STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JUN - 5 2012
S.C. Supreme Court

Appeal From Dorchester County
The Honorable Diane S. Goodstein, Circuit Court Judge

TIMOTHY DION ROGERS,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

DIANA HOLT, ESQ.
P.O. Box 6454
Columbia, South Carolina 29260
ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit
Post Office Box 1525
Orangeburg, SC 29116-1525
(803) 533-6252

ATTORNEYS FOR PETITIONER

INDEX

INDEX i

Transcript of Record - January 25th and 27th, 1994 1

Record on Appeal - The Honorable Luke N. Brown, Jr. 27

Notice of Intention to Appeal - March 3, 1994 1377

Final Brief of Appellant - July 26, 1995 1380

Final Brief of Respondent - July 7, 1995 1410

South Carolina Supreme Court Opinion No.: 24366 filed January 22, 1996 1478

Remittitur - February 7, 1996 1484

Record on Appeal - The Honorable Charles William Whetstone, Jr. 1485

Notice of Appeal - December 6, 1996 2625

Final Brief of Appellant - June 17, 1998 2633

Final Brief of Respondent - June 17, 1998 2649

South Carolina Supreme Court Affirmed Opinion No.: 25032
filed December 6, 1999 2668

Petition for Rehearing - December 20, 1999 2674

South Carolina Supreme Court Order granting Petition for Rehearing dated
January 24, 2000 2677

South Carolina Supreme Court Affirmed Opinion No.: 25032 filed
January 24, 2000 2678

Petition for Stay of Execution - February 7, 2000 2684

Remittitur - February 9, 2000 2687

Application for Post-Conviction Relief [2000-CP-18-575] - June 12, 2000 2688

Return to Application for Post-Conviction Relief [2000-CP-18-575] - July 13, 2000 2693

First Amended Application for Post-Conviction Relief - August 27, 2004 2704

Post-Conviction Relief Transcript of Record 2719

Second Amended Application for Post-Conviction Relief - March 31, 2005 3947

Post-Conviction Relief Hearing Transcript - March 25, 2005 3966

Post-Conviction Relief Hearing Transcript - Cont. - August 23, 2005 3985

Applicant's proposed Order - June 11, 2007 4068

Respondent's proposed Order - May 11, 2007 4209

Third Amended Application for Post-Conviction Relief dated May 31, 2007 4412

Motion to Strike Third Amended Application for Post-Conviction Relief - June 7, 2007 ... 4436

Order granting applicant to amend Third Application for Post-Conviction Relief dated September 22, 2008 4461

Revised Third Amended Application for Post-Conviction Relief - September 29, 2008 4464

Return to Motion to Amend Third Amended Application for Post-Conviction Relief dated October 15, 2008 4492

Order granting Applicant's Motion to Amend - June 19, 2009 4513

Respondent's proposed Order - Grounds 9 (G-H) - July 20, 2009 4523

Applicant's proposed Order - Grounds 9(G-H) - July 24, 2009 4541

South Carolina Supreme Court Order - June 17, 2010 4556

Order Granting New Sentencing, etc. - September 2, 2010 4558

Applicant's Motion to Alter or Amend - September 13, 2010 4732

Respondent's Motion to Alter or Amend - September 13, 2010 4750

Transcript of Hearing on Rule 59(e), SCRCP motions - October 8, 2010 4818

Amended Order Granting New Sentencing, etc. - December 10, 2010 4858

Notice of Appeal dated January 7, 2011 5009

THE COURT: ANYTHING FURTHER?

MR. BAILEY: WAIT ONE SECOND, JUDGE. YOUR HONOR, THE STATE WOULD REST AT THIS POINT.

THE COURT: ALL RIGHT. GO TO YOUR ROOM, MR. FOREMAN, MEMBERS OF THE JURY. LET'S TAKE A FEW MINUTES, MIGHT BE AS MUCH AS 15 MINUTES. SO YOU CAN GET A CUP OF COFFEE OR A COLD DRINK OR SOMETHING AND RELAX.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

THE COURT: I'LL HEAR ANY MOTIONS.

MR. BAILEY: NONE FROM THE STATE, YOUR HONOR.

MR. RUNYON: YOUR HONOR, WE WOULD MOVE AT THIS TIME TO -- FOR A DIRECTED VERDICT OF ACQUITTAL ON THE GROUNDS THE STATE HAS FAILED TO PROVE A PRIMA FACIE CASE. SECONDLY, WE WOULD MOVE AT THIS TIME TO---

THE COURT: PRIMA FACIE CASE FOR MURDER?

MR. RUNYON: FOR MURDER.

THE COURT: GO AHEAD.

MR. RUNYON: JUDGE, THE SUPREME COURT SAYS WE'VE GOT TO MAKE THOSE MOTIONS, I DON'T KNOW WHY, AT THIS STAGE. IN ALL SERIOUSNESS, I WOULD MOVE AT THIS TIME -- I WOULD RENEW MY MOTION TO QUASH THE NOTICE OF AGGRAVATING CIRCUMSTANCES ON THE GROUNDS THAT THE STATE HASN'T SHOWN THE CIRCUMSTANCES RECKLESS TO MAKE THE GUN

A WEAPON OR DEVICE OF HARM TO MORE THAN ONE PERSON UNDER THE AGGRAVATING CIRCUMSTANCES PROVISION IN THAT THIS WAS NOT AN INDISCRIMINATE FIRING. THIS WAS A -- IN THE SENSE THAT SUCH AS IN A SHOPPING MALL OR WHAT HAVE YOU AND I JUST DON'T THINK -- AND THERE'S NO LAW ON IT IN THIS STATE.

THERE'S PLENTY OF LAW ON IT IN PLACES SUCH AS ARIZONA AND I REALIZE THIS -- I WOULD CITE SPECIFICALLY, YOUR HONOR, STATE V. -- STATE OF ARIZONA VERSUS SMITH AT 707 PACIFIC SECOND 289 AND STATE VERSUS MCCALL AT 677 PACIFIC SECOND 920 CERTIORARI AT 467 U.S. 1220. ESSENTIALLY ALL THESE CASES INDICATE THAT THE -- THAT AS LONG AS THE SHOOTING IS NOT RANDOM OR, QUOTE, INDISCRIMINATE, THEN THE WEAPON ITSELF DOES NOT CONSTITUTE -- DOES NOT MEET THE STATUTORY REQUIREMENTS. OBVIOUSLY WHEN THAT WAS ORIGINALLY DRAWN, AN AWFUL LOT OF PEOPLE THOUGHT THAT THAT SHOULD REFER TO BOMBS AND THINGS OF THAT SORT. BUT GUNS HAVE BEEN, IN FACT, HELD WHEREIN THERE'S RANDOM AND INDISCRIMINATE SHOOTING SUCH AS IN A SHOPPING MALL OR SOMEONE WALKING INTO A CHURCH OR WHAT HAVE YOU AND, THEREFORE, WE'D MOVE TO RENEW OUR MOTION AT THIS TIME TO QUASH THAT AGGRAVATING CIRCUMSTANCE, YOUR HONOR.

WE ALSO WOULD RENEW OUR MOTION TO QUASH THE AGGRAVATING CIRCUMSTANCE AS TO THE AGE OF THE VICTIM ON

THE GROUNDS THAT THERE'S NO LEGISLATIVE INTENT EXPRESSED IN THIS STATE AND IT IS A TOTALLY ARBITRARY AND CAPRICIOUS DESIGNATION TO JUST DESIGNATE THAT IF SOMEONE DIES WHO'S UNDER ELEVEN, THEREFORE, IT'S AN AGGRAVATING CIRCUMSTANCE FOR MURDER. AND, THUS, IT MAKES EVERY HOMICIDE OF AN ELEVEN-YEAR-OLD OR UNDER ELEVEN YEARS OLD A CAPITAL CASE. THAT'S JUST NOT THE WAY IT'S APPLIED IN SOUTH CAROLINA. IT'S NOT APPLIED. MANY CHILD ABUSE CASES AND WHAT HAVE YOU WHERE THEY RESULTED IN DEATHS OF CHILDREN -- YOU KNOW, THAT WOULD MAKE EVERY DEATH OF A CHILD UNDER ELEVEN A POTENTIAL CAPITAL CASE AND IT'S SIMPLY NOT APPLIED THAT WAY IN SOUTH CAROLINA. IT DOESN'T CHALLENGE EITHER THE PROSECUTOR OR THE JURIES AND I WOULD RENEW OUR MOTION AS TO THAT GROUND.

THE COURT: ANYTHING FURTHER?

MR. RUNYON: YES, YOUR HONOR. I WOULD ANNOUNCE TO THE COURT AT THIS POINT IN TIME---

THE COURT: AS FAR AS MOTIONS ARE CONCERNED.

MR. RUNYON: NO.

THE COURT: ALL RIGHT. AS FAR AS YOUR FIRST MOTION IS CONCERNED, THERE'S AMPLE EVIDENCE. I DENY THAT MOTION. AS FAR AS YOUR SECOND MOTION IS CONCERNED, IT'S REALLY NOT APPROPRIATE AT THIS STAGE OF THE CASE. HOWEVER, IF FOR ANY REASON YOU WANT A RULING

ON IT I DENY THAT MOTION ALSO. RIGHT NOW WE'RE ONLY CONCERNED WITH GUILT OR INNOCENCE OF MURDER, BUT I DENY THAT MOTION, TOO. I THINK THE CASES -- THERE ARE AMPLE CASES THAT SUPPORT THE POSITION OF THE STATE. ALL RIGHT. ANYTHING ELSE?

MR. RUNYON: YOUR HONOR---

THE COURT: READY TO GO FORWARD?

MR. RUNYON: THERE IS ONE OTHER MATTER OF HOUSEKEEPING, YOUR HONOR. WE WOULD AT THIS TIME ANNOUNCE TO THE COURT THAT MR. -- IT'S OUR UNDERSTANDING MR. ROGERS WOULD CHOOSE NOT TO TESTIFY.

THE COURT: ALL RIGHT, SIR. MR. ROGERS, WOULD YOU STAND UP FOR ME JUST A MOMENT OR TWO? YOUR ATTORNEY TELLS ME THAT YOU HAVE DECIDED NOT TO TESTIFY WHICH IS YOUR RIGHT UNDER THE CONSTITUTION, AND IF YOU DECIDE NOT TO TESTIFY I WILL TELL THAT JURY THAT THEY CAN'T EVEN DISCUSS IT. THEY CANNOT HOLD IT AGAINST YOU. YOU'RE MERELY EXERCISING ONE OF YOUR RIGHTS. BY THE SAME TOKEN, YOU HAVE A RIGHT TO TESTIFY IF YOU WANT TO. IS IT YOUR DECISION THAT YOU WILL NOT TESTIFY?

MR. ROGERS: YES, SIR, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. YOU MAY BE SEATED. ALL RIGHT, SIR. ARE YOU READY TO GO FORWARD?

MR. RUNYON: YOUR HONOR, WE WOULD ANNOUNCE TO

THE JURY THAT OR WE WOULD ANNOUNCE IN THE PRESENCE OF THE JURY THAT THE DEFENSE WOULD REST.

THE COURT: ALL RIGHT, SIR. DON'T INTEND TO PUT UP ANY TESTIMONY.

MR. RUNYON: NO, SIR.

THE COURT: OH, ALL RIGHT, SIR. NOW, SO THAT I WON'T HAVE TO BRING THE JURY BACK OUT AGAIN, I'LL GIVE YOU A FEW MINUTES. I'LL TAKE A BREAK IN JUST A MOMENT OR TWO. THE ONLY THING I SEE TO CHARGE IN THIS CASE SO FAR IS MY GENERAL CHARGE WHICH YOU'RE FAMILIAR WITH, A CHARGE ON EXPERTS. I DON'T SEE ANY CIRCUMSTANTIAL EVIDENCE UNLESS YOU SEE SOMETHING THAT I HAVEN'T SEEN. DO YOU SEE ANY CHARGE ON CIRCUMSTANTIAL EVIDENCE? I'M MERELY -- THIS IS JUST KIND OF A HOUSEKEEPING THING.

MR. RUNYON: YOU KNOW, YOUR HONOR, I AGREE WITH THE COURT. I DON'T SEE---

THE COURT: ALL RIGHT, SIR.

MR. RUNYON: ---WHERE CIRCUMSTANTIAL EVIDENCE IS. . .

THE COURT: THE NEXT ONE IS STATEMENT OR CONFESSION.

MR. RUNYON: YES, SIR.

THE COURT: I'LL GIVE -- I THINK WHAT I'LL DO UNLESS YOU WANT ME TO -- I CAN USE THE WORD CONFESSION,

BUT I HAVE FASHIONED A CHARGE ON STATEMENT. WOULD YOU RATHER I USE STATEMENT RATHER THAN CONFESSION?

MR. RUNYON: ABSOLUTELY, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. THEN I'LL GIVE SOME INSTRUCTIONS TO THE JURY ON FAILURE TO TAKE THE STAND, A CHARGE ON MURDER. IS THERE ANYTHING ELSE THAT YOU CAN THINK OF?

MR. RUNYON: YES, SIR. I WOULD REQUEST A CHARGE AS TO MANSLAUGHTER AND A CHARGE AS TO INVOLUNTARY MANSLAUGHTER, YOUR HONOR.

THE COURT: WELL. . .

MR. RUNYON: I THINK UNDER STATE V. DRAYTON THE MERE FACT THAT THE STATEMENT THAT WAS INTRODUCED BY THE STATE SAYS -- USED THE WORD ACCIDENT---

THE COURT: WELL, BUT IT'S A LITTLE DIFFERENT AS FAR AS. . . I'LL LET YOU ADDRESS IT IF YOU WANT TO, SOLICITOR.

MR. BAILEY: I'LL SIT DOWN.

THE COURT: BUT WE ALL KNOW -- WE ALL KNOW THE REQUIREMENTS OF INVOLUNTARY MANSLAUGHTER.

MR. RUNYON: YES, SIR.

THE COURT: AND I CAN'T SEE WHERE IT WOULD APPLY IN THIS PARTICULAR CASE, COUNSELOR, THE INVOLUNTARY MANSLAUGHTER. MY INSTRUCTION TO THE JURY, IF IT WERE APPLICABLE, WOULD READ SOMETHING OF THIS

NATURE. LET'S SEE.

MR. RUNYON: COULD I INQUIRE OF THE COURT AS TO WHETHER OR NOT THE COURT WOULD CHARGE MANSLAUGHTER UNDER THE CIRCUMSTANCES OF THIS CASE?

THE COURT: WHAT'S YOUR POSITION, SOLICITOR?

MR. BAILEY: YOUR HONOR, IF HE'S ASKING FOR A CHARGE ON ACCIDENT WHICH IS THE ONLY---

THE COURT: NO, HE'S ONLY CHARGING MANSLAUGHTER NOW. THAT'S THE ONLY THING WE'RE ADDRESSING.

MR. BAILEY: CAN I ASK IF HE'S GOING TO ASK FOR A CHARGE ON ACCIDENT?

MR. RUNYON: NO.

THE COURT: OH, I WOULDN'T CHARGE. . .

MR. RUNYON: WE CAN'T.

THE COURT: HE SAYS HE'S NOT GOING TO ASK FOR THAT, SOLICITOR.

MR. RUNYON: LET ME SAY THIS. FOR THE RECORD, I DON'T THINK I CAN ASK FOR A CHARGE AND I DON'T THINK THE COURT CAN GIVE A CHARGE ON ACCIDENT WHEN YOU'RE NOT GOING TO CHARGE INVOLUNTARY MANSLAUGHTER. AND SO, THEREFORE---

THE COURT: WELL, YOU TELL ME -- TELL ME HOW POSSIBLY WOULD INVOLUNTARY MANSLAUGHTER APPLY IN THIS CASE. HERE IS MY INSTRUCTIONS IF I DECIDED TO CHARGE

MANSLAUGHTER WHICH YOU'RE FAMILIAR WITH. INVOLUNTARY I'M TALKING ABOUT. INVOLUNTARY MANSLAUGHTER IS DEFINE AS THE UNINTENTIONAL KILLING OF ANOTHER BY A PERSON ENGAGED AT THE TIME IN DOING SOME ACT IN RECKLESS DISREGARD OF THE SAFETY OF OTHERS. FOR EXAMPLE, THE KILLING OF A PERSON BY RECKLESS USE OF A DANGEROUS INSTRUMENT SUCH HAS GUN, KNIFE, OR AUTOMOBILE IN RECKLESS DISREGARD OF THE SAFETY OF OTHERS. AND IN INVOLUNTARY MANSLAUGHTER THERE'S THE ABSENCE OF BOTH MALICE AND INTENT. WHAT ABOUT THAT?

MR. RUNYON: WELL, WE ASK FOR IT, YOUR HONOR, AND WE ASK FOR BOTH VOLUNTARY MANSLAUGHTER CHARGE AND INVOLUNTARY MANSLAUGHTER CHARGE. I THINK THE COURTS HAVE---

THE COURT: WHAT'S YOUR POSITION, SOLICITOR?

MR. BAILEY: YOUR HONOR, COULD I HAVE A FEW MINUTES TO KIND OF PONDER THAT? MAYBE ABOUT FIVE MINUTES?

THE COURT: ALL RIGHT, SIR. WELL, LET'S TAKE ABOUT TEN MINUTES AND YOU LET ME KNOW HOW YOU FEEL. DO YOU KNOW ANYTHING OTHER THAN MURDER, MANSLAUGHTER, INVOLUNTARY MANSLAUGHTER? HE SAYS HE DOESN'T SEE ANY CIRCUMSTANTIAL EVIDENCE. THAT'S REALLY ABOUT ALL THAT I SEE.

MR. RUNYON: I WOULD AGREE WITH THE COURT. I

MEAN, THE QUESTION IS IS WHICH OF THOSE TWO CHARGES OR IF THE COURT -- I DON'T PRESUME, BUT IF THE COURT WOULD CHARGE MANSLAUGHTER AND CHARGE INVOLUNTARY.

THE COURT: ALL RIGHT, SIR. SOLICITOR, LET'S TAKE ABOUT TEN MINUTES.

MR. BAILEY: ALL RIGHT.

THE COURT: AND YOU CAN DISCUSS THE CASE AND LET ME KNOW. COURT'S IN RECESS FOR ABOUT TEN MINUTES. EVERYONE ELSE REMAIN SEATED FOR THE TIME BEING IF YOU WILL, PLEASE. ALL RIGHT. COURT'S IN RECESS.

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. BE SEATED, PLEASE. ALL RIGHT. SOLICITOR, HE'S ASKED FOR A CHARGE, AS I UNDERSTAND IT, ON MURDER, MANSLAUGHTER, AND INVOLUNTARY MANSLAUGHTER. WHAT'S YOUR POSITION?

MR. BAILEY: YOUR HONOR, WITH RESPECT TO ANY CHARGE ON VOLUNTARY MANSLAUGHTER, OF COURSE, THAT IS AN INTENTIONAL KILLING IN SUDDEN HEAT OF PASSION UPON SUFFICIENT LEGAL PROVOCATION. I SEE NOTHING IN THE RECORD TO SHOW ANY SUFFICIENT LEGAL PROVOCATION TO KILL SOMEBODY WITH A DEADLY WEAPON LIKE A PISTOL. SO, I WOULD OPPOSE THE CHARGE ON INVOLUNTARY - EXCUSE ME - ON VOLUNTARY MANSLAUGHTER.

THE COURT: COUNSELOR?

MR. RUNYON: YOUR HONOR, AS IT RELATES TO THAT, THE TESTIMONY IS -- THE TESTIMONIAL EVIDENCE IS NOT IN THE RECORD. THE STATE HAS SUBMITTED MY CLIENT'S STATEMENT. THAT STATEMENT WOULD MEET -- WE WOULD SUBMIT MEETS THE BARE MINIMUM FOR SHOWING WORDS WHICH PROVOKE A CONFRONTATION WHICH RESULTED IN, ACCORDING TO THAT STATEMENT, WHICH RESULTED IN MORE OF A FIGHT THAN WHAT THE STATE'S WITNESSES HAVE SAID. NOW -- AND SO I THINK WE'VE GOT IN THE RECORD THAT STATEMENT WHICH AS A BARE MINIMUM SATISFIES THE REQUIREMENTS FOR THE CHARGE TO VOLUNTARY MANSLAUGHTER.

AND THEN, OF COURSE, THE STATEMENT ITSELF DOES CLEARLY SAY THAT THE SHOOTING OF THE CHILD WAS AN ACCIDENT, USES THAT TERMINOLOGY. I WOULD ONCE AGAIN REFER THE COURT TO STATE V. DRAYTON. IN BOTH OF THE DRAYTON CASES, DRAYTON ONE AND DRAYTON TWO, THE SUPREME COURT SPOKE WITH APPROVING DICTA ON THE COURT'S INSTRUCTING THE JURY AS TO INVOLUNTARY MANSLAUGHTER EVEN THOUGH THE THEORY OF THE STATE WAS WAS THAT THIS WAS A KIDNAPPING, ARMED ROBBERY WHICH RESULTED IN THE DEATH OF THE CLERK MERELY BECAUSE THE 29-PAGE CONFESSION OF LEROY DRAYTON SAID IN ONE PORTION THAT HE WAS SHOWING HER THE GUN AT THE TRESTLE WHERE SHE'D BEEN TAKEN AND IT ACCIDENTALLY DISCHARGED. NOW, SO I THINK THAT -- SO I THINK THAT UNDER STATE V. DRAYTON HE'S

CERTAINLY ENTITLED TO VOLUNTARY MANSLAUGHTER.

THE COURT: WELL, I -- THE STATE'S CHARGED HIM WITH MURDER. THE ELEMENTS COULD BE FOUND BY THE JURY OF MURDER. THERE'S ALSO TESTIMONY WHICH WOULD REQUIRE ME TO GIVE THEM A CHARGE ON INVOLUNTARY MANSLAUGHTER. BUT I'M CONCERNED ABOUT VOLUNTARY MANSLAUGHTER, COUNSELOR. I CAN SEE THERE'S BEEN SOME TESTIMONY AND THAT THE DEFENDANT SPIT ON MR. B WHICH COULD INDICATE HEAT AND PASSION, BUT I AM CONCERNED ABOUT LEGAL PROVOCATION. THIS IS A CASE IN WHICH THE ONLY TESTIMONY THAT I HEARD WAS THAT HE WAS SOME DISTANCE AWAY. I THINK ONE OF THE WITNESSES SAID AS FAR AS FROM HERE TO THE TWO SWINGING DOORS. SO, TELL ME WHERE -- WHERE IS LEGAL PROVOCATION ENOUGH FOR ME TO SEND IT TO THE JURY, IF YOU CAN?

MR. RUNYON: YOUR HONOR, ONCE AGAIN, THE STATEMENT OF THE DEFENDANT GIVES THE GENESIS OF THIS WHOLE SITUATION AS A COMPLETELY DIFFERENT SET OF FACTS. THE STATE PLACED THAT IN EVIDENCE. IT IS IN EVIDENCE, AND REGARDLESS OF WHETHER THE JURY CAN REASONABLY BELIEVE THAT STATEMENT OR NOT---

THE COURT: WELL, WHAT IS IT -- WHAT IS IT IN THE STATEMENT -- AND YOU'VE GOT THE STATEMENT THERE?

MR. RUNYON: YES, YOUR HONOR.

THE COURT: TELL ME THE WORDS IN THAT

STATEMENT, I READ IT, THAT INDICATES LEGAL PROVOCATION OR FOR THAT MATTER ANY TESTIMONY.

MR. RUNYON: YOUR HONOR, STATE'S EXHIBIT NUMBER 18 HE INDICATES -- HE INDICATES ALMOST HALFWAY DOWN -- IT SAYS, QUOTE, I COULD STILL HEAR HIM MAKING RACIST REMARKS. I PAID NO MORE ATTENTION AFTER THAT. THEN I HEARD DAXTON TELLING THEM -- TALKING TO THE DRIVER AND THE VERSION OF THIS STATEMENT IS THAT DAXTON PATTERSON INTERVENED BETWEEN MR. ROGERS AND SOMEONE WHO WAS MAKING AGGRESSIVE RACIAL STATEMENTS AND THAT THE GENESIS OF THE ARGUMENT AS BETWEEN DAXTON PATTERSON AND MR. B WAS, IN FACT, MR. B 'S ORIGIN AND, THEREAFTER, DAXTON PATTERSON AND---

THE COURT: READ IT TO ME.

MR. RUNYON: OKAY. IT SAYS, "I COULD STILL HEAR HIM MAKING RACIST REMARKS. I PAID NO MORE ATTENTION AFTER THAT. THEN I HEARD DAXTON TELLING THEM -- TALKING TO THE DRIVER. DAXTON WAS SAYING, 'HE'LL BE OFF THE PHONE IN A MINUTE.' THEN I NOTICED AN ARGUMENT GOING ON THEN BETWEEN DAXTON AND THE TWO MALE PASSENGERS. THAT'S WHEN I TURNED AROUND AND NOTICED TWO WHITE MALES WALKING TOWARDS DAXTON AND [Assault Victim] [Assault Victim] WAS PULLING DAXTON AWAY FROM THE TWO WHITE MALES. I TOLD MY BROTHER TO HOLD ON. I WALKED OVER TO WHERE DAXTON AND [Assault Victim] WERE. THEN WHEN I WALKED OVER

THERE, THE DRIVER TURNED AROUND AND WENT TO THE TRUCK AND PUSHED HIS SEAT UP. IT APPEARED TO ME AS IF HE WAS LOOKING FOR A WEAPON OF SOME SORT. THEN I PULLED OUT THE GUN."

NOW, THE CIRCUMSTANCES OF THIS STATEMENT ARE THAT THE PARTIES IN THE TRUCK WERE BEING, IN FACT, AGGRESSORS TOWARDS SOMEONE WHO HAD INTERVENED BETWEEN HIM AND SOMEONE MAKING THE RACIST REMARKS AND THAT THE REMARKS OF THE -- THE ALLEGED REMARKS OF MR. B HAD GONE FURTHER ON THAN MERELY STATEMENTS. NOW, THE STATE---

THE COURT: WELL, I WOULD BE TELLING THE JURY THAT WORDS ALONE WOULDN'T JUSTIFY. . .

MR. RUNYON: I UNDERSTAND, YOUR HONOR, BUT WE'D LIKE TO BE ABLE TO ARGUE THAT THIS ENTIRE SITUATION IS SEEN FROM VARIOUS VIEWPOINTS AND THIS IS ONE VIEWPOINT THAT IT'S SEEN FROM AND THE STATE PUT IT IN EVIDENCE AND WE CAN RELY UPON THAT.

MR. BAILEY: YOUR HONOR, IF I COULD BE HEARD ON THAT. VOLUNTARY MANSLAUGHTER BY DEFINITION IS AN INTENTIONAL HOMICIDE WITHOUT MALICE AFORETHOUGHT. HIS STATEMENT -- MR. RUNYON QUIT READING IT. BUT THE NEXT LINE SAYS, "I FIRED A SHOT IN THE AIR WITH INTENTIONS OF SCARING THEM." SO, IF THEY BELIEVE HIS STORY THROUGH THIS STATEMENT THAT ALL HE WAS TRYING TO DO WAS

SCARE THEM, THEN THERE'S NO INTENTIONAL HOMICIDE. IF THERE'S NO INTENTIONAL HOMICIDE, THERE'S NO VOLUNTARY MANSLAUGHTER.

THE COURT: WHAT ABOUT THAT, COUNSELOR?

MR. RUNYON: WELL, YOUR HONOR, THE COURT'S GOING TO INSTRUCT THE JURY YOU CAN BELIEVE A PART OF WHAT ONE WITNESS PERSON AND PART OF WHAT ANOTHER PERSON SAYS.

THE COURT: WELL, TELL ME OTHER THAN THE STATEMENT THEN. WHAT DO WE HAVE?

MR. RUNYON: WE HAVE VARIOUS -- WE HAVE VARIOUS STORIES ABOUT A FIGHT AND WHETHER OR NOT DAXTON PATTERSON WAS THE AGGRESSOR. WE HAD ANTHONY RILEY TESTIFY WHEN I HEARD THE -- FIRST I THOUGHT IT WAS FIREWORKS AND THEN I FIGURED IT WAS JUST MIKE FIRING IN THE AIR. HE HAS A QUICK TEMPER. WE'VE GOT -- WE'VE GOT VARIOUS STORIES ACROSS THE SPECTRUM AS TO EXACTLY WHAT MAY OR MAY NOT HAVE HAPPENED THERE.

MR. BAILEY: YOUR HONOR, THE ONLY TESTIMONY IN THE RECORD IS THAT DAXTON PATTERSON WAS THE AGGRESSOR. NOBODY HAS SAID THAT MIKE B OR CARVER DID ANYTHING AGGRESSIVE. THIS WHOLE THING WAS A INITIATED BY PATTERSON; THAT'S ALL WE'VE GOT.

THE COURT: ALL RIGHT. I DON'T THINK THE ELEMENTS OF VOLUNTARY MANSLAUGHTER ARE PRESENT AND I

DENY YOUR MOTION, BUT I WILL GIVE YOU A CHARGE ON INVOLUNTARY MANSLAUGHTER.

MR. RUNYON: ALL RIGHT. THEN, YOUR HONOR, COULD WE ADDRESS THE -- THE STATE HAS HANDED UP A SERIES OF REQUESTS TO CHARGE, ONE THROUGH EIGHT. I WOULD OBJECT TO -- IF THE COURT INTENDS TO CHARGE THEM---

THE COURT: WELL, MY CHARGE ON MALICE---

MR. RUNYON: I THINK THE GENERAL CHARGE -- I THINK THE GENERAL CHARGE IS GOING TO COVER MOST OF ALL OF THEM.

THE COURT: MY CHARGE ON MALICE PRETTY WELL COVERS ALMOST ALL OF IT.

MR. RUNYON: YES, SIR.

THE COURT: AND THEY'RE NOT IN THE EXACT WORDS THAT THE STATE HAS GIVEN ME. OBVIOUSLY I WOULDN'T CHARGE ALL OF THEM, BUT IT COVERS ALMOST EVERYTHING THERE. I HEARD THE STATE'S OPENING REMARKS ABOUT THE THREE OR FOUR DIFFERENT CIRCUMSTANCES OF MALICE AND MY MALICE WOULD COVER PRETTY NEAR ALL OF THEM. WHAT IS IT YOU -- WHICH ONE OF THOSE DO YOU OBJECT TO?

MR. RUNYON: WELL, THE STATE'S REQUEST TO CHARGE NUMBER 2 CITING---

THE COURT: ALL RIGHT. HOLD IT A MINUTE.

MR. RUNYON: CITING 40 C.J.S. HOMICIDE.

THE COURT: WELL, I DON'T -- MINE DOESN'T -- WELL, I WON'T CHARGE THAT IN THOSE WORDS, BUT IT'S GOOD LAW.

MR. RUNYON: I'M NOT SUGGESTING---

THE COURT: BUT MINE DOESN'T -- IS NOT EXACTLY LIKE THAT. GO AHEAD.

MR. RUNYON: MY SUGGESTION IS IS THAT THE C.J.S. CITATION IS NOT PURSUANT TO WHAT OUR COURT HAS SAID.

THE COURT: I UNDERSTAND THAT.

MR. RUNYON: AS IT RELATES TO STATE'S REQUEST TO CHARGE NUMBER 3 CITING 5 A.L.R. AT 603, NUMBER ONE, IT'S ALMOST A CHARGE ON THE FACTS.

MR. BAILEY: I'LL WITHDRAW THAT.

THE COURT: ALL RIGHT, SIR. I'M NOT GOING TO CHARGE THAT ANYWAY. WHAT'S NEXT?

MR. RUNYON: AND STATE'S REQUEST NUMBER -- TO CHARGE NUMBER 4 IS ALMOST THE SAME.

THE COURT: SAME THING.

MR. RUNYON: AND STATE'S REQUEST TO CHARGE NUMBER 7 CITING 40 C.J.S. 864, I THINK IT'S COVERED BY YOUR GENERAL CHARGE AND IT IS MORE SPECIFICALLY COVERED -- HAS BEEN ADDRESSED BY OUR STATE SUPREME COURT AND THE LANGUAGE OF OUR STATE SUPREME COURT SHOULD BE

UTILIZED VERSUS. . .

