes for the rest of the week. We had set
12 aside the rest of this week to try this case. We're going
13 to have some time left over.

14 I know Judge Cole is doing some general sessions. I
15 can tell that all of you all are itching to get back into
16 the fray. We will see if we can drum anything else up.
17 Maybe I can do some pleas for you sometime this week.

18 MR. GOWDY: Yes, sir.

19 THE COURT: I need to see you.

20 We will stand at ease until we get a question or a
21 verdict.

22 (Whereupon, a recess was taken.)

23 THE COURT: Let me, once again, tell everyone that if
24 you do not feel that you can control your emotions,
25 regardless of what the verdict is, you need to remove

Verdict

1 yourself from the courtroom, because I will not tolerate any
2 outbursts whatsoever.

3 And I will direct the deputies that if there are any
4 outbursts, take that person into custody. And we will hold
5 a contempt hearing later on this week.

6 All right. Let's bring our jury back.

7 (Whereupon, the jury returned to report its verdict at
8 5:51 p.m.)

9 THE COURT: Madam Foreperson, it is my understanding
10 you have reached a verdict in this case. Is that correct?

11 THE FOREPERSON: Yes, sir.

12 THE COURT: And you filed out the verdict forms as I
13 instructed.

14 THE FOREPERSON: Yes, sir.

15 THE COURT: Please hand them to the bailiff.

16 In the case of the State vs. Richard Bernard Moore, we,
17 the jury in the above entitled case, find beyond a
18 reasonable doubt the following statutory aggravating
19 circumstances: One, that the defendant, Richard Bernard
20 Moore, did murder James Mahoney while in the commission of
21 the crime or act of robbery while armed with a deadly
22 weapon; two, that the defendant by his act of murder
23 knowingly created a great risk of death to more than one
24 person in a public place by means of a weapon or device
25 which normally would be hazardous to the lives of more than

Verdict

1 one person; three, that the defendant committed the murder
2 of James Mahoney for himself or another for the purpose of
3 receiving money or a thing of monetary value. And that is
4 signed by each and every juror.

5 I am going to ask you as I call your names, if this was
6 your finding as to aggravating circumstances, and is it
7 still your finding. And please answer to those two
8 questions.

9 Foreperson, Karen E. Nave.

10 JUROR NUMBER 194: Yes.

11 THE COURT: Jennifer Caston.

12 JUROR NUMBER 53: Yes, sir.

13 THE COURT: Debra Ledford.

14 JUROR NUMBER 157: Yes, sir.

15 THE COURT: Doris Robertson.

16 JUROR NUMBER 230: Yes, sir.

17 THE COURT: Larry Wayne Ridings.

18 JUROR NUMBER 227: Yes, sir.

19 THE COURT: Michael Scott Garner.

20 JUROR NUMBER 95: Yes, sir.

21 THE COURT: Walter M. Ballard, Jr.

22 JUROR NUMBER 19: Yes, sir.

23 THE COURT: Sandra Taylor.

24 JUROR NUMBER 265: Yes, sir.

25 THE COURT: Susan Hardison.

Verdict

1 JUROR NUMBER 116: Yes, sir.

2 THE COURT: Pamela Robinson.

3 JUROR NUMBER 231: Yes, sir.

4 THE COURT: Benjie J. Martinez.

5 JUROR NUMBER 170: Yes, sir.

6 THE COURT: Jeffrey A. Blanchard.

7 JUROR NUMBER 29: Yes, Your Honor.

8 THE COURT: Case of the State vs. Richard Bernard
9 Moore, we, the jury in the above entitled case having found
10 beyond a reasonable doubt the existence of the following
11 statutory aggravating circumstances, to wit, that the
12 defendant, Richard Bernard Moore, did murder James Mahoney
13 while in the commission of the crime or act of robbery while
14 armed with a deadly weapon, now recommend to the Court that
15 the defendant, Richard Bernard Moore, be sentenced to death,
16 signed by the foreperson, Karen E. Nave, Juror Jennifer
17 Caston, Juror Susan Hardison, Juror Pamela Robinson, Juror
18 Debra Ledford, Juror Doris Robertson, Juror Larry Wayne
19 Ridings, Juror Michael Scott Garner, Juror Walter Ballard,
20 Jr., Juror Sandra Taylor, Juror Benjamin Martinez, Juror
21 Jeffrey A. Blanchard.

22 As I call your names, I'm going to ask you, was this
23 your verdict and is it still your verdict.

24 Foreperson Karen E. Nave.

25 JUROR NUMBER 194: Yes, sir.

Verdict

1 THE COURT: Juror Jennifer Caston.
2 JUROR NUMBER 53: Yes, sir.
3 THE COURT: Susan Hardison.
4 JUROR NUMBER 116: Yes, sir.
5 THE COURT: Pamela Robinson.
6 JUROR NUMBER 231: Yes, sir.
7 THE COURT: Debra Ledford.
8 JUROR NUMBER 157: Yes, sir.
9 THE COURT: Doris Robertson.
10 JUROR NUMBER 230: Yes, sir.
11 THE COURT: Larry Wayne Ridings.
12 JUROR NUMBER 227: Yes, sir.
13 THE COURT: Michael Scott Garner.
14 JUROR NUMBER 95: Yes, sir, Your Honor.
15 THE COURT: Walter M. Ballard, Jr.
16 JUROR NUMBER 19: Yes, sir.
17 THE COURT: Sandra Taylor.
18 JUROR NUMBER 265: Yes, sir.
19 THE COURT: Benjamin L. Martinez.
20 JUROR NUMBER 170: Yes, sir.
21 THE COURT: Jeffrey A. Blanchard.
22 JUROR NUMBER 29: Yes, Your Honor.
23 THE COURT: Anything further from the state before the
24 jury is excused?
25 MR. GOWDY: No, sir, Your Honor.

Motions

1 THE COURT: Anything from the defendant?

2 MR. KELLY: No, sir.

3 THE COURT: Ladies and gentlemen of the jury, that
4 concludes your responsibilities in this matter. I am going
5 to send you to the jury room. And from there you will be
6 dismissed.

7 The jury may retire to the jury room at this time.

8 (Whereupon, the trial jury was excused.)

9 THE COURT: All right. Anything further from the
10 defendant before sentencing? Any motions?

11 MR. KELLY: Judge, once again, just out of an abundance
12 of caution, we would appreciate the Court noting all of our
13 exceptions and renew our motions.

14 THE COURT: All motions are noted, and they are denied
15 in being consistent with my prior rulings.

16 MR. KELLY: Thank you, Your Honor.

17 THE COURT: All right. Let's bring the defendant
18 around for sentencing, please.

19 All right. Anything you want to say, Mr. Moore?

20 THE DEFENDANT: No, sir, Your Honor.

21 THE COURT: Anything from Mr. Kelly or Mr. Morin?

22 MR. KELLY: No, sir.

23 MR. MORIN: No, sir.

24 THE COURT: In the case of 2000-GS-42-617, that's count
25 two, the possession of a weapon during the commission of a

Sentence

1 violent crime, the Sentence of the Court is that the
2 defendant, Richard Bernard Moore, be committed to the State
3 Department of Corrections for a term of five years.

4 2000-619, that's assault with intent to kill, the
5 defendant, Richard Bernard Moore, is committed to the State
6 Department of Corrections for a term of ten years.

7 2001-2460, that's armed robbery, the defendant, Richard
8 Bernard Moore, is committed to the State Department of
9 Corrections for a term of 30 years.