THE COURT: WELL, I HAVE A CHARGE ON TRANSFERRED INTENT AND THAT IS THE LAW AND THAT'S WHAT THE SOLICITOR IS ARGUING. IN OTHER WORDS, IF HE SHOT WITH MALICE IN HIS HEART AT MR. B AND KILLED A THIRD PERSON OR A SECOND PERSON AS HE DID IN THIS CASE, THE JURY COULD FIND HIM GUILTY OF MURDER.

MR. RUNYON: YES, YOUR HONOR, I UNDERSTAND. ALL I'M SAYING IS IS AS IT RELATES TO THAT CHARGE, THAT CHARGE IS NOT THE STATE V. ELMORE CHARGE AND I THINK---

THE COURT: WELL, IT'S STATE VERSUS HORNE WHICH IS STILL GOOD LAW. THAT'S A VERY LATE CASE.

MR. RUNYON: NO, WE'RE NOT LOOKING AT THE SAME THING.

THE COURT: I'M LOOKING AT CHARGE---

MR. BAILEY: JUDGE, YOU SKIPPED OVER 5.

THE COURT: ALL RIGHT.

MR. BAILEY: STATE VERSUS HORNE. I ASSUME HE'S GOT NO PROBLEM WITH. . .

THE COURT: HOW ABOUT LOOK AT 5? BECAUSE THAT'S THE ONE I'M TALKING ABOUT.

MR. RUNYON: YOUR HONOR, UNDER -- HORNE AND ELMORE ARE COMPATIBLE. SO, I MEAN---

THE COURT: WELL, IN ANY EVENT, I'M GOING TO LET HIM ARGUE THAT.

MR. RUNYON: YES, SIR. THAT'S NO PROBLEM.

THE COURT: MY CHARGE IS NOT EXACTLY AS HE WROTE IT, BUT IT GIVES THE SAME INFORMATION TO THE JURY. ALL RIGHT.

MR. RUNYON: I THINK---

THE COURT: HOW ABOUT 6?

MR. RUNYON: GANDY IS THE LAW, YOUR HONOR, AND I THINK YOUR GENERAL CHARGE IS GOING TO ADDRESS THAT.

THE COURT: MY GENERAL CHARGE -- YOU CAN ARGUE THAT, SOLICITOR. BOTH NUMBER 5 AND NUMBER 6 IS IN MY GENERAL CHARGE.

MR. BAILEY: ALL RIGHT, SIR.

THE COURT: BUT IT DOESN'T DIVIDE THEM UP, SO TO SPEAK, BECAUSE IT SAYS, AS NUMBER 5 SAYS -- IT SAYS IF HE DOESN'T KILL HIS INTENDED VICTIM BUT KILLS ANOTHER, THEN HE COULD BE GUILTY OF MURDER. HOW ABOUT NUMBER 7?

MR. RUNYON: NUMBER 7, I THINK WE ADDRESSED. . .

THE COURT: WELL, ACTUALLY THAT'S GOOD LAW, SOLICITOR, BUT I'VE GOT A LITTLE BETTER ONE THAN THAT, BUT YOU CAN ARGUE THAT BECAUSE IT'S ALL IN THERE. HOW ABOUT NUMBER 8?

MR. RUNYON: YOUR HONOR, I DON'T KNOW WHAT

MOTIVE HAS GOT TO DO WITH ANYTHING. THEY DON'T HAVE TO PROVE IT AND I DON'T KNOW THAT---

THE COURT: WHAT DOES THAT APPLY TO THIS CASE, SOLICITOR, AS FAR AS MOTIVE IS CONCERNED?

MR. BAILEY: YOUR HONOR, THE ONLY REASON I PUT THAT CHARGE IN THERE WAS BECAUSE I WAS ANTICIPATING THE POSSIBLE ARGUMENT BY MR. RUNYON THAT MR. ROGERS HAD NO MOTIVE TO KILL STEPHANIE B .

THE COURT: WELL, HE'S PROBABLY GOING TO ARGUE IT IN REGARDS TO INVOLUNTARY MANSLAUGHTER.

MR. BAILEY: IF HE'S NOT GOING TO ARGUE LACK OF MOTIVE, THEN I'D WITHDRAW IT.

MR. RUNYON: JUDGE, I'M GOING TO ARGUE LACK OF INTENT. I'M NOT GOING TO ARGUE MOTIVE. MOTIVATION HASN'T GOT ANYTHING TO DO WITH THIS.

THE COURT: ALL RIGHT, SIR. I DON'T THINK THAT DOES AND, BESIDES, MINE COVERS IT. ALL RIGHT. READY TO GO FORWARD?

MR. BAILEY: YOUR HONOR, IF I COULD HAVE A MINUTE HERE. I DID NOT KNOW WHAT CHARGES YOU WOULD GIVE AS FAR AS MANSLAUGHTER, INVOLUNTARY, AND POSSIBLE ACCIDENT DEFENSE AND I DO HAVE SOME CHARGES PERTAINING TO MANSLAUGHTER THAT I HAD NOT HANDED UP BECAUSE I DIDN'T KNOW IF WE WERE GOING TO GET INTO IT.

THE COURT: WELL, I'M GOING TO CHARGE

INVOLUNTARY MANSLAUGHTER.

MR. BAILEY: YES, SIR.

THE COURT: NOT MANSLAUGHTER.

MR. BAILEY: YES, SIR.

THE COURT: I'M JUST CHARGING MURDER.

MR. BAILEY: IF I COULD HAVE JUST A SECOND. I DON'T THINK I HAVE ANY OTHER CHARGES.

THE COURT: WELL, I'VE GOT A PRETTY GENERAL CHARGE ON MURDER, BUT I'LL BE GLAD TO SHOW IT TO YOU IF YOU. . .

MR. BAILEY: I DON'T HAVE ANY OTHER PREPARED CHARGES, JUDGE.

MR. RUNYON: YOUR HONOR, SINCE YOU'RE GOING TO CHARGE THE INVOLUNTARY, ARE WE GOING TO GET A CHARGE AS TO ACCIDENT?

THE COURT: WELL, I'LL LET YOU READ IT. LET ME SEE.

MR. RUNYON: I KNOW YOU'VE GOT A REAL GOOD CHARGE AS TO ACCIDENT IN YOUR CHARGE BOOK.

THE COURT: WELL, ALL I GOT ACTUALLY ARE TWO CHARGES ON IT. INVOLUNTARY MANSLAUGHTER IS DEFINED AS THE UNLAWFUL KILLING OF A PERSON WITHOUT ANY MALICE AND WITHOUT AN INTENTION TO KILL. IT IS THE UNINTENTIONAL CAUSING OF THE DEATH OF ANOTHER THROUGH CRIMINAL NEGLIGENCE. AND THEN I DEFINE CRIMINAL NEGLIGENCE AS

THE DISREGARD OF THE SAFETY OF OTHERS. NEGLIGENCE IS THE FAILURE TO USE DUE CARE AND CARELESSNESS MEANS THE SAME THING, BUT CRIMINAL NEGLIGENCE IS MORE THAN SOMEONE FAILING TO USE CARE, DUE CARE, MORE THAN JUST BEING CARELESS. CRIMINAL NEGLIGENCE IS THE RECKLESS DISREGARD OF THE SAFETY OF OTHERS. IT'S GROSS NEGLIGENCE. IN OTHER WORDS, THE PERSON WHO HANDLES A DEADLY WEAPON IN SUCH A MANNER AS TO INDICATE A WILLFUL OR WANTON DISREGARD FOR THE SAFETY OF OTHERS IS GUILTY OF INVOLUNTARY MANSLAUGHTER.

MR. RUNYON: THAT'S CORRECT, JUDGE. THAT'S THE LAW. I GOT NO PROBLEM WITH THAT.

THE COURT: ANYTHING YOU WANT ME TO ADD OR SUBTRACT, SOLICITOR?

MR. BAILEY: JUDGE, I THOUGHT HE WAS ASKING ABOUT A CHARGE ON ACCIDENT. IT'S MY UNDERSTANDING YOU'RE NOT GOING TO CHARGE---

THE COURT: I WILL NOT CHARGE ACCIDENT AND HERE HE'S NOT ASKING FOR IT ANYWAY. ANYTHING ELSE?

MR. BAILEY: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: ANYTHING FURTHER?

MR. RUNYON: NOTHING OTHER THAN TO RESPECTFULLY EXCEPT THE RULING OF THE COURT IN THOSE MATTERS IN WHICH THE COURT REFUSED OUR REQUESTS.

THE COURT: ALL RIGHT. NOW---

MR. BAILEY: YOUR HONOR, COULD WE SEE YOUR GENERAL CHARGE PRIOR TO YOU GIVING THAT?

THE COURT: YOU CAN BE LOOKING AT IT RIGHT HERE. YOU PROBABLY KNOW IT BY HEART. MR. ROGERS, AT THIS TIME I WANT TO TELL YOU -- IF YOU'D STAND UP FOR ME FOR JUST A MOMENT. YOU HAVE A RIGHT TO MAKE AN OPENING STATEMENT AND A CLOSING STATEMENT AS WELL AS YOUR ATTORNEY. COUNSELOR, IS HE GOING TO MAKE AN OPENING OR CLOSING STATEMENT?

MR. RUNYON: NO, YOUR HONOR, IT WILL BE HANDLED BY COUNSEL. UNLESS REQUIRED BY THE STATE, WE'D JUST LIKE TO GO AHEAD AND CLOSE.

THE COURT: ALL RIGHT, SIR. IS IT YOUR WISH THAT YOU -- YOU HAVE DECIDED NOT TO MAKE A STATEMENT TO THE JURY?

MR. ROGERS: YES, SIR, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. RUNYON: AT THIS STAGE.

THE COURT: YES, SIR.

MR. RUNYON: THAT WAIVER IS ONLY FOR THE GUILT PHASE, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. SOLICITOR, IN THAT GENERAL CHARGE, IF YOU'VE GOT IT, IT'S A GENERAL CHARGE. YOU'LL SEE REASONABLE DOUBT, BUT IT'S CHANGED

AND I JUST -- UNLESS YOU WANT SOMETHING DIFFERENT I'LL JUST CHARGE---

MR. BAILEY: YOUR HONOR, I PROBABLY DIDN'T SAY IT RIGHT, BUT WHAT I WAS LOOKING FOR IN YOUR CHARGE WAS ON DEFINITION OF MALICE AFORETHOUGHT AND INTENT AND TRANSFERRED INTENT.

THE COURT: WELL, THERE'S MY GENERAL CHARGE. SUFFICE IT TO SAY, SOLICITOR -- I DON'T HAVE IT HERE AND I DON'T KNOW THAT I'VE EVEN GOT IT OUT HERE, BUT I'LL HAVE IT WHEN I'M READY FOR IT.

MR. BAILEY: YES, SIR.

THE COURT: BUT EVERYTHING THAT YOU GAVE ME IS GOOD LAW AND YOU CAN ARGUE IT.

MR. BAILEY: ALL RIGHT, SIR.

THE COURT: ALL RIGHT. BRING THE JURY.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT.)

THE COURT: MR. BAILIFF, DON'T FORGET NO ONE CAN COME IN OR GO OUT WHILE THE ATTORNEYS ARE MAKING THEIR REMARKS. I DON'T CONTEMPLATE -- I THINK YOU WANTED TO LEAVE HERE -- IS MS. DIXON STILL BACK THERE?

MS. DIXON: YES, SIR.

THE COURT: WHERE ARE YOU? OH, THERE YOU ARE. WHAT WOULD YOU BE LEAVING? ABOUT TWELVE O'CLOCK.

MS. DIXON: NO, I HAVE SOME STUDENTS THAT

HAVE TO LEAVE AT TWELVE, BUT WE CAN STAY. THE OTHER ONES CAN STAY. WE'D LIKE TO BE OUT OF HERE AT LEAST BY ONE.

THE COURT: OH, CERTAINLY YOU'LL BE.

MS. DIXON: SOME OF THEM HAVE TO LEAVE BEFORE TWELVE.

THE COURT: ALL RIGHT. BUT I JUST DON'T WANT ANYBODY GETTING UP WHILE THEY'RE TALKING TO THE JURY.

MS. DIXON: YES, SIR.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. ALL RIGHT. NOW, MR. FOREMAN, MEMBERS OF THE JURY, THE STATE FINISHED THEIR TESTIMONY. THE DEFENSE HAS ELECTED NOT TO PUT UP ANY TESTIMONY. IN OTHER WORDS, THEY HAVE RESTED THEIR CASE, AND YOU REMEMBER I TOLD YOU EARLIER ON YESTERDAY OR PERHAPS EARLIER IN THE WEEK THAT IT'S PERFECTLY PERMISSIBLE. A PERSON HAS A RIGHT NOT TO PUT UP ANY TESTIMONY NOR TESTIFY AND MR. DIXON -- MR. ROGERS HAS ONLY EXERCISED HIS CONSTITUTIONAL RIGHTS. AND I'LL BE TELLING YOU WHEN YOU GO BACK IN THE JURY ROOM TO DELIBERATE THAT YOU CAN'T HOLD THAT AGAINST HIM. AS A MATTER OF FACT, YOU CAN'T EVEN DISCUSS IT.

AND SO AT THIS TIME THE SOLICITOR WILL MAKE HIS OPENING REMARKS, FOLLOWED BY MR. RUNYON, AND THEN YOU'LL BE ABLE TO HEAR SOME INSTRUCTIONS FROM ME. I

DON'T KNOW HOW LONG THEY'RE GOING TO TALK, BUT IF FOR ANY REASON DURING THIS TIME THAT YOU FEEL LIKE YOU'D LIKE TO TAKE A BREAK, MR. FOREMAN, YOU JUST TELL ME AND WE'LL STOP. ALL RIGHT. SOLICITOR?

MR. BAILEY: MAY IT PLEASE THE COURT? LET ME PULL THIS PODIUM AROUND HERE. OKAY. I WANT TO, FIRST OF ALL, THANK Y'ALL FOR YOUR ATTENTION THROUGHOUT THE TRIAL. WHEN WE FIRST SPOKE TO YOU WHEN THE TRIAL STARTED, I ASKED THAT YOU PAY CLOSE ATTENTION TO EVERYTHING AND YOU HAVE DONE THAT AND I DO APPRECIATE IT ON BEHALF OF THE STATE OF SOUTH CAROLINA. NOW, Y'ALL KNOW WHAT THE PROCEDURE IS BY NOW. YOU HEAR CLOSING ARGUMENTS FROM THE LAWYERS. WHAT I SAY IS NOT EVIDENCE. WHAT MR. RUNYON OR MR. LEIENDECKER MAY SAY AFTER I SIT DOWN IS NOT EVIDENCE.

THE EVIDENCE IS ALREADY IN. YOU'VE HEARD IT AND I'M GOING TO REFER TO SOME OF THOSE THINGS THAT WERE SAID. MY MEMORY MAY BE DIFFERENT THAN YOURS. THERE WERE A LOT OF PEOPLE THAT SAID A LOT OF THINGS AND THIS HAPPENED A GOOD WHILE BACK. SO, IF YOU REMEMBER ANYTHING DIFFERENTLY THAN WHAT YOU HEAR THE LAWYERS TELLING YOU ABOUT, BY ALL MEANS USE YOUR OWN MEMORY OF WHAT HAPPENED BECAUSE YOUR MEMORY IS AS GOOD AS MINE IS. NOW, OBVIOUSLY SOMEBODY'S GOT TO HAVE THE LAST ARGUMENT. THE WAY THE SYSTEM WORKS, THE DEFENSE

IN THIS CASE GETS THE LAST ARGUMENT. SO, I'M SURE THAT I WILL WANT TO GET UP HERE AFTER THEY TALK AND SAY SOMETHING ELSE, BUT I CAN'T DO IT. SO, I'M GOING TO -- TO A CERTAIN EXTENT GOING TO HAVE TO ANTICIPATE WHAT THEY MAY SAY IN MY OPENING REMARKS HERE.

THE FACT THAT TIMOTHY ROGERS, THIS MAN SITTING RIGHT HERE, SHOT STEPHANIE B , NINE-YEAR-OLD STEPHANIE B TO DEATH IS NOT SERIOUSLY IN CONTENTION. ALL OF THE EVIDENCE POINTS TO THAT. EVERYTHING YOU'VE HEARD FROM THE WITNESS STAND IS THAT HE SHOT STEPHANIE B . SHE DIED THE FOLLOWING DAY FROM A GUNSHOT WOUND TO THE HEAD. THE ISSUE SURROUNDS THE CIRCUMSTANCES AROUND THAT SHOOTING AND THE ISSUE IS GOING TO BOIL DOWN TO WHETHER OR NOT WHAT HAPPENED IS MURDER UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA OR WHETHER IT'S INVOLUNTARY MANSLAUGHTER. THE JUDGE WILL INSTRUCT YOU IN DETAIL AGAIN ON THE ELEMENTS OF MURDER IN SOUTH CAROLINA AND THE ELEMENTS OF A LESSER INCLUDED OFFENSE OF INVOLUNTARY MANSLAUGHTER.

THE JUDGE WILL INSTRUCT YOU THAT I ON BEHALF OF THE STATE OF SOUTH CAROLINA HAVE THE BURDEN OF PROOF IN THIS CASE. I'M TRYING TO PROVE MURDER. THAT'S MY RESPONSIBILITY, MY OBLIGATION, MY BURDEN, AND I'VE GOT TO SATISFY EACH OF YOU BEYOND A REASONABLE DOUBT THAT

THE SHOOTING OF STEPHANIE B IN THE HEAD THAT NIGHT WAS MURDER UNDER OUR LAWS AND IN MY OPENING STATEMENT I TALKED TO YOU ABOUT MURDER. I TALKED TO YOU ABOUT MALICE AFORETHOUGHT AND I GAVE SOME EXAMPLES, AND I'M GOING TO REPEAT THOSE EXAMPLES TO YOU BECAUSE IT BEARS SO HEAVILY ON THIS CASE.

MURDER IS THE INTENTIONAL KILLING OF ONE HUMAN BEING BY ANOTHER WITH MALICE AFORETHOUGHT AND AFORETHOUGHT JUST MEANS THAT THAT INTENT HAS TO FORM AT SOME POINT IN TIME BEFORE THE ACTUAL KILLING TAKES PLACE. IT DOESN'T HAVE TO BE A WEEK OR A MONTH OR A DAY OR A MINUTE. IT COULD BE A SPLIT SECOND, BUT THAT INTENT HAS TO BE THERE. SO, YOU HAVE TO LOOK FOR EVIDENCE OF INTENT FROM THE WITNESS STAND AND WHAT YOU'VE HEARD.

MALICE, AS I TOLD YOU EARLIER, MEANS AN EVIL STATE OF MIND, A DEPRAVED HEART. IT'S A STATE OF MIND THAT CONSTITUTES MURDER, AND I GAVE YOU EXAMPLES OF THE DIFFERENT TYPES OF MALICE THAT YOU COULD HAVE. YOU CAN HAVE EXPRESS MALICE. AND WHEN YOU'VE GOT EXPRESS MALICE, THERE'S NO DOUBT ABOUT THE PERSON'S INTENT TO KILL. HE EXPRESSES THAT. YOU CAN HAVE IMPLIED MALICE AND THE JUDGE WILL INSTRUCT YOU ABOUT THAT. AN EXAMPLE I GAVE IS THAT YOU CAN INFER MALICE BY THE USE OF A DEADLY WEAPON SUCH AS A GUN. THAT'S A FORM OF IMPLIED

MALICE. AND I TALKED TO YOU EARLIER ABOUT SPECIFIC INTENT WHERE IF I SPECIFICALLY INTEND TO SHOOT MR. DEAS HERE AND I SHOOT HIM WITH MALICE AFORETHOUGHT, THAT IS MURDER. AND I TALKED TO YOU ABOUT TRANSFERRED INTENT WHERE IF I INTEND TO SHOOT MR. DEAS AND I MISS AND I HIT MS. HORTMAN OVER HERE, MY INTENT TO KILL MR. DEAS IS TRANSFERRED TO MS. HORTMAN. IT IS STILL MURDER EVEN THOUGH I DIDN'T INTEND TO KILL HER IN PARTICULAR.

AND FINALLY I TALKED TO YOU ABOUT GENERAL INTENT WHICH IS NOT A SPECIFIC INTENT TO KILL ANY PARTICULAR PERSON BUT A TOTAL, RECKLESS, COMPLETE DISREGARD FOR THE LIVES AND SAFETY OF OTHERS. AND THE EXAMPLE I GAVE THERE WOULD BE IF I TURNED MY HEAD AND I SHOT A LOADED GUN INTO THIS CROWD OUT HERE AND I SHOT ONE OF THESE YOUNG PEOPLE SITTING OUT HERE AND I DIDN'T PARTICULARLY INTEND TO KILL THAT PERSON OR MAYBE DIDN'T CARE WHETHER I KILLED ANYBODY, BUT MY STATE OF MIND WAS SO DEPLORABLE, SO FULL OF MALICE, THAT I DIDN'T KNOW OR CARE WHO I KILLED, IF I KILLED ONE OF THESE PEOPLE DOING THAT, THAT IS ALSO MURDER.

AND I DO NOT WANT YOU TO CONFUSE THAT GENERAL MALICE WITH THE STATE OF MIND THAT'S REQUIRED FOR INVOLUNTARY MANSLAUGHTER WHICH IS BASICALLY AN ACCIDENTAL KILLING, A RECKLESS OR A GROSSLY NEGLIGENT HANDLING OF A GUN, FOR EXAMPLE. IF YOU'RE LOADING A

GUN IN YOUR HOUSE AND YOU'RE NOT PAYING ANY ATTENTION TO -- YOU'RE CLEANING THE GUN. YOU DON'T KNOW WHETHER IT'S LOADED OR NOT AND YOU SHOOT YOUR FRIEND. THAT MAY BE AN EXAMPLE OF INVOLUNTARY MANSLAUGHTER BECAUSE YOU'VE GOT NO MALICE IN YOUR HEART. THE DISTINCTION IS BETWEEN THAT FORM OF ACCIDENT OR RECKLESS DEATH AND A DEATH INVOLVING MALICE AFORETHOUGHT IN ANY OF THE THREE FORMS THAT I'VE TALKED TO YOU ABOUT.

NOW, I WANT TO POINT OUT -- AND I'M NOT GOING TO GO THROUGH ALL THE EVIDENCE AGAIN. YOU'VE HEARD IT; YOU'VE BEEN ATTENTIVE. I JUST WANT TO POINT OUT ABOUT SIX DIFFERENT THINGS THAT CAME OUT IN THIS TRIAL THAT ARE EVIDENCE OF MALICE AFORETHOUGHT AND SPECIFIC INTENT TO KILL MR. B OVER HERE ON THE BEHALF OF TIMOTHY ROGERS. AND I APOLOGIZE FOR THE LANGUAGE I'M GOING TO USE. I'M QUOTING THE EVIDENCE YOU HEARD, THE SWORN EVIDENCE FROM THE WITNESS STAND, WHEN I QUOTE THESE PEOPLE. AND, AGAIN, IF I MISQUOTE SOMEBODY, USE YOUR OWN MEMORIES BECAUSE Y'ALL WERE ATTENTIVE. YOU HEARD EVERYTHING I'VE HEARD AND YOUR MEMORIES ARE AS GOOD AS MINE.

YOU REMEMBER ANTHONY RILEY WHEN HE TESTIFIED. HE WAS THE SECOND WITNESS WHO TESTIFIED ON BEHALF OF THE STATE, AND HE TESTIFIED THAT TIMOTHY ROGERS CAME OVER TO DAXTON PATTERSON. PATTERSON WAS

THERE. THE ONLY OTHER TWO PEOPLE THERE WERE MIKE B AND ANTHONY RILEY. AND HE QUOTED TIMOTHY ROGERS AS SAYING, "IF ONE OF THOSE MOTHER FUCKERS SAY ANYTHING ABOUT US, LET ME KNOW AND I'LL TAKE CARE OF THEM." THAT'S AN INDICATION OF MALICE TOWARD ANTHONY RILEY AND MIKE B WHO WERE THE ONLY ONES THERE.

YOU RECALL MR. CARVER'S TESTIMONY. MR. CARVER WAS THE LAST WITNESS YOU HEARD FROM FROM THE STATE WHO TESTIFIED THIS MORNING THAT WHEN TIMOTHY ROGERS GOT OFF OF THAT TELEPHONE AND DAXTON PATTERSON AT THE DOOR STRUGGLING WITH THE DOOR WITH MIKE B , HE SAID, "LET ME GET THIS FELLOW." THEN HE WALKS OVER TO MIKE B AND WHEN HE GETS OVER THERE, STEPHANIE B IS SITTING IN THE TRUCK. SHE'S CRYING LOUDLY. BOTH MR. B AND MR. CARVER SAID STEPHANIE WAS SCARED. SHE'S SITTING THERE BESIDE HER FATHER IN THAT TRUCK AND SHE'S CRYING AND SCREAMING LOUDLY BECAUSE HERE'S A GUY COMING UP, PUTTING A GUN TO HER FATHER'S HEAD, AND THE NEXT THING THAT WAS SAID -- AND YOU HEARD THIS FROM MIKE B . YOU HEARD IT FROM JIMMY CARVER. WHEN ROGERS HERE PUT THE GUN TO MR. B 'S HEAD, HE SAYS, "I'LL KILL YOU."

NOW, LADIES AND GENTLEMEN, IF THAT IS NOT AN EXPRESSION OF MALICE, THAT IS, A CLASSIC CLEAR-CUT -- YOU CAN'T GET ANY PLAINER THAN THAT WHEN YOU PUT A

LOADED GUN TO SOMEBODY'S HEAD AND SAY, "I'LL KILL YOU." AND THEN HE TOOK THAT GUN, POINTED IT DOWN TOWARD THIS WHEEL, AND YOU CAN SEE THE PAINT KNOCKED OFF OF THE WHEEL HERE. FIRED ONE SHOT, KNEW THE GUN WAS WORKING, KNEW IT WAS LOADED BECAUSE THE GUN WENT OFF AND HIT SOMETHING.

THE NEXT THING THAT HAPPENED WAS STEPHANIE B WAS SHOT IN THE BACK OF THE HEAD AND WE'RE TALKING ABOUT NOT A K-MART OR WAL-MART PARKING LOT. WE'RE TALKING ABOUT A LITTLE, TINY PARKING LOT THAT COULD FIT INSIDE THIS COURTROOM. AND MR. RUNYON AT ONE POINT IN ONE OF HIS QUESTIONS IN TALKING ABOUT THAT PARKING LOT SAID THIS WAS AN EXTREMELY CONFINED AREA, THAT, YOU KNOW, IT WAS FIFTEEN TO TWENTY FEET BETWEEN THE TRUCK AND WHERE ROGERS COULD HAVE BEEN STANDING. YOU HEARD MR. CARVER TALK ABOUT THE DISTANCE INVOLVED. AND WE'RE TALKING ABOUT A DISTANCE FROM THIS WALL OVER HERE WHERE THIS LADY IS SITTING TO THIS SWINGING DOOR RIGHT HERE AT THE MOST, A REAL, REAL SHORT DISTANCE.

AFTER STEPHANIE WAS SHOT IN THE BACK OF THE HEAD AND HER FATHER REALIZED SHE'D BEEN SHOT -- YOU HEARD MR. CARVER SAY THAT HE SAW THE SHOT. HE TURNED AROUND AND HE SAW TIMOTHY ROGERS LEVEL THAT GUN AT THE BACK WINDOW, FIRE, AND STEPHANIE SLUMPED OVER AGAINST HER FATHER. HE DIDN'T AIM IN THE AIR. HE AIMED

DIRECTLY AT THE TRUCK. AND WHAT HAPPENED AFTER MIKE B DROVE BACK INTO THE PARKING LOT AND PULLED AROUND AND HEADED BACK IN IN A FRANTIC STATE OF MIND, GOT OUT THERE AND YELLED AT THESE PEOPLE, "YOU SHOT MY DAUGHTER"? WHAT DID THEY DO BEFORE THEY RAN OFF? YOU HEARD IT FROM MIKE B . YOU HEARD IT FROM MR. CARVER. THEY LAUGHED AND RAN OFF. IS THAT MALICE?

FINALLY, THE LAST POINT I'M GOING TO BRING OUT AS FAR AS INTENTIONAL CONDUCT AND MALICE IS SOMETHING ELSE THAT ANTHONY RILEY SAID. WHEN HE GOT DOWN TO HIS HOUSE, HE GOT ON TO HIS PORCH AFTER HEARING THE TWO SHOTS. HE DIDN'T PASS ANYBODY BETWEEN SPELL'S STORE AND HIS HOUSE. AFTER THE SECOND SHOT, TWO PEOPLE COME RUNNING DOWN THE ROAD AWAY FROM SPELL'S STORE. IT WAS DARK. HE COULDN'T IDENTIFY THEM, BUT HE HEARD ONE OF THEM YELL OUT, "YOU GOT THE MOTHER FUCKER?" THE OTHER SAID, "YEAH, I GOT THE MOTHER FUCKER." THIS IS AFTER MIKE B HAD SAID, "YOU SHOT MY DAUGHTER."

NOW, IS THAT MALICE? ABSOLUTELY. AND MR. RUNYON MAY GET UP HERE AND SAY ANTHONY RILEY COULDN'T IDENTIFY THESE PEOPLE. AGAIN, YOU'RE HERE TO USE YOUR COMMON SENSE. TWO SHOTS FIRED. TWO PEOPLE RUNNING AWAY. "YOU GOT THE MOTHER FUCKER?" "YEAH, I GOT THE MOTHER FUCKER." WHO ELSE COULD IT HAVE BEEN? AND THEN HE SAW THE GIRL WHO WAS WITH THEM ALSO COMING THROUGH

THE WOODS ABOUT THE SAME TIME.

YOU GOT A SITUATION WHERE A MAN WITH A LOAD GUN DELIBERATELY COMES OVER TO A TRUCK. THE MAN'S -- MIKE B IS TRYING TO LEAVE, NOT TRYING TO CAUSE ANY TROUBLE. HE'D HAD A FEW BEERS, BUT HE WASN'T INTOXICATED. THERE'S NO LAW AGAINST HAVING A FEW BEERS. THAT'S THE WORST THING YOU CAN SAY ABOUT MIKE B . HE HAD A FEW BEERS AND HE HAD HIS DAUGHTER OUT THERE TO GET HER A SANDWICH, TALKING TO ANTHONY RILEY, MINDING HIS OWN BUSINESS, JUST A BUNCH OF DRUNK SCUMS UP THERE PICKS AN ARGUMENT. AND HE GETS TO HIS TRUCK AND ALL HE WANTS TO DO IS LEAVE AND HAS THAT GUN LEVELED AT HIS HEAD AND HIS LIFE THREATENED AND HIS DAUGHTER BESIDE HIM CRYING AND A FEW MINUTES LATER HIS DAUGHTER IS SHOT IN THE HEAD AND DIES THE NEXT DAY.

YOU RECALL THE TESTIMONY FROM JIMMY CARVER AND MIKE B AGAIN THAT WHEN TIMOTHY ROGERS WAS UP THERE AT THAT WINDOW WITH THAT LOADED GUN ON MIKE B 'S HEAD, STEPHANIE WAS RIGHT THERE CRYING LOUDLY. SHE MADE EYE CONTACT WITH HIM. HE MADE EYE CONTACT WITH HER. HE KNEW SHE WAS IN THAT TRUCK. WHEN HE FIRED INTO THAT TRUCK, HE KNEW THERE WERE THREE PEOPLE THERE AND THE DISTANCE WAS THIS WALL TO THIS WALL OVER HERE AND THAT IS NOT INVOLUNTARY MANSLAUGHTER, LADIES AND GENTLEMEN. THAT IS ABSOLUTE

COLD-BLOODED MURDER WITH MALICE AFORETHOUGHT.

UNDER OUR SYSTEM OF LAWS, PEOPLE HAVE TO BE ACCOUNTABLE AND RESPONSIBLE FOR WHAT THEY DO UNLESS THEY'RE INSANE AND THAT'S NOT AN ISSUE IN THIS CASE. FOR OUR LAW SYSTEM TO WORK, PEOPLE HAVE TO BE HELD ACCOUNTABLE AND THEY CAN ONLY BE HELD ACCOUNTABLE BY JURIES LISTENING TO THE FACTS AND BRINGING BACK TRUE AND JUST VERDICTS.