10 And as to 2000-GS-42-617, as the trial judge in the
11 above entitled action and prior to the imposition of the
12 death sentence upon the defendant, Richard Bernard Moore, I
13 find as an affirmative fact that the evidence of the case
14 warrants the imposition of the death penalty, and its
15 imposition is not the result of prejudice, passion or any
16 other arbitrary factor.

17 And in the case of 2000-GS-42-617, the defendant,
18 Richard Bernard Moore, has been found by the jury to be
19 guilty of the offense of murder. The jury has recommended
20 that the defendant should be sentenced to death.

21 It is therefore the Judgment of the Law and the
22 Sentence of the Court that the defendant, Richard Bernard
23 Moore, be taken to the Spartanburg County Detention Center
24 and thence to the state Department of Corrections henceforth
25 to be kept in close and safe confinement until the 22nd day

Sentence

1 of January 2002 upon which day between the hours of six
2 o'clock p.m. and six o'clock a.m. or upon an order of
3 execution issued by the South Carolina Supreme Court the
4 defendant, Richard Bernard Moore, shall suffer death by
5 electrocution or lethal injection in the manner provided by
6 law.

7 May God have mercy on your soul.

8 Those sentences are consecutive.

9 You may take him away.

10 Just one moment. I need to bring the jury back in and
11 give them their dismissal charge. Let's bring the jury back
12 in, please. Everyone else remain seated, please.

13 (The following takes place after the defendant was
14 removed from the courtroom.)

15 THE COURT: Let the record reflect that the jury has
16 been taken by the jury custodians to their location.

17 Anything further from the state?

18 MR. GOWDY: No, sir, Your Honor.

19 THE COURT: From the defense?

20 MR. KELLY: No, sir, Your Honor.

21 THE COURT: Once again, thank you very much for your
22 cooperation during the case. And for everyone involved in
23 the case, thank you for your cooperation during this last
24 week.

25 Insofar as this case is concerned, court is adjourned.

Sentence

1 (State's voir dire request; defendant's requested voir
2 dire; defense request to charge; notice of statutory
3 aggravating circumstances and evidence in support of
4 aggravating circumstances; supplemental notice of additional
5 evidence in support of aggravating circumstances marked
6 Court's Exhibit Number Thirteen.)

7 END OF REQUESTED TRANSCRIPT OF RECORD

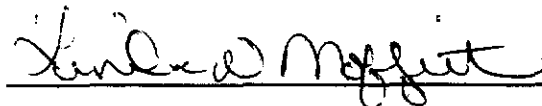
Certificate

CERTIFICATE

I, the undersigned, Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 3rd day of April, 2001; the 8th day of June 2001; the 28th day of September 2001; October the 15th through the 20th, 2001; and October the 22nd, 2001.

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

April 3, 2002

A handwritten signature in cursive script, reading "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

State

State's Attorneys: Gowdy, Barnette;
WillinghamDefendant: Richard Bernard Moore
B/M

Court Reporter: Linda D. Moffitt

Defense Attorneys: Morin, Kelly, Johnson

Juror No.	Name	Sex	Race	Court	Strikes		Accept
					State	Defense	
251	Joyce B. Smythe	F	W		N		N
166	Jason B. Lyda	M	W		Y	X	N
231	Pamela Robinson	F	W		Y	Y	Y
29	Jeffrey A. Blanchard	M	W		Y	Y	Y
191	Joyce Morrow	F	B		N		N
116	Susan Hardison	F	W		Y	Y	Y
2	Douglas Alexander	M	B		N		N
230	Doris M. Robertson	F	W		Y	Y	Y
28	Don S. Blair	M	W		Y	N	N
213	Debra P. Perkins	F	W		N		N
194(F)	Karen E. Nave	F	W		Y	Y	Y
53	Jennifer M. Caston	F	W		Y	Y	Y
19	Walter M. Ballard, Jr.	M	W		Y	Y	Y
4	Lanie M. Allen	F	W		Y	N	N
227	Larry W. Ridings	M	W		Y	Y	Y
197	Gary L. New	M	W		Y	N	N
205	Ronda B. Parks	F	W		Y	N	N
288	Kelly S. West	F	W		Y	N	N
220	Tammy P. Hayes	F	W		Y	N	N
145	Charles L. Kent	M	W		N		N
192	David M. Mosley	M	W		Y	N	N
95	Michael S. Garner	M	W		Y	Y	Y
157	Debra M. Ledford	F	W		Y	Y	Y
170	Benjamin L. Martinez	M	H		Y	Y	Y
295	Michael J. Willingham	M	W		Y	N	N
85	Jeff L. Fortner	M	W		Y	N	N
265	Sandra S. Taylor	F	W		Y	Y	Y
132	Edward T. Huffman	M	W		N		N
290	Malcolm S. White	M	W		Y	N	N
94(A)	Stacy Gantt	F	W		Y	Y	Y
92	Patricia P. Gallman	F	W		Y	N	N
160(A)	Deborah J. Lindsay	F	W		Y	Y	Y

WITNESSES

ive Denton

artanburg County Sheriff's Dept.

JB 771

artanburg, SC 29304-0771

1. SENTENCE MADE

2. REPORT ENDED

3. CARD FILLED

4. INDEXED

5. CHECKED WARRANTS

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

G-299434 and DIRECT INDICTMENT

FINE CARD MADE

8. TRAFFIC VIOLATIONS COPY

Computer

ACTION OF GRAND JURY

VERDICT

COUNT ONE: Guilty

COUNT TWO: Guilty

Loren E. Nave

Foreperson of Petit Jury

Date: 10-20-01

DOCKET NO

00-GS-42-0617

The State of South Carolina

County of Spartanburg

(02) Holman C. Gossett, Solicitor

COURT OF GENERAL SESSIONS

JAN 17 2000

TERM

THE STATE

vs.

Richard Bernard Moore

**Indictment for
MURDER AND POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME**

SC Code 16-03-0010, 0020 and 16-23-490

CDR CODE: 0116: 0549

CLASS: FEL-EXM: FEL/F

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)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JAN 13 2000, the

Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE—MURDER

That Richard Bernard Moore did in Spartanburg County on or about September 16, 1999, feloniously, wilfully and with malice aforethought, kill one James Joseph Mahoney, by shooting the victim with a gun, and that the said victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

**COUNT TWO—POSSESSION OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME**

That Richard Bernard Moore did in Spartanburg County on or about September 16, 1999, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: MURDER, in violation of Code §16-23-490. *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended

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


SOLICITOR

1765

WITNESSES

County Sheriff's Dept.

SC 29304-0771

ST WARRANT NUMBER

ION OF GRAND JURY

Grand Jury
3-00

VERDICT

Petit Jury

DOCKET NO.

00-GS-42- 0619

The State of South Carolina

County of Spartanburg

(02) Holman C. Gossett, Solicitor

COURT OF GENERAL SESSIONS

JAN 17 2000

TERM

THE STATE

vs.

Richard Bernard Moore

Indictment for

ASSAULT W/ INTENT TO KILL

SC Code: 17-25-0030

CDR Code: 768

Class MIS-UNC

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 am not guilty to the within indictment or to

Defendant

Witness:

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

1769

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JAN 13 2000

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

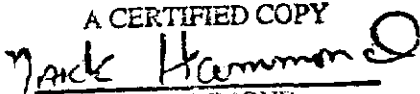
ASSAULT WITH INTENT TO KILL

That Richard Bernard Moore did in Spartanburg County on or about September 16, 1999, with malice aforethought attempt to commit a battery upon one Terry Dean Hadden, by shooting at the victim with a gun, with intent to kill the said victim, in violation of §17-25-30 (CL), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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

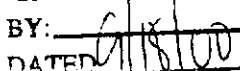

SOLICITOR

A CERTIFIED COPY



M. HAMMOND
CLERK OF COURT
SPARTANBURG COUNTY

BY: _____ D.C.

DATED:  1/18/00

WITNESSES

Steve Denton

Spartanburg County Sheriff's Office

1. SENTENCE MADE ☒

2. REPORT ENDED ☒

3. CARD PULLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

6. CHECKED SIGNATURE ☒

7. ARREST WARRANT NUMBER ☒
FINE CARD MADE

Direct Indictment VIOLATIONS COPY ☒

Computer

Warrant
Send
Heath

1770 ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 10-4-01

VERDICT

Guilty

True Bill

Karen E. Nave

Foreperson of Petit Jury

Date: 10-20-01

DOCKET NO. 01 - GS - 42 -

2460

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 08 2001

TERM

THE STATE

vs.

RICHARD BERNARD MOORE

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

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)
)
COUNTY OF SPARTANBURG)

INDICTMENT

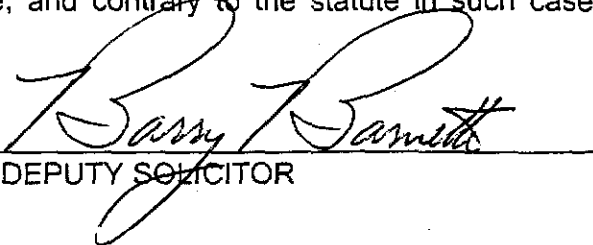
At a Court of General Sessions, convened on OCT 04 2001 the Grand

Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That Richard Bernard Moore did in Spartanburg County on or about September 16, 1999, committed a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of robbery reasonably believed to be a deadly weapon, and did feloniously take from the person or presence of James Mahoney, by means of force, violence, and/or intimidation, goods or monies of Nikkis Speedy Mart, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

1772

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

STATE,)
V.)

RICHARD B. MOORE ,)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

NOTICE OF STATE'S INTENTION TO
SEEK THE DEATH PENALTY

INDICTMENTS: 00-GS-42-617-619
WARRANT NUMBERS: G299134, 132
& 133

TO THE DEFENDANT, RICHARD B. MOORE, AND HIS ATTORNEY(S) :

YOU WILL PLEASE TAKE NOTICE, that the State of South Carolina, acting by and through the Solicitor for the Seventh Judicial Circuit, Holman C. Gossett, hereby gives written notice pursuant to §16-3-26 of the Code of Laws of South Carolina (1976), as amended, that the State intends to seek the death penalty against the aforesaid defendant, Richard B. Moore, on Indictment Number 00-GS-42-617 , charging him with the murder of James Joseph Mahoney.

The trial of the aforesaid defendant shall be set at a date and time thirty (30) days after the service of this notice on the said defendant and his attorney(s), and after the defendant and his attorney(s) have been provided with a written notice of the statutory aggravating circumstances and evidence in support of aggravating circumstances that the State intends to rely upon in the case against the defendant.

A CERTIFIED COPY
BY: *Mark Hammond*
CLERK OF COURT
SPARTANBURG COUNTY
DATED 9/18/18 PC.

MARK HAMMOND
2000 SEP 18 AM 9:53
CLERK OF COURT
SPARTANBURG COUNTY

Holman C. Gossett
HOLMAN C. GOSSETT, SOLICITOR
Seventh Judicial Circuit
Spartanburg County Courthouse
Spartanburg, South Carolina
(864)-596-2575

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT
INDICTMENT NO.: 2000-GS-42-617

2001 SEP 14 PM 2:03
MAKING RECORD

STATE OF SOUTH CAROLINA,)
VS.)
RICHARD BERNARD MOORE,)
DEFENDANT.)

**NOTICE OF STATUTORY
AGGRAVATING CIRCUMSTANCES
AND EVIDENCE IN SUPPORT OF
AGGRAVATING CIRCUMSTANCES**

TO THE DEFENDANT AND HIS ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE, that the State of South Carolina, acting by and through the Solicitor for the Seventh Judicial Circuit, Harold Watson Gowdy, III, will rely on the following statutory aggravating circumstances in seeking the death penalty against the above named defendant:

1. That the defendant, Richard Bernard Moore, did murder James Mahoney, while in the commission of the crime or act of robbery while armed with a deadly weapon. Section 16-3-20 (C) (a) (1) (d) of the Code of Laws of South Carolina (1976), as amended (Cum. Supp. 1990).
2. That the defendant, Richard Bernard Moore, by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person, Section 16-3-20 (C) (a) (3) of the Code of Laws of South Carolina (1976), as amended (Cum. Supp. 1990).
3. That the defendant, Richard Bernard Moore, did murder James Mahoney, while in the commission of the crime or act of larceny with the use of a deadly weapon. Section 16-3-20 (C) (a) (1) (e) of the Code of Laws of South Carolina (1976), as amended (Cum. Supp. 1990).
4. That the defendant, Richard Bernard Moore, committed the murder of James Mahoney for himself or another for the purpose of receiving money or a thing of monetary value. Section 16-3-20 (C) (a) (4).

YOU WILL PLEASE TAKE FURTHER NOTICE, that the State of South Carolina acting by and through the Solicitor for the Seventh Judicial Circuit, Harold W. Gowdy, III, will rely upon the following evidence in support of aggravating circumstances in seeking the death penalty against the defendant, Richard Bernard Moore:

1. Any prior criminal convictions or juvenile adjudications of the defendant.
2. Any record, report, or other document relating to any misconduct by the defendant, or disciplinary action taken against the defendant, during any period of incarceration.
3. Any record, report, or other document relating to action taken against the defendant, during any period of parole or probation.
4. Pictures, videotape, and diagrams of the crime scene and of the victim, James Mahoney.

① /jm

5. A pistol recovered in the vicinity of the crime scene believed to be used in the crimes that the defendant is charged with; and any shells, shell fragments, casings, believed to have been fired by said pistol.
6. The clothing believed to have been worn by the defendant at the time he allegedly committed the crimes he is charged with.
7. The clothing believed to have been worn by the victim at the time that the defendant allegedly committed the crimes that he is charged with.
8. The Spartanburg County Sheriff's Department Forensic Unit Case Report.
9. Blood Samples from the Crime Scene and the Defendant's Chevrolet truck, as well as blood samples from the Defendant and the victim.
10. Testimony and the autopsy report of Dr. J. David Wren, MD, regarding his examination of James Mahoney.
11. Items and effects taken from the victim and the business at the crime scene.
12. Any SLED report prepared by any SLED agents listed as witnesses below.
13. Any written or oral statements of the defendant.
14. Diagrams, maps, or aerial photographs showing surrounding area of the crime scene.
15. Items and effects taken from the Chevrolet pick-up truck driven by the Defendant.
16. The testimony of the following persons:
 - a. **Detective Steve Denton, Spartanburg County Sheriff's Department.** May testify to matters relating to the investigation of the murder and robbery of James Mahoney as stated in his Investigative Notes listed as pages 7 thru 17 (consisting of ten pages) of the discovery. Specifically and not limited to evidence found at the crime scene; oral statements of witness, Terry Hadden; evidence found in the defendant's truck; and oral statements of the defendant at Spartanburg Regional Medical Center.
 - b. **Detective Neal Urch, Spartanburg County Sheriff's Department.** May testify to matters relating to the investigation of the murder and robbery of James Mahoney as stated in his Investigative Notes listed on page 20 (consisting of one page) of the discovery. Specifically and not limited to evidence found at the autopsy of the victim, James Mahoney.
 - c. **Detective Tony E. Brown, Spartanburg County Sheriff's Department.** May testify to matters relating to the investigation of the murder and robbery of James Mahoney as stated in his Investigative Notes listed on pages 17 thru 19 (consisting of three pages) of the discovery. Specifically and not limited to evidence found at the crime scene; interviewing Terry Hadden, the witness at the scene; interviewing George Gibson, a witness that observed and spoke to the defendant after the incident, observed the defendant's truck and the items inside it; interviewing Jeff Goodwin, a witness that found a .45 pistol on Highway 9 near California Avenue after observing the pistol.
 - d. **Detective Charity Brazeal, Spartanburg County Sheriff's Department.** May testify to matters relating to the investigation of the murder and robbery of James Mahoney as stated in her Investigative Notes listed on pages 21 and 22 (consisting of two pages) of