YOU HAD THREE POLICE OFFICERS THAT I CALLED FROM THE STATE OF ALABAMA THAT ARRESTED MR. ROGERS IN ALABAMA AND THEY TOOK A STATEMENT FROM HIM, AND I PUT THAT STATEMENT INTO EVIDENCE BECAUSE I WANTED Y'ALL TO KNOW EVERYTHING, ALL OF THE FACTS ABOUT THIS CASE, GOOD OR BAD, WHETHER IT HELPS OR HURTS. AND MR. RUNYON IS GOING TO TALK TO Y'ALL ABOUT THIS STATEMENT AND HE'S GOING TO USE THIS TO TRY TO CONVINCE Y'ALL THIS WAS NOT MURDER. THIS WAS INVOLUNTARY MANSLAUGHTER.

NOW, I WANT TO GO OVER PARTS OF THIS STATEMENT WITH YOU. IT'S IN EVIDENCE. YOU'LL HAVE IT IN THE JURY ROOM AND I'D LIKE YOU TO LOOK AT IT AND I WANT YOU TO DECIDE WHETHER OR NOT THIS STATEMENT MR. ROGERS GAVE IS A TRUTHFUL ACCOUNT OF WHAT HAPPENED. IF EVERYTHING IN THIS STATEMENT IS TRUE, THEN MAYBE Y'ALL OUGHT TO GO AHEAD AND FIND HIM GUILTY OF INVOLUNTARY MANSLAUGHTER INSTEAD OF MURDER. BUT LET ME JUST TAKE

IT ONE AT A TIME. HE SAYS TALKING ABOUT GOING TO TH STORE, "I WENT DOWN THERE TO CALL MY BROTHER. WHEN GOT THROUGH TO HIM, WE WAS TALKING. THEN A TRUCK PULLED UP." SO, YOU GOT TIMOTHY ROGERS SAYING HE GO TO THE STORE FIRST. THEN THE TRUCK CAME UP. OKAY?

MIKE B SAID THAT HE GOT TO THE STORE BEFORE ROGERS AND THAT GROUP DID. JIMMY CARVER SAID THEY GOT THERE BEFORE ROGERS AND THAT GROUP DID. ANTHONY RILEY SAID HE WAS ON THE PHONE WHEN THE TRUCK DROVE UP, AND FINALLY [Assault Victim] THAT HAS THIS MAN' CHILD WHO TESTIFIED UNDER SUBPOENA FOR THE STATE OF SOUTH CAROLINA SAID THAT MIKE B , STEPHANIE, AND THE PEOPLE IN THE TRUCK WERE THERE FIRST. SO, WHAT MR. ROGERS IS SAYING IN HIS STATEMENT HE GAVE IN ALABAMA THAT, "WHEN I GOT THROUGH TO HIM, WE WERE TALKING, THEN A TRUCK PULLED UP," IS REFUTED BY EVERY SINGLE WITNESS THAT TOOK THAT STAND AND TESTIFIED UNDER OATH.

THEN HE SAYS, AND I'M QUOTING FROM HIS STATEMENT, "THEN A TRUCK PULLED UP. IT WAS A BEIGE, SMALL PICKUP TRUCK." THIS IS A FULL-SIZE GRAY PICKUP TRUCK, NOT A SMALL BEIGE TRUCK. AND HE SAYS THAT MR. -- HE WAS TRYING TO USE THE TELEPHONE AND MIKE B MADE SOME RACIST REMARKS AND DAXTON PATTERSON BEING A GOOD CITIZEN SAID HE'LL BE OFF THE PHONE IN A MINUTE. THEN HE SAYS, "WHEN I WALKED OVER THERE, THE DRIVER

TURNED AROUND, WENT BACK TO THE TRUCK, AND PUSHED HIS SEAT UP. IT APPEARED TO ME AS IF HE WAS LOOKING FOR A WEAPON OF SOME SORT. THEN I PULLED OUT THE GUN. THE GUN WAS A 380. I FIRED A SHOT IN THE AIR WITH INTENTIONS OF SCARING THEM."

LADIES AND GENTLEMEN, REMEMBER THE DISTANCE INVOLVED HERE, THIS WALL HERE TO THAT SWINGING DOOR OVER THERE, AND HIS STATEMENT HERE IS HE FIRED A SHOT, NOT TWO SHOTS, A SHOT INTO THE AIR TO SCARE THEM. HE SAYS IT'S A 380 PISTOL. YOU'VE GOT TWO SHELL CASINGS IN EVIDENCE FOUND AT THE SCENE THAT ARE 380-CALIBER SHELL CASINGS, AND YOU HEARD DAVID COLLINS FROM S.L.E.D. TESTIFIED BOTH OF THESE SHELL CASINGS WERE FIRED BY THE SAME GUN. TWO SHOTS WERE FIRED, NOT ONE LIKE HE SAYS IN THE STATEMENT.

YOU ALSO HEARD TESTIMONY FROM [Assault Victim] THAT TWO SHOTS WERE FIRED, MIKE B THAT TWO SHOTS WERE FIRED, JIMMY CARVER THAT TWO SHOTS WERE FIRED, JAMES ROBINSON THAT HE HEARD TWO SHOTS FIRED, ISAIAH JENNINGS HEARD TWO SHOTS FIRED, AND MRS. LINCOLN THAT WENT IN THE STORE AT THE SAME TIME ISAIAH JENNINGS WENT IN THERE HEARD TWO SHOTS FIRED. AND YOU'VE GOT PHYSICAL EVIDENCE OF TWO BULLETS HITTING. HERE'S ONE BULLET MARK IN THE WHEEL AND THE OTHER ONE, OF COURSE, IN THE BACK WINDOW AND THROUGH THE FRONT WINDOW OF THE

TRUCK.

THIS THING ABOUT SHOOTING UP INTO THE AIR - GUN SHOOTS WHERE YOU POINT IT. IF YOU POINT UP IN TH AIR, THE BULLET IS GOING UP IN THE AIR. IF YOU POINT TO THE GROUND, IT'S GOING TO THE GROUND. THE TRAJECTORY OF THAT BULLET STARTED OUT STRIKING THE BA WINDOW OF THE TRUCK A LITTLE BIT ABOVE THIS DECAL AND LITTLE BIT TO THE LEFT AND YOU CAN GET A BETTER IDEA HERE. . . LET ME SEE IF I CAN GET A BETTER PICTURE. YOU CAN SEE THE DECAL HERE AND THAT'S SHOT IN AT ALMOS IN THE MIDDLE, ALMOST SMACK-DAB IN THE MIDDLE OF THE BACK WINDOW. IF YOU WERE TRYING TO SHOOT A HOLE RIGHT IN THE MIDDLE OF THAT BACK WINDOW, YOU COULDN'T HAVE DONE A MUCH BETTER JOB.

THE NEXT THING THAT HIT -- THIS IS THE DRAWING THAT DR. NICHOLS TESTIFIED ABOUT. THE NEXT THING THAT HIT WAS THE BACK OF STEPHANIE'S HEAD, AND I THINK HE SAID IT WAS ABOUT TWO INCHES FROM THE TOP OF HER HEAD WHERE IT STRUCK THE BACK OF HER HEAD. THE NEXT MARK WE'VE GOT IS THE EXIT WOUND WHICH IS ABOUT THREE INCHES FROM THE TOP OF THE HEAD RIGHT ABOVE THE LEFT EYE. SO, YOU'VE GOT A TEN-DEGREE DOWNWARD TRAJECTORY FROM THE ENTRANCE WOUND TO THE EXIT WOUND.

FINALLY, THAT BULLET COMES OUT OF THE FRONT OF THE TRUCK ALMOST WHERE THE WINDSHIELD WIPER LAYS

DOWN, JUST A COUPLE OF INCHES ABOVE THE -- WHERE THE GLASS STARTS ON THE WINDSHIELD. SO, EACH OF THOSE FOUR LANDMARKS YOU'VE GOT. THE BACK WINDOW, THE BACK OF HER HEAD, THE FRONT OF THE HEAD, AND THE FRONT WINDSHIELD INDICATES A DOWNWARD PATH WHICH MAKES THIS STATEMENT THAT HE SHOT INTO THE AIR AN ABSOLUTE LIE THAT'S REFUTED BY THE PHYSICAL EVIDENCE YOU'VE GOT IN FRONT OF YOU.

NOW, IN A MINUTE I'LL GET DOWN HERE AND, AS I SAID, THE OTHER LAWYERS, THE DEFENSE LAWYERS, WILL GET A CHANCE TO GET UP HERE AND TAKE ISSUE WITH WHAT I'VE SAID HERE AND THEY'RE GOING TO BLAME MIKE B FOR ARGUING, FOR DRINKING. THEY'RE GOING TO BLAME DAXTON PATTERSON FOR GETTING UP THERE AND STARTING THIS ARGUMENT. THEY MAY BLAME JIMMY CARVER FOR GETTING OUT OF THAT TRUCK, BUT THERE WAS ONE PERSON AND THE EVIDENCE SHOWS THIS CLEARLY AND ONLY ONE PERSON THAT HAD A GUN, THAT USED THE GUN, THAT FIRED A GUN THAT KILLED STEPHANIE B AND THAT'S THIS MAN RIGHT HERE, TIMOTHY ROGERS. SO, WHEN THEY TRY TO BLAME THESE OTHER PEOPLE TO CAST YOUR ATTENTION AWAY FROM TIMOTHY ROGERS, REMEMBER WHO FIRED THAT SHOT, WHO KILLED THAT LITTLE GIRL. THAT'S WHAT WE'RE CONCERNED WITH. SO PLEASE DON'T GET SIDETRACKED ON THESE ISSUES.

DOES A PERSON WHO WAS ONLY ACCIDENTALLY

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Honorable Luke N. Brown, Jr., Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY D. ROGERS,

APPELLANT.

RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

SC Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330
Attorney for Appellant

CHARLES MOLONY CONDON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WALTER M. BAILEY, JR., Solicitor
First Judicial Circuit

134 East Richardson Avenue
Summerville, SC 29483
(803) 871-2640

Attorneys for Respondent

INDEX

INDEX i

JURY VOIR DIRE 18

GUILT PHASE

THOMAS WILLIAM BEHRMANN, M.D. (IN CAMERA) 683
DIRECT EXAMINATION 683

MICHAEL GEORGE B[redacted] 714
DIRECT EXAMINATION 714
CROSS-EXAMINATION 741

CLAY A. NICHOLS, M.D. 771
DIRECT EXAMINATION 771
CROSS-EXAMINATION 778
REDIRECT EXAMINATION 782

ANTHONY RILEY (IN CAMERA) 784
DIRECT EXAMINATION 784
CROSS-EXAMINATION 788

ANTHONY RILEY (WITH JURY) 791
DIRECT EXAMINATION 791
CROSS-EXAMINATION 815

assault victim 823
DIRECT EXAMINATION 823
CROSS-EXAMINATION 835

ISAIAH JENNINGS 842
DIRECT EXAMINATION 842
CROSS-EXAMINATION 845

HERTHENIA LINCOLN 848
DIRECT EXAMINATION 848
CROSS-EXAMINATION 849

JAMES ROBINSON 850
DIRECT EXAMINATION 850
CROSS-EXAMINATION 853

GEORGE SCHARE 854
DIRECT EXAMINATION 854

JEFFREY A. ROGERS 857
DIRECT EXAMINATION 857

EARL V. ASBELL 860
DIRECT EXAMINATION 860
CROSS-EXAMINATION 882

DAVID J. COLLINS 884
DIRECT EXAMINATION 884
CROSS-EXAMINATION 890

DAVID SHANKLE 892
DIRECT EXAMINATION 892

STEPHANIE SIMMONS 894
DIRECT EXAMINATION 894
CROSS-EXAMINATION 897

RODNEY DOUGLAS (IN CAMERA) 898
DIRECT EXAMINATION 898

RODNEY DOUGLAS (WITH JURY) 906
DIRECT EXAMINATION 906
CROSS-EXAMINATION 912

LESTER PATRICK 914
DIRECT EXAMINATION 914
CROSS-EXAMINATION 917
REDIRECT EXAMINATION 919

RACELL COOK-JONES 921
DIRECT EXAMINATION 921
CROSS-EXAMINATION 923

JAMES CARVER 928
DIRECT EXAMINATION 928
CROSS-EXAMINATION 950
REDIRECT EXAMINATION 961

PENALTY PHASE

VERNEST LAWRENCE 1058
DIRECT EXAMINATION 1058
CROSS-EXAMINATION 1060
REDIRECT EXAMINATION 1068

ANTHONY BROWN 1068
DIRECT EXAMINATION 1068
CROSS-EXAMINATION 1071

PALACE L. BUNCH 1075
DIRECT EXAMINATION 1075

MELINDA D. B[redacted] 1085
DIRECT EXAMINATION 1085

RICHARD L. LAWHON 1091
DIRECT EXAMINATION 1091
CROSS-EXAMINATION 1095

MIKE B[redacted] 1099
DIRECT EXAMINATION 1099
CROSS-EXAMINATION 1105

TIMOTHY D. ROGERS 1107
DIRECT EXAMINATION 1107
CROSS-EXAMINATION 1120
REDIRECT EXAMINATION 1139

MCTEER MANIGAULT 1143
DIRECT EXAMINATION 1143
CROSS-EXAMINATION 1145

applicant's mother 1146
DIRECT EXAMINATION 1146

MARTIN N[redacted], JR. 1152
DIRECT EXAMINATION 1152

CLARENCE A. MIDDLETON 1156
DIRECT EXAMINATION 1156
CROSS-EXAMINATION 1159

ALESIA W. HEYWARD 1164
DIRECT EXAMINATION 1164
CROSS-EXAMINATION 1167

ADALEE BRYANT 1168
DIRECT EXAMINATION 1168
CROSS-EXAMINATION 1172

APPELLANT'S STATEMENT DATED DECEMBER 2, 1992 1236

MOTION TO INSTRUCT JURY AS TO LIFE SENTENCE BEING WITHOUT PAROLE 1239

APPELLANT'S CRIMINAL RECORD 1240

INDICTMENT FOR MURDER 1248

NOTICE OF INTENT TO SEEK THE DEATH PENALTY AND NOTICES OF EVIDENCE AND AGGRAVATION OF PUNISHMENT 1250

STATUTORY INSTRUCTIONS 1256

JURY'S FINDING OF AGGRAVATING CIRCUMSTANCES 1258

SENTENCING 1260

AFFIRMATION OF DEATH PENALTY 1261

MOTION IN LIMINE 1262

DISCOVERY MOTION 1263

DISCOVERY ORDER 1265

SPEEDY TRIAL MOTION 1268

ORDER APPOINTING COUNSEL 1269

ORDER REQUIRING MEDICAL EVALUATION 1270

MOTION TO QUASH NOTICE OF AGGRAVATING CIRCUMSTANCES 1271

STATE'S REQUEST TO CHARGE 1272

COMMITMENT ORDER 1286

AUGUST 17 AND 19, 1993 HEARING TRANSCRIPT 1288

FEBRUARY 2, 1994 HEARING TRANSCRIPT 2304

JUDGE'S FINAL REPORT 2322

CERTIFICATE OF COUNSEL FOR APPELLANT 2334

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF GENERAL SESSIONS
93-GS-18-101

THE STATE

-VS-

TIMOTHY D. ROGERS

TRANSCRIPT OF RECORD
VOLUME 3
PAGES 801 - 1235

FEBRUARY 28, 1994
THROUGH MARCH 5, 1994
ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE LUKE N. BROWN, JR., JUDGE, AND JURY.

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

WALTER BAILEY, ESQUIRE
HARRISON BELL, ESQUIRE
ATTORNEY FOR THE STATE

WILLIAM RUNYON, ESQUIRE
MARK LEIENDECKER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DAPHNE D. VANN
CIRCUIT COURT REPORTER

KILLING SOMEBODY -- AND THAT'S BASICALLY WHAT INVOLUNTARY MANSLAUGHTER IS. INVOLUNTARY MEANS YOU DIDN'T MEAN TO DO IT. VOLUNTARY MEANS YOU DID MEAN TO DO IT. INVOLUNTARY MEANS HE DID NOT INTEND TO KILL ANYBODY; IT WAS JUST AN ACCIDENT BASICALLY. DOES A MAN WITH THAT STATE OF MIND THAT DIDN'T MEAN TO KILL SOMEBODY RUN OFF TO ALABAMA AND HIDE UNDER A COUCH IN THE MARRIED STUDENTS' HOUSING WHEN HE KNOWS THE COPS ARE AT THE DOOR? NO.

ON BEHALF OF THE STATE OF SOUTH CAROLINA, AGAIN, I APPRECIATE YOUR ATTENTION. I'M GOING TO SIT DOWN NOW. I CAN'T SAY ANYTHING ELSE. BUT I ASK YOU TO LET YOUR VERDICT SPEAK THE TRUTH AND I ASK YOU ON BEHALF OF THE STATE OF SOUTH CAROLINA BASED ON THE EVIDENCE, BASED ON THE LAW THE JUDGE IS GOING TO GIVE YOU, TO COME BACK WITH A GUILTY OF MURDER -- A VERDICT OF MURDER. ANYTHING LESS THAN THAT WOULD BE A VICTORY FOR THE DEFENDANT AND AN INSULT TO THE MEMORY OF STEPHANIE B[redacted]. THANK YOU.

MR. RUNYON: MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, THIRTY YEARS AGO THIS MONTH, MARCH 12TH AS A MATTER OF FACT, I GOT A LETTER FROM NEW ORLEANS, LOUISIANA, FROM TULANE UNIVERSITY THAT SAID, "WE ACCEPT YOU INTO LAW SCHOOL." I WAS FINISHING UP AT THE COLLEGE OF CHARLESTON AT THE TIME. AND THEY

NEEDED SOME ADDITIONAL PAPERS, SO I TOOK MY LAW BOARDS AND I TOOK THAT LETTER AND WENT DOWN AND WENT IN THE DEAN'S OFFICE, DEAN TOAL AT THAT TIME, SITTING AT THE DESK AND I TOLD HIM I NEEDED SOME THINGS AND THAT I'D BEEN ACCEPTED TO TULANE LAW SCHOOL. HE LOOKED UP AT ME OVER HIS GLASSES AND SAID, "YOU WERE ACCEPTED AT TULANE?"

YOU SEE, MY ACADEMIC RECORD WAS LESS THAN STERLING. I SHOWED HIM MY LAW BOARDS AND SAID, "I THINK THAT'S WHAT DID IT." AND I MADE A DECISION THEN THAT I WAS GOING TO GO TO LAW SCHOOL SINCE I'D BEEN ACCEPTED, GAVE UP A PERFECTLY GOOD JOB AT METROPOLITAN LIFE INSURANCE -- JOB OFFER AT METROPOLITAN LIFE INSURANCE COMPANY. AND THERE ARE TIMES LIKE THIS CASE THAT I REGRET THAT I DID THAT BECAUSE PRACTICING LAW, AND PARTICULARLY IN CRIMINAL COURT, IS REALLY TOUGH WHEN YOU HAVE A CASE LIKE THIS.

THIS IS NOT A CASE WHERE, YOU KNOW, WE CAN -- WE CAN STAND UP HERE AND SAY, OH, DON'T WORRY ABOUT THIS. DON'T WORRY ABOUT THAT BECAUSE YOU'RE GOING TO WORRY ABOUT EVERYTHING. I MEAN, THIS IS A BAD CASE, FOLKS, AND I'M GOING TO ASK YOU TO FIND MY CLIENT GUILTY OF INVOLUNTARY MANSLAUGHTER. I'M NOT GOING TO STAND UP AND TELL YOU THAT HE'S NOT GUILTY OF DOING ANYTHING, AND INSOFAR AS OTHERS PEOPLES' CULPABILITY,

MAYBE THAT'S WHAT'S WRONG WITH SOCIETY TODAY. EVERYBODY IS TO BLAME FOR SOMETHING. NOBODY WANTS TO TAKE CREDIT OR BLAME, AND WE'RE NOT HERE JUDGING WHETHER OR NOT MR. B[redacted] DID SOMETHING OR -- WELL, A TWELVE-PACK OF BEER SURE DISAPPEARED, BUT WE'RE NOT HERE TO JUDGE THAT. WE'RE ONLY HERE TO JUDGE WHAT WE'RE GOING TO DO WITH MR. ROGERS, AND I'LL BE THE FIRST ONE TO ADMIT THAT. BUT LET'S -- LET'S UNDERSTANI WHERE WE ARE.

THIS CASE IS A PERFECT EXAMPLE OF THE OLD STORY, THE OLD EXAMPLE OF THE SIGHTLESS PEOPLE BEING TAKEN TO THE ZOO AND ASKED TO BEING -- OR DESCRIBE AN ELEPHANT AFTER THEY'VE BEEN ABLE TO TOUCH HIM AND WHAT HAVE YOU. YOU KNOW, ONE TOUCHED THE TUSK. ONE TOUCHED THE TRUNK. ONE TOUCHED THE LEGS. AND YOU GET ALL THESE VARIOUS DESCRIPTIONS. WELL, THIS IS A SHORT CASE, A VERY SHORT CASE, AND YOU'VE SEEN WHAT YOU'VE GOTTEN.

NOW, IT'S BEEN MY EXPERIENCE THAT -- YOU KNOW, MR. BAILEY AND I HAVE BEEN FRIENDS FOR YEARS, BUT, YOU KNOW, IT NEVER CEASES TO AMAZE ME THAT ANYBODY WHO SAYS ANYTHING ON THE STAND, IF IT DOESN'T AGREE WITH SOMEBODY ELSE, THEN THEY MUST BE LYING OR ANYBODY WHO GIVES A STATEMENT, THEY MUST BE LYING IF IT DOESN'T AGREE WITH SOMEBODY ELSE. MR. JENNINGS. MR. JENNINGS

IS A BRICKLAYER WHO LIVED IN THIS COMMUNITY ALL HIS LIFE. HE DIDN'T SEE ANYBODY IN THAT PARKING LOT EXCEPT ONE WHITE GUY ACTING KIND OF CRAZY. HE WENT IN AND HE SAID, "THERE'S A GUY OUT THERE. HE'S DRUNK OR SOMETHING." HE DIDN'T SEE ANYBODY ELSE. BUT WE'RE SUPPOSED TO ACCEPT AS GOSPEL WHAT MR. RILEY SAYS BECAUSE HE'S GOING TO REMEMBER EVERY SINGLE DETAIL, BUT HE DIDN'T REMEMBER TO PUT IN HIS STATEMENT THESE TWO GUYS RUNNING BY THE HOUSE AND ONE OF THEM MYSTERIOUSLY SAYING, "DID YOU GET THE MOTHER FUCKER?" AND THE OTHER ONE SAYING, "YES, I DID. I THINK I DID." THAT'S NOT IN HIS STATEMENT. IT'S NOT IN HIS STATEMENT.

WE HAD THAT NIGHT A TRAGIC SERIES OF EVENTS. WE GOT A MAN WHO CAME TO TOWN -- GOOD FELLOW; OKAY? NOTHING EVIL ABOUT THAT MAN OVER THERE. CAME TO TOWN, BOUGHT HIMSELF A TWELVE-PACK OF BEER, GOING TO DRINK SOME OF IT, WAIT FOR HIS DAUGHTER, GOING TO PICK UP HIS FRIEND, MR. CARVER, AND THEY'RE GOING BACK TO THE LAKE. NOTHING WRONG WITH THAT. MR. CARVER HAD HIS NINE MILLIMETER. MAYBE THAT'S ONE OF OUR PROBLEMS. WE GOT TOO MANY GUNS AROUND, BUT HAD HIS NINE MILLIMETER IN THE CLOTHES BASKET AND THERE WAS A 410 SHOTGUN IN THE TRUCK. SOMETHING BAD WAS GOING TO HAPPEN THAT EVENING, EITHER WHERE THEY STOPPED SOMEWHERE OR ON THE ROAD OR SOMETHING.

NOW, THE POLICE TOOK PICTURES OF EVERYTHING AND YOU'VE GOT THESE PICTURES IN EVIDENCE AND, YOU KNOW, THE STATE HASN'T PUT IN ANY EVIDENCE AS TO WHAT HAPPENED TO THE BEER OR WHAT HAVE YOU. MR. CARVER SAYS, "I DIDN'T SEE ANY BEER IN THAT TRUCK, DIDN'T SEE ANY BEER AT ALL." I UNDERSTAND AND I WOULD SUBMIT TO YOU YOU WOULD UNDERSTAND, TOO, THE TERRIBLE GUILT FEELINGS THAT SOMEONE WOULD HAVE IF THEY HAD -- IF THEIR JUDGMENT WAS CLOUDED AND THEY DIDN'T ACT JUST THE WAY THEY SHOULD HAVE IN A GIVEN SITUATION AND THEIR CHILD WAS INJURED OR KILLED. THAT'S WHAT WE HAVE HERE.

NOW, MR. RILEY SAYS CERTAIN THINGS HAPPENED. MR. RILEY IS AN INTERESTING INDIVIDUAL. MR. RILEY, I REMIND YOU, KNOWS MR. B[redacted]. WHAT DID MR. RILEY TELL YOU? HE SAID, "WELL, WHEN I HEARD THESE NOISES, I THOUGHT IT WAS FIRECRACKERS AT FIRST." AND THEN WHAT DID HE SAY? HE SAID, "AND THEN I THOUGHT, WELL, MAYBE IT WAS JUST MIKE B[redacted] FIRING SOME WARNING SHOTS." HE'S GOT A TEMPER. I WOULD RESPECTFULLY SUBMIT TO YOU THAT NO ONE, NO ONE, IS EVER GOING TO KNOW PRECISELY WHAT HAPPENED THAT PARTICULAR NIGHT.

UNFORTUNATELY, YOU COLLECTIVELY, INDIVIDUALLY AND COLLECTIVELY, HAVE GOT TO MAKE A DECISION WITH WHAT YOU'VE GOT TO WORK WITH. DECIDE BEYOND A REASONABLE

DOUBT WHAT HAPPENED THAT NIGHT. AND YOU DON'T -- AND YOU DON'T KNOW WHO TO RELY UPON AND YOU'VE GOT THE TOUGHEST JOB. YOUR JOB IS VERY, VERY TOUGH BECAUSE WE'VE GOT A BUNCH OF PEOPLE TRYING TO DESCRIBE AN ELEPHANT. MR. RILEY REMEMBERS THOSE PEOPLE RUNNING BY, BUT HE DIDN'T PUT IT IN HIS STATEMENT THAT NIGHT. MR. RILEY WAS VISITED BY AN EMISSARY OF THE B[redacted] FAMILY JUST THIS PAST SUNDAY, TOLD YOU ABOUT THAT, MAKE SURE HOW HIS TESTIMONY WOULD BE, SO TO SPEAK, AND HE WENT TO SEE MR. B[redacted]. HE SAID, "WELL, I'LL TAKE CARE OF IT. DON'T YOU WORRY. EVERYTHING IS GOING TO BE ALL RIGHT."

I DON'T KNOW WHAT YOU'RE GOING TO BE ABLE TO GLEAN FROM THIS TESTIMONY, BUT I THINK WHAT YOU CAN REASONABLY CONCLUDE IS THAT ON THAT NIGHT DAXTON PATTERSON, assault victim , AND TIMOTHY ROGERS WERE DRINKING THAT DAY AND HE WAS INTOXICATED. THAT'S THE TESTIMONY. MR. B[redacted] HAD HAD, BY HIS TESTIMONY, THREE, MAYBE FOUR BEERS, BUT HE WAS ALL RIGHT TO DRIVE. THE NEXT TIME YOU'VE HAD THREE OR FOUR BEERS YOU TELL THAT DEPUTY SHERIFF THAT YOU'RE ALL RIGHT TO DRIVE. OF COURSE, HE'D BOUGHT A TWELVE-PACK. WAS HIS JUDGMENT CLOUDED? WAS HIS RECOLLECTION CLOUDED? I DON'T KNOW. YOU'VE GOT TO MAKE THAT DECISION.

MR. CARVER SAYS HE DIDN'T HAVE ANYTHING TO

DRINK. HE STOPPED. STEPHANIE WANTS SOMETHING TO EAT, PERFECTLY PROPER. SPELL'S GROCERY STORE HAS BEEN THERE FOR FIFTY YEARS. WE KNOW IT'S BEEN THERE FOR AT LEAST THIRTY-FOUR BECAUSE THE GENTLEMAN, MR. ROBINSON, I BELIEVE HAS WORKED THERE FOR THIRTY-FOUR YEARS. SO WE KNOW THAT STORE HAS BEEN THERE FOR A LONG TIME. PERFECTLY REPUTABLE, RESPECTABLE PLACE. AND THEY'RE ATTENDING THEIR BUSINESS. NOW, REGARDLESS OF WHO GOT THERE FIRST, YOU KNOW, HE SAYS, WELL, MR. ROGERS GAVE THIS STATEMENT ABOUT HIS RECOLLECTIONS, YOU KNOW. MR. BAILEY WOULD SAY, WELL, WHAT HE'S TELLING YOU HERE IS A LIE. NOW, THESE OTHER PEOPLE CAN HAVE DIFFERENT STATEMENTS BUT, OH, YOU KNOW, THEY JUST FORGOT OR THEY DIDN'T REMEMBER OR THEY WERE JUST UNDER EMOTIONAL STRESS OR STRAIN. THEY'RE NOT LYING. THEY'RE NOT MISTAKEN OR ANYTHING OF THAT SORT. MR. ROGERS IS LYING.

POLICE OFFICERS IN TUSKEGEE, ALABAMA WENT AND GOT HIM AND I DON'T KNOW THE. . . I DON'T KNOW THAT HE CAN SLIDE UNDER SIX INCHES UNDER A COUCH, IF THERE IS THAT MUCH. BUT BE THAT AS IT MAY, THAT WAS THE RECOLLECTION OF THE POLICE OFFICER. AND HE WAS IN THE APARTMENT AND HE WENT TO TUSKEGEE AND THAT NIGHT HE RAN AWAY. HE RAN AWAY. HURT SOMEBODY AND HE RAN AWAY. THERE'S NO QUESTION ABOUT THAT AND I'M NOT STANDING

HERE TELLING YOU HE'S NOT GUILTY OF SOMETHING. IT WOULD BE ONE THING IF WE WERE STANDING UP HERE SAYING, OH, WELL, YOU KNOW, FIND HIM NOT GUILTY AND ALL THAT SORT OF STUFF. WE'RE NOT SAYING THAT.

GUILTY OF THE MANSLAUGHTER OFFENSE. HIS HONOR IS GOING TO TELL YOU ABOUT THE MANSLAUGHTER OFFENSE. HE'S GOING TO CHARGE YOU AS TO THE LAW AND I WANT YOU TO LISTEN TO THAT. WHATEVER HIS HONOR TELLS YOU ABOUT THE LAW, YOU KNOW, YOU TAKE THAT. DON'T TAKE WHAT I SAY WHAT THE LAW IS; TAKE WHAT HE SAYS. AND LIKEWISE WITH REGARDS TO THE FACTS, JUST LIKE MR. BAILEY SAID, IF I RECALL SOMETHING DIFFERENTLY THAN YOU RECALL, YOU TAKE YOUR RECOLLECTION AND YOU'VE GOT THE RECORD. ANYTHING -- ANY MISSTATEMENT, IF THERE WAS ONE, BY MYSELF OR MR. BAILEY WOULD BE THOROUGHLY INTENTIONAL (SIC) ON EITHER PART.

IT'S A TERRIBLE TRAGEDY AND, YOU KNOW, PEOPLE WHO DESERVED TO BE HURT THAT NIGHT, MAYBE BE BEAT UP OR SHOT IN THE FOOT OR SOMETHING, YOU KNOW, JUST DIDN'T GET TO COME UP. AN INNOCENT NINE-YEAR-OLD CHILD HAD TO DIE. WELL, SHE DIDN'T HAVE TO, BUT SHE DID. AND THAT'S A TERRIBLE TRAGEDY, BUT YOUR JOB IS TO NOT TO DECIDE WHETHER OR NOT THAT'S A TERRIBLE TRAGEDY BECAUSE WE ALL AGREE UPON THAT. YOUR JOB IS TO DETERMINE WHETHER OR NOT THAT WAS MURDER OR WHETHER OR NOT IT WAS

THE MANSLAUGHTER OFFENSE THAT HIS HONOR IS GOING TO INSTRUCT YOU ON.