② *[Signature]*

11/11/00
11/11/00
11/11/00

the discovery. Specifically and not limited to the oral statements made by the defendant at Spartanburg Regional Medical Center.

- e. **Detective Marc Finley, Spartanburg County Sheriff's Department.** May testify to matters relating to the investigation of the murder and robbery of James Mahoney, and specifically and not limited to evidence found in the Defendant's Chevrolet pickup truck and the search warrant involving this truck.
- f. **Investigator Paul Dorman, Spartanburg County Sheriff's Department.** May testify to matters relating to the investigation of the murder and robbery of James Mahoney, and specifically the collection of evidence at the crime scene, the defendant's Chevrolet pickup truck, and the diagram of the crime scene. May testify about the Charter Arms 44 Spl. Bulldog - ser. No.: 080050710 found on the floor in the kitchen next to the black stool above the victim's head. May testify about the H&R .32 cal. pistol found on a shelf under the counter in the store. May testify to the small butcher knife found on the floor in the kitchen adjacent to the victim's feet. May testify to a pocket knife with blood stains on it found in the pick-up truck driven by the Defendant. Please see the Forensic Unit Case Report listed as pages 26, 32, 33, 43 thru 50 (consists of 11 pages) and pages 27, 52 thru 54, and 66 thru 68, which are diagrams and notes on measurements from the crime scene (consisting of 7 pages).
- g. **Investigator Shane Dedmon, Spartanburg County Sheriff's Department.** May testify to matters relating to the investigation of the murder and robbery of James Mahoney, and specifically the collection of evidence of a GSR kit from Richard Moore. He also took custody of the Industria Argentina .45 cal. pistol found on Highway 9 near California Avenue. He also took six (6) pictures which the state will seek to enter into evidence.
- h. **Investigator Hugh Murphy, Spartanburg County Sheriff's Department.** May testify about photographs taken at the autopsy of James Mahoney that was conducted by Dr. J. David Wren, M.D.. He may also testify about taking, into evidence, the projectile taken from James Mahoney during the autopsy. He may also testify about performing a GSR kit on James Mahoney.
- i. **Investigator Blair Lacy, Spartanburg County Sheriff's Department.** May testify about the documentation and collection of evidence with Investigator Paul Dorman from the Defendant's Chevrolet truck backed against a telephone pole next to the driveway of 131 Hillside Drive and the crime scene at that location.
- j. **Deputy R.C. Miller, Spartanburg County Sheriff's Department.** May testify about arriving at Nikki's Speedy Mart at 366 Highway 221 and his observations at the scene. His incident report consisting of two [typed] pages and his two [handwritten] pages states his observations and what the witness, Terry Hadden, stated at the scene. (Please see Deputy Miller's investigative report consisting of two pages - typed incident report listed as page 1 and 2 and his handwritten report listed as page 130 and 131).
- k. **Deputy Bobby Rollins, Spartanburg County Sheriff's Department.** May testify about finding the Defendant while on patrol in the Whitney community. He was checking several areas where the suspect in the convenience store robbery might have been. He was driving his patrol unit on Hillside Drive towards Cleveland Chapel Road and was using his patrol spotlight around 133 Hillside Drive. During this time, he heard a bang coming from the residence at 133 Hillside Drive. He turned his patrol unit around to check the noise, he saw a black male (the defendant) come from a blue and white Chevy truck. At the time, the black male put his hands in the air. He got out of his patrol unit and shouted for him to get on the ground and to show him his hands. As he approached the subject, he noticed that he was bleeding severely from his left arm. The suspect shouted, while he was on ground, "I give up. I did it." At that time, he asked the

③ *[Signature]*

dispatcher for assistance. Officer Brazeal arrived and placed the suspect in handcuffs. The suspect was still stating that "he was giving up." The suspect, during this time, was not asked about the crime. Deputy Rollins also read his Miranda Rights to him. The suspect stated that he understood his rights clearly. (Please see Deputy Rollins' statement consisting of one page - typed statement listed as page 91 and his hand written statement listed as page 92).

- l. **Deputy James Bush, Spartanburg County Sheriff's Department.** May testify about arriving at the scene involving Deputy Rollins and the Defendant on Hillside Drive. He may also testify about looking into the Chevrolet truck that the Defendant was driving to check to see if anyone else was inside the vehicle. He observed a large quantity of cash laying on the seat. He observed that half of the money was in a blue bank bag and the rest was across the seat. The money had blood on several of the bills and blood on the door panel and down the side of the truck. (Please see Deputy Bush's statement consisting of one page - typed statement listed as page 93 and his hand written statement listed as page 94.)
- m. **Deputy M.D. Gabriel, Spartanburg County Sheriff's Department.** May testify about responding to the scene where the defendant was found on Hillside Drive and looking for the weapon used in the shooting. (Please see Deputy Gabriel's supplemental report consisting of one page - typed report listed as page 3 and his hand written statement listed as page 132.)
- n. **Deputy T. Dudzenski, Spartanburg County Sheriff's Department.** May testify about responding to the scene where the defendant was found on Hillside Drive and looking for the weapon used in the shooting and or weapon used during the robbery.
- o. **Investigator Rusty Clevenger, Seventh Circuit Solicitor's Office.** May testify about the crime scene at Nikki's Speedy Mart on Highway 221 and his observations of it. May testify about the scene where the defendant was found at 133 Hillside Drive and his observations of it. (Please see Inv. Clevenger's Progress Report consisting of four pages - listed as pages 133 thru 136.)
- p. **Senior Agent Manuel J. Ortuno, SLED.** May testify about Serology and DNA Analysis performed on blood samples from the crime scene at Nikki's Speedy Mart on Highway 221 and blood samples from the vehicle found at 133 Hillside Drive. (Please see his report listed as SLED Lab No.: L99-15422 consisting of four pages listed as pages 26 thru 29.)
- q. **Senior Agent Stephen J. Lambert, SLED.** May testify about Forensic DNA Analysis of blood samples from the crime scene at Nikki's Speedy Mart on Highway 221 and blood samples from the vehicle found at 133 Hillside Drive with the blood standards from James Mahoney and Richard Moore. (Please see his report listed as SLED Lab No.: L99-15422 consisting of three pages listed as pages 161 thru 163.)
- r. **Senior Agent Ted M. Shealy, SLED.** May testify about Latent Print Department Analysis from the three pistols collected by the Spartanburg County Sheriff's Department and the four-way tire iron collected from the crime scene at Nikki's Speedy Mart on Highway 221. (Please see his report listed as SLED Lab No.: L99-15422 consisting of two pages listed as pages C14 - C15).
- s. **Lt. Joseph D. Powell, SLED.** May testify about the GSR and Trace Analysis from the GSR Kit done on the Defendant and James Mahoney. Also, he may testify about the Trace Analysis of a black metal file holder with hole, blue and white striped shirt, and a white shirt button. (Please see his report listed as SLED Lab No.: L99-15422 consisting of two pages listed as pages C16 - C17).