NOW, TIMOTHY ROGERS -- YOU TAKE ALL OF THE TESTIMONY, YOU TAKE ALL OF THE DISCREPANCIES, YOU TAKE ALL OF THE VARIOUS VIEWS, TIMOTHY ROGERS SAID, "I WAS AT SPELL'S GROCERY STORE AND I WAS ON THE PHONE." HIS RECOLLECTION IS IS A SMALLER TRUCK PULLED UP. WELL, IT'S A FULL-SIZED TRUCK. HE'S INCORRECT ABOUT THE SIZE OF THE TRUCK. I'M ON THE PHONE. I'M NOT BOTHERING ANYBODY. I'M TALKING. DAXTON PATTERSON, ACCORDING TO THE STATEMENT HERE, DOES, IN FACT, GET INTO A ROW WITH MR. B[redacted]. NOW, MR. ROGERS' STATEMENT SAYS THAT THERE WERE SOME REMARKS MADE, BUT BE THAT AS IT MAY, HE DIDN'T DO ANYTHING. APPARENTLY DAXTON PATTERSON GOT INTO THE ROW WITH MR. B[redacted]. AND THEN WHAT OCCURRED?

REGARDLESS OF WHETHER IT WAS OVER HERE AT THE END, YOU KNOW, AFTER MR. RILEY LEFT AND THEY FOLLOWED HIM OVER THERE, MR. B[redacted] AND MR. PATTERSON CARRIED THEIR ARGUMENT TO THE TRUCK AND IT GOT PRETTY HEATED AND IT GOT PRETTY OUT OF HAND AND IT WAS GETTING OUT OF HAND. MR. CARVER GOT OUT OF THE TRUCK BECAUSE HE THOUGHT THERE WAS GOING TO BE SOME REAL BLOWS THROWN. AND AT THAT POINT IT ALL GETS KIND OF DISCOMBOBULATED AND AT THAT POINT IN TIME THERE'S A LOT OF DIFFERENCE

OF OPINION, BUT THE SIMPLE FACT OF THE MATTER IS IS DAXTON PATTERSON AND MR. B[redacted] WERE IN PRETTY CLOSE PROXIMITY. DAXTON PATTERSON WAS STANDING BETWEEN THE DOORWAY -- THE DOOR AND THE FRAME OF THE TRUCK. MR. B[redacted] COULDN'T CLOSE THE DOOR.

NOW, MR. B[redacted] -- I WOULD RESPECTFULLY SUBMIT TO YOU THAT MR. B[redacted] WASN'T JUST SAYING, LOOK, FELLOW, WHY DON'T YOU JUST GO AWAY OR WHAT HAVE YOU. MR. B[redacted] IS PROBABLY TELLING THE GUY, GET OUT OF THERE. YOU KNOW, I DON'T HAVE ANYTHING -- YOU DON'T HAVE ANY RIGHT TO DO THIS OR WHATEVER HE WAS SAYING. HE'S ROWING WITH PATTERSON. ROGERS AT THAT POINT IN TIME COMES OVER AND IT'S UNCONTRADICTED THAT HE INTERVENES BETWEEN DAX PATTERSON AND MIKE B[redacted]. NO QUESTION ABOUT THAT. AND HE PULLS A GUN.

NOW, HERE IS WHERE THE STORIES ARE DIFFERENT. MR. B[redacted] SAYS THAT HE POINTED THE GUN AT HIM AND HE SPIT ON HIM AND WHAT HAVE YOU. MR. CARVER SAID THE SAME THING, BY THE WAY. THAT'S INTERESTING. OF COURSE, HE DIDN'T PUT THAT IN HIS STATEMENT. HE SAID THE WHITE MALE SPIT ON HIM AND HE DIDN'T TALK ABOUT LAUGHING AND WHAT HAVE YOU. THAT JUST CAME ABOUT, YOU KNOW, JUST LIKE THE VISIT TO MR. RILEY CAME ABOUT, I GUESS. I DON'T KNOW. BUT THE SIMPLE FACT IS IS THAT MR. ROGERS PRODUCED A WEAPON. IT'S NOT RIGHT.

YOU KNOW, WE GOT TOO MANY GUNS AROUND. I MEAN, IT'S A WONDER MORE PEOPLE WEREN'T INJURED OR KILLED THAT NIGHT. WE HAD A SHOTGUN IN THE TRUCK AND WE HAD A LOADED NINE MILLIMETER IN THE BED OF THAT TRUCK AND WE HAD AT LEAST THREE PEOPLE WHO WERE PROBABLY PRETTY WELL UNDER THE INFLUENCE: ROGERS, PATTERSON, AND MAYBE MR. B[redacted]. IN ANY EVENT, IT'S THOROUGHLY REASONABLE TO BELIEVE AND IMPLY AND INFER FROM THE EVIDENCE THAT ROGERS WAS TRYING TO BREAK UP B[redacted] AND PATTERSON. I'M NOT TELLING YOU HE DID IT THE RIGHT WAY. I'M NOT TELLING YOU AND SUGGESTING TO YOU THAT YOU SHOULD DO IT THAT WAY. THAT'S WHAT HE WAS DOING.

NOW, WHAT DID MR. CARVER TELL YOU? YOU KNOW, THE STATE SAYS, WELL, YOU CAN'T BELIEVE WHAT MR. ROGERS TELLS YOU BECAUSE HE'S LYING. OF COURSE, HE WAS DRUNK AT THE TIME PROBABLY. HE CAN'T BE MISTAKEN. HE'S JUST A LIAR. MR. CARVER DIDN'T REMEMBER CERTAIN THINGS THAT NIGHT, BUT HE WAS JUST UNDER EMOTIONAL STRESS. EXCUSE ME. NOW, WHAT OCCURRED? MR. CARVER SAID THAT AT THE TIME MR. B[redacted] PULLED OFF WITH THE TRUCK THAT MR. ROGERS' HAND AND ARM WERE WITHIN THE DOOR FRAME -- THE DOOR WINDOW OF THE TRUCK. THAT IS DIFFERENT FROM WHAT MR. B[redacted] SAYS AND FRANKLY THAT'S -- MS. assault victim DOESN'T EVEN RESPOND TO THAT BECAUSE SHE SAID HER BACK WAS TURNED. YOU'VE GOT A SPACE ABOUT AS BIG AS THE

WIDTH OF THIS COURTROOM HERE AND, YOU KNOW, THE TRUCK -- Y'ALL ARE FAMILIAR. YOU CAN USE YOUR GOOD COMMON SENSE. THE PICKUP TRUCK IS ABOUT SO LONG AND, I MEAN, IT'S A REAL CLOSE CONFINED SPACE. HE PULLS OFF.

NOW, IF YOU BELIEVE -- AND THERE'S NO QUESTION ABOUT THE FACT THERE WERE TWO SHOTS FIRED, AND IF YOU BELIEVE THAT THERE WERE TWO SHOTS FIRED, WHAT WAS THE FIRING OF THE FIRST SHOT FOR OTHER THAN - I'M NOT SUGGESTING THAT YOU SHOULD BREAK UP FIGHTS THAT WAY - OTHER THAN TO DISPERSE THIS WHOLE SITUATION? IT WAS FIRED INTO THE GROUND. FIRED AWAY FROM THESE PEOPLE. AND MR. ROGERS WAS STANDING, BY MR. CARVER'S TESTIMONY, RIGHT THERE AT THE HEAD OF THE TRUCK JUST LIKE THIS. SAY THIS IS THE FRONT OF THE TRUCK AND THE TRUCK TAKES OFF. MR. CARVER SAYS, WELL, WE JUST KIND OF PULLED AWAY, YOU KNOW. WE WEREN'T UPSET OR ANYTHING. WEREN'T UPSET? THERE'S A MAN THERE WITH A GUN. YOU'RE NOT GOING TO TROMP ON IT? YOU'RE NOT GOING TO GET OUT OF THERE? I DON'T KNOW. MAYBE IT WAS A FEW OF THOSE BEERS THAT MADE YOU JUST FEEL LIKE, WELL, WE'LL JUST DRIVE OFF A LITTLE BIT. BUT THE SIMPLE FACT IS IS A WEAPON WAS DISCHARGED. THE WEAPON WAS DISCHARGED THE SECOND TIME AND THE ONE THING THAT WE'LL NEVER KNOW IS WHERE PEOPLE WERE PRECISELY BECAUSE IN THE CONFINES OF THAT PARKING LOT MR. ROGERS HAD TO BE SOMEWHERE THAT

WOULD PLACE HIM IN A POSITION TO FIRE A SHOT AT A TEN-DEGREE DOWNWARD ANGLE.

THAT'S WHAT -- THAT'S WHAT THESE PICTURES REFLECT TOGETHER WITH THIS DRAWING OF STEPHANIE. IT WAS A TEN-DEGREE DOWNWARD ANGLE. IS THAT CONSISTENT WITH MAYBE STANDING ON THE CURB OVER BY THE STORE? PROBABLY BECAUSE HE'D BE ELEVATED. THAT'S CONSISTENT WITH JUMPING OUT OF THE WAY? BEING ELEVATED? YOU'VE GOT TO DECIDE. AND YOU KNOW WHAT? WE'LL NEVER KNOW PRECISELY WHAT OCCURRED. WE'LL NEVER KNOW THAT. BUT YOU'VE GOT TO MAKE THAT DECISION AND I DON'T KNOW HOW YOU'RE GOING TO DO IT.

LADIES AND GENTLEMEN, YOU KNOW, IT'S VERY DIFFICULT WHEN YOU'RE HANDLING A CRIMINAL CASE TO STAND UP SOMETIMES AND ASK JURORS TO -- WELL, YOU KNOW, THE EVIDENCE IS THIS WAY AND THE EVIDENCE IS THAT WAY. PLEASE, YOU KNOW, RETURN A VERDICT OF NOT GUILTY. IT'S DIFFICULT THAT WAY AT TIMES AND JURIES STILL DO IT. IT PROVES THE SYSTEM WORKS AND WHAT HAVE YOU. BUT I'M NOT ASKING YOU TO FIND MY CLIENT NOT GUILTY. I'M NOT ASKING YOU THAT. I'M ASKING YOU TO GO INTO THE JURY ROOM, LOOK AT ALL THE THINGS THAT HAPPENED, DISCUSS ALL THE FACTS AND CIRCUMSTANCES, AND FIND HIM GUILTY OF THE MANSLAUGHTER OFFENSE THAT THE JUDGE IS GOING TO TELL YOU YOU CAN FIND HIM GUILTY OF.

WE'RE TAKING OUR RESPONSIBILITY. EVERYBODY ELSE IS SAYING, OH, I DIDN'T HAVE ANYTHING TO DO WITH IT OR YOU KNOW. . . . WE'RE ASSUMING OUR RESPONSIBILITY. WE WANT YOU TO FIND US GUILTY. HOW'S THAT? WAS EVIDENCE EXACTLY THE WAY THE SOLICITOR WANTED IT? AND I'M NOT SUGGESTING THAT MY FRIEND WALTER BAILEY WOULD EVER HAVE ANYBODY DO THIS, BUT ISN'T THERE SOME QUESTION -- WHY WOULD SOMEONE GO TO A WITNESS AND TALK TO THEM ABOUT THEIR TESTIMONY? WHY WOULD THEY HAVE TO GO TO SEE MR. B[redacted] AND SAY, "DON'T WORRY. I'M GOING TO. . ." WHY? WE'LL NEVER KNOW THE ANSWER TO THAT. WE'LL NEVER KNOW THE ANSWER TO THAT. BUT THE SIMPLE FACT OF THE MATTER IS IS THAT THAT IS A FACTOR WHICH YOU CAN CONSIDER.

NOW, MR. BAILEY HAS TOLD YOU MR. ROGERS IS A LIAR. OKAY? IF YOU WANT TO BELIEVE THAT, YOU BELIEVE THAT. I'M TELLING YOU NO QUESTION ABOUT THE FACT THAT MR. ROGERS DOESN'T REMEMBER THINGS PRECISELY ACCURATELY AS THEY OCCURRED THAT NIGHT AND, AS A MATTER OF FACT, NOBODY REMEMBERS ACCURATELY WHAT HAPPENED THAT NIGHT. PLEASE FIND MY CLIENT GUILTY OF THE MANSLAUGHTER OFFENSE THAT THE JUDGE IS GOING TO CHARGE YOU BECAUSE HE'S GUILTY OF THAT. HE HAD A WEAPON HE SHOULDN'T HAVE HAD. SOMEONE GOT KILLED THAT DIDN'T HAVE ANYTHING TO DO WITH IT. AND I DON'T THINK THERE'S ANY QUESTION --

THERE'S NO QUESTION THAT IN THIS CASE THAT MR. ROGERS NEVER HAD AN INTENT TO SHOOT THAT CHILD.

I'M GOING TO SIT DOWN. MR. LEIENDECKER AND I HAVE DECIDED THAT, YOU KNOW, WE'RE NOT GOING TO BORE YOU WITH TWO SPEECHES BECAUSE AS A PRACTICAL MATTER THERE'S ONLY SO MUCH WE CAN SAY. EACH AND EVERY ONE OF YOU -- IT'S A TOUGH JOB. EACH AND EVERY ONE OF YOU HAVE GOT TO BE SATISFIED BEYOND A REASONABLE DOUBT THAT THERE WAS A SPECIFIC INTENT TO KILL SOMEBODY THAT NIGHT BY MR. ROGERS, BY MR. ROGERS. AND IF YOU'RE NOT SATISFIED BEYOND THAT REASONABLE DOUBT, YOU CAN'T FIND HIM GUILTY OF MURDER. AND ON TOP OF THAT, WE'RE STANDING HERE TELLING YOU WHAT WE'RE GUILTY OF AND I WOULD IMPLORE YOU, I WOULD ASK YOU, TO FIND HIM GUILTY OF THAT MANSLAUGHTER OFFENSE THAT HIS HONOR IS GOING TO TELL YOU ABOUT.

AS I SAID, THERE ARE CASES LIKE THIS THAT MAKES ME WONDER SOMETIMES WHY I DIDN'T TAKE THAT GOOD JOB OFFER FROM METROPOLITAN BECAUSE THIS IS A TOUGH KIND OF BUSINESS. YOU'VE GOT TO ASK PEOPLE TO PUT IN PERSPECTIVE AND IT'S TERRIBLE TO PUT IN PERSPECTIVE -- TRY TO PUT IN PERSPECTIVE THE DEATH OF A CHILD. YOU CAN'T DO THAT. EVERY ONE OF US HAVE CHILDREN OR NIECES OR NEPHEWS AND EVERY ONE OF US WOULD HAVE SAID, "IF SOMETHING'S GOING TO HAPPEN, LET IT BE TO ME, NOT MY

CHILD OR MY NIECE OR NEPHEW." I WANT YOU TO REMEMBER THAT. USE YOUR COMMON SENSE BECAUSE THAT HAS A LOT TO DO WITH RECOLLECTIONS, TOO, JUST AS MUCH AS THAT TWELVE-PACK OF BEER HAS TO DO WITH RECOLLECTION.

NO ONE WANTS TO BE -- FEEL LIKE THEY WERE RESPONSIBLE OR HAD ANY HAND IN DOING ANYTHING, EVEN A MISJUDGMENT, NOT GOING INTO THE STORE AND CALLING THE POLICE OR WHAT HAVE YOU. NO ONE WANTS TO FEEL LIKE THEY BROUGHT ABOUT THE DEATH OF THEIR CHILD. I RESPECTFULLY SUBMIT TO YOU THAT PROBABLY HAD SOMETHING TO DO WITH THE TESTIMONY IN THIS CASE. ON BEHALF OF MR. LEIENDECKER AND MR. ROGERS AND MYSELF I WANT TO THANK YOU FOR YOUR ATTENTION. I WANT TO THANK YOU FOR LISTENING TO US AND I WANT TO THANK YOU FOR YOUR CONSIDERATION. ALL WE CAN ASK OF YOU AT THIS POINT IN TIME IS THAT YOU DELIBERATE AND, IF YOU CAN UNANIMOUSLY AGREE, PLEASE FIND MY CLIENT GUILTY OF THE MANSLAUGHTER OFFENSE THAT HIS HONOR IS GOING TO TELL YOU ABOUT FROM THE BENCH. PLEASE FIND HIM GUILTY OF THAT OFFENSE. THANK YOU.

THE COURT: THANK YOU VERY MUCH. I THINK IT MIGHT BE BETTER, MR. FOREMAN, TO SEND YOU TO LUNCH NOW BECAUSE YOU'D JUST HAVE TO BREAK IT UP IF I GAVE YOU SOME INSTRUCTIONS NOW. SO, I'M GOING TO SEND YOU TO LUNCH. I'M GOING TO -- I'M AIMING -- LET'S SEE. LET'S

JUST MAKE IT 1:30. THAT WILL GIVE YOU A CHANCE -- YOU WON'T HAVE TO HURRY. HAVE A GOOD LUNCH AND SEE YOU AT 1:30.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO GO TO LUNCH.)

THE COURT: ALL RIGHT. GO AHEAD. CARRY MR. ROGERS TO LUNCH. NOW, COURT'S IN RECESS UNTIL 1:30, BUT I WANT YOU TO LEAVE QUIETLY. I'M GOING TO TALK TO MY STUDENTS HERE JUST A MOMENT OR TWO.

(WHEREUPON, A LUNCH BREAK WAS TAKEN.)

THE COURT: THANK YOU SO MUCH. PLEASE BE SEATED. ALL RIGHT. ALL RIGHT. WHAT HAPPENED TO MR. RUNYON?

MR. LEIENDECKER: WE'RE NOT SURE, YOUR HONOR.

THE COURT: HE'LL BE AROUND. I'LL WAIT ON HIM.

BAILIFF: HERE HE COMES.

THE COURT: ALL RIGHT. CAN YOU THINK OF ANYTHING ELSE, COUNSELOR, BEFORE I---

MR. BAILEY: YOUR HONOR, NOTHING OTHER THAN THE STATE'S REQUEST FOR THE CHARGE -- STATE'S NUMBER 1 THAT I HAD GIVEN YOU A COPY OF.

THE COURT: YEAH, THAT'S INCLUDED IN MY GENERAL CHARGE.

MR. BAILEY: ALL RIGHT, SIR.

THE COURT: IS THAT WHAT YOU REFERRED TO AS GENERAL MALICE? WELL, IT STARTS OFF---

MR. BAILEY: AS OPPOSED TO SPECIFIC INTENT OR TRANSFERRED INTENT.

THE COURT: YOU ASKED TO CHARGE NUMBER 1 WHICH BEGINS WITH "IN ITS POPULAR SENSE" AND ENDS WITH "OR EXCUSE"?

MR. BAILEY: YES, SIR.

THE COURT: WELL, THAT'S IN MY GENERAL CHARGE.

MR. RUNYON: YOUR HONOR, JUST AS -- IT HAS NOTHING TO DO WITH ANY ADDITIONAL REQUESTS TO CHARGE OTHER THAN WHAT WE'VE HAVE ALREADY PREVIOUSLY DISCUSSED, BUT FOR THE RECORD AS A MATTER OF HOUSEKEEPING WE WOULD LIKE TO HAVE THE RECORD REFLECT THAT THE MOTIONS MADE AT THE END OF THE STATE'S CASE WERE RENEWED UPON OUR RESTING.

THE COURT: YES, SIR.

MR. RUNYON: AND THAT THE COURT WOULD HAVE THE SAME RULING AS IT HAD PREVIOUSLY RULED.

THE COURT: YES, SIR. ANYTHING FURTHER?

MR. RUNYON: NOTHING FURTHER AT THIS TIME, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. BRING THE JURY IN FOR ME. PLEASE, IF YOU WILL, FOR THOSE OF YOU IN

THE COURTROOM, IT'S ONLY GOING TO TAKE ME ABOUT TWENTY MINUTES TO GIVE THIS CHARGE. I'M GOING TO ASK THAT YOU NOT GET UP AND LEAVE. DON'T LET ANYONE IN, OF COURSE, UNLESS IT'S AN ABSOLUTE EMERGENCY.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 1:31 P.M.)

THE COURT: NOW, MR. FOREMAN, MEMBERS OF THE JURY, WE'RE JUST ABOUT TO WIND DOWN THIS PARTICULAR CASE AND IT NOW BECOMES MY DUTY TO CHARGE YOU WHICH MERELY -- SLIDE THAT BACK UP THERE. I CAN'T QUITE -- I CAN'T SEE BUT HALF OF MY JURORS THERE. THANK YOU VERY MUCH. IT NOW BECOMES MY DUTY TO CHARGE YOU. CHARGE, OF COURSE, JUST MEANS TO INSTRUCT YOU ON THE LAW THAT APPLIES TO THIS CASE. THIS IS A CASE IN WHICH THE STATE CHARGES THE DEFENDANT, TIMOTHY ROGERS, WITH THE CRIME OF MURDER. AT THE END OF THE CASE YOU'RE GOING TO HAVE THE CHOICE OF THREE VERDICTS: THAT IS, GUILTY OF MURDER, GUILTY OF INVOLUNTARY MANSLAUGHTER, OR NOT GUILTY.

NOW, TO THIS CRIME OF MURDER HE PLEADS NOT GUILTY AND YOU REMEMBER I TOLD YOU SITTING AT THAT TABLE HE'S JUST AS INNOCENT AS YOU AND I EVEN NOW UNLESS AND UNTIL THE STATE CAN SATISFY TWELVE OF YOU OF HIS GUILT BEYOND A REASONABLE DOUBT BECAUSE IT'S IMPORTANT TO REMEMBER THAT A PERSON CHARGED WITH A

CRIME, NO MATTER HOW SERIOUS IT MIGHT BE, IS ALWAYS PRESUMED TO BE INNOCENT. THE PRESUMPTION BEGINS FROM THE MOMENT A PERSON IS ARRESTED AND IT CONTINUES THROUGHOUT ALL THE PROCEEDINGS, INCLUDING YOUR DELIBERATIONS, UNLESS AND UNTIL THE STATE CAN SATISFY YOU OF HIS GUILT BEYOND A REASONABLE DOUBT BECAUSE IT WOULD BE YOUR DUTY TO FIND HIM NOT GUILTY IF YOU HAVE A REASONABLE DOUBT.

WELL, WHAT'S A REASONABLE DOUBT? I TOLD YOU, YOU RECALL, YOU USE THOSE WORDS REASONABLE DOUBT JUST LIKE YOU WOULD IN YOUR EVERYDAY AFFAIRS. IT'S SAID THAT A REASONABLE DOUBT IS A DOUBT WHICH A JUROR CAN GIVE WHEN THEY'RE EARNESTLY SEEKING TO FIND THE TRUTH. IT'S ALSO SAID THAT A REASONABLE DOUBT IS A DOUBT WHICH WOULD MAKE A REASONABLE PERSON HESITATE TO ACT, SO TO SPEAK. AND, OF COURSE, REASONABLE DOUBT CAN EXIST FROM EVIDENCE IN THE CASE OR LACK OF EVIDENCE. YOU ALONE MUST MAKE THAT DETERMINATION OF WHETHER OR NOT REASONABLE DOUBT EXISTS.

NOW, I EXPLAINED TO YOU AT THE BEGINNING OF THE CASE THAT YOU ARE THE JUDGES OF THE FACTS IN THIS CASE AND AS JUDGES OF THE FACTS YOU MUST OF NECESSITY DETERMINE THE CREDIBILITY OF THE WITNESSES WHO TESTIFIED. WELL, HOW DO YOU DO THAT? YOU KNOW, YOU DO IT EVERY DAY AND YOU DON'T EVEN THINK ABOUT IT.

SUPPOSE YOU CAN'T SEE OUTSIDE AND SOMEBODY WALKS IN THE DOOR BACK THERE AND SAYS, "IT'S RAINING OUTSIDE." WELL, YOUR MIND IS KIND OF LIKE A COMPUTER. IT ACCEPTS WHAT THAT PERSON TELLS YOU AND THEN YOU APPLY OTHER LITTLE THINGS IN THAT COMPUTER LIKE HOW THE WEATHER WAS WHEN YOU CAME IN THIS MORNING, HOW THE PERSON SAID IT, ALL THE THINGS THAT YOU PICK UP AND THEN YOU MAKE UP YOUR MIND WHETHER TO BELIEVE IT OR NOT. THAT'S WHAT WE CALL USING YOUR COMMON SENSE BECAUSE YOU DON'T LEAVE YOUR COMMON SENSE AT HOME WHEN YOU ARE DETERMINING THE CREDIBILITY OF THE WITNESSES. WHEN I SAY CREDIBILITY, I'M TALKING ABOUT BELIEVABILITY. YOU USE THOSE SAME LITTLE GUIDELINES THAT YOU USE EVERY DAY AND YOU DON'T EVEN THINK ABOUT IT.

FOR INSTANCE, WHEN YOU ARE TRYING TO DETERMINE THE CREDIBILITY OF WITNESSES, THE BELIEVABILITY OF THE WITNESSES WHO TESTIFIED IN THIS CASE, YOU COULD TAKE INTO CONSIDERATION THE MANNER IN WHICH A WITNESS TESTIFIED. SOMETIMES WE REFER TO THAT AS THE DEMEANOR OF THE WITNESS. WHAT WAS THE ABILITY OF THE WITNESS TO KNOW ABOUT WHAT HE OR SHE TESTIFIED TO? WAS THE WITNESS'S TESTIMONY MADE STRONGER BY OTHER EVIDENCE OR WAS IT MADE WEAKER BY OTHER EVIDENCE? DID THE WITNESS HAVE SOMETHING TO GAIN OR SOMETHING TO LOSE FROM TESTIFYING AS HE OR SHE DID? BUT YOU WOULDN'T DO

IT BY COUNTING THE NUMBER OF WITNESSES ON EITHER SIDE OBVIOUSLY BECAUSE YOU COULD BELIEVE EVERYTHING THAT A WITNESS TESTIFIED TO OR NOTHING. YOU COULD BELIEVE A SMALL PORTION AND DISREGARD THE LARGER OR VICE VERSA. YOU COULD BELIEVE ONE WITNESS AGAINST MANY OR MANY AGAINST ONE, ALWAYS KEEPING TWO THINGS IN MIND: FIRST, YOU ALWAYS GIVE THE DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT. SECONDLY, YOU DON'T HAVE TO FEEL SORRY FOR ANYONE. YOU DON'T HAVE TO FEEL YOU MUST PUNISH ANYONE. YOU JUST BRING IN A VERDICT THAT SPEAKS THE TRUTH, AND WHEN YOU'VE DONE THAT YOU DON'T HAVE TO APOLOGIZE TO ANYONE.

NOW, THAT SAME CONSTITUTION WHICH MADE YOU THE JUDGE OF THE FACTS MADE ME THE JUDGE OF THE LAW, AND WHEN YOU CAME IN THE COURTROOM AND YOU HAD AN IDEA OF WHAT THE LAW WAS AND IT DIFFERS FROM WHAT YOU THOUGHT IT OUGHT TO BE OR YOU HEARD SOMETHING DIFFERENT FROM SOMEBODY ELSE, YOU JUST TAKE THE LAW AS I GIVE YOU, EVEN THOUGH YOU MIGHT DISAGREE WITH IT, APPLY IT TO THE FACTS AS ONLY YOU CAN FIND AND DELIBERATE AND REACH A VERDICT IN THIS CASE.

WELL, WHAT IS THE LAW THAT I NEED TO TELL YOU TO APPLY TO THE FACTS AS YOU FOUND IN THIS CASE? WELL, THE FIRST I THINK AND THE FOREMOST THING THAT I NEED TO TELL YOU IS IS THE DEFENDANT DIDN'T TAKE THE STAND AND

HE DIDN'T PUT UP ANY WITNESSES. AND AS I REMINDED YOU EARLIER, YOU MUST NOT TAKE THAT INTO CONSIDERATION IN THIS CASE. AS A MATTER OF FACT, WHEN YOU GO BACK IN THE JURY ROOM DON'T EVEN DISCUSS IT. HE HAD A PERFECT RIGHT TO DO THAT. OUR CONSTITUTION GAVE HIM THAT RIGHT NOT TO TESTIFY OR PUT UP ANY EVIDENCE. SO, WHEN YOU GO BACK IN YOUR JURY ROOM JUST DON'T TAKE THAT INTO CONSIDERATION WHATSOEVER AND DON'T EVEN DISCUSS IT.

NOW, THERE WERE SOME PEOPLE WHO TESTIFIED IN THE CASE WHO WERE QUALIFIED AS EXPERTS. I'VE FORGOTTEN EXACTLY WHO THEY WERE. I RECALL THERE WAS A DOCTOR AND PERHAPS SOMEONE ELSE IN SOME OTHER FIELD. WELL, WHAT ARE EXPERTS? PEOPLE WHO COME IN HERE AND TESTIFY GENERALLY CAN'T GIVE OPINIONS. THEY TESTIFY FROM THEIR SENSES. THAT IS, THEY HEARD SOMETHING AND COME AND TELL YOU ABOUT IT OR THEY SAW SOMETHING AND COME IN HERE AND TELL YOU ABOUT IT. WELL, PEOPLE WHO EITHER THROUGH EXPERIENCE OR EDUCATION OR A COMBINATION OF BOTH BECOME PROFICIENT IN A CERTAIN FIELD AND THEY'RE CALLED EXPERTS AND DIFFERENT FROM ORDINARY PEOPLE THEY CAN GIVE OPINIONS. BUT JUST LIKE I TELL YOU AS FAR AS ORDINARY WITNESSES ARE CONCERNED, YOU GIVE THAT EXPERT'S TESTIMONY WHATEVER WEIGHT YOU FEEL IT DESERVES UNDER THE FACTS AND CIRCUMSTANCES OF THIS PARTICULAR CASE.

NOW, THERE'S BEEN SOME TESTIMONY IN THIS CASE ABOUT A STATEMENT THAT THE DEFENDANT MIGHT HAVE MADE IN THIS PARTICULAR CASE. I WANT TO TELL YOU THE LAW THAT APPLIES TO THAT. NO STATEMENT OR ALLEGED STATEMENT CAN BE CONSIDERED AGAINST ANY DEFENDANT IF IT WAS MADE THROUGH FORCE OR FEAR OR UNDER DURESS OR COMPULSION OF ANY KIND OR IF IT WAS INDUCED BY SOME PROMISE OF LENIENCY OR REWARD OF ANY KIND. IN OTHER WORDS, AN ALLEGED STATEMENT ACTUALLY MADE BY A DEFENDANT CONSTITUTES NO EVIDENCE AGAINST HIM UNLESS IT WAS FREELY AND VOLUNTARILY MADE WITHOUT ANY THREATS OR INDUCEMENTS ADDRESSED TO FEAR OR HOPE AND FURTHER THAT THE DEFENDANT UNDERSTOOD THE CONTENTS OF THAT STATEMENT. HENCE, IT IS YOUR DUTY TO DETERMINE FROM ALL THE EVIDENCE BEFORE YOU WHETHER THE STATE HAS ESTABLISHED THAT ANY SUCH STATEMENT WAS, IN FACT, FREE AND VOLUNTARY UNDER THE TOTALITY OF THE CIRCUMSTANCES.

AS TO ANY ALLEGED STATEMENT INTRODUCED IN EVIDENCE IN THIS CASE AGAINST THE DEFENDANT, THE SAME MUST BE DISREGARDED BY YOU AND NOT CONSIDERED AGAINST THE DEFENDANT UNLESS THE STATE HAS SATISFIED YOU FROM THE TESTIMONY BEYOND A REASONABLE DOUBT THAT NOT ONLY WAS IT ACTUALLY MADE BY THE DEFENDANT AND THAT IT WAS NOT EXTORTED BY FORCE OR FEAR NOR INDUCED BY PROMISES BUT THAT IT WAS FREELY AND VOLUNTARILY MADE UNDER THE

TOTALITY OF THE CIRCUMSTANCES. AND, OF COURSE, IN ORDER TO CONSTITUTE ANY EVIDENCE AGAINST HIM, THAT ALLEGED STATEMENT WILL ALSO HAVE TO BE BELIEVED BY YOU, THE JURY, IN WHOLE OR IN PART. IF YOU FIND THAT ANY ALLEGED STATEMENT WAS MADE FREELY AND VOLUNTARY UNDER THE TOTALITY OF THE CIRCUMSTANCES, THEN, OF COURSE, IT SHOULD BE CONSIDERED BY YOU ALONG WITH ANY AND ALL OTHER EVIDENCE IN THE CASE IN WHOLE OR IN PART AND GIVEN WHATEVER WEIGHT YOU FEEL IT DESERVES UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE.