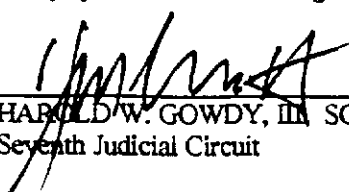
④ jmc

- t. **Lisa G. Kiser and Lt. Emily B. Reinhart, SLED.** May testify about the processing of evidence received from the Spartanburg County Sheriff's Department. (Please see their report listed as SLED Lab No.: L99-15422 consisting of two pages listed as pages C18 C19).
- u. **Senior Agent Kenneth H. Whitler, SLED.** May testify about analysis of the firearms, cartridges, bullets, jacket fragments, steel balls, and bullet cores found at the crime scene at Nikki's Speedy Mart on Highway 221, from the body of James Mahoney, and firearm found near Highway 9 - California Avenue. (Please see his report listed as SLED Lab No.: L99-15422 consisting of five pages listed as pages C 20 - C 24.)
- v. **Deputy Jane Millwood, Spartanburg County Sheriff's Department.** May testify about evidence placed into the care and control of the Spartanburg County Sheriff's Department evidence room.
- w. **Deputy Robert Rosenberg, Spartanburg County Sheriff's Department.** May testify about evidence placed into the care and control of the Spartanburg County Sheriff's Department evidence room.
- x. **Investigator Ken Bishop, Spartanburg County Coroner's Office.** May testify about his observations at the crime scene at Nikki's Speedy Mart on Highway 221, as well as the autopsy of James Mahoney. (Please see his report consisting of two pages listed as pages 128 - 129).
- y. **Dr. J. David Wren, M.D., Spartanburg Regional Medical Center.** May testify to the autopsy of James Mahoney and his findings from the autopsy. (Please see his autopsy report consisting of seven pages listed as pages 122 - 127).
- z. **Terry Dean Hadden, Spartanburg, South Carolina.** May testify to the events occurring at Nikki's Speedy Mart on Highway 221 in which the Defendant committed the Armed Robbery and the Murder of James Mahoney. He also may testify to the Defendant also shooting at him in Nikki's Speedy Mart. Mr. Hadden may testify to the Defendant saying "Get your Goddamn hands up" to James Mahoney prior to the shooting between the Defendant and Mr. Mahoney. Mr. Hadden also stated that the Defendant told him [Hadden] "I told you not to move" and pointed a gun at him and fired one shot toward him. (Please read the incident report consisting of two pages by Deputy Miller listed as pages 1-2 [typed] and pages 130-131 [handwritten] and the two written statements of Terry Dean Hadden listed as pages 71 thru 75 of the discovery. (The first statement consists of one page typed and one page handwritten. The second statement consists of two pages typed and two pages handwritten).
- aa. **George Gibson, Spartanburg, South Carolina.** May testify to the Defendant pulling a vehicle into his yard with loud mufflers and banging on his door. When he went to the door, the defendant that he knew as "Mo" said for him to "open the door." Mr. Gibson opened the door, but left the screen door locked. He turned on the porch light and saw the Defendant. The Defendant told him that he had been shot and needed to go to the hospital. The Defendant had a T-shirt wrapped around his left arm and it had blood on it. He asked him what he came here for and he said "that he had done something wrong and needed to go to the hospital and also to turn himself in." Mr. Gibson told him "No, he couldn't come in and he could drive himself to the hospital." The Defendant then went back and got into his truck. He tried to back out of the driveway, but he ran into a telephone pole. Mr. Gibson then saw a police car drive by and saw the Defendant get out of the truck and turn himself into the officer. (Please see Mr. Gibson's statement consisting of one page. Typed page is listed as page 78. Handwritten page is listed as page 79).

- bb. **Jeff Goodwin, Spartanburg, South Carolina.** May testify about finding a gun in the middle of Highway 9 near California Avenue and calling 911. (Please see Mr. Goodwin's statement consisting of one page. Typed page is listed as page 81. Handwritten page listed as page 82).
- cc. **Keith Fowler and Nannette Fowler, Spartanburg, South Carolina.** May testify about the crime scene at Nikki's Speedy Mart. They may testify about the bank bag being gone from the store. (Please see Mr. Fowler's two statements consisting of one page apiece listed as page 84- typed and page 85 handwritten and another typed statement on page 86 and handwritten on page 87)
- dd. **Lynda Byrd, Spartanburg, South Carolina.** May testify about the Defendant living with her and her owning a 1971 Chevrolet truck and a set of the keys for the truck being left on the kitchen counter in her house. (Please see Ms. Byrd's statement consisting of one page- type on page 88 and handwritten on page 89). A copy of the truck's S.C. vehicle registration is listed on page 90 of the discovery.
- ee. **Lori Gilbert, Spartanburg, South Carolina.** May testify about observing the Defendant driving the truck by her house twice on the day of the murder. (Please see Lori Gilbert's statement consisting of one page- type on page 96 and handwritten on Page 97).
- ee. **Kenneth Warren Harris, Spartanburg, South Carolina.** May testify about a conversation that he had with the Defendant in the Spartanburg County Detention Center. The Defendant told him about the shooting at Nikki's Speedy Mart. He said that the Defendant said that he went inside Nikki's and he held the man at gunpoint and asked the man for all the money. The man then hesitated and then he started shooting the man. He didn't think anyone was in the store, but there was a witness inside the store at the poker machine. (Please see Kenneth Warren's statement consisting of five pages listed as pages 154 thru 158).
- ff. Any Department of Corrections Official or Officials, who may be responsible for maintaining records on the Defendant.
- gg. Any parole/probation officer or agent responsible for the past supervision of the Defendant, or person responsible for maintaining records on the Defendant.
- hh. Any person responsible for the keeping of any record which relates to any prior conviction of the Defendant in General Sessions Court or any adjudication by a family court.

That if the State intends to rely on any additional evidence in support of any aggravating circumstances, it shall notify the Defendant and his attorneys prior to the sentencing of the Defendant.

Spartanburg, South Carolina
September 14, 2001


HAROLD W. GOWDY, III SOLICITOR
Seventh Judicial Circuit

MARK HAMMOND

2001 SEP 14 PM 2:03

FILED
CLERK OF COURT
SPARTANBURG COUNTY

② 

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 IN THE COURT OF GENERAL SESSIONS
 FOR THE SEVENTH JUDICIAL CIRCUIT
 INDICTMENT NO.: 2000-GS-42-617

STATE OF SOUTH CAROLINA,)
)
 VS.)
)
 RICHARD BERNARD MOORE,)
)
)
)
 DEFENDANT.)
)
)

**SUPPLEMENTAL NOTICE OF
 ADDITIONAL EVIDENCE IN SUPPORT OF
 AGGRAVATING CIRCUMSTANCES**

TO THE DEFENDANT AND HIS ATTORNEYS: R. Keith Kelly, Michael Morin, and the Spartanburg County Public Defender's Office:

YOU WILL PLEASE TAKE FURTHER NOTICE, that the State of South Carolina acting by and through the Solicitor for the Seventh Judicial Circuit, Harold W. Gowdy, III, will rely upon the following evidence in support of aggravating circumstances in seeking the death penalty against the defendant, Richard Bernard Moore:

1. Any prior criminal convictions or juvenile adjudications of the defendant.
2. Any record, report, or other document relating to any misconduct by the defendant, or disciplinary action taken against the defendant, during any period of incarceration.
3. Any record, report, or other document relating to action taken against the defendant, during any period of parole or probation.
4. Pictures, videotape, and diagrams of the crime scene and of the victim, James Mahoney.
5. A pistol recovered in the vicinity of the crime scene believed to be used in the crimes that the defendant is charged with; and any shells, shell fragments, casings, believed to have been fired by said pistol.
6. The clothing believed to have been worn by the defendant at the time he allegedly committed the crimes he is charged with, as well as items in his control such as his wallet and the items located in them.
7. The clothing believed to have been worn by the victim at the time that the defendant allegedly committed the crimes that he is charged with.
8. The Spartanburg County Sheriff's Department Forensic Unit Case Report.
9. Blood Samples from the Crime Scene and the Defendant's Chevrolet truck, as well as blood samples from the Defendant and the victim.
10. Testimony and the autopsy report of Dr. J. David Wren, MD, regarding his examination of James Mahoney.
11. Items and effects taken from the victim and the business at the crime scene.
12. Any SLED report prepared by any SLED agents listed as witnesses below.

13. Any written or oral statements of the defendant.
14. Diagrams, maps, or aerial photographs showing surrounding area of the crime scene.
15. Items and effects taken from the Chevrolet pick-up truck driven by the Defendant.
16. Defendant's NCIC Information.
17. The testimony of the following persons:
 - a. Any Department of Corrections Official or Officials, who may be responsible for maintaining records on the Defendant.
 - b. Any parole/probation officer or agent responsible for the past supervision of the Defendant, or person responsible for maintaining records on the Defendant.
 - c. Any person responsible for the keeping of any record that relates to any prior conviction of the Defendant in General Sessions Court (including all Circuit Courts from other states of similar jurisdiction such as Michigan) or any adjudication by a family court in any state.
 - d. **Investigator Rusty Clevenger, Seventh Circuit Solicitor's Office.** He may additionally testify about an incident of August 10, 1995 concerning an incident in which the Defendant, Richard Bernard Moore along with Irvin Earl Keller attempted to pick up merchandise on the side of Bryant Road in Spartanburg County. Sheriff's Deputies Greg Israel and Brent Yelton approached both subjects at the stolen items along Bryant Road. Richard Moore jumped into the truck and sped off and hit Mr. Keller. Officer Israel tried to stop the truck. Richard Moore slowed down the truck, exited the vehicle and ran away on foot. Deputies tried to apprehend Richard Moore but were unable to. Mr. Moore was charged with Driving Under Suspension 3rd offense. (Please see Sheriff's Department Incident Report dated 8/10/95).
 - e. **Officer R.D. Burke, Spartanburg Department of Public Safety.** He may testify about Richard Moore being arrested for Driving Under Suspension 3rd offense and Habitual Traffic Offender on 2/6/93. (Please see incident report dated 2/6/93 from the Spartanburg Public Safety Department).
 - f. **Officer M.W. Alexander, Spartanburg Department of Public Safety.** He may testify about Richard Moore being arrested for Driving Under Suspension 2nd offense and Possession of Marijuana on 9/29/92. (Please see incident report dated 9/29/92 from the Spartanburg Public Safety Department).
 - g. **Sergeant Raymond Gist, Spartanburg County Sheriff's Department.** He may testify about Richard Moore being arrested for Driving Under Suspension 3rd on 11/05/94. (Please see incident report dated 11/05/94 from the Spartanburg County Sheriff's Department).
 - h. **Trooper M.C. Bolding, SCHP.** He may testify about Richard Moore being charged with DUI 2nd offense and Escape on 6/26/92. (Please see incident report dated 6/26/92 from the SCHP).
 - i. **Trooper K.R. Aycock, SCHP.** He may testify about Richard Moore being charged with Driving Under Suspension 6th offense on 7/7/95. (Please see incident report dated 7/7/95 from the SCHP).

J. **Officer J. Biehl and Lisa K. Coupe, Mt. Clemens Police Department.** They may testify about Police Records from the Mount Clemens Police Department in Michigan concerning an incident on 10/22/86 in which Richard Moore was charged with B&E of Business, Stolen Handguns, Resisting Arrest, and Fleeing. (Please see letter dated September 19, 2001 from Lisa Coupe with pages 1 thru 19 attached to it). They may also testify about an Armed Robbery charge dated 9/30/86 in which Richard Moore was also charged with Armed Robbery. (Please see letter dated September 19, 2001 from Lisa Coupe with pages 1 thru 14 attached to it.)

J. **Angela Mayes Caree, Clinton T.W.P., Michigan 48036.** She may testify about Richard Moore breaking into her home and stealing items from her home. (Please see voluntary statement given by Mrs. Caree).

J. **Agent David H. Saad, Macomb County, Michigan.** He may testify about a Presentence Investigative Report done on Richard Moore on 5/15/87 for the Honorable Michael D. Schwartz in the Macomb County Court. (Please see Presentence Investigation Report, Basic Information Report, and Sentencing Information Report attached to letter from Kathleen Schaefer, Program Manager, Macomb County Circuit Court Probation consisting of 10 pages).

m. **Lori (Gilbert) Turner, Boiling Springs, South Carolina.** She may testify to statements made by Richard Moore prior to the Murder and Armed Robbery of James Mahoney. One or two days prior to the crime, Richard Moore approached her and told her that "he was broke and didn't know what he was going to do."

n. **George Gibson, Spartanburg, South Carolina.** He may testify to statements made by Richard Moore prior to the crime. Mr. Moore came to Mr. Gibson's residence and asked for him "to take him somewhere to get some crack (cocaine)." He also told Mr. Gibson that he did not have any money and need to borrow some money to get some. Mr. Moore also told Mr. Gibson that he would be getting paid later that night. Mr. Gibson did not take him to get any crack. Later, Mr. Moore came back to Mr. Gibson's residence. When Mr. Gibson opened the door, Mr. Moore told him that "he wanted to get some stuff and that he had plenty of money to get it." Mr. Gibson then saw that Mr. Moore had been hurt when he saw blood on his left arm wrapped with a T-shirt and told him, "Man, you need to go to the hospital." Mr. Moore replied, "I do need to go to the hospital." Mr. Moore also stated that, "He had done something wrong and needed to turn himself in." Mr. Gibson told Mr. Moore that he could not come in and he could drive himself to the hospital. Mr. Moore got back into his truck and tried to back out of the driveway, but he ran into a telephone pole. The police came by and Mr. Moore got out of the truck and turned himself into the officer.

o. **Jeannine Smith, RN, SRMC.** She may testify to her observations and the treatment of Richard Moore at the SRMC ER. Mrs. Smith noted on the Emergency Department intake sheet that Mr. Moore had a gunshot wound in his left arm and that the patient (Mr. Moore) had alcohol (ETOH) and cocaine present. She also noted an odor of alcohol (ETOH) on Mr. Moore. (Please see SRMC Emergency Department Records consisting of 11 pages).

OK p. **Michelle Moss, SRMC.** She may testify that she drew Mr. Moore's blood pursuant to a search warrant executed by Inv. Steve Denton.

q. **Dr. Damon Gatewood, SRMC.** He may testify to his observations and the treatment of Richard Moore at the SRMC ER. Dr. Gatewood may testify to Mr. Moore denying any recollection of the events leading to or involving his injury at the time of interview concerning the condition of Mr. Moore. (Please see SRMC Emergency

Department Records consisting of 11 pages- specifically the Progress Notes of Dr. Gatewood.)