NOW, THE DEFENDANT IS CHARGED WITH MURDER. AND SO I WANT TO EXPLAIN TO YOU WHAT I MEAN BY MURDER. MURDER IS DEFINED AS THE WILLFUL, FELONIOUS KILLING OF A HUMAN BEING BY ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT AND THAT MALICE MAY BE EXPRESSED OR IMPLIED. HENCE, IN ORDER TO CONVICT OF MURDER, THE STATE MUST NOT ONLY PROVE THE KILLING OF THE DECEASED BY THE DEFENDANT BUT THAT IT WAS DONE WITH MALICE AFORETHOUGHT AND SUCH PROOF MUST BE BEYOND A REASONABLE DOUBT. SO AGAIN FOR EMPHASIS, THE STATE -- TO CONVICT THE DEFENDANT, THE STATE MUST PROVE, FIRST, THE KILLING OF THE VICTIM BY THE DEFENDANT AND, SECOND, THAT THE KILLING WAS DONE WITH MALICE AFORETHOUGHT, EITHER EXPRESSED OR IMPLIED.

NOW, LET ME INSTRUCT YOU ON WHAT IS MALICE.

NOW, MALICE, MR. FOREMAN AND MEMBERS OF THE JURY, IN ITS POPULAR SENSE -- THE TERM MALICE CONVEYS THE MEANING OF HATRED OR ILL WILL OR HOSTILITY TOWARD ANOTHER. IN ITS LEGAL SENSE, HOWEVER, IT IS EMPLOYED IN THE DESCRIPTION OF -- WHEN IT IS EMPLOYED IN THE DESCRIPTION OF MURDER, IT DOES NOT NECESSARILY IMPORT ILL WILL TOWARD THE INDIVIDUAL INJURED BUT SIGNIFIES, RATHER, A GENERAL MALIGNANT RECKLESSNESS OF THE LIVES AND SAFETY OF OTHERS OR A CONDITION OF THE MIND WHICH SHOWS A HEART, REGARDLESS OF SOCIAL DUTY, FATALLY BENT ON MISCHIEF.

IN OTHER WORDS, A MALICIOUS KILLING IS WHERE THE ACT WAS DONE WITHOUT LEGAL JUSTIFICATION, EXCUSE, OR EXTENUATION AND MALICE HAS BEEN FREQUENTLY SUBSTANTIALLY SO DEFINED AS CONSISTING OF THE INTENTIONAL DOING OF A WRONGFUL ACT TOWARD ANOTHER WITHOUT LEGAL JUSTIFICATION OR EXCUSE. NOW, IT'S NOT NECESSARY FOR MALICE TO HAVE EXISTED IN THE WRONGDOER'S MIND FOR ANY PARTICULAR LENGTH OF TIME, BUT IT MUST HAVE BEEN EXISTING AT THE TIME OF THE ACT. IT MUST HAVE BEEN THE COMPELLING MOTIVE WHICH WAS CONSUMMATED IN THE DEATH OF THE PARTY KILLED. IF MALICE IS PRESENT IN THE MIND OF THE DEFENDANT AT THE TIME OF THE KILLING FOR ANY LENGTH OF TIME BEFORE THE ACT, THEN THE PRESENCE OF MALICE WOULD BE SUFFICIENT TO RENDER THE

KILLING MURDER.

NOW, AS I TOLD YOU EARLIER, MALICE MAY EITHER BE EXPRESS MALICE OR IMPLIED MALICE. EXPRESS MALICE IS WHERE A PERSON BY WORD OF MOUTH EXPRESSES HATRED OR ILL WILL TOWARD ANOTHER OR WHERE THE STATE SHOWS PREPARATION TO CARRY OUT THE ASSAULT PRIOR TO THE ACTUAL COMMISSION OF THE ASSAULT SUCH AS LYING IN WAIT FOR THE VICTIM. NOW, THE LAW MAY IMPLY OR INFER MALICE WHERE THE DEED IS DONE WITH A DEADLY WEAPON OR WITH THE THREAT OF A DEADLY WEAPON WHICH WHEN USED WITH THE INTENT TO INJURE ANOTHER PERSON, IT MAY BE CALCULATED TO PRODUCE DEATH OR SERIOUS BODILY HARM. THIS IS CALLED IMPLIED MALICE.

NOW, MALICE MAY BE IMPLIED FROM THE GENERAL NATURE OF THE ACT WHERE IT IS EXHIBITED A WICKED, LOW, DEPRAVED OR MALIGNANT SPIRIT. NOW, WHEN YOU HAVE IMPLIED MALICE, IT DEALS WITH THE INFERENCE WITH REFERENCE TO THE EVIDENCE. THAT IS, IT PERMITS THE JURY TO FIND MALICE, BUT IT DOES NOT REQUIRE THE JURY TO FIND MALICE. IN OTHER WORDS, THE INFERENCE OF MALICE FROM THE USE OF A DEADLY WEAPON OR THE THREATENED USE OF A DEADLY WEAPON IS SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, THE JURY, ALONG WITH OTHER EVIDENCE IN THE CASE AND TO BE GIVEN SUCH WEIGHT AS YOU ALL DETERMINE IT SHOULD

RECEIVE. THE INFERENCE OF MALICE MAY BE DRAWN FROM PROOF OF THE USE OR THREATENED USE OF A DEADLY WEAPON IF YOU, THE JURY, CONCLUDE THAT SUCH IS, AFTER PROPER CONSIDERATION, CONSIDERING ALL THE FACTS AND CIRCUMSTANCES IN EVIDENCE BEYOND A REASONABLE DOUBT.

NOW, I TELL YOU, MR. FOREMAN AND MEMBERS OF THE JURY, WHERE A PERSON INTENDS TO KILL OR SERIOUSLY INJURE ONE PERSON BUT KILLS ANOTHER, THAT PERSON MAY BE FOUND GUILTY OF MURDER. IF MALICE IS FOUND AT THE TIME OF THE KILLING, EVEN IF A THIRD PARTY IS KILLED RATHER THAN THE INTENDED VICTIM, THE PERSON MAY BE GUILTY OF MURDER. IN OTHER WORDS, ACTUAL MALICE TOWARD THE UNINTENDED VICTIM IS NOT NECESSARY. THIS IS CALLED THE DOCTRINE OF TRANSFERRED INTENT. THE ACTOR'S INTENT TO KILL HIS INTENDED VICTIM IS SAID TO BE TRANSFERRED TO HIS ACTUAL VICTIM. ALL THAT IS REQUIRED FOR MURDER IS THE MENTAL STATE OF MALICE PROVIDED BY THE INTENT TO KILL A HUMAN BEING COUPLED WITH AN ACT THAT CAUSED THE DEATH OF A HUMAN BEING.

NOW, I'LL CHARGE YOU NOW THE CHARGE OF INVOLUNTARY MANSLAUGHTER. INVOLUNTARY MANSLAUGHTER, A LESSER OFFENSE, IS DEFINED AS THE UNINTENTIONAL KILLING OF ANOTHER BY A PERSON ENGAGED AT THE TIME IN DOING AN ACT IN RECKLESS DISREGARD FOR THE SAFETY OF OTHERS. FOR EXAMPLE, THE KILLING OF A PERSON BY THE RECKLESS

USE OF A DANGEROUS INSTRUMENT SUCH AS A GUN OR A RIFLE OR A SHOTGUN OR AN AUTOMOBILE IN RECKLESS DISREGARD FOR THE SAFETY OF OTHERS. THE MENTAL STATE THAT CHARACTERIZES THE CRIME OF INVOLUNTARY MANSLAUGHTER IS THE ABSENCE OF ACTUAL INTENTION TO CAUSE DEATH EITHER ACTUAL OR REASONABLY IMPLIED BY THE HOMICIDAL ACT. IN INVOLUNTARY MANSLAUGHTER THERE IS THE ABSENCE OF BOTH MALICE AND INTENT.

NOW, SIMPLE NEGLIGENCE, MR. FOREMAN AND MEMBERS OF THE JURY, IS THE FAILURE TO OBSERVE DUE CARE, THAT TYPE OF CARE THAT A PERSON OF ORDINARY REASON AND PRUDENCE WOULD OBSERVE. SIMPLE NEGLIGENCE WILL NOT SUPPORT A CONVICTION OF INVOLUNTARY MANSLAUGHTER. RECKLESS DISREGARD, AS I USED, RECKLESS DISREGARDS FOR THE SAFETY OF OTHERS -- THE WORDS RECKLESS DISREGARD OF THE SAFETY OF OTHERS MEANS SOMETHING MORE THAN MERE NEGLIGENCE OR CARELESSNESS, SOMETHING MORE THAN THE FAILURE TO EXERCISE DUE OR ORDINARY CARE. THEY SIGNIFY A CONSCIOUS INDIFFERENCE TO THE RIGHTS AND SAFETY OF OTHERS OR A RECKLESS DISREGARD THEREOF. AND AS I TOLD YOU EARLIER, IN INVOLUNTARY MANSLAUGHTER THERE IS THE ABSENCE OF BOTH MALICE AND INTENT.

NOW, MR. FOREMAN, MEMBERS OF THE JURY, YOU'VE BEEN CHOSEN AS FAIR AND IMPARTIAL JURORS SWORN TO

FAIRLY TRY THIS CASE AND WHEN YOU'VE DONE THAT YOU DON'T HAVE TO APOLOGIZE TO ANYONE. THERE ARE THREE FORMS OF VERDICTS THAT YOU CAN CONSIDER IN THIS CASE AND THE FACT THAT I TELL YOU ONE BEFORE THE OTHER HAS ABSOLUTELY NO BEARING. I JUST HAVE TO SAY ONE BEFORE THE OTHER AND THEY ARE CONTAINED IN THIS INDICTMENT WHICH YOU'LL HAVE IN YOUR ROOM. THIS IS NOT EVIDENCE. THIS IS JUST A PIECE OF PAPER WHICH CONTAINS THE CHARGES AGAINST THE DEFENDANT AND ON THE BACK OF IT, MR. FOREMAN, WHERE IT SAYS "VERDICT" WILL BE THE THREE POSSIBLE VERDICTS.

IF YOU FIND THAT THE STATE HAS SATISFIED YOU OF MR. ROGERS' GUILT BEYOND A REASONABLE DOUBT OF MURDER, THEN YOU'D USE NUMBER ONE, GUILTY OF MURDER, AND YOU'D JUST PUT A CHECK MARK WHERE I PUT THAT. IF YOU FIND THAT HE'S NOT GUILTY OF MURDER BUT IS GUILTY OF INVOLUNTARY MANSLAUGHTER, YOU'D USE NUMBER TWO, GUILTY OF INVOLUNTARY MANSLAUGHTER AND, HERE AGAIN, YOU'D PUT A CHECK MARK. AND IF YOU FIND THAT THE STATE HAS FAILED TO PROVE HIM GUILTY OF ANYTHING, YOU WOULD USE NUMBER THREE WHERE IT SAYS NOT GUILTY AND YOU'D PUT A CHECK MARK.

NOW, WHEN YOU PUT THAT CHECK MARK ON ONE OF THOSE THREE, MR. FOREMAN, AND YOU SIGN YOUR NAME IT INDICATES THAT ALL TWELVE OF YOU HAVE AGREED BECAUSE

ALL TWELVE OF YOU MUST AGREE WHATEVER YOUR VERDICT. I'M GOING TO SEND YOU ALL TO YOUR ROOM WITH THE BAILIFF RIGHT NOW. I'M GOING TO PUT MY TWO ALTERNATES IN ANOTHER ROOM TEMPORARILY AND I'LL BE GIVING YOU SOME INSTRUCTIONS. DON'T QUITE BEGIN YOUR DELIBERATIONS YET. ALL RIGHT. WOULD YOU TAKE THOSE AND PUT MY ALTERNATES IN ANOTHER ROOM FOR ME, PLEASE?

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

THE COURT: THANK YOU. ANY EXCEPTIONS OR ADDITIONS FROM THE STATE?

MR. BAILEY: NO, SIR, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. RUNYON: THE ONLY EXCEPTION IS AS WE PREVIOUSLY STATED, YOUR HONOR, WITH THE COURT'S DECISION NOT TO CHARGE VOLUNTARY MANSLAUGHTER.

THE COURT: ALL RIGHT, SIR.

MR. RUNYON: WE'D RENEW THAT REQUEST. WE ANTICIPATE THE COURT'S RULING, BUT WE WOULD RENEW IT.

THE COURT: WELL, AS I HAD TOLD YOU AND AS I GAVE THE MATTER SOME THOUGHT, YOU CAN'T HAVE VOLUNTARY MANSLAUGHTER WHEN YOU TAKE THE POSITION THIS WAS AN ACCIDENTAL KILLING. YOU JUST CAN'T DO THAT, BUT I REALIZE YOUR MOTION AND SO I STILL DENY YOU TO CHARGE THAT.

MR. RUNYON: THANK YOU VERY MUCH, YOUR HONOR.
THE COURT: ANYTHING FURTHER?
MR. RUNYON: NOTHING FURTHER, YOUR HONOR.
THE COURT: ALL RIGHT. THANK YOU VERY MUCH. ALL RIGHT. CHECK THE EXHIBITS FOR ME, PLEASE, GENTLEMEN, IF YOU WILL.
(THE ATTORNEYS AND COURT REPORTER REVIEWED THE EXHIBITS.)
THE COURT: TAKE THE EXHIBITS BACK THERE. TELL THEM TO BEGIN THEIR DELIBERATIONS. KEEP MY ALTERNATES IN ANOTHER ROOM AND WHATEVER THE ALTERNATES WANT THAT THE JURY GETS BE SURE TO GIVE THEM, YOU KNOW, COLD DRINKS OR WHATEVER THEY WANT AND JUST. . . YOU GOT THEM IN ANOTHER ROOM, HAVEN'T YOU?
BAILIFF: YES, SIR.
THE COURT: GOOD. THANK YOU VERY MUCH. ALL RIGHT. COURT'S IN RECESS WAITING THE VERDICT FROM THE JURY.
(WHEREUPON, THE JURY BEGAN DELIBERATING AT 1:55 P.M.)
THE COURT: THANK YOU VERY MUCH. BE SEATED, PLEASE. FOR THOSE OF YOU IN THE COURTROOM, THE JURY IS ASKING FOR SOME ADDITIONAL INSTRUCTIONS AND SO THEY'RE GOING TO BRING THEM IN THE COURTROOM. BE SURE THERE'S NOBODY OUT THERE THAT WANTS TO COME IN FOR ME.

BAILIFF: I'LL CHECK.

THE COURT: ALL RIGHT. THANKS.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 3:42 P.M. WITH A QUESTION.)

THE COURT: NOW, MR. FOREMAN, MEMBERS OF THE JURY, I GOT A LITTLE NOTE FROM YOU AND IT READS THUS: THE JURY WOULD LIKE TO BE REINSTRUCTED ON MALICE AFORETHOUGHT AND THE DIFFERENCE BETWEEN MANSLAUGHTER AND MURDER. WOULD IT BE POSSIBLE TO SEE THIS IN WRITING? WELL, IT WOULDN'T BE POSSIBLE TO SEE IT IN WRITING, BUT I'LL ATTEMPT TO GO THROUGH IT VERY SLOW AND CAREFULLY WITH YOU AND THEN IF YOU HAVE ANY QUESTIONS AFTER YOU GO BACK YOU CAN SEND ME BACK A LITTLE NOTE.

I TOLD YOU THAT MURDER IS DEFINED AS THE WILLFUL, FELONIOUS KILLING OF A HUMAN BEING BY A HUMAN BEING WITH MALICE AFORETHOUGHT AND THAT MALICE MAY BE EXPRESSED OR IMPLIED, TWO DIFFERENT KINDS OF MALICE. HENCE, IN ORDER TO CONVICT OF MURDER, THE STATE MUST NOT ONLY PROVE THE KILLING OF THE DECEASED BY THE DEFENDANT BUT THAT IT WAS DONE WITH MALICE AFORETHOUGHT AND SUCH PROOF, AS EVERYTHING ELSE, MUST BE BEYOND A REASONABLE DOUBT. SO, I WANT TO TELL YOU WHAT MALICE IS.

I SUPPOSE IN ITS POPULAR SENSE THE TERM

MALICE CONVEYS THE MEANING OF HATRED OR ILL WILL OR PERHAPS HOSTILITY TOWARD ANOTHER. IN ITS LEGAL SENSE, HOWEVER, AS IS EMPLOYED IN THE DESCRIPTION OF MURDER, IT DOES NOT NECESSARILY IMPORT ILL WILL TOWARD THE INDIVIDUAL WHO WAS KILLED BUT SIGNIFIES, RATHER, A GENERAL MALIGNANT RECKLESSNESS OF THE LIVES AND SAFETY OF OTHERS OR CONDITION IN THE MIND WHICH SHOWS A HEART, REGARDLESS OF SOCIAL DUTY, FATALLY BENT ON MISCHIEF. IN OTHER WORDS, MALICIOUS KILLING IS WHERE THE ACT IS DONE WITHOUT LEGAL JUSTIFICATION, EXCUSE, OR EXTENUATION. AND MALICE HAS BEEN FREQUENTLY SUBSTANTIALLY SO DEFINED AS THIS: THE INTENTIONAL DOING OF A WRONGFUL ACT TOWARD ANOTHER WITHOUT LEGAL JUSTIFICATION OR EXCUSE.

NOW, THERE ARE -- IT'S NOT NECESSARY THAT MALICE HAVE EXISTED IN THE WRONGDOER'S MIND FOR ANY PARTICULAR LENGTH OF TIME, BUT IT MUST HAVE BEEN EXISTING IN THE MIND OF THE KILLER AT THE TIME THE ACT WAS DONE. IF MALICE IS PRESENT IN THE MIND OF THE DEFENDANT AT THE TIME OF THE KILLING FOR ANY LENGTH OF TIME, THEN THE PRESENCE OF MALICE WOULD BE SUFFICIENT TO RENDER THE KILLING MURDER. EXPRESS MALICE IS WHERE A PERSON BY WORD OF MOUTH EXPRESSES HATRED OR ILL WILL FOR ANOTHER OR WHERE THE STATE SHOWS PREPARATION FOR THE DEED SUCH AS LYING IN WAIT FOR A PERSON, I BELIEVE

I EXPLAINED TO YOU.

NOW, THE LAW MAY IMPLY MALICE OR INFER MALICE WHERE THE DEED IS DONE WITH A DEADLY WEAPON OR WITH THE THREAT OF A DEADLY WEAPON WHICH WHEN USED WITH THE INTENT TO INJURE ANOTHER PERSON MAY BE CALCULATED TO PRODUCE DEATH OR SERIOUS BODILY HARM. THIS IS CALLED IMPLIED MALICE. NOW, MALICE MAY BE IMPLIED FROM THE GENERAL NATURE OF THE ACT WHERE IT IS EXHIBITED A WICKED, LOW, DEPRAVED, OR MALIGNANT SPIRIT. NOW, WHERE YOU HAVE IMPLIED MALICE IT DEALS WITH THE INFERENCE WITH REFERENCE TO THE EVIDENCE. THAT IS, IT PERMITS THE JURY TO FIND MALICE, BUT IT DOES NOT REQUIRE THE JURY TO FIND MALICE. IN OTHER WORDS, INFERENCE OF MALICE FROM THE USE OF A DEADLY WEAPON OR THE THREAT OF USE OF A DEADLY WEAPON IS SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, THE JURY, ALONG WITH ALL THE OTHER EVIDENCE IN THE CASE AND BE GIVEN WHATEVER WEIGHT YOU FEEL IT DESERVES UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE. THE INFERENCE OF MALICE MAY BE DRAWN FROM PROOF OF THE USE OR THE THREATENED USE OF A DEADLY WEAPON IF YOU, THE JURY, CONCLUDE SUCH IS PROPER AFTER CONSIDERING ALL OF THE FACTS AND CIRCUMSTANCES IN EVIDENCE BEYOND A REASONABLE DOUBT.

NOW, I CHARGE YOU THAT WHERE A DEFENDANT

INTENDS TO KILL OR SERIOUSLY INJURE ONE PERSON BUT KILLS ANOTHER, A DEFENDANT MAY BE FOUND GUILTY OF MURDER OR MANSLAUGHTER. IF MALICE IS FOUND AT THE TIME OF THE KILLING, EVEN IF A THIRD PARTY IS KILLED RATHER THAN THE INTENDED VICTIM, THE DEFENDANT MAY BE GUILTY OF MURDER. IN OTHER WORDS, ACTUAL MALICE TOWARD THE UNINTENDED VICTIM IS NOT NECESSARY. THIS IS CALLED, AS I TOLD YOU EARLIER, THE DOCTRINE OF TRANSFERRED INTENT. THE ACTOR'S INTENT TO KILL HIS INTENDED VICTIM IS SAID TO BE TRANSFERRED TO HIS ACTUAL VICTIM. ALL THAT IS REQUIRED FOR MURDER IS THE MENTAL STATE OF MALICE PROVIDED BY THE INTENT TO KILL A HUMAN BEING COUPLED WITH AN ACT WHICH CAUSED THE DEATH OF A HUMAN BEING. THAT'S MURDER AND MALICE.

NOW, LET ME TELL YOU WHAT INVOLUNTARY MANSLAUGHTER IS. INVOLUNTARY MANSLAUGHTER IS DEFINED AS THE UNINTENTIONAL KILLING OF ANOTHER PERSON ENGAGED AT THE TIME IN DOING SOME ACT IN RECKLESS DISREGARD FOR THE SAFETY OF OTHERS. FOR EXAMPLE, THE KILLING OF A PERSON BY THE RECKLESS USE OF A DANGEROUS INSTRUMENT SUCH AS A GUN, KNIFE OR AN AUTOMOBILE IN RECKLESS DISREGARD FOR THE SAFETY OF OTHERS. THE MENTAL STATE THAT CHARACTERIZES THE CRIME OF INVOLUNTARY MANSLAUGHTER IS THE ABSENCE OF ACTUAL INTENTION TO CAUSE DEATH BY THE HOMICIDAL ACT. IN INVOLUNTARY

MANSLAUGHTER THERE IS THE ABSENCE OF MALICE AND INTENT.

SIMPLE NEGLIGENCE IS THE FAILURE TO OBSERVE DUE CARE, THE DEGREE OF CARE WHICH WOULD HAVE BEEN EXERCISED BY A PERSON OF ORDINARY REASON AND PRUDENCE. SIMPLE NEGLIGENCE WON'T SUPPORT A CONVICTION OF INVOLUNTARY MANSLAUGHTER. WHEN I SAID RECKLESS DISREGARD, THE WORDS RECKLESS DISREGARD OF THE SAFETY OF OTHERS MEANS SOMETHING MORE THAN MERE NEGLIGENCE OR CARELESSNESS, SOMETHING MORE THAN THE FAILURE TO EXERCISE DUE OR ORDINARY CARE. AS I SAID, THEY SIGNIFY A CONSCIOUS INDIFFERENCE TO THE RIGHTS AND SAFETY OF OTHERS OR A RECKLESS DISREGARD. SO, IN INVOLUNTARY MANSLAUGHTER THERE IS THE ABSENCE OF BOTH INTENT TO COMMIT MURDER OR SERIOUS BODILY HARM AND MALICE. DO YOU THINK THAT EXPLAINS IT TO YOU?

FOREMAN: YES, SIR.

THE COURT: THANK YOU VERY MUCH. YOU CAN JUST FOLLOW THE BAILIFF. BE SURE TO PUT MY ALTERNATES OUT.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 3:53 P.M.)

THE COURT: ANY EXCEPTIONS OR ADDITIONS FROM THE STATE?

MR. BAILEY: NONE FROM THE STATE, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. RUNYON: NONE FROM THE DEFENSE, YOUR HONOR.

THE COURT: ALL RIGHT. COURT'S IN RECESS WAITING ON THE JURY.

(WHEREUPON, THE JURY CONTINUED DELIBERATING AT 3:53 P.M.)

THE COURT: THAT'S ALL RIGHT. KEEP YOUR SEAT. THANK YOU. I UNDERSTAND THE JURY HAS REACHED A VERDICT. I DON'T KNOW WHAT IT IS, BUT I REALIZE THERE'S A LOT OF FEELINGS ON BOTH SIDES. BUT I PROMISE YOU I WILL NOT CONDONE ANY OUTBURST. SO, IF YOU HAVE ANY PROBLEM OR YOU THINK YOU'LL HAVE ANY PROBLEM, I SUGGEST YOU LEAVE THE COURTROOM. ALL RIGHT. LET'S DO IT ALL CALMLY, PLEASE. ALL RIGHT. TELL THEM TO BRING THE JURY IN.

(WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH A VERDICT AT 5:50 P.M.)

THE COURT: SIT THOSE EXHIBITS DOWN FOR ME IF YOU WILL. LOOKS LIKE THEY MIGHT FALL. THAT WILL BE ALL RIGHT. THANK YOU VERY MUCH. ALL RIGHT, MADAM CLERK.

THE CLERK: LADIES AND GENTLEMEN, HAVE YOU AGREED UPON A VERDICT?

FOREMAN: WE HAVE.

THE COURT: IT APPEARS TO BE IN ORDER. YOU MAY PUBLISH IT.

THE CLERK: IN THE MATTER OF THE STATE VERSUS TIMOTHY ROGERS, VERDICT: GUILTY OF MURDER. WHAT'S YOUR FIRST NAME, SIR?

FOREMAN: IT'S BERGEN.

THE CLERK: BERGEN BERKAW. IS THIS YOUR VERDICT? AND SO SAY YOU ALL.

THE COURT: IF THIS IS YOUR VERDICT, RAISE YOUR RIGHT HAND FOR ME, PLEASE. APPEARS TO BE IN ORDER. ANYTHING FURTHER FROM THE STATE BEFORE I---

MR. BAILEY: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. RUNYON: WE WOULD REQUEST FORMAL POLLING OF THE JURY, YOUR HONOR.

THE COURT: ALL RIGHT. NOW, MR. FOREMAN, MEMBERS OF THE JURY, THE CLERK IS GOING TO CALL YOUR NAME ONE BY ONE, AND WHEN YOUR NAME IS CALLED I'M GOING TO ASK THAT YOU STAND UP AND SHE'S GOING TO ASK YOU THIS QUESTION AND I WANT YOU TO ANSWER IT, WHATEVER YOUR ANSWER. WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT? MADAM CLERK?

THE CLERK: RICARDO RIVERA, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR RIVERA: IT WAS MY VERDICT AND IT IS MY VERDICT.

THE CLERK: THANK YOU.

THE COURT: YOU MAY SIT DOWN. THANK YOU.

THE CLERK: NANCY J. LANGENSTEIN?

THE COURT: YOU CAN JUST ANSWER YES OR NO. THANK YOU.

THE CLERK: WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR LANGENSTEIN: YES.

THE CLERK: LAURA E. TYSON, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR TYSON: YES.

THE CLERK: MILDRED E. KNIGHT, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR KNIGHT: YES.

THE CLERK: BERGEN F. BERKAW, JR., WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR BERKAW: YES, IT IS.

THE CLERK: VICKIE T. KASPAR, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR KASPAR: YES.

THE CLERK: ALFREDA L. ADDISON, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR ADDISON: YES.

THE CLERK: LESLIE B. LANE, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR LANE: YES.

THE CLERK: HELENE P. FLOYD, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR FLOYD: YES.

THE CLERK: MARY E. SMITH, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR SMITH: YES.

THE CLERK: CHERYL L. HUTTO, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR HUTTO: YES.

THE CLERK: RICHARD A. GRUBER, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR GRUBER: YES.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MR. FOREMAN. MEMBERS OF THE JURY, I WATCHED YOU VERY CAREFULLY. YOU LISTENED CAREFULLY TO THE TESTIMONY. YOU WERE POLITE TO THE ATTORNEYS WHEN THEY SUMMARIZED THEIR CASE TO YOU. YOU LISTENED CAREFULLY TO THE LAW AS I INSTRUCTED YOU AND, AS A MATTER OF FACT, YOU CAME BACK FOR SOME OTHER EXPLANATIONS. NOW, SOMEONE MIGHT DISAGREE WITH YOUR VERDICT, BUT IF THEY DO JUST REMEMBER THIS: THAT'S JUST AN OPINION AND, YOU SEE, YOU ALL ARE TWELVE OPINIONS. SO; HAVING FOLLOWED THE

LAW, EVEN THOUGH IT MIGHT BE DISTASTEFUL TO YOU TO FIND SUCH A VERDICT AGAINST A FELLOW CITIZEN, YOU DON'T HAVE TO APOLOGIZE TO ANYONE. SO, I'M GOING TO SEND YOU TO YOUR ROOM FOR JUST A MOMENT OR TWO. I HAVE SOME LEGAL MATTERS TO TAKE UP AND I'LL BE BACK WITH YOU IN JUST A FEW MINUTES. JUST FOLLOW THE BAILIFF FOR ME.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT 5:55 P.M.)

THE COURT: I'LL HEAR ANY MOTIONS.

MR. BAILEY: NONE FROM THE STATE, YOUR HONOR.

MR. RUNYON: YOUR HONOR, AT THIS POINT IN TIME WE WOULD MOVE FOR A NEW TRIAL ON THE GROUNDS THAT -- GROUNDS ENUNCIATED AT THE CLOSE OF BOTH THE STATE AND THE DEFENSE CASE. WE WOULD ALSO MOVE TO QUASH THE -- OR RENEW OUR MOTIONS TO QUASH THE NOTICE OF AGGRAVATING CIRCUMSTANCES AND WE WOULD MOVE SPECIFICALLY FOR A NEW TRIAL ON THE GROUNDS THAT IT WAS ERROR NOT TO HAVE CHARGED MANSLAUGHTER, VOLUNTARY MANSLAUGHTER, TO THE JURY, AND THOSE BASICALLY ARE OUR MOTIONS FOR A NEW TRIAL AT THIS POINT IN TIME, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. I DENY THOSE MOTIONS. DO YOU WAIVE THE 24-HOUR PERIOD?

MR. RUNYON: NO, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. LET'S SEE.

TODAY AT SIX O'CLOCK WOULD MEAN WE COULDN'T START THE TRIAL UNTIL SIX O'CLOCK TOMORROW. HOW ABOUT NINE O'CLOCK ON SATURDAY MORNING?

MR. RUNYON: IF YOU SAY NINE O'CLOCK, JUDGE, WE'LL BE HERE.

THE COURT: ALL RIGHT, SIR. ALL RIGHT. BRING THE JURY OUT FOR ME, PLEASE.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 5:56 P.M.)

THE COURT: NOW, MR. FOREMAN, MEMBERS OF THE JURY, WE HAVE, AS YOU ALREADY KNOW, A SECOND PHASE TO THIS TRIAL, BUT BY LAW I WON'T BE ABLE TO START THIS AND I WISH I COULD TELL YOU DIFFERENT BECAUSE I WON'T BE ABLE TO TURN YOU LOOSE. YOU'LL STILL BE AT THE MOTEL OR PERHAPS THEY CAN TAKE YOU OUT TO SOMETHING THAT WILL BE A LITTLE MORE PLEASANT FOR YOU TOMORROW. I WON'T BE ABLE TO START THE TRIAL UNTIL SATURDAY. THAT'S THE DAY AFTER TOMORROW AT NINE O'CLOCK. SO, WE'RE GOING TO START PROMPTLY AT NINE O'CLOCK ON SATURDAY MORNING AND HOPEFULLY WE CAN DISPOSE OF IT ON SATURDAY.

SO, I'M GOING TO SEND YOU TO YOUR ROOM NOW. I DON'T KNOW WHERE THEY HAVE PLANNED FOR YOU TO HAVE DINNER. I UNDERSTAND A REAL GOOD PLACE IN SUMMERVILLE, BUT REMEMBER WHAT I TOLD YOU. Y'ALL PICK A GOOD PLACE

THAT YOU WANT TO OR ANYWHERE WITHIN REASONABLE DISTANCE AND I HOPE YOU HAVE A GOOD NIGHT AND I'LL SEE YOU SATURDAY MORNING AT NINE O'CLOCK PROMPTLY. IF YOU'LL JUST GO BACK TO YOUR ROOM, IT WON'T TAKE BUT JUST A MOMENT OR TWO AND THE BAILIFFS WILL BE ABLE TO CARRY YOU OUT.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR THE DAY AT 5:58 P.M.)

THE COURT: ALL RIGHT. I WANT MR. ROGERS REMOVED, PLEASE.

(THE DEFENDANT LEAVES THE COURTROOM.)

THE COURT: ALL RIGHT, SIR. DURING THE WEEK -- DURING THE INTERIM TOMORROW IF THERE'S ANYTHING I CAN DO FOR YOU, JUST LET ME KNOW. I'M AVAILABLE. I WILL BE HERE FOR A SHORT TIME TOMORROW, I THINK, BUT I'M AVAILABLE BY TELEPHONE---

MR. RUNYON: YES, SIR.

THE COURT: ---AT HOME IF YOU NEED ME. AND UNTIL THEN COURT'S RECESSED TILL SATURDAY MORNING AT NINE O'CLOCK.

MR. RUNYON: THANK YOU VERY MUCH, YOUR HONOR.

MR. BAILEY: THANK YOU, YOUR HONOR.

(COURT'S EXHIBIT 1 WAS RECEIVED IN EVIDENCE. WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AND RESUMED ON SATURDAY, MARCH 5, 1994.)

THE COURT: THANK YOU SO MUCH. PLEASE BE SEATED. ALL RIGHT. SOLICITOR, ARE YOU READY TO GO FORWARD?

MR. BAILEY: YOUR HONOR, THE STATE'S READY. AS I MENTIONED IN CHAMBERS, WE HAVE SOMETHING ON THE TELEVISION HERE, A V.C.R.

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: WE'D LIKE TO SHOW THE COURT SO YOU CAN MAKE A RULING AS FAR AS ADMISSIBILITY.

THE COURT: WELL, LET ME ASK YOU THIS. DO YOU WANT TO -- DO YOU WANT TO PLAY IT TO THE JURY?

MR. BAILEY: YES, SIR.

THE COURT: AND YOU OBJECT?

MR. RUNYON: YOUR HONOR---

THE COURT: I BELIEVE YOU TOLD ME YOU DIDN'T RECALL WHETHER OR NOT YOU OBJECTED TO THE FULL THING. WHY DON'T LET'S JUST LISTEN? LET'S JUST WATCH IT AND THEN YOU CAN MAKE UP YOUR MIND HOW YOU WANT TO. . .

MR. RUNYON: YOUR HONOR, FOR THE RECORD, I HAVE NO PROBLEM -- I'M NOT ASKING TO AUTHENTICATE IT AND WHAT HAVE YOU. I'M JUST NOT SURE IT'S RELEVANT AT THIS POINT IN TIME AND WE WOULD OBJECT ON THE GROUNDS OF RELEVANCY.

THE COURT: OH, ALL RIGHT. WELL, YOU KNOW, IN THIS PROCEEDING MOST EVERYTHING CAN COME FORWARD

THAT'S NOT -- THAT WON'T INFLAME THE JURY. GO AHEAD.

MR. BAILEY: I PLAN ON PLAYING THAT KIND OF EARLY ON IF YOU RULE IT'S ADMISSIBLE.

THE COURT: ALL RIGHT, SIR. LET'S GET IT ON. WELL, LET'S TURN IT AROUND THE OTHER WAY. I CAN WATCH IT FROM THE OTHER WAY. THEN THE SOLICITOR AND THOSE CAN LOOK AT IT.

THE COURT: CAN YOU SEE, MR. RUNYON?

MR. RUNYON: SURE CAN, JUDGE.

(WHEREUPON, A VIDEOTAPE WAS PLAYED IN CAMERA.)

THE COURT: ALL RIGHT. SOLICITOR, MR. RUNYON SAYS IT'S NOT RELEVANT. WHAT'S YOUR POSITION?

MR. BAILEY: YOUR HONOR, I THINK ANYTHING THAT GOES TO THE CIRCUMSTANCES OF THE CRIME OR CHARACTERISTICS OF THE DEFENDANT IS RELATIVE IN THE PENALTY PHASE. IT SHOWS HIS DEMEANOR. IT SHOWS HIS COMMENTS ABOUT WHAT HAPPENED.

THE COURT: WELL, HE SAID IT WAS AN ACCIDENT, I RECALL. YOU OBJECT TO IT?

MR. RUNYON: YES, SIR, YOUR HONOR. I MEAN, THE WHOLE PURPOSE OF THE -- THE WHOLE PURPOSE OF THE TAPE IS TO SHOW HIM IN DREADLOCKS AND PRISON CLOTHES AND THEY TRY TO CHARACTERIZE HIM AND ALLOW THE STATE TO ARGUE ALONG LINES WHICH ARE NOT NECESSARILY PROVEN BY

THE TAPE.

THE COURT: ALL RIGHT, SIR. ANYTHING ELSE?

MR. RUNYON: NOTHING ELSE, YOUR HONOR.

THE COURT: OVERRULED. I'LL ALLOW IT, SOLICITOR.

MR. BAILEY: THANK YOU, YOUR HONOR.

THE COURT: IS THERE ANYTHING ELSE WE HAVE? AS I TOLD YOU ALL IN CHAMBERS, I NEED AS SOON AS POSSIBLE WRITTEN STATUTORY MITIGATING CIRCUMSTANCES THAT YOU'RE RELYING ON AND IF YOU GIVE ME ANY THAT ARE NOT STATUTORY THAT YOU'D LIKE FOR ME TO SUBMIT THEM IN WRITING, I'LL BE GLAD TO DO THAT ALSO. AND WHILE I'M -- WHILE I'M ABOUT IT, I GAVE MR. ROGERS AN OPPORTUNITY TO MAKE AN OPENING STATEMENT TO THE JURY. I WANT TO TELL YOU AT THIS TIME, MR. ROGERS, YOU HAVE A RIGHT, YOU AND YOUR ATTORNEYS, TO MAKE A CLOSING STATEMENT TO THE JURY. SO, YOU MIGHT BE GIVING THAT SOME THOUGHT.

MR. RUNYON: HE HAS, YOUR HONOR. HE WILL BE MAKING A CLOSING STATEMENT TO THE JURY.

THE COURT: ALL RIGHT, SIR. IS THERE ANYTHING ELSE?

MR. RUNYON: YES, SIR, YOUR HONOR. IN CHAMBERS WE DISCUSSED DEFENSE MOTION IN LIMINE AS IT RELATES TO THE -- REFERENCING THE TERM "PAROLE". I

BELIEVE THE SOLICITOR HAD INDICATED HE'S NOT GOING TO MENTION THAT. HE'S NOT GOING TO ARGUE ABOUT THAT.

THE COURT: ALL RIGHT, SIR.

MR. RUNYON: THE SECOND IS, YOUR HONOR, WE MADE A GENERALIZED MOTION. WE HANDED UP SOME PROPOSED LANGUAGE. OBVIOUSLY THE MOTION GOES TO ALLOWING -- HAVING THE JURY INSTRUCTED THAT AS IT RELATES TO MR. ROGERS IN THE CONTEXT OF THIS CASE THAT LIFE -- IN HIS SITUATION A LIFE SENTENCE MEANS LIFE WITHOUT PAROLE. I WOULD REFERENCE THE COURT TO THE SIMMONS CASE WHICH WAS RECENTLY ARGUED IN THE UNITED STATES SUPREME COURT. I THINK THAT AS A PRACTICAL MATTER IF THIS JURY IS NOT -- I THINK AS A PRACTICAL MATTER JURORS COME TO THE COURTHOUSE AND A SUBSTANTIAL NUMBER OF THEM WILL COME TO THE COURTHOUSE WITH SOME PRECONCEIVED NOTION ABOUT PAROLE. THEY KEEP HEARING ABOUT EARLY RELEASE PROGRAMS AND ALL SORTS OF OTHER THINGS AND THAT THEY SIMPLY DON'T TAKE THE -- LIFE IS TO BE TAKEN IN ITS USUAL CONTEXT OF INSTRUCTION AS BEING, QUOTE, THE FACTS OF THE -- THE FACT OF THE MATTER. AND IN HIS CASE, HOWEVER, WITH THE RECORD AS PER WHAT THE STATE'S GOING TO RELY UPON AS AN AGGRAVATING CIRCUMSTANCE OR AS SUPPORT FOR THEIR REQUEST FOR THE DEATH PENALTY, THAT RECORD WOULD RENDER HIM INELIGIBLE FOR ANY TYPE OF PAROLE PROGRAM AT THE END OF HIS THIRTY YEARS AND,

THEREFORE, WE WOULD ASK THE COURT TO INSTRUCT THE JURY AS TO THAT FACT.

THE COURT: ALL RIGHT, SIR. ORDINARILY I WOULD NOT INSTRUCT THE JURY ANYTHING ABOUT WHAT IT MEANS FOR LIFE A SENTENCE OR PAROLE. I HAVE NO IDEA WHAT EITHER THE SUPREME COURT OF SOUTH CAROLINA OR THE UNITED STATES SUPREME COURT WOULD RULE ON LIFE WITHOUT PAROLE BECAUSE OF SOME TYPE OF CONVICTIONS. I JUST DON'T HAVE ANY IDEA. BUT I -- AND SO I DON'T KNOW WHETHER IT MEANS LIFE WITHOUT PAROLE OR NOT. I DENY YOUR MOTION FOR ME TO CHARGE THE JURY ON THIS MOTION TO INSTRUCT THE JURY AS TO LIFE SENTENCE BEING WITHOUT PAROLE WHILE -- MARCH THE 5TH, 1994, AT 9:15 A.M. I'LL GIVE THIS BACK TO THE CLERK. I WILL, HOWEVER, IF YOU WISH, CHARGE THE JURY TO CONSIDER THE WORDS LIFE AND DEATH IN THEIR PLAIN AND ORDINARY MEANING. IT'S MY UNDERSTANDING THAT'S THE LAW UP TO THIS POINT. IS THAT YOURS, SOLICITOR?

MR. BAILEY: IT'S MY UNDERSTANDING THE NORRIS CHARGE IS THE APPROPRIATE CHARGE AT THIS POINT IN TIME, YOUR HONOR.

THE COURT: YES, SIR.

MR. RUNYON: YOUR HONOR, WE HAVE -- WE WOULD REQUEST THE LANGUAGE IN NORRIS, BUT BY MAKING THAT REQUEST I'D LIKE THE RECORD TO REFLECT WE'RE NOT

WAIVING OUR ORIGINAL MOTION WHICH THE COURT HAS DENIED.

THE COURT: I UNDERSTAND. HERE YOU ARE, MADAM CLERK.

THE CLERK: THANK YOU.

THE COURT: THANK YOU. READY TO GO FORWARD?

MR. BAILEY: STATE'S READY, YOUR HONOR.

MR. RUNYON: DEFENSE IS READY, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. BRING THE JURY.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 9:23 A.M.)

THE COURT: NOW, MR. FOREMAN, MEMBERS OF THE JURY, I HOPE YOU HAD A GOOD DAY YESTERDAY AND A GOOD NIGHT LAST NIGHT. WE'RE NOW PREPARING TO EMBARK ON THE SECOND PHASE OF THIS TRIAL, AS I HAVE EXPLAINED TO EACH OF YOU INDIVIDUALLY AND AS A JURY BEFORE. THE PROCEEDINGS WHICH WE'RE ABOUT TO START WILL BE INFORMATION FROM THE STATE AND THE DEFENSE, IF THEY WOULD LIKE TO, PERHAPS GOOD AND BAD THINGS ABOUT THE DEFENDANT, EXTENUATING CIRCUMSTANCES AND AGGRAVATING CIRCUMSTANCES, AS I EXPLAINED TO YOU ALL BEFORE TODAY.

LISTEN CAREFULLY TO THIS TESTIMONY AND THESE EXHIBITS BECAUSE AT THE END OF IT AFTER I GIVE YOU SOME INSTRUCTIONS, AS I HAVE EXPLAINED TO YOU BEFORE, YOU WILL BE ASKED TO RECOMMEND TO ME WHAT THE PROPER SENTENCE IS IN THIS CASE, THAT IS, LIFE OR DEATH. AND

WHEN I USE THOSE WORDS RECOMMEND, I WANT TO REMIND YOU THAT WHATEVER YOU RECOMMEND TO ME I MUST BY LAW DO. I CANNOT CHANGE. DON'T FORGET, MR. FOREMAN, IF AT ANY TIME I SEND YOU OUT IT WE'LL BE DISCUSSING A MATTER OF LAW AND DON'T FORGET IF FOR ANY REASON I SEND YOU OUT AND YOU'RE NOT READY TO COME IN WHEN I TELL YOU TO, YOU JUST TELL ME YOU ARE NOT READY.

IF DURING THE PROCEEDINGS ANY OF YOU WANT TO TAKE A BREAK, JUST TELL THE FOREMAN AND I'LL BE GLAD TO TAKE WHATEVER TIME YOU FEEL IS NECESSARY. AND DON'T FORGET THESE BAILIFFS WOULD LOVE TO DO ANYTHING THEY CAN TO MAKE YOU MORE COMFORTABLE IN THIS CASE. ALL RIGHT. THE STATE GOES FORWARD FIRST. SOLICITOR?

MR. BAILEY: YOUR HONOR, MAY I MAKE A BRIEF OPENING AT THIS POINT?

THE COURT: OF COURSE.

MR. BAILEY: THANK YOU, YOUR HONOR. LADIES AND GENTLEMEN, I WANT TO THANK YOU FOR THE ATTENTION YOU'VE SHOWN THUS FAR IN THE TRIAL. WE ALL APPRECIATE THE HARDSHIPS THAT YOU'VE ENDURED BEING PUT UP IN A MOTEL, THE ATTENTION THAT YOU'VE PAID TO ALL OF THE TESTIMONY AND THE JUDGE'S INSTRUCTIONS. WHAT I'M GOING TO ASK Y'ALL TO DO IS JUST DO THE SAME THING YOU'VE BEEN DOING, BUT PLEASE CONTINUE TO HAVE AN OPEN MIND, TO PAY CLOSE ATTENTION TO THE REST OF THE TESTIMONY,

THE REST OF THE LAW THE JUDGE IS GOING TO GIVE YOU.

AT THIS POINT TIMOTHY ROGERS' GUILT IS NO LONGER AN ISSUE. HE SITS BEFORE YOU TODAY A CONVICTED MURDERER OF A NINE-YEAR-OLD CHILD. WHAT WE'RE HERE AT THIS POINT, OF COURSE, IS TO DETERMINE THE APPROPRIATE PUNISHMENT. YOU'VE GOT TWO CHOICES: LIFE IN PRISON OR THE DEATH PENALTY. AND AS JUDGE BROWN TOLD YOU, YOU'RE GOING TO HEAR EVIDENCE RELATING TO PUNISHMENT, EVIDENCE IN AGGRAVATION THAT I'M GOING TO BE INTRODUCING TO TRY TO CONVINCE YOU TO BRING BACK THE DEATH PENALTY. YOU MAY ALSO HEAR EVIDENCE IN MITIGATION TO TRY TO CONVINCE YOU TO BRING BACK A LIFE SENTENCE.

THE EVIDENCE I'M GOING TO PUT UP YOU CAN DIVIDE INTO THREE KINDS OF EVIDENCE. ONE ARE THE CIRCUMSTANCES OF THE CRIME THAT YOU MAY NOT HAVE ALREADY HEARD ABOUT UP TO THIS POINT IN TIME. THE SECOND THING THAT I'M ALLOWED TO BRING OUT AND THAT I'M GOING TO BRING OUT WOULD CONCERN EVIDENCE OF THE CHARACTERISTICS OF TIMOTHY ROGERS, THE KIND OF PERSON HE IS. AND THE THIRD THING IS VICTIM IMPACT EVIDENCE AND THAT'S THE IMPACT THAT STEPHANIE B[redacted]'S DEATH HAD ON HER FAMILY, HER GRANDMOTHER, HER GRANDFATHER, HER PARENTS, THE PEOPLE THAT LOVED HER AND THAT WERE CLOSE TO HER.

AND AFTER YOU'VE HEARD THE TESTIMONY AT THIS

POINT, I'LL HAVE ONE MORE OPPORTUNITY TO SPEAK TO YOU AND MAKE A CLOSING ARGUMENT FOR THIS PHASE. THE JUDGE WILL THEN INSTRUCT YOU AGAIN AND YOU GO BACK AND YOU MAKE THAT LIFE AND DEATH DECISION AND LISTEN TO THE EVIDENCE. PLEASE CONTINUE TO USE YOUR GOOD COMMON SENSE THAT YOU USED DURING THE FIRST PHASE OF THE TRIAL. PAY CLOSE ATTENTION TO EVERYTHING BECAUSE THIS IS THE MOST IMPORTANT DECISION ANY OF Y'ALL WILL MAKE IN ANY TRIAL. THANK YOU VERY MUCH.

THE COURT: NOW, THE DEFENDANT AND HIS ATTORNEYS HAVE A RIGHT - THEY DON'T HAVE TO - TO MAKE ANY TYPE OF OPENING REMARKS. SOLICITOR -- I MEAN, MR. RUNYON?

MR. RUNYON: GOOD MORNING. MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I'M GOING TO BE VERY BRIEF. WE'VE REACHED THAT STAGE, AS THE SOLICITOR HAS INDICATED AND AS THE JUDGE HAS INDICATED, WHERE WE'RE GOING TO TALK ABOUT THE PENALTY HERE. NOW, THE SOLICITOR IS GOING TO PRESENT TO YOU SUCH EVIDENCE AS HE WANTS TO PRESENT TO TRY TO CONVINCE YOU THAT YOU SHOULD IMPOSE THE DEATH PENALTY. IT'S PLAIN, PURE, AND SIMPLE. HE'S GOING TO TRY TO CONVINCE YOU FOR WHATEVER REASON HE PROPOSES THAT MR. ROGERS SHOULD, IN FACT, RECEIVE THE DEATH PENALTY.

HE'S GOING TO TALK TO YOU ABOUT THE IMPACT ON

FAMILY MEMBERS AND WHAT HAVE YOU AND TO A CERTAIN EXTENT AND TO A LARGE EXTENT WE'RE GOING TO TELL YOU THE SAME THING. WE'RE GOING TO TELL YOU A LITTLE BIT MORE ABOUT MR. ROGERS. YOU'RE GOING TO HEAR MORE ABOUT HIM. YOU'RE GOING TO HEAR HOW THIS HAS IMPACTED ON HIS FAMILY AND HOW THEY WERE EXTREMELY DISTURBED BY THIS HAPPENING AND HOW TORN THEY ARE THAT SOMEONE FROM THEIR FAMILY GOT THEMSELVES IN THIS SITUATION. AND ALL I CAN ASK YOU AT THIS POINT IS WHAT WE ASKED YOU TO BEGIN WITH: PLEASE LISTEN AND THEN AT THE END OF THE PRESENTATION WE'LL BE ABLE TO TALK TO YOU A LITTLE BIT MORE INTELLIGENTLY. THANK YOU VERY MUCH.

MR. BAILEY: YOUR HONOR, I WOULD MOVE TO INCORPORATE THE GUILT PHASE TESTIMONY INTO THIS PHASE OF THE TRIAL FORMALLY.

THE COURT: ALL RIGHT, SIR. I GRANT THAT.

MR. BAILEY: AND WOULD NEXT---

THE COURT: YES, SIR?

MR. RUNYON: YOUR HONOR, WE HAVE NO OBJECTION TO THAT MOTION AS LONG AS OUR OBJECTION IS NOT TAKEN IN THE RECORD AS WAIVING ANY OBJECTION MADE DURING THE COURSE OF THE GUILT PHASE.

THE COURT: ALL RIGHT, SIR. WOULD MR. ROGERS LIKE TO MAKE AN OPENING STATEMENT?

MR. RUNYON: NO, YOUR HONOR.

THE COURT: IS THAT CORRECT, MR. ROGERS?

MR. RUNYON: THAT'S CORRECT.

THE COURT: ALL RIGHT. CALL YOUR FIRST WITNESS.

MR. BAILEY: YOUR HONOR, THE STATE -- PRIOR TO CALLING ANY WITNESS, I WOULD OFFER THE TAPE THAT THE COURT HAS VIEWED THIS MORNING.

THE COURT: YES, SIR.

MR. BAILEY: AS THE STATE'S NEXT EXHIBIT WHICH WOULD BE, WHAT, NUMBER 20?

THE COURT: ALL RIGHT, SIR. SUBJECT TO ANY OBJECTIONS PREVIOUSLY MADE.

(STATE'S EXHIBIT 20 WAS RECEIVED IN EVIDENCE.)

FOREMAN: JUDGE, ONE OF THE JURORS CANNOT SEE THE TELEVISION.

THE COURT: WE'RE GOING TO FIX IT; I PROMISE YOU. IS THERE ANYBODY THAT CANNOT SEE THAT SCREEN? GOOD. FEEL FREE TO STAND UP IF YOU CAN'T. ALL RIGHT, SIR.

(WHEREUPON, STATE'S EXHIBIT 20, A VIDEOTAPE, WAS PLAYED IN OPEN COURT BEFORE THE JURY.)

MR. BAILEY: YOUR HONOR, THE STATE WOULD NEXT OFFER A SUMMARY OF MR. ROGERS' CRIMINAL CONVICTION RECORD AND THE STIPULATION SIGNED BY MR. RUNYON AND I.

THE COURT: ALL RIGHT, SIR. WHEN YOU SAY STIPULATION, MR. FOREMAN, MEMBERS OF THE JURY, IT MERELY MEANS THAT THIS IS THE DEFENDANT'S RECORD AND THE ATTORNEYS HAVE STIPULATED THAT THAT IS HIS RECORD WITHOUT BRINGING IN OTHER WITNESSES TO TESTIFY.

MR. BAILEY: YOUR HONOR, I ALSO HAVE AN ENLARGEMENT OF THE RECORD.

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: THAT I'D LIKE TO HAVE MARKED ALSO.

(STATE'S EXHIBITS 21 AND 22 WERE RECEIVED IN EVIDENCE.)

MR. BAILEY: YOUR HONOR, I'D LIKE TO PUBLISH THIS TO THE JURY AT THIS TIME.

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: LADIES AND GENTLEMEN, THIS IS THE STIPULATION SIGNED BY MR. RUNYON AND I DATED TODAY'S DATE. THE STATE AND THE DEFENDANT ABOVE-NAMED STIPULATE AND AGREE THAT IF THE CLERK OF COURT FOR DORCHESTER COUNTY AND THE CLERK OF COURT FOR THE TOWN OF SUMMERVILLE WERE CALLED AS WITNESSES THEY WOULD TESTIFY THAT THEY'RE THE CUSTODIANS OF THE CONVICTION RECORDS AS SUMMARIZED IN A DOCUMENT ENTITLED "TIMOTHY D. ROGERS' CRIMINAL RECORD" AND THAT SAID SUMMARY ACCURATELY REFLECTS THE OFFICIAL RECORDS OF SUCH

CONVICTIONS INCLUDING THE OFFENSE DATE, CHARGE, AND SENTENCE.

THAT RECORD IS ENLARGED HERE AND IT STARTS OFF NOVEMBER 22ND, 1985, TRESPASSING AFTER NOTICE, SUMMERVILLE MUNICIPAL COURT, SENTENCE IS A $216 FINE, THIRTY DAYS IMPRISONMENT. 1986, CARRYING A PISTOL, COURT OF GENERAL SESSIONS FOR DORCHESTER COUNTY, SIX MONTHS IN PRISON, FINE OF $350. 1987, POSSESSION OF MARIJUANA, SUMMERVILLE MUNICIPAL COURT, FORFEITED $216 BOND. JULY 31, '87, SHOPLIFTING CONVICTION, SUMMERVILLE MUNICIPAL COURT, FORFEITED $218 BOND. MARCH 26, 1988, RESISTING ARREST, SUMMERVILLE MUNICIPAL COURT, FORFEITED A $118 BOND. DECEMBER 20, 1988, GRAND LARCENY OF A VEHICLE, COURT OF GENERAL SESSIONS FOR DORCHESTER COUNTY, INDETERMINATE SENTENCE NOT TO EXCEED SIX YEARS IMPRISONMENT.

SEPTEMBER 14, 1990, POSSESSION OF COCAINE, THE COURT OF GENERAL SESSIONS FOR DORCHESTER COUNTY, FORTY-FIVE DAYS IMPRISONMENT. AUGUST 1992, CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE, COURT OF GENERAL SESSIONS, SEVEN YEARS IN PRISON. AND AGAIN SEPTEMBER OF '92, CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE IN THIS COURT, SEVEN YEARS IMPRISONMENT CONCURRENT WITH THE PRIOR SEVEN-YEAR SENTENCE. THE STATE CALLS VERNEST LAWRENCE.

VERNEST LAWRENCE, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: STATE YOUR FULL NAME FOR THE RECORD, PLEASE.

THE WITNESS: VERNEST LAWRENCE.

MR. RUNYON: YOUR HONOR, WE'D LIKE THE RECORD TO NOTE OUR OBJECTION. I BELIEVE WE DISCUSSED THIS IN CHAMBERS.

THE COURT: YES, SIR. YES, SIR, I NOTE IT.

MR. RUNYON: I OBJECT TO THIS LINE OF QUESTIONING.

THE COURT: OVERRULED.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. SIR, YOU'RE VERNEST LAWRENCE?

A. YES.

Q. HOW OLD ARE YOU, MR. LAWRENCE?

A. FORTY-EIGHT.

Q. OKAY. WHERE DO YOU LIVE?

A. HOLLY HILL.

Q. OKAY. AND HOW LONG HAVE YOU LIVED IN HOLLY HILL?

A. ABOUT SIX, SEVEN YEARS.

Q. OKAY. DO YOU KNOW THE DEFENDANT IN THIS CASE, TIMOTHY ROGERS?

A. YES, SIR.

Q. OKAY. NOW, I WANT TO CALL YOUR ATTENTION TO MARCH 26TH, 1988. DID YOU HAVE OCCASION TO SEE MR. ROGERS?

A. YES, SIR.

Q. WHERE DID YOU SEE HIM AT?

A. CLUB 78.

Q. AND WHERE IS CLUB 78 LOCATED?

A. HIGHWAY 78 IN SUMMERVILLE.

Q. OKAY. NOW, ABOUT WHAT TIME OF THE DAY OR NIGHT WERE YOU AT THE CLUB 78?

A. PROBABLY ABOUT TWELVE.

Q. TWELVE MIDNIGHT?

A. UH-HUH.

Q. OKAY. PULL YOUR CHAIR UP JUST A LITTLE BIT IF YOU WOULD AND KIND OF TRY TO TALK INTO THAT MIKE SO EVERYBODY CAN HEAR YOU; OKAY? ALL RIGHT. NOW, DID ANYTHING UNUSUAL HAPPEN THAT NIGHT IN RELATION TO TIMOTHY ROGERS?

A. WELL, HIM AND ANOTHER FELLOW WAS FIGHTING AND ME AND ANOTHER FELLOW WAS PARTING THE FIGHT. AND SO AFTER THE FIGHT -- WE GOT THE FIGHT PARTED, THEN HE COME FROM AROUND THE CORNER AND---

Q. WAIT A MINUTE. WHEN YOU SAY "HE", I WANT YOU TO USE THE PERSON'S NAME; OKAY?

A. ROGERS CAME FROM AROUND THE CORNER AND HIT ME IN THE HEAD WITH A BAT.

Q. WHAT KIND OF BAT?

A. I DON'T KNOW WHAT KIND OF BAT IT WAS. I DON'T KNOW WHETHER IT WAS WOOD OR METAL.

Q. ALL RIGHT. NOW, HAD YOU DONE ANYTHING TO MR. ROGERS BEFORE HE HIT YOU OVER THE HEAD WITH A BAT?

A. NO, SIR.

Q. AND WHAT PART OF YOUR HEAD DID HE HIT YOU WITH?

A. ON THE BACK.

Q. ALL RIGHT. AND WHAT HAPPENED TO YOU AFTER HE HIT YOU WITH THE BAT?

A. ONE OF MY FRIENDS TAKE ME HOME.

Q. DID YOU GO TO THE DOCTOR?

A. YES.

MR. BAILEY: ALL RIGHT. MR. LAWRENCE, ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MR. LAWRENCE, YOU WERE IN A FIGHT WITH MR. MCTEER, WEREN'T YOU, SIR?

A. WITH WHO?

Q. WASN'T THE OTHER FELLOW'S NAME MCTEER THAT YOU GOT IN A FIGHT WITH THAT NIGHT?

A. NO, SIR.
Q. YOU DIDN'T GET IN A FIGHT WITH ANYBODY ELSE?
A. NO, SIR.
Q. ALL RIGHT. AND MR. ROGERS JUST CAME UP TO YOU AND STRUCK YOU ACROSS THE BACK OF THE HEAD FOR NO REASON.
A. HE WAS -- HE WAS -- HE WAS FIGHTING THE OTHER GUY THAT ME AND THE OTHER FELLOW WAS PARTING HIM AND ANOTHER FELLOW FROM FIGHTING. SO AFTER THE FIGHT WAS OVER, THEN HE COME AROUND THE CORNER AND HIT ME WITH A BAT.
Q. SO THE FIGHT WAS TOTALLY OVER.
A. (WITNESS NODDED HEAD UP AND DOWN.)
Q. AND THAT'S YOUR TESTIMONY.
A. YES.
Q. AND YOU WERE DRINKING THAT NIGHT, WEREN'T YOU?
A. YES.
Q. AND MR. ROGERS WAS DRINKING?
A. I DON'T KNOW.
Q. WELL, HOW LONG HAD HE BEEN AT THE CLUB?
A. I DON'T KNOW.
Q. HAD YOU SEEN HIM THERE BEFORE?
A. YES.
Q. I MEAN, THAT NIGHT, BEFORE THIS WHOLE THING

HAPPENED, HAD HE BEEN THERE THAT NIGHT?

A. YES.

Q. AND WAS HE JUST STANDING AROUND EATING PEANUTS AND PLAYING POOL?

A. I DON'T KNOW WHAT HE WAS EATING OR WHAT HE WAS DOING.

Q. AND, OF COURSE, YOU SAY HE HIT YOU IN THE BACK OF THE HEAD WITH A BAT OR SOMETHING; CORRECT?

A. A BAT.

Q. ALL RIGHT. AND SO YOU WENT TO THE DOCTOR AND THEN YOU WENT TO THE POLICE.

A. RIGHT.

Q. AND YOU APPEARED IN COURT AND TESTIFIED AGAINST HIM.

A. RIGHT.

Q. YOU APPEARED IN COURT AND TESTIFIED AGAINST HIM.

A. NO, WE DIDN'T BEEN IN NO COURT. I JUST WENT AND SIGNED A WARRANT.

Q. AND YOU NEVER WENT TO COURT ON THAT, DID YOU?

A. NO.

Q. THAT ENTIRE MATTER NEVER GOT LITIGATED, DID IT, SIR?

A. NO.

Q. AND SO IT'S YOUR CONTENTION THAT YOU HAD

ABSOLUTELY NOTHING TO DO WITH GETTING INVOLVED IN THIS THING THAT NIGHT. YOU JUST GOT HIT FOR NO REASON.