✓ f. **David Kivett, Spartanburg, South Carolina.** He may testify to Richard Moore robbing Rack Room Store in which he was the assistant manager on 9/13/91 and how the event effected his life.

✓ s. **Valerie Elaine Wisniewski, Spartanburg, South Carolina.** She may testify to Richard Moore robbing the Rack Room Store in which she was an employee on 9/13/91 and how the event affected her life.

✓ 1. **Ricky Allen Forrester, Inman, South Carolina.** He may testify to Richard Moore attempting to grab his girlfriend's pocket book (Michelle Anne Crowder) on 9/13/91. He may also testify about Mr. Moore hitting him in the left rib cage area when he tried to stop Mr. Moore from taking the pocket book. He may testify about Mr. Moore telling Ms. Crowder to "let go of the damn pocket book" and hitting Ms. Crowder on the right side of her head. He may testify on how the event affected his life.

✓ u. **Michelle Anne Crowder, Columbia, South Carolina.** She may testify to Richard Moore attempting to grab her pocket book on 9/13/91. She may testify about Mr. Moore trying to run with the pocket book, and when she would not let go of the pocket book, Mr. Moore said "Let go of the damn pocket book" and hit her on the right side of her head. When her boyfriend, Ricky Allen Forrester, tried to stop Mr. Moore, Mr. Moore hit him in the left rib cage area and ran away. She may testify about how the event affected her life.

✓ v. **David Keller, Spartanburg, South Carolina.** He may testify about Richard Moore striking him over the left eye with a beer bottle on 5/10/95 and how the event affected his life.

✓ w. **William Calvin Sterling, New Haven, Michigan.** He may testify about Richard Moore and two other individuals (Michael Moore- the Defendant's brother and Tommy Thomas) robbing him of his money while all three of them were armed with pistols on 10/3/86. He may also testify about being struck a number of times in the head and facial area with a gun during the robbery. He may also testify about the effect of this robbery and aggravated assault on his life. 5

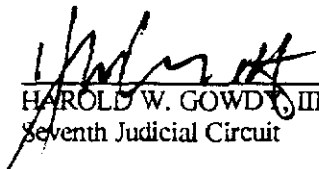
✓ x. **Lt. C Peace, Mount Clemens Police Department, Mount Clemens, Michigan.** He may testify about the interview of Richard Moore concerning the Armed Robbery and Aggravated Assault on William Calvin Sterling on 10/3/86 as well as his investigation of this crime and the effect on the victim, William Calvin Sterling. 6

✓ y. **Lt. Michael Convery, Mount Clemens Police Department, Michigan.** He may testify about the incident on 10/22/86 concerning the B&E of the Broadway Market in Mt. Clemens, Michigan involving Richard Moore. He may testify about arresting of Mr. Moore in connection with the Breaking and Entering and Mr. Moore resisting his arrest and fleeing from Lt. Convery as well as other police officers. He may also testify about the breaking and entering, stolen handguns used in the crime, and the Resisting Arrest-Fleeing. (Please see incident report from Mount Clemens Police Department dated 10/22/86), 7

✓ z. **Keith Fowler, Spartanburg, South Carolina.** He may testify concerning the impact of the death of James Mahoney on him. He may also testify about James Mahoney's work habits, his character, and his reputation.

- aa. **Nikki Fowler, Spartanburg, South Carolina.** She may testify about the impact of the death of James Mahoney on her. She may also testify about James Mahoney's work habits, his character, and his reputation.
- bb. **Ann Yarborough, Spartanburg, South Carolina.** She may testify about the impact of the death of James Mahoney on her. She may also testify about James Mahoney's work habits, his character, and his reputation.
- cc. **Kathy Pinson, Spartanburg, South Carolina.** She may testify about the impact of the death of James Mahoney on her. She may also testify about her brother's relationship with her and his family. She may testify about his work habits, his character, and his reputation.
- dd. **Allison Pinson, Spartanburg, South Carolina.** She may testify about the impact of the death of James Mahoney on her and their family.
- ee. **Virginia Mahoney.** She may testify about the impact of her son's death on her. She may also testify about her son's relationship with her and his family. She may testify about his work habits, his character, and his reputation.
- ff. **Jack Mahoney, Texas.** He may testify about the impact of his brother's death on him. He may also testify about his relationship with him and his family. He may testify about his work habits, his character, and his reputation.
- gg. **James J. Mahoney.** He may testify about the impact of James Mahoney's death on him.
- hh. **Richard Armisted.** He may testify about the impact of James Mahoney's death on him.
- ii. **Kenneth Warren Harris, Kirkland Correctional Institute.** He may testify to threats communicated to him by Mr. Moore while housed at the Spartanburg County Detention Center. This testimony is in addition to the testimony from the five (5) page statement given to law enforcement on 2/21/2000.
- jj. **Jeff Mahoney.** He may testify about the impact of James Mahoney's death on him.

That if the State intends to rely on any additional evidence in support of any aggravating circumstances, it shall notify the Defendant and his attorneys prior to the sentencing of the Defendant.


 HAROLD W. GOWDY III, SOLICITOR
 Seventh Judicial Circuit

October 5, 2001
 Spartanburg, South Carolina

2001 OCT -5 PM 4:45
 MARK HARRISON
 CLERK OF COURT
 SPARTANBURG COUNTY



1784

State of South Carolina
Circuit Court of the Seventh Judicial Circuit

GARY E. CLARY
JUDGE

E. FLOYD BAKER BLVD. ROOM 208
POST OFFICE BOX 789
GAFFNEY, SOUTH CAROLINA 29342-0789
Phone: (864)487-2582
FAX: (864)487-2773
E-mail : gclaryj@scjd.state.sc.us

April 3, 2001

Michael D. Morin, Esquire
Assistant Public Defender ✓
180 Magnolia Street
Spartanburg, SC 29306

James D. Willingham, II, Esquire
Assistant Solicitor
Seventh Judicial Circuit
Cherokee County Courthouse
Gaffney, SC 29340

R. Keith Kelly, Esquire
P. O. Box 2804
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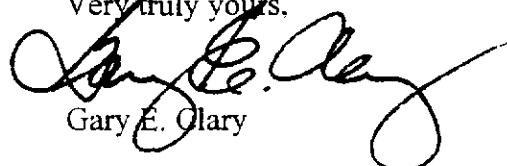
Re: The State v. Richard B. Moore
00GS-42-617, 618 and 619

Counselors:

Enclosed please find a copy of the juror questionnaire I propose each juror in above referenced matter answer. Please review the same and direct any questions or suggestions to me.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,


Gary E. Clary

GEC/vg
Enclosure

THE PRESIDING JUDGE REQUESTS THAT YOU ANSWER
TO THE BEST OF YOUR KNOWLEDGE THE FOLLOWING QUESTIONS
AND RETURN ALONG WITH THE JUROR QUESTIONNAIRE CARD (FORM)

1785

(NOTE: IF AT ANY TIME, YOU NEED ADDITIONAL SPACE IN ORDER TO PROPERLY ANSWER ANY GIVEN QUESTION, PLEASE ATTACH A SEPARATE SHEET.)

1. NAME _____
2. DATE OF BIRTH _____
3. ADDRESS _____
4. PLACE OF BIRTH _____
5. PLEASE NAME THE SCHOOLS YOU HAVE ATTENDED AND THE GRADE OR LEVEL COMPLETED
 - (A) GRADE SCHOOL _____
 - (B) JUNIOR HIGH _____
 - (C) HIGH SCHOOL _____
 - (D) COLLEGE _____
 - (E) VOCATIONAL OR TRADE SCHOOL _____
 - (F) PROFESSIONAL SCHOOL _____
 - (G) GRADUATE SCHOOLS _____
 - (H) DEGREES OR DIPLOMAS YOU HOLD _____
6. HOW LONG HAVE YOU LIVED IN LEXINGTON COUNTY, SOUTH CAROLINA? _____
7. HAVE YOU EVER LIVED OUTSIDE THE SOUTHEASTERN U. S.? _____
8. MARITAL STATUS:

☐	MARRIED - NUMBER OF YEARS _____
☐	NEVER MARRIED
☐	SEPARATED
☐	DIVORCED
☐	WIDOWED
9. IF MARRIED, SPOUSE'S NAME _____
10. SPOUSE'S OCCUPATION _____
11. SPOUSE'S EDUCATION LEVEL _____
12. NUMBER OF CHILDREN AND THEIR AGES
 - GIRLS _____
 - BOYS _____

13. HOW WOULD YOU DESCRIBE THE CONDITION OF YOUR HEALTH? _____

1780

A. IF YOU HAVE ANY PHYSICAL OR MEDICAL PROBLEMS WHICH WOULD MAKE JURY DUTY DIFFICULT OR WHICH REQUIRE ACCOMMODATION, PLEASE EXPLAIN HERE.

14. HAVE YOU EVER BEEN A WITNESS IN A CRIMINAL CASE? _____

15. HAVE YOU PREVIOUSLY SERVED ON A JURY? [] YES [] NO

IF YES, WHAT TYPE OF CASE WAS IT? [] CIVIL [] CRIMINAL

16. HAVE YOU EVER SERVED ON A GRAND JURY? _____

17. HAVE YOU EVER BEEN IN ANY BRANCH OF THE ARMED FORCES OF THE UNITED STATES (INCLUDING THE MILITARY RESERVES, NATIONAL GUARD OR ROTC?) [] YES [] NO.

(A) IF YES, PLEASE ANSWER THE FOLLOWING:

(a) IN WHAT BRANCH? _____

(b) WHAT WAS YOUR RANK AT DISCHARGE? _____

18. PLEASE ANSWER THE FOLLOWING ABOUT YOUR EMPLOYMENT. IF NOT CURRENTLY EMPLOYED, PLEASE ANSWER THE FOLLOWING ABOUT YOUR LAST EMPLOYMENT:

(A) WHERE DO YOU WORK? _____

(B) HOW LONG HAVE YOU WORKED THERE? _____

(C) WHAT IS YOUR CURRENT JOB TITLE? _____

(D) HOW LONG HAVE YOU HAD THAT TITLE? _____

(E) PLEASE DESCRIBE YOUR JOB RESPONSIBILITIES. _____

(F) WHAT WAS YOUR OCCUPATION BEFORE PRESENT EMPLOYMENT? _____

19. WHAT IS YOUR RELIGIOUS AFFILIATION, IF ANY? _____

20. HAVE YOU, ANY FAMILY MEMBERS OR CLOSE FRIENDS EVER : (CHECK ALL THAT APPLY)

[] BEEN AN EMPLOYEE OF ANY LAW ENFORCEMENT AGENCY (LOCAL, STATE, FEDERAL, MUNICIPAL, OTHERWISE)?

[] SERVED AS A MEMBER OF AN AUXILIARY OR POLICE RESERVE LAW ENFORCEMENT BRANCH SUCH AS AN AUXILIARY DEPUTY SHERIFF OR CONSTABLE?

[] SERVED AS A MILITARY POLICE OFFICER?

[] APPLIED FOR A JOB IN LAW ENFORCEMENT?

IF YOU CHECKED ANY OF THE ABOVE, PLEASE EXPLAIN : _____

1787

21. HAVE YOU OR ANY MEMBER OF YOUR FAMILY A MEMBER OF ANY GROUP WHICH ENCOURAGES STRICT ENFORCEMENT OF CRIMINAL LAWS OR MODIFICATION OF OUR PRESENT LAWS SUCH AS MOTHERS AGAINST DRUNK DRIVERS (MADD), CITIZENS AGAINST VIOLENCE (CAVE)?

[] YES [] NO

22. HAVE YOU, ANY FAMILY MEMBERS OR CLOSE FRIENDS EVER BEEN THE VICTIM OF OR WITNESSED ANY CRIME (WHETHER OR NOT THE CRIME WAS REPORTED)?

[] YES [] NO

IF YES,

- (A) PLEASE DESCRIBE THE CRIME(S) AND INDICATE WHO WAS INVOLVED EITHER AS A WITNESS OR VICTIM: _____

- (B) WAS ANYONE ARRESTED? [] YES [] NO.

- (C) IF THERE WAS AN ARREST, WHAT WAS THE OUTCOME? _____

- (D) IF THERE WAS A TRIAL, DID YOU TESTIFY? [] YES [] NO

23. HAVE YOU OR ANY FAMILY MEMBER EVER BEEN ARRESTED OR CHARGED WITH A CRIME OTHER THAN A TRAFFIC OFFENSE? [] YES [] NO

IF YES, PLEASE EXPLAIN WHO WAS CHARGED AND WITH WHAT CRIME. _____

- A. HAVE YOU OR ANY FAMILY MEMBER EVER BEEN CONVICTED OF A CRIME OTHER THAN A TRAFFIC OFFENSE? [] YES [] NO

IF YES, PLEASE EXPLAIN WHO WAS CONVICTED OF WHAT CRIME. _____

24. PLEASE LIST ALL CLUBS, ASSOCIATIONS OR CIVIC GROUPS TO WHICH YOU BELONG. THESE MAY INCLUDE, BUT ARE NOT LIMITED TO, THE AMERICAN CIVIL LIBERTIES UNION, AMERICAN LEGION, NAACP, KIWANIS, LEAGUE OF WOMEN VOTERS, NATIONAL RIFLE ASSOCIATION, ROTARY CLUB, VETERANS OF FOREIGN WARS, OR ANY OTHER ASSOCIATION. _____

25. WHAT IS/ ARE YOUR PRIMARY SOURCE(S) OF NEWS?

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☐ TV ☐ MAGAZINE

☐ NEWSPAPER ☐ OTHER

☐ RADIO

(A) WHAT TV OR RADIO SHOWS DO YOU REGULARLY WATCH OR LISTEN TO AND WHAT MAGAZINES AND NEWSPAPERS DO YOU REGULARLY READ? _____

26. HAVE YOU DISPLAYED ONE OR MORE BUMPER STICKERS ON YOUR AUTOMOBILE IN THE LAST TWELVE (12) MONTHS?

☐ YES ☐ NO

IF YES, PLEASE LIST EACH BUMPER STICKER: _____

JUROR SIGNATURE

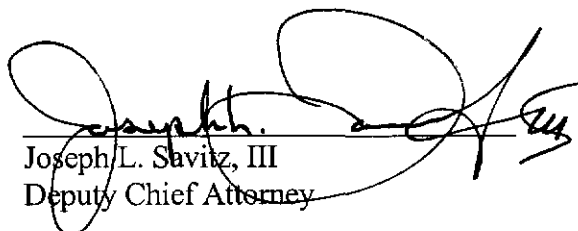
JUROR NAME - PRINTED OR TYPED

DATED: _____

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 27th, 2003



Joseph L. Savitz, III
Deputy Chief Attorney

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