A. RIGHT.

Q. OKAY. AND THAT'S YOUR STORY.

A. YES.

Q. AND YOU DON'T KNOW ANYBODY BY THE NAME OF MCTEER.

A. NO.

Q. WHO WAS THE OTHER PERSON THAT WAS WITH YOU THAT NIGHT?

A. LEROY LIMEHOUSE.

Q. LEROY LIMEHOUSE. DID MR. LIMEHOUSE GET PUNCHED OR ANYTHING?

A. NO.

Q. AND YOU SAY SOMEONE CAME AROUND THE CORNER AND HIT YOU IN THE BACK OF THE HEAD?

A. NO, I SAID ROGERS DID.

Q. ROGERS CAME AROUND THE CORNER AND HE HIT YOU IN THE BACK OF THE HEAD.

A. RIGHT.

Q. DID YOU SEE HIM COME AROUND THE CORNER?

A. RIGHT.

Q. WHAT DID HE HAVE IN HIS HANDS?

A. A BAT. I DON'T KNOW WHETHER IT WAS A WOODEN ONE OR A METAL ONE.

Q. OKAY. AND SO YOU JUST TURNED YOUR BACK ON HIM AND LET HIM HIT YOU IN THE BACK OF THE HEAD.

A. I DIDN'T SAY THAT. HE RUN AND HE COME UP TO ME AND HIT ME WITH THE BAT.

Q. OKAY. IN THE BACK OF THE HEAD.

A. RIGHT.

Q. CAME UP TO YOU FROM THE FRONT OR THE BACK?

A. FROM THE BACK.

Q. OKAY. SO, YOUR BACK WAS TO HIM, SO THAT'S WHY HE HIT YOU IN THE BACK OF THE HEAD; RIGHT?

A. NOT REALLY. IT WAS BETWEEN TURNED AND IN THE BACK OF ME.

Q. BUT YOU COULD SEE HIM.

A. RIGHT.

Q. AND THEN WHERE DID MR. ROGERS GO?

A. I DON'T KNOW.

Q. WELL, DID YOU LEAVE AT THAT TIME?

A. NO, MY FRIEND TAKE ME FROM THERE.

Q. YOUR FRIEND. WHO IS YOUR FRIEND?

A. LEROY COLES.

Q. LEROY WHO?

A. COLES.

Q. ALL RIGHT, SIR. MR. COLES TOOK YOU AND MR. LIMEHOUSE STAYED THERE.

A. RIGHT.

Q. OKAY. AND THAT WAS THE LAST TIME YOU SAW MR. ROGERS THAT NIGHT, WASN'T IT?

A. RIGHT.

Q. YOU NEVER SAW HIM AGAIN AT ANY OTHER CLUBS, DID YOU, SIR?

A. YES, SIR.

Q. I BEG YOUR PARDON?

A. YES, I DID.

Q. YOU DID SEE HIM. AND ON THOSE OTHER TIMES WHEN YOU SAW HIM AT THOSE CLUBS, WAS THERE ANY PROBLEM?

A. NOT WITH ME.

Q. WAS THERE ANY PROBLEM WITH MR. ROGERS?

A. NOT WITH ME THERE WASN'T.

Q. MR. LAWRENCE, DID TIMOTHY ROGERS ON THE OTHER TIMES YOU RAN INTO HIM AT CLUBS SAY OR DO ANYTHING TO YOU?

A. NO.

Q. ALL RIGHT. SO, THERE WASN'T ANY PROBLEM FROM HIM AND THERE WASN'T ANY PROBLEM FROM YOU.

A. NO.

Q. AND Y'ALL GOT ALONG, DIDN'T YOU?

A. I NEVER SPEAK TO HIM.

Q. AND HE NEVER SPOKE TO YOU.

A. RIGHT.

Q. AND FROM THAT TIME ON THERE WASN'T A SINGLE

CROSS WORD BETWEEN YOU AND MR. ROGERS.

A. NO.

Q. YOU DIDN'T GO LOOKING FOR TROUBLE AND HE DIDN'T GO LOOKING FOR TROUBLE; ISN'T THAT RIGHT?

A. AS FAR AS MY OPINION.

Q. OKAY. NOW, THAT NIGHT DID YOU SEE WHAT OCCURRED BETWEEN MR. ROGERS AND ANYONE ELSE?

A. NO.

Q. OKAY. SO, YOU DON'T KNOW HOW THAT WHOLE THING GOT STARTED EITHER.

A. NO.

Q. NOW, LET ME ASK YOU SOMETHING. THIS WAS AT CLUB 78?

A. YES.

Q. NOW, CLUB 78, IS THAT A PLACE THAT HAS NICE BIG, THICK LEATHER CHAIRS OR IS THAT -- IT'S KIND OF A NIGHT SPOT, ISN'T IT?

A. UH-HUH.

Q. AND PEOPLE DRINK THERE, DON'T THEY, SIR?

A. YES. THIS HAPPENED ON THE OUTSIDE. IT WASN'T INSIDE.

Q. IT HAPPENED ON THE OUTSIDE. BUT ARGUMENTS AND FIGHTS AND WHAT HAVE YOU AT CLUB 78 ARE NOT UNUSUAL, ARE THEY, SIR?

A. NO.

Q. AS A MATTER OF FACT, YOU'VE BEEN IN ONE -- YOU'VE BEEN IN ARGUMENTS AND FIGHTS BEFORE THAT.

A. YES.

Q. AND YOU WERE IN ARGUMENTS AND FIGHTS AFTER THAT, WEREN'T YOU?

A. YES.

Q. AS A MATTER OF FACT, THAT'S JUST A COMMON PART OF YOUR LIFE WHEN YOU'RE AROUND THESE CLUBS. ISN'T THAT RIGHT, SIR?

A. NOT REALLY.

Q. NOT REALLY. HOW MANY TIMES A YEAR DO YOU GET IN ALTERCATIONS OR DISAGREEMENTS AT CLUB 78 OR OTHER CLUBS?

A. I DON'T GO TO CLUBS ANYMORE.

Q. YOU DON'T GO TO CLUBS ANYMORE. WHY IS THAT, SIR?

A. BECAUSE I JUST DON'T.

Q. OKAY. YOU DON'T NEED TO GO TO CLUBS BECAUSE THERE'S TOO MUCH FUSSING AND FIGHTING THERE; RIGHT?

A. RIGHT.

Q. OKAY. AND THAT'S ALL YOU KNOW ABOUT MR. ROGERS WAS THAT ONE INCIDENT; CORRECT?

A. RIGHT.

Q. NEVER HAD TROUBLE WITH HIM AFTER THAT.

A. NOPE?

MR. RUNYON: OKAY. EXCUSE ME, YOUR HONOR. NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. CALL YOUR NEXT WITNESS.

MR. BAILEY: MR. LAWRENCE -- IF I COULD REDIRECT, YOUR HONOR, BRIEFLY.

REDIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. LAWRENCE, IS IT A COMMON THING AT THESE CLUBS TO GET BEAT OVER THE HEAD WITH A BASEBALL BAT FOR NO REASON?

A. RIGHT.

Q. IT IS?

A. YES.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR. COME DOWN, MR. LAWRENCE.

THE COURT: YOU CAN COME DOWN.

MR. BAILEY: WE CALL ANTHONY BROWN.

ANTHONY BROWN, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. BROWN, WHERE ARE YOU EMPLOYED?

A. THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

Q. AND ARE YOU A CORRECTIONAL OFFICER THERE?

A. THAT'S CORRECT.

Q. AND WHAT PARTICULAR FACILITY ARE YOU ASSIGNED TO?

A. I'M ASSIGNED TO THE RECEPTION AND EVALUATION UNIT.

Q. OKAY. WHERE IS THAT LOCATED?

A. BROAD RIVER.

Q. OKAY. WHAT'S THE FULL NAME OF BROAD RIVER?

A. BROAD RIVER CORRECTIONAL INSTITUTION, RECEPTION AND EVALUATION UNIT.

Q. OKAY. AND WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AT BROAD RIVER?

A. TO SUPERVISE, CONTROL, AND MAKE SURE I TAKE CARE OF THE SAFETY OF THE INMATES.

Q. OKAY. NOW, DO YOU KNOW THE DEFENDANT IN THIS CASE, TIMOTHY ROGERS?

A. VAGUELY.

Q. OKAY. AND HOW DO YOU KNOW HIM?

A. JUST FROM ENTERING THE RECEPTION AND EVALUATION UNIT.

Q. ALL RIGHT. DID YOU HAVE OCCASION TO SEE TIMOTHY ROGERS ON FEBRUARY 9TH, 1993, AT ABOUT 10:15 A.M. AT BROAD RIVER?

A. I DON'T RECALL SPECIFICALLY.

Q. OKAY. LET ME HAND YOU A PIECE OF PAPER AND

SEE IF THIS REFRESHES YOUR MEMORY. AND I'LL ASK WHETHER OR NOT YOUR NAME IS DOWN AT THE BOTTOM OF THAT PIECE OF PAPER.

A. THAT'S CORRECT.

Q. ALL RIGHT, SIR.

A. OKAY. YES, I'M FAMILIAR WITH THE SITUATION.

Q. OKAY. WHAT OCCURRED ON THAT DAY WITH RESPECT TO TIMOTHY ROGERS?

A. WELL, SPECIFICALLY DEALING WITH TIMOTHY THERE WAS NOTHING THAT I CAN WITNESS TO OTHER THAN THAT HE WAS ACCUSED OF BEING INVOLVED WITH AN ALTERCATION WITH SOME OTHER INMATES.

Q. ALL RIGHT. WERE YOU PRESENT WHEN THAT HAPPENED?

A. NOT AT THE INSTANT IT HAPPENED. SO, TIMOTHY ROGERS WAS NEVER SEEN TO BE, YOU KNOW, DIRECTLY INVOLVED, BUT HE WAS ACCUSED.

Q. WAS HE AN INMATE---

A. HE WAS ACCUSED BY THE PERSON THAT WAS ATTACKED.

Q. WAS HE AN INMATE AT THE TIME?

A. YES, SIR?

MR. BAILEY: OKAY. ANSWER ANY QUESTIONS THEY MAY HAVE FOR YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MR. BROWN, HOW LONG HAVE YOU BEEN WORKING WITH THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS?

A. THIRTEEN YEARS.

Q. AND WHERE HAVE YOU WORKED DURING THAT PERIOD OF TIME?

A. CENTRAL CORRECTIONAL INSTITUTION AND THE R. AND E. UNIT, RECEPTION AND EVALUATION UNIT.

Q. NOW, MR. BROWN -- AND WHAT KIND OF JOBS HAVE YOU HAD?

A. SECURITY.

Q. SECURITY BASICALLY?

A. BASICALLY.

Q. YOU'RE IN THE INSTITUTION.

A. YES, SIR.

Q. AND YOU'RE IN THE CRIMINAL BLOCKS---

A. RIGHT.

Q. ---AND AROUND THEM.

A. THAT'S CORRECT.

Q. NOW, THE STAFF OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS TRIES TO RUN A NEAT, ORDERLY INSTITUTION WHEREVER THEY ARE. ISN'T THAT CORRECT, SIR?

A. THAT'S CORRECT.

Q. BUT PRISON IN SOUTH CAROLINA IS NOT A NICE PLACE, IS IT, SIR?

A. IT'S NOT A NICE PLACE ANYWHERE; NO, SIR, IT ISN'T.

Q. BUT PARTICULARLY IN SOUTH CAROLINA IT'S CLEAN AND NEAT AND WHAT HAVE YOU, BUT IT AIN'T A NICE PLACE TO BE, IS IT?

A. NO, SIR.

Q. OKAY. AND DURING YOUR CONTACTS WITH MR. ROGERS, DO YOU HAVE ANY RECOLLECTION OF MR. ROGERS NOT CONFORMING OR ATTEMPTING TO CONFORM TO THE RULES AND REGULATIONS AS YOU KNOW THEM?

A. NO, SIR, I DON'T.

Q. AND I WOULD TAKE IT THEN THAT HE DID, IN FACT, CONFORM AS FAR AS YOU KNOW.

A. THAT'S CORRECT.

Q. AND ADAPT TO THE PRISON LIFE.

A. AS FAR AS I KNOW.

MR. RUNYON: YES, SIR. NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: ALL RIGHT. YOU CAN COME DOWN.

MR. BAILEY: YOUR HONOR, IF I CAN HAVE A MOMENT. ONE OF MY ASSISTANTS IS CHECKING ON THE AVAILABILITY OF THE NEXT WITNESS.

THE COURT: ALL RIGHT, SIR.

FOREMAN: JUDGE BROWN?

THE COURT: YES, SIR.

FOREMAN: ONE OF THE JURORS IS COLD. COULD SHE GET HER COAT?

THE COURT: OF COURSE. WHY DON'T YOU JUST -- LET'S TAKE ABOUT FIVE MINUTES AND I'M GOING TO SEE ABOUT ADJUSTING THE HEAT IN HERE PERHAPS. WHY DON'T YOU GO AHEAD TO YOUR ROOM FOR JUST A MOMENT?

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

THE COURT: SOLICITOR, LET'S JUST TAKE ABOUT FIVE MINUTES.

MR. BAILEY: ALL RIGHT, SIR.

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

THE COURT: ALL RIGHT. THANK YOU SO MUCH. PLEASE BE SEATED. ALL RIGHT. BRING THE JURY IN.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT.)

THE COURT: MR. FOREMAN, FOR THOSE OF YOU WHO MIGHT BE A LITTLE CHILLY WE JUST TRIED TO FIND OUT WHETHER OR NOT WE COULD ADJUST THIS. YOU REMEMBER THE OTHER DAY WHEN IT WAS SO HOT I MADE THEM CUT IT OFF. WELL, IT TAKES TWO DAYS TO CRANK THE THING UP AND SO I DON'T WANT TO HANG AROUND TWO MORE DAYS TO DO IT, BUT I

WILL TELL YOU THIS IN DEFENSE OF THE COUNTY COUNSEL. THEY'RE PUTTING IN A NEW SYSTEM IN HERE THAT WON'T HAVE THAT. SO, MAYBE I'LL BE LUCKY ENOUGH TO HAVE YOU ON ANOTHER JURY AT A LATER TIME WHEN IT'S WORKING.

I WILL TELL YOU THIS, THOUGH. WE'RE IN PRETTY GOOD SHAPE. I REMEMBER IN FLORENCE A FEW YEARS AGO THEY NEVER COULD GET THE SYSTEM ADJUSTED AND SO I COMPLAINED AND I FOUND OUT THAT SOMEBODY SAYS, WELL, THE REASON IS IS THE PERSON WHO ADJUSTS IT IS IN VIRGINIA AND TRULY IT WAS ON COMPUTER IN THE STATE OF VIRGINIA. AND I WENT THERE ABOUT SIX MONTHS LATER AND IT WAS WORKING GOOD AND I ASKED THEM WHAT DID THEY DO. THEY SAID THAT THEY HAD MOVED THE COMPUTER TO ATLANTA, GEORGIA. SO, I HOPE YOU'LL BE COMFORTABLE, THOUGH. ALL RIGHT, SOLICITOR.

MR. BAILEY: THE STATE CALLS PATSY BUNCH.

PALACE L. BUNCH, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE GIVE US YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD, PLEASE.

THE WITNESS: MY FULL NAME IS PALACE L. BUNCH, B-U-N-C-H.

COURT REPORTER: WOULD YOU SPELL YOUR FIRST NAME?

THE WITNESS: P-A-L-A-C-E.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MS. BUNCH, YOU GO BY THE NAME -- NICKNAME PATSY BUNCH?

A. PATSY. UH-HUH.

Q. OKAY. WHO ARE YOU MARRIED TO, MS. BUNCH?

A. MARRIED TO LEON BUNCH.

Q. OKAY. CAN YOU SCOOT YOUR CHAIR UP JUST A LITTLE BIT? OKAY. AND, MS. BUNCH, IF I MIGHT ASK, HOW OLD ARE YOU?

A. FIFTY-SEVEN.

Q. OKAY. AND WHO IS YOUR -- DO YOU HAVE ANY CHILDREN?

A. YES, I HAVE TWO.

Q. OKAY. AND WHO ARE THEY?

A. MELINDA B[redacted] AND JOYCE WILSON.

Q. OKAY. AND WAS STEPHANIE B[redacted] YOUR GRANDDAUGHTER?

A. SHE WAS OUR ONLY GRANDCHILD. SHE WAS OUR GRANDDAUGHTER.

Q. OKAY. AND WHERE DO YOU LIVE AT THIS TIME?

A. IN KNIGHTSVILLE.

Q. OKAY. HOW FAR BACK IN -- WHEN STEPHANIE WAS GROWING UP, HOW FAR APART DID YOU LIVE FROM MIKE B[redacted] AND YOUR DAUGHTER AND STEPHANIE?

A. FIVE OR SIX MILES.

Q. ALL RIGHT. HOW FREQUENT DID YOU SEE STEPHANIE?

A. EVERY WEEK. USUALLY SEVERAL TIMES A WEEK.

Q. OKAY.

A. WE HAD HER EVERY WEEKEND JUST ABOUT.

Q. ALL RIGHT. AND WHEN SHE WOULD STAY WITH YOU FOR THE WEEKEND, DID SHE HAVE HER OWN ROOM IN YOUR HOUSE OR WHERE DID SHE STAY?

A. SHE MOSTLY SLEPT IN THE SAME ROOM WITH US.

Q. OKAY.

A. SHE HAD HER OWN BED IN THERE.

Q. OKAY. AND THIS WAS A FREQUENT OCCASION, EVERY WEEKEND?

A. JUST ABOUT EVERY WEEKEND.

Q. AND WHAT TYPE THINGS DID SHE DO WHEN SHE WOULD VISIT WITH YOU AND YOUR HUSBAND?

A. WELL, SHE STAYED FROM THE TIME SHE WAS LITTLE. SO, SHE WENT TO SUNDAY SCHOOL AND CHURCH EVERY SUNDAY WITH ME. SHE WOULD HELP ME COOK IN THE KITCHEN. OF COURSE, WHEN SHE WAS LITTLE SHE'D SPLASH IN THE WATER HELPING WASH DISHES. SHE WOULD HELP IN THE YARD WITH FLOWERS. AS SHE GOT OLDER, SHE HELPED RAKE LEAVES, CUT GRASS. ANY TIME IF I WAS AT WORK AND CAME HOME I COULD TELL WHERE SHE WAS THERE. IF I

DIDN'T SEE HER, YOU COULD TELL STEPHANIE WAS IN THE HOUSE FROM THE LIVING ROOM.

Q. ALL RIGHT. MS. BUNCH, LET ME HAND YOU A PICTURE HERE AND ASK IF YOU CAN IDENTIFY THIS.

A. THAT'S HER LAST SCHOOL PICTURE, THE ONE FROM '92.

MR. BAILEY: YOUR HONOR, I WOULD OFFER THIS.

THE COURT: WITHOUT OBJECTION.

(STATE'S EXHIBIT 23 WAS RECEIVED IN EVIDENCE.)

BY MR. BAILEY:

Q. MS. BUNCH, WHAT IS YOUR HUSBAND'S HEALTH?

A. HE IS DISABLED FROM A STROKE HE HAD IN MAY OF '92.

Q. OKAY. AND DID HE HAVE MORE THAN ONE STROKE?

A. HE HAD ONE THE 28TH OF FEBRUARY AND THEN FOLLOWING SURGERY ON THE FIRST DAY OF MAY HE HAD HIS SECOND ONE WHICH WAS MORE INVOLVED THAN THE FIRST.

Q. OKAY. WOULD THAT STROKE IMPAIR HIS ABILITY TO SPEAK AND TESTIFY HERE?

A. YES, IT DOES IMPAIR HIS SPEECH.

Q. OKAY. WHAT RELATIONSHIP DID YOU OBSERVE BETWEEN STEPHANIE AND YOUR HUSBAND AFTER HE HAD HIS STROKE?

A. WELL, THERE WAS ALWAYS A CLOSE BOND BETWEEN

THEM AND AFTER THE STROKE HE WAS IN INTENSIVE CARE ABOUT THREE DAYS AND HE WAS JUST REAL UPSET ABOUT WHAT HAD HAPPENED TO HIM. HE DIDN'T WANT TO SPEAK TO US. HE DIDN'T WANT ANYTHING TO EAT, DRINK. SO, WE TOOK HER TO THE WINDOW OUTSIDE HIS ROOM AND THE NURSE HAPPENED TO WALK IN WHILE HE WAS LOOKING AT HER THROUGH THE WINDOW AND SHE COULD SEE THE RESPONSE ON HIS FACE.

MR. RUNYON: OBJECTION, YOUR HONOR. I HATE TO INTERRUPT, BUT TESTIFYING ABOUT WHAT THE NURSE COULD SEE. . .

THE COURT: YES, SIR.

THE WITNESS: WELL, WE COULD -- WE COULD ALL SEE THE RESPONSE ON HIS FACE AND THAT'S THE FIRST RESPONSE HE'D SHOWN TO ANYONE. THEY LET HER COME INTO THE ROOM WHERE HE WAS IN INTENSIVE CARE. SHE WAS ALLOWED IN THERE EVERY DAY HE WAS THERE. THE FIRST DRINK OF WATER OR JUICE HE TOOK OUT OF A CUP HE TOOK FROM HER. THE FIRST LITTLE BIT OF PUDDING OR ANYTHING HE ATE FOR HER. SHE WAS, YOU KNOW, A BIG FACTOR IN HIS RECOVERING.

BY MR. BAILEY:

Q. HOW DID THAT RELATIONSHIP PERSIST AFTER THAT UP UNTIL NOVEMBER OF 1992?

A. WELL, WHEN HE WAS TRANSFERRED TO WALTERBORO TO A REHAB CENTER WE HAD TO HAVE HER WITH US WHEN WE

WENT OR ELSE HE WAS ON OUR CASE, BUT SHE USUALLY WENT WITH US. AFTER HE GOT HOME AND WAS GOING TO REHAB SHE WENT WITH HIM. EVERYBODY IN THE REHAB CENTER KNEW HER AND THEY COULD SEE THE IMPORTANCE, YOU KNOW, THE FEEL BETWEEN THEM AND HOW MUCH SHE HAD TO DO WITH HIS RECOVERY.

Q. ALL RIGHT. DO YOU KNOW WHAT ORGANIZATIONS, IF ANY, STEPHANIE BELONGED TO?

A. SHE WAS -- THE FUTURE ASTRONAUTS CLUB. IN FACT, WE BUILT A ROCKET. SHE AND I BUILT A ROCKET AND HER DAD WENT WITH US. SHE WENT TO THE SPACE CENTER IN FLORIDA ALONG WITH THAT GROUP. SHE WAS A MEMBER OF THE JUST-SAY-NO CLUB AND SHE HAD A JUST-SAY-NO TEE SHIRT ON WHEN SHE WAS KILLED. SHE WAS IN THE BROWNIES. SHE HAD WON ALL OF HER MERIT BADGES WHEN SHE WAS IN THE BROWNIES. THERE WAS AN ENVIRONMENTAL CLUB AT SCHOOL WHICH SHE WAS -- I DON'T KNOW THE WHOLE NAME, BUT SHE WAS IN THAT CLUB ALSO.

Q. OKAY. AND YOU'VE DESCRIBED THE RELATIONSHIP BETWEEN STEPHANIE AND YOUR HUSBAND. WHAT ABOUT BETWEEN YOU AND HER? WHAT DID Y'ALL DO TOGETHER AS GRANDMOTHER AND GRANDDAUGHTER?

A. WELL, I SEWED FOR HER AND SHE'D ALWAYS HELP PICK OUT -- WELL, THE TIME SHE WAS FOUR OR FIVE YEARS OLD SHE WOULD HELP PICK OUT THE PATTERNS OR THE CLOTH

BECAUSE SHE DEFINITELY KNEW WHAT SHE WANTED. WE WOULD GET OUTSIDE AND PLANT FLOWERS TOGETHER. SHE -- IN SUNDAY SCHOOL SHE KEPT WANTING TO KNOW WHEN SHE WOULD BE OLD ENOUGH TO GET IN MY CLASS AND SHE FINALLY -- SHE WAS THERE. THE TIME SHE WAS KILLED SHE WAS IN MY CLASS. WE'D GO GROCERY SHOPPING, DIFFERENT THINGS LIKE THAT TOGETHER. WE MADE -- EVERY YEAR FROM THE TIME SHE WAS IN THE KINDERGARTEN TOGETHER WE MADE AN EASTER BUNNY CAKE WHICH WAS TAKEN OUT TO THE CLASS FOR EASTER. THAT WAS DONE EVERY YEAR. BUT I COULD NEVER COMPLETELY FINISH IT. SHE HAD TO HELP.

Q. YOU SAID SHE WENT TO CHURCH OFTEN WHEN SHE WAS WITH YOU. DID SHE GO TO SUNDAY SCHOOL?

A. OH, YES. SHE WAS IN SUNDAY SCHOOL JUST NEARLY EVERY SUNDAY THAT CAME UP.

Q. DID Y'ALL HAVE A NICKNAME FOR HER OR DID YOU CALL HER STEPHANIE OR WHAT?

A. HER GRANDDADDY CALLED HER MONK MONK AND I EITHER WOULD BE SQUIRT OR USUALLY STEPH. IF SHE EVER HEARD STEPHANIE, THAT WAS HER SIGNAL: WATCH OUT. SOMETHING IS WRONG.

Q. NOW, THE HOUSEBOAT THAT WAS TALKED ABOUT EARLIER IN THE TRIAL AT LAKE MURRAY, WHOSE HOUSEBOAT IS THAT?

A. IT'S A TIME-SHARE THING, BUT WE DO OWN THE

TWO WEEKS UP THERE AND SHE WAS WITH US WHEN WE FIRST WENT DOWN, YOU KNOW, TO INVESTIGATE THE THING, CHECK IT OUT, AND SHE WAS WITH US EVERY TIME WE WENT. SHE WAS ON THAT BOAT. IF IT WAS DURING THE SCHOOL TIME, SHE'D BE UP THERE AFTER SCHOOL, LEAVE TO GO THE NEXT MORNING, OR ON HOLIDAYS SHE WOULD STAY THE COMPLETE TIME. BE THERE THE WHOLE WEEKEND IF SCHOOL WAS GOING ON. SHE THOROUGHLY ENJOYED IT.

Q. WHAT DID SHE DO ON THE HOUSEBOAT?

A. FISHING WAS A BIG THING. FISH OFF THE DOCK, FISH OFF THE BOAT, GET OUT IN THE SMALL BOAT, YOU KNOW, AND GO OUT AND FISH, PUT OUT SETLINES. SHE LOVED HELPING DO ANY OF IT.

Q. ALL RIGHT. WHERE WERE YOU WHEN YOU FOUND OUT THAT YOUR GRANDDAUGHTER HAD BEEN SHOT?

A. WE WERE ON THE HOUSEBOAT - MY HUSBAND, MYSELF, AND STEPHANIE'S MOM. WE WERE UP THERE OURSELF WAITING ON HER DAD AND JIMMY TO GET BACK WITH HER.

Q. OKAY. AND WHEN YOU FOUND OUT THAT SHE HAD BEEN SHOT, WHAT DID YOU DO?

A. WELL, THE MANAGER OF THE PLACE CAME DOWN TO THE BOAT AND TOLD US THERE WAS A MESSAGE THAT A [redacted] CHILD HAD BEEN SHOT AND HE HAD A PHONE NUMBER TO CALL. SO, MELINDA WAS AFRAID OF UPSETTING HER DAD AND SHE WENT WITH HIM TO THE PHONE. SHE WAS SO LONG COMING

BACK TILL I FINALLY WENT TO SEE, YOU KNOW, AND I MET HER COMING BACK TO THE BOAT AND SHE TOLD ME WHAT IT WAS. WE WENT IN. I HAD ALREADY -- BY MEANS I MANAGED TO GET HIS SHIRT ON HIM AND HIS SHOES BECAUSE I KNEW WE WAS GOING TO HAVE TO GO. AND SO WHEN WE GOT IN WE TOLD HIM, "WE'VE GOT TO GO. STEPHANIE HAS BEEN HURT." AND I HAD TO DRIVE BACK TO CHARLESTON, ALL THE WAY ALONG THE ROAD DRIVING WILD LIKE -- NOT WILD, BUT FAST AND ALL AS I WAS NOBODY -- NO POLICEMAN WOULD SHOW UP TO HELP US OUT OR ANYTHING.

Q. WHEN YOU GOT TO THE HOSPITAL, DID YOU HAVE A CHANCE TO SEE HER?

A. NO, I DIDN'T SEE HER TILL THE NEXT MORNING.

Q. WAS SHE STILL ALIVE THEN?

A. SHE WAS ON MACHINES, YES, AND STILL BREATHING AND HER HANDS WERE WARM AND, YOU KNOW, HER SKIN WAS STILL WARM, BUT THERE WAS NO RESPONSE OR ANYTHING IN HER. AND, OF COURSE, AT THAT TIME THEY HAD A SMALL BANDAGE ON HER HEAD SO YOU COULDN'T SEE ANYTHING EXCEPT THE BANDAGE WAS THERE.

Q. ALL RIGHT. NOW, WHEN STEPHANIE---

A. BUT SHE HORRIBLY SWELLED EVEN THEN.

Q. WHEN STEPHANIE DIED, WHAT WAS DONE WITH HER ORGANS?

A. THEY WERE DONATED. WE HAD TOLD THEM ANY OF

THEM THEY COULD USE -- ANYTHING THEY COULD USE TO GO AHEAD. WE DIDN'T DESIGNATE ANY PARTICULAR ONES. SOME MONTHS -- WELL, MAYBE A FEW YEARS EVEN BEFORE THAT SOME PROGRAM SHE AND I WERE WATCHING A BABY WAS BORN. I THINK IT WAS MISSING A BRAINSTEM. FOR SOME REASON THAT CHILD COULD NOT LIVE AND I DON'T REMEMBER -- THE SAME HOSPITAL OR ONE CLOSE BY THERE WAS ANOTHER BABY BORN THAT NEEDED AN ORGAN, NEEDED A HEART, NEEDED SOMETHING TO LIVE AND THE FIRST FAMILY HAD SAID SINCE THERE IS NO POSSIBLE WAY IT COULD LIVE THEY WOULD LIKE TO DONATE ITS ORGANS TO ONE -- TO ANOTHER FAMILY SO THAT THEIR CHILD COULD LIVE. AND WE DISCUSSED IT AND TALKED ABOUT IT AND I SAYS, "WHAT DO YOU THINK OF THAT?" AND SHE SAYS, "I THINK THAT'S GOOD TO HELP SOMEBODY ELSE."

SO, BEFORE SHE WAS -- WHEN THE DOCTORS HAD TOLD US IT DIDN'T LOOK GOOD AT ALL, HE DIDN'T THINK THERE WAS ANY HOPE AND THAT WAS HIS WAY OF LETTING US DOWN I'M SURE, I HAD TOLD MELINDA -- I SAID, "I DON'T KNOW ABOUT MIKE, BUT TALK TO HIM. SEE WHAT HE SAYS. WE NEED TO THINK ABOUT IT." SO, WHEN THE TIME CAME FOR THAT WHEN THEY HAD COME OUT AND TOLD US SHE WAS BRAIN-DEAD, WE TOLD THEM THAT THEY -- MELINDA WENT AHEAD AND TOLD THEM THAT WE WANT TO DONATE THE ORGANS SO THAT THEY DIDN'T HAVE TO APPROACH US ABOUT IT. BUT THEY DID COME AND EXPLAIN EVERYTHING TO US HOW, YOU

KNOW -- WHAT THE WHOLE PROCEDURE WAS.

Q. COULD YOU TELL THE JURY HOW STEPHANIE'S LOSS HAS AFFECTED YOU?

A. OF COURSE, THERE'S A WHOLE BIG EMPTY PLACE. YOU HEAR -- YOU HEAR A CHILD SAY "GRANDMA" AND YOU LOOK AROUND. I HAD TO GO IN MY SUNDAY SCHOOL CLASS AND TRY TO ANSWER THOSE CHILDREN'S QUESTIONS. IT WAS REALLY A LEARNING EXPERIENCE FOR THEM BUT -- AND IT WAS HARD FOR ME SOMETIMES TO TALK TO THEM, BUT I HAVE -- AS THEY'VE ASKED ALL THE THINGS, I'VE TRIED TO HELP THEM OUT SO THAT THEY WOULDN'T BE SO FEARFUL OF DEATH THEIRSELF AND KNOW THERE'S MORE TO LOOK FORWARD TO.

BUT, YOU KNOW, I DON'T HAVE HER TO SEW FOR ANYMORE, TO PLAN SURPRISES FOR HER GRANDDADDY WITH, TO -- JUST NOTHING. WE'LL NEVER SEE HER GROW UP AND GRADUATE OR GET MARRIED AND MAYBE GIVE US SOME GREAT-GRANDS. ALL OF THAT'S GONE AND WE DON'T HAVE ANY OTHER GRANDCHILDREN.

Q. WHAT ABOUT YOUR HUSBAND, MS. BUNCH? HOW HAS IT AFFECTED HIM?

A. WELL, WE MANAGED TO KEEP ON GOING. THAT'S FOR SURE. BUT IT'S JUST TOOK THE LIGHT OUT OF HIM. HE IS JUST NOT AS INVOLVED IN THINGS AS HE WAS AT ONE TIME BECAUSE HE DOESN'T HAVE HER THERE TO COME UP AND TALK TO HIM OR PICK AT HIM OR GIVE HIM A KISS OR ANYTHING.

I THINK MAYBE HE WOULD HAVE PROGRESSED FURTHER WITH SOME OF HIS THERAPY IF SHE HAD HAVE BEEN THERE. BUT IT'S REALLY A BIG HOLE THAT CAN NEVER BE FILLED. EVEN IF WE HAD ANOTHER HALF A DOZEN GRANDCHILDREN IT COULD NEVER BE THE SAME ONE BECAUSE CHILDREN ARE TOO DIFFERENT ONE FROM ANOTHER.

MR. BAILEY: MS. BUNCH, ANSWER ANY QUESTIONS, PLEASE, IF MR. RUNYON HAS ANYTHING FOR YOU.

MR. RUNYON: NO QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT. YOU MAY COME DOWN.

THE WITNESS: THANK YOU.

MR. BAILEY: I CALL MELINDA BUNCH. MELINDA B[redacted]. EXCUSE ME.

MELINDA D. B[redacted], AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME.

THE WITNESS: MELINDA DENISE B[redacted], B-[redacted].

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MELINDA, YOU ARE STEPHANIE'S MOTHER; IS THAT CORRECT?

A. YES.

Q. DID YOU AND MIKE HAVE ANY OTHER CHILDREN?

A. NO.
Q. I'M GOING TO HAND YOU A BIRTH CERTIFICATE AND ASK IF THAT'S A COPY OF STEPHANIE'S BIRTH CERTIFICATE.
A. YES.
Q. WHAT DAY WAS SHE BORN?
A. JULY 25TH, 1983.
MR. BAILEY: YOUR HONOR, I WOULD OFFER THIS.
MR. RUNYON: YES, SIR. YOUR HONOR, WE HAVE NO OBJECTION TO THE COPY.
THE COURT: THANK YOU.
MR. RUNYON: WE'VE SEEN IT.
(STATE'S EXHIBIT 24 WAS RECEIVED IN EVIDENCE.)
BY MR. BAILEY:
Q. HOW OLD WAS STEPHANIE WHEN SHE DIED?
A. NINE YEARS OLD.
Q. LET ME HAND YOU A PHOTOGRAPH AND ASK YOU IF YOU CAN IDENTIFY THAT.
A. YES.
Q. WHEN WAS THAT TAKEN ROUGHLY?
A. I BELIEVE IT WAS THE CHRISTMAS BEFORE SHE GOT KILLED.
Q. OKAY. DOES THAT SHOW YOU AND YOUR HUSBAND AND STEPHANIE?
A. AND STEPHANIE, YES.

Q. WAS THAT TAKEN AT YOUR HOME?
A. THAT WAS AT HIS MOTHER'S HOME.
MR. BAILEY: YOUR HONOR, I WOULD OFFER THIS.
THE COURT: ANY OBJECTION?
MR. RUNYON: NO OBJECTION, YOUR HONOR.
THE COURT: THANK YOU.
(STATE'S EXHIBIT 25 WAS RECEIVED IN EVIDENCE.)
Q. MS. B[redacted], DID STEPHANIE LIVE AT HOME WITH YOU DURING HER ENTIRE LIFE?
A. YES.
Q. DID SHE SPEND WEEKENDS WITH HER GRANDPARENTS ON OCCASIONS?
A. YES.
Q. OKAY. WHAT KIND OF CHILD WAS STEPHANIE JUST IN GENERAL?
A. SHE WAS A HAPPY CHILD. SHE LIKED TO HELP WHOEVER SHE COULD. SHE HAD I KNOW A BOY IN SCHOOL WITH HER IN ONE OF HER CLASSES THAT WAS HANDICAP AND SHE LOVED TO HELP HIM. SHE LOVED TO HELP HER TEACHERS. SHE WAS JUST -- SHE WAS AN OUTGOING PERSON.
Q. DID SHE HAVE ANY PETS AT HOME?
A. YEAH, SHE HAD TWO RABBITS AND A DOG AND SHE HAD---
Q. OKAY. DO YOU STILL HAVE THE DOG?

A. YES.
Q. DID Y'ALL GO TO A PARTICULAR CHURCH?
A. YES, SIR. SHE WENT TO FAITH BAPTIST CHURCH.
Q. WAS SHE BAPTIZED IN THAT CHURCH?
A. YES.
Q. WHAT ABOUT HER SCHOOL ATTENDANCE? WHAT SCHOOL DID SHE GO TO?
A. SHE STARTED AT SUMMERVILLE ELEMENTARY AND SHE WAS GOING TO NEWINGTON (PHONETIC) WHENEVER SHE GOT KILLED.
Q. ALL RIGHT. WHAT GRADE WAS SHE IN?
A. FOURTH.
Q. DID SHE DO ALL RIGHT IN SCHOOL?
A. YEAH, SHE DONE PRETTY WELL.
Q. ALL RIGHT. DID SHE HAVE TO REPEAT ANY GRADES OR DID SHE GO RIGHT ON UP TO THE FOURTH GRADE?
A. SHE WENT RIGHT ON TO THE FOURTH GRADE.
Q. I'LL HAND YOU THIS AND ASK IF YOU CAN IDENTIFY THAT.
A. THIS IS HER REPORT CARDS FOR ALL THE WAY TO WHERE SHE WAS AT IN SCHOOL.
MR. RUNYON: YOUR HONOR, WE HAVE NO OBJECTIONS TO THE USE OF THE COPY AND THE INTRODUCTION OF THE THING.
THE COURT: THANK YOU.

(STATE'S EXHIBIT 26 WAS RECEIVED IN EVIDENCE.)

BY MR. BAILEY:

Q. MS. B[redacted], HOW WAS STEPHANIE'S ATTENDANCE AT SCHOOL?

A. SHE HAD GOOD ATTENDANCE. USUALLY WHEN SHE MISSED SHE WAS SICK OR EITHER HAD A DENTIST APPOINTMENT OR SOMETHING SHE HAD TO GO TO.

Q. WHAT TYPE THINGS DID SHE LIKE TO DO?

A. SHE LIKED TO PLAY WITH HER DOLL BABIES, PLAY NINTENDO, HELP AROUND THE HOUSE. WHEN SHE WENT OUTSIDE, SHE LIKED TO PLANT FLOWERS OR RIDE HER BIKE, PLAY WITH THE KIDS DOWN THE STREET.

Q. ALL RIGHT. MS. B[redacted], WHERE WERE YOU WHEN YOU FOUND OUT THAT STEPHANIE HAD BEEN SHOT?

A. IN SANTEE ON THE HOUSEBOAT.

Q. HOW DID YOU FIND OUT ABOUT IT?

A. THE MANAGER COME DOWN AND TOLD US THAT A B[redacted] CHILD HAD BEEN SHOT AND HE TOOK ME BACK UP TO THE PHONE TO CALL THE EMERGENCY ROOM AT TRIDENT. AND I CALLED THEM AND HE TOLD ME I NEED TO GET THERE AS SOON AS I COULD WHEN I TALKED TO THE DOCTOR, THAT THEY DIDN'T THINK SHE WAS GOING TO MAKE IT, AND HE TOLD ME THAT SHE HAD BEEN SHOT IN THE BACK OF THE HEAD.

Q. DID YOU GET A CHANCE TO SEE HER BEFORE SHE

DIED?

A. YEAH. WHEN I SAW HER, SHE WAS JUST LAYING THERE.

Q. MS. B[redacted], DID YOU HAVE TO GET ANY HELP AFTER STEPHANIE'S DEATH?

A. YES, I HAD TO GO TO A COUNSELOR.

Q. OKAY. MORE THAN ONE COUNSELOR?

A. YES, I'VE BEEN TO TWO OF THEM.

Q. AND ARE YOU IN COUNSELING NOW?

A. I HAVEN'T BEEN IN ABOUT A MONTH, BUT I'VE JUST GOTTEN THE MONEY BECAUSE I'VE LOST MY JOB. I GOT THE MONEY NOW TO START GOING BACK.

Q. DO YOU ANTICIPATE HAVING ANY OTHER CHILDREN?

A. I WANT TO, BUT I'M SCARED.

MR. BAILEY: ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

MR. RUNYON: WE HAVE NO QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH. YOU MAY COME DOWN.

MR. BAILEY: RIC LAWHON.

RICHARD L. LAWHON, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR US.

THE WITNESS: RICHARD LINN LAWHON, L-A-W-H-O-N.

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MR. LAWHON, WHERE ARE YOU EMPLOYED?

A. DORCHESTER ALCOHOL AND DRUG COMMISSION.

Q. ALL RIGHT, SIR. AND WHAT DO YOU DO THERE?

A. I'M A CLINICAL COUNSELOR AND FAMILY THERAPIST.

Q. AND WHAT'S YOUR EDUCATIONAL BACKGROUND?

A. MASTER'S DEGREE IN EDUCATION.

Q. ALL RIGHT. AND AFTER YOU GOT YOUR MASTER'S DEGREE IN EDUCATION, DID YOU GET ANY FURTHER TRAINING?

A. YES, I'VE GOTTEN CONTINUING EDUCATION THROUGH THE UNIVERSITY OF SOUTH CAROLINA.

MR. RUNYON: YOUR HONOR, I DON'T MEAN TO INTERRUPT MR. LAWHON, BUT I'M FAMILIAR WITH HIS QUALIFICATIONS. HE'S A CERTIFIED COUNSELOR.

THE WITNESS: RIGHT.

MR. RUNYON: AND AS MY UNDERSTANDING, WE WOULD OFFER TO STIPULATE TO HIS CREDENTIALS AND HIS ABILITY TO TESTIFY IN THE FIELD IN WHICH HE'S BEING OFFERED TO TESTIFY IN.

MR. BAILEY: THANK YOU, MR. RUNYON.

BY MR. BAILEY:

Q. ALL RIGHT, SIR. IN THE COURSE OF YOUR DUTIES AS A COUNSELOR, DID YOU HAVE OCCASION TO SEE MIKE B[redacted]?

A. YES. HE WAS REFERRED TO OUR AGENCY THROUGH AN EMPLOYEE ASSISTANCE PROGRAM WITH THE COUNTY BY HIS SUPERVISOR AFTER THE DEATH OF HIS DAUGHTER.

Q. ALL RIGHT. HOW LONG AFTER STEPHANIE DIED DID YOU FIRST SEE MIKE?

A. IT WAS APRIL 1ST, 1993.

Q. OKAY. AND YOU WORK AT THE ALCOHOL AND DRUG ABUSE COMMISSION; IS THAT RIGHT?

A. CORRECT.

Q. IS YOUR COUNSELING LIMITED TO PROBLEMS DEALING WITH ALCOHOL OR DRUG ABUSE?

A. NO. ACTUALLY I WORK IN THE DORCHESTER COUNSELING SERVICES BRANCH OF THE ALCOHOL AND DRUG COMMISSION WHICH IS AN OUTPATIENT CLINIC DEALING WITH ANY GENERAL COUNSELING PROBLEMS.

Q. ALL RIGHT, SIR. NOW, WHEN YOU SAW MIKE B[redacted], WHAT WAS YOUR INITIAL REACTION THE FIRST TIME YOU SAW HIM?

A. THAT HE WAS, OF COURSE, GRIEVING AND DEPRESSED AND THE DIAGNOSIS WAS MAJOR DEPRESSION WITH MODERATE SYMPTOMS.

Q. OKAY. DID YOU MAKE ANY DIAGNOSIS ABOUT HIS

USE OF ALCOHOL FOLLOWING STEPHANIE'S DEATH?

A. YES. HE WAS PERIODICALLY ABUSING ALCOHOL TO DEAL WITH THE GRIEF AND I'VE ADDRESSED THAT DIRECTLY WITH HIM.

Q. NOW, IN THE COURSE OF YOUR PRACTICE, YOUR COUNSELING, DO YOU OFTEN DEAL WITH PEOPLE SUFFERING FROM GRIEF WITH THE LOSS OF A LOVED ONE?

A. YES.

Q. ALL RIGHT. AND DO DIFFERENT PEOPLE REACT TO THAT GRIEF IN DIFFERENT DEGREES?

A. YES. DIFFERENT PEOPLE HAVE DIFFERENT COPING MECHANISMS AND DIFFERENT WAYS TO DEAL WITH IT, YES.

Q. OKAY. AND WITH RESPECT TO MIKE B[redacted] HOW WOULD YOU CHARACTERIZE HIS COPING SKILLS?

A. I'D SAY HE HAS POOR COPING SKILLS. HE'S HAD A HARD TIME DEALING WITH THIS.

Q. ALL RIGHT, SIR. ON A SCALE FROM ONE TO TEN, TEN BEING THE WORST ADJUSTMENT, WHERE WOULD YOU PUT MIKE B[redacted] AS FAR AS HIS ADJUSTMENT TO HIS DAUGHTER'S DEATH?

A. WITH TEN BEING THE WORST?

Q. YES, SIR.

A. A NINE OR A TEN.

Q. DO YOU HAVE ANY OPINION ON WHY MIKE B[redacted] HAS TAKEN THIS THING AS HARD AS YOU'VE TESTIFIED HE

TOOK IT?

A. WHAT I'VE SEEN -- IN FACT, WHAT I SAW UP UNTIL THE LAST SESSION TWO WEEKS AGO WAS THE GUILT HE'S FELT THAT HE WASN'T ABLE TO STOP IT OR WASN'T ABLE TO PREVENT THIS FROM HAPPENING SOMEHOW.

Q. DO YOU KNOW OF ANY MEDICATION THAT HE'S TAKING?

A. I KNOW HE'S BEEN PRESCRIBED AN ANTIDEPRESSANT BY HIS FAMILY DOCTOR.

Q. AND WHAT IS YOUR PROGNOSIS FOR HIM AT THIS POINT?

A. HE'S GOING TO NEED CONTINUING THERAPY, CONTINUING SUPPORT AFTER THE TRIAL, GUARDED, BUT WITH HOPE AS LONG AS HE CONTINUES IN THERAPY.

Q. ALL RIGHT. WHEN YOU SAY GUARDED, WHAT DO YOU MEAN BY THAT?

A. GUARDED WOULD BE THAT I HOPE -- I'M NOT SURE WHAT HIS LEVEL OF COMMITMENT WOULD BE TO THERAPY ONCE THIS IS OVER. MY FEAR WOULD BE THAT HE'D SAY THE TRIAL IS OVER AND I DON'T NEED COUNSELING ANYMORE IS WHAT I MEANT BY GUARDED.

Q. DO YOU THINK HE'LL NEED CONTINUING COUNSELING---

A. YES.

Q. ---AFTER THE TRIAL IS OVER?

A. YES.

MR. BAILEY: THANK YOU. ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MR. LAWHON, VERY BRIEFLY. MR. B[redacted] PERIODICALLY ABUSED ALCOHOL TO TRY TO USE AS A CRUTCH TO -- AFTER HIS DAUGHTER'S DEATH; ISN'T THAT CORRECT?

A. THAT'S WHAT I'VE SEEN, YES.

Q. OKAY. NOW, AS IT RELATES TO YOUR COUNSELING AND YOUR REVIEW, EXAMINATION, AND GENERAL TREATMENT PATTERN, THIS ALCOHOL -- THIS UTILIZATION OF ALCOHOL WAS NOT SOMETHING NEW THAT OCCURRED JUST AFTER HIS DAUGHTER'S DEATH. ISN'T THAT CORRECT, SIR?

A. THOSE ARE THE REPORTS I'VE GOTTEN, YES.

Q. THOSE ARE THE REPORTS YOU'VE GOTTEN.

A. YES.

Q. AND THOSE REPORTS WERE FROM MR. B[redacted].

A. AND FROM FAMILY, RIGHT. CORRECT.

Q. AND FROM THE FAMILY.

A. UH-HUH.

Q. NOW, DID HE DISCUSS WITH YOU -- DID YOU EVER TALK WITH HIM ABOUT THE NIGHT OF THE INCIDENT?

A. YES.

Q. AND DID HE EVER DISCUSS WITH YOU THE FACT

THAT ALCOHOL -- THAT HE'D HAD ALCOHOL THAT EVENING?

A. NO.

Q. HE NEVER MENTIONED THAT.

A. NO.

Q. AND YOU COUNSEL WITH PEOPLE WHO HAVE SUBSTANCE ABUSE OR ALCOHOL PROBLEMS, DON'T YOU, SIR?

A. CORRECT.

Q. NOW, AS IT RELATES TO ALCOHOL PARTICULARLY, PARTICULARLY COMMONPLACE THINGS SUCH AS BEER AND WHAT HAVE YOU, IT'S VERY COMMONPLACE THAT PEOPLE DON'T RECOGNIZE PROBLEMS WITH ALCOHOL BECAUSE IT IS SO COMMONPLACE TO DRINK THESE THINGS. ISN'T THAT CORRECT?

A. YES.

Q. OKAY. AND AS IT RELATES TO ALCOHOL ITSELF, ARE YOU FAMILIAR IN THE COURSE OF YOUR FIELD OF ENDEAVOR WITH THE EFFECTS OF ALCOHOL ON A PERSON'S ABILITY TO PERCEIVE -- MAKE PERCEPTIONS AND MAKE JUDGMENTS AND THINGS OF THAT SORT?

A. IT CAN CLOUD JUDGMENT, YES.

Q. OKAY. SO THAT WHEN YOU HAVE SOMEONE WHO'S UNDER THE INFLUENCE OF ALCOHOL, VARIOUS SYSTEMIC PROBLEMS OCCUR AS WELL AS JUDGMENTAL PROBLEMS OCCUR.

A. CORRECT.

Q. DOES ALCOHOL CHANGE ONE'S PERCEPTION OF EVENTS THAT THEY MAY BE INVOLVED IN?

A. IT COULD.

Q. AND AS IT RELATES TO MR. B[redacted], HE'S NEVER DISCUSSED WITH YOU HIS INVOLVEMENT OR UTILIZATION OF ALCOHOL JUST BEFORE HIS DAUGHTER'S -- THE INCIDENT IN WHICH HIS DAUGHTER WAS FATALLY INJURED.

A. NO.

Q. NOW, DO YOU FIND THAT -- AND ALSO IT'S NOT UNCOMMON FOR PEOPLE WHO ARE IN A SITUATION SUCH AS THIS WHERE THERE'S A TRIAL OR THERE'S SOME EVENT TO VIEW THIS TYPE OF SITUATION AS A CLOSURE EVENT. ISN'T THAT CORRECT, SIR?

A. CORRECT.

Q. AND, THUS, THEN THEY WOULD SAY, WELL, I'M ABOUT AS GOOD AS I CAN BE. I DON'T NEED TO COME TO COUNSELING ANYMORE.

A. THAT DOES HAPPEN. UH-HUH.

Q. AND AS A MATTER OF FACT, THAT'S ONE OF YOUR PROFESSIONAL CONCERNS AS A TREATING PROFESSIONAL AS IT RELATES TO MR. B[redacted].

A. RIGHT.

Q. OKAY. NOW, SINCE THE -- SINCE YOUR TREATMENT OF MR. B[redacted] HAS COMMENCED, HAS THE PERIODIC USE OR ABUSE OF ALCOHOL CONTINUED?

A. IT HAS.

Q. NOW, OF COURSE, YOU AS A PROFESSIONAL DON'T

RECOMMEND THAT.

A. NO.

Q. IT'S NOT EVEN A CRUTCH -- IT'S NOT EVEN A GOOD CRUTCH, IS IT, SIR?

A. NO, AND HE'S MADE A COMMITMENT TO LIMIT HIS DRINKING.

Q. HOW MANY PEOPLE WITH -- HOW MANY PEOPLE ROUGHLY HAVE YOU TREATED -- HOW LONG HAVE YOU BEEN DOING THIS?

A. AT THE ALCOHOL AND DRUG COMMISSION? SEVEN AND A HALF YEARS.

Q. OKAY. LET'S JUST TAKE THOSE SEVEN AND A HALF YEARS BECAUSE THAT'S A LOT TO REMEMBER, ISN'T IT?

A. UH-HUH. UH-HUH.

Q. HOW MANY PEOPLE DO YOU THINK YOU'VE TREATED, COUNSELED WITH, AND WHAT HAVE YOU OVER THAT PERIOD OF TIME, SIR?

A. IT'S HARD TO SAY. I WOULD SAY IN DIRECT CLIENT CONTACT I WOULD HAVE MAYBE TEN THOUSAND HOURS.

Q. OKAY. AND YOU DON'T GET PAID ENOUGH, BUT YOU SURE DO WORK HARD FOR YOUR MONEY, DON'T YOU, SIR?

A. I'D LIKE TO THINK SO.

Q. ALL RIGHT. NOW, AS IT RELATES TO PEOPLE WHO HAVE SUBSTANCE ABUSE PROBLEMS OR SPECIFICALLY ALCOHOL USE, IS IT NOT A COMMON OCCURRENCE THAT THEIR REPORTS

TO YOU GENERALLY OF EVENTS IN THEIR LIVES WHILE UNDER THE INFLUENCE OF ALCOHOL CAN BE A GOOD BIT DIFFERENT THAN WHAT THOSE EVENTS ACTUALLY WERE?

A. I MEAN, I DON'T WORK FROM THE BASIS THAT THEY'RE LYING TO ME SO, I MEAN, I DON'T KNOW. I KNOW WHEN SOMEONE IS USING THEIR JUDGMENT IS CLOUDED.

Q. OKAY. AND THEIR MEMORY IS CLOUDED?

A. COULD BE. DEPENDS ON THE LEVEL OF USE.

Q. DEPENDS UPON THE LEVEL OF USE.

A. RIGHT.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: YOU MAY COME DOWN. THANK YOU.

MR. BAILEY: MIKE B[redacted].

MICHAEL G. B[redacted], AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: STATE YOUR NAME, PLEASE.

THE WITNESS: MICHAEL GEORGE B[redacted], B-[redacted].

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MIKE, I'M GOING TO ASK YOU TO PULL YOUR CHAIR UP JUST A LITTLE BIT AND GET CLOSE TO THE MIKE SO EVERYBODY CAN HEAR YOU ALL RIGHT. OKAY. MIKE, I KNOW

YOU'VE TESTIFIED PREVIOUSLY ABOUT WHAT OCCURRED THAT NIGHT. CAN YOU DESCRIBE JUST IN YOUR OWN WORDS WHAT YOUR RELATIONSHIP WITH STEPHANIE WAS DURING HER LIFETIME?

A. RELATIONSHIP?

Q. YES, SIR.

A. I WAS HER FATHER AND SHE WENT FISHING AND WENT TO RACE CAR RACES WITH ME.

Q. ALL RIGHT. AND YOU WORKED IN THE YEARS PRIOR TO HER DEATH AS A CONSTABLE. IS THAT CORRECT?

A. YES, SIR.

Q. FOR DORCHESTER COUNTY?

A. YES, SIR.

Q. AND WHAT HOURS DID YOU WORK COMPARED WITH WHAT HOURS YOUR WIFE WORKED?

A. MELINDA USUALLY WENT TO WORK SOMETIMES IN THE AFTERNOON OR IN THE MORNING. IF SHE DID, I WOULD LET STEPHANIE GO WITH ME TO WORK. THEN I WOULD CARRY HER TO SCHOOL.

Q. OKAY.

A. OR SOME MORNINGS -- WELL, SHE HAD TO BE TO SCHOOL AT SEVEN AND I WOULD CARRY HER AND THEN GO TO WORK.

Q. ALL RIGHT. DID YOU SHARE A GOOD BIT OF THE CHILD-REARING ACTIVITIES DUE TO YOUR WORK SCHEDULE AND

YOUR WIFE'S WORK SCHEDULE?

A. YES, SIR, I DID.

Q. OKAY. YOU'VE TALKED ABOUT SOME OF THE THINGS Y'ALL DID TOGETHER LIKE FISHING.

A. YES, SIR.

Q. DID STEPHANIE LIKE TO FISH?

A. YES, SHE LOVED IT.

Q. HOW OFTEN WOULD YOU TAKE HER FISHING?

A. DURING THE SUMMERTIMES ME AND HER WOULD GO QUITE A BIT, EVERY CHANCE I COULD GET TO TAKE A LITTLE TIME OFF FROM WORK.

Q. WHEN IS THE LAST TIME YOU TOOK STEPHANIE FISHING?

A. LAST TIME WAS WHEN SHE WAS ON THE HOUSEBOAT.

Q. AND HOW LONG WAS THAT BEFORE SHE DIED?

A. WE WERE THERE FROM FRIDAY AND SHE DIED ON WEDNESDAY.

Q. OKAY.

A. I MEAN GOT SHOT ON WEDNESDAY.

Q. ALL RIGHT, SIR. THAT FRIDAY BEFORE SHE WAS SHOT SHE WENT FISHING?

A. WELL, SHE WENT FISHING THAT TUESDAY WHEN SHE GOT PICKED UP FROM SCHOOL AND WAS BROUGHT BACK. SHE CAUGHT A TWO-POUND CRAPPIE AND THAT WAS THE LAST TIME SHE FISHED.

Q. BESIDES FISHING, WHAT ELSE DID SHE LIKE TO DO?

A. SHE LOVED GOING TO RACES WITH ME.

Q. OKAY. ARE YOU A RACE CAR FAN?

A. YES, SIR.

Q. HAVE YOU WORKED ON RACE CARS YOURSELF?

A. I BUILT ONE AND IT HAD HER NAME AND THE YEAR SHE WAS BORN ON IT.

Q. OKAY. WHEN YOU WOULD WORK ON THE RACE CAR, WHAT WOULD STEPHANIE DO?

A. SHE WOULD PICK UP WRENCHES AND ALL WANTING TO HELP.

Q. WHAT OTHER PLACES DID Y'ALL -- WHAT DID Y'ALL DO TOGETHER BESIDES, YOU KNOW, WORKING ON THE RACE CAR AND GOING FISHING?

A. I WOULD DO -- WE WOULD DO A LOT TOGETHER. I WOULD LET HER GO WITH ME TO SERVE PAPERS IN THE EVENING TIME.

Q. THAT'S IN CONNECTION WITH YOUR JOB AS A CONSTABLE?

A. YEAH.

Q. OKAY. DID SHE LIKE MUSIC?

A. SHE LOVED COUNTRY MUSIC.

Q. AND WOULD YOU STATE WHETHER OR NOT YOU TOOK HER TO CONCERTS ON OCCASION?

A. YEAH, I TOOK HER TO WYNONA AND MCBRIDE AND THE RIDE. THAT WAS HER FIRST CONCERT.

Q. ALL RIGHT. AND IN CONNECTION WITH GETTING STEPHANIE TO SCHOOL AND PICKING HER UP FROM SCHOOL, WHAT INVOLVEMENT DID YOU HAVE IN THAT?

A. I WOULD CARRY HER OR EITHER I WOULD SEE THAT SHE GOT ON THE BUS. MOSTLY I WOULD CARRY HER BECAUSE ME AND HER WOULD GO TO MCDONALD'S AND I WOULD GET COFFEE AND SHE WOULD GET A SAUSAGE BISCUIT AND COKE.

Q. NOW, AT THE TIME STEPHANIE WAS SHOT BY TIMOTHY ROGERS, DO YOU RECALL WHAT CLOTHING SHE HAD ON?

A. YES, SIR.

Q. WHAT DID SHE HAVE ON?

A. SHE HAD A JUMPSUIT ON THAT HER GRANDMA MADE HER WITH AMERICAN FLAGS ON IT, PLUS SHE HAD A JUST-SAY-NO TEE SHIRT ON.

Q. WAS SHE IN THE JUST-SAY-NO CLUB IN SCHOOL?

A. YES, SIR, SHE WAS.

Q. ALL RIGHT. MIKE, COULD YOU TELL THE JURY HOW STEPHANIE'S MURDER HAS AFFECTED YOU?

A. IT'S A TERRIBLE LOSS, VERY TERRIBLE. JUST I CAN'T DO NONE OF THE THINGS WITH HER NO MORE THAT I DID. IT'S A VERY TERRIBLE TRAGEDY.

Q. MR. LAWHON TESTIFIED ABOUT YOU GOING TO HIM FOR COUNSELING.

A. YES, SIR.

Q. HAVE YOU SEEN ANYBODY ELSE BESIDES MR. LAWHON?

A. I HAD WENT TO KIM SHARPEE TO START WITH AND I DIDN'T LIKE HER, SO I CHANGED. JUDGE SLOAN HELPED ME GO THROUGH RIC.

Q. OKAY. IS IT GETTING ANY EASIER AS TIME GOES ON?

A. TO ME IT GETS EASIER, BUT IT'S NOT THAT EASY. THIS IS A TERRIBLE TRAGEDY. I LOVED MY CHILD DEARLY. IT'S HAD A GREAT EFFECT ON MY LIFE AND THERE HAS BEEN TIMES I WISH I WASN'T HERE BECAUSE OF IT. SHE DIDN'T DESERVE TO DIE.

Q. MIKE, DID SHE REMAIN -- AFTER SHE WAS SHOT, WAS SHE CONSCIOUS FOR ANY PERIOD OF TIME?

A. I SEEN HER SUFFER. I SEEN HER SUFFER.

Q. ARE YOU STILL GOING TO SEE MR. LAWHON ON A REGULAR BASIS?

A. YES, SIR, I AM.

Q. DO YOU PLAN ON CONTINUING TO DO THAT?

A. YES, SIR, I AM.

Q. HAVE YOU ABUSED ALCOHOL TO SOME EXTENT SINCE STEPHANIE DIED?

A. YES, SIR.

Q. ARE YOU TAKING ANY MEDICATION THE DOCTOR HAS

GIVEN YOU?

A. MY FAMILY DOCTOR HAS GOT ME ON THREE DIFFERENT TYPES OF MEDICATION.

Q. IS THERE A DAY THAT GOES BY THAT YOU DON'T THINK ABOUT STEPHANIE?

A. THERE'S NOT A DAY OR A NIGHT THAT DON'T GO BY AND THERE'S NIGHTS THAT GO BY THAT I HEAR THAT SHOT IN THAT WINDOW AND I REACH OUT AND GRAB HER IN DREAMS AND HOLLER HER NAME.

MR. BAILEY: ANSWER ANY QUESTIONS MR. RUNYON MAY HAVE FOR YOU.

CROSS-EXAMINATION

BY MR. RUNYON:

Q. MR. B[redacted], STEPHANIE'S LOSS WAS A TREMENDOUS LOSS TO EVERYONE, WASN'T IT?

A. YES, SIR, IT IS.

Q. DID YOU -- AND TO BE HONEST ABOUT IT, IF YOU COULD YOU'D CHANGE PLACES WITH HER, WOULDN'T YOU?

A. I'D LOVE TO BE WHERE SHE'S AT INSTEAD OF HER THERE.

Q. YEAH. AND AS A PRACTICAL MATTER, YOU FEEL SOMEWHAT RESPONSIBLE YOURSELF AND DEEP DOWN INSIDE IF YOU COULD HAVE DONE SOMETHING DIFFERENT YOU WOULD HAVE, WOULDN'T YOU?

A. I DON'T FEEL RESPONSIBLE FOR WHAT HAPPENED;

NO, I DON'T.

Q. AND YOUR PATTERN OF USE OF ALCOHOL REALLY HASN'T CHANGED ALL THAT MUCH FROM PRIOR TO YOUR DAUGHTER'S DEATH, HAS IT, SIR?

A. I DON'T OVERUSE ALCOHOL. I WILL TELL YOU THAT.

Q. YOU DON'T NORMALLY USE IT?

A. I DON'T -- I LOVE MY JOB. I'D RATHER HAVE MY JOB THAN LOSE IT FOR THAT.

Q. WELL, I'M NOT SUGGESTING YOU DRINK ON THE JOB, SIR. BUT YOUR USE OF ALCOHOL HASN'T CHANGED ANY FROM PRIOR TO HER DEATH TILL AFTER HER DEATH, HAS IT, SIR?

A. I MAY DRINK TWO OR THREE EVERY OTHER DAY OR EVERY THREE DAYS.

MR. RUNYON: OKAY. ALL RIGHT. NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: YOU CAN COME DOWN.

MR. BAILEY: THE STATE RESTS, YOUR HONOR.

THE COURT: ALL RIGHT. READY TO GO FORWARD?

MR. RUNYON: WE'RE READY TO GO FORWARD, JUDGE.

THE COURT: CALL YOUR FIRST WITNESS.

MR. RUNYON: YOUR HONOR, WE WOULD CALL AT

THIS POINT THE DEFENDANT, MR. TIMOTHY ROGERS.

THE COURT: COME AROUND, MR. ROGERS.

TIMOTHY D. ROGERS, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. RUNYON:

Q. NOW, MR. ROGERS, YOU'RE THE DEFENDANT IN THIS CASE?

A. YES, SIR.

Q. AND YOU'RE GOING TO HAVE TO SPEAK UP. IF I CAN HEAR YOU, THEN I KNOW EVERYBODY ON THE JURY CAN HEAR YOU.

A. YES, SIR.

Q. NOW, MR. ROGERS, DID YOU INTEND TO SHOOT STEPHANIE B[redacted] THAT NIGHT?

A. NO, SIR.

Q. ALL RIGHT. NOW, THERE'S ALREADY BEEN A DETERMINATION AS TO YOUR CRIMINAL STATUS IN THIS CASE THAT YOU'RE GUILTY OF MURDER. YOU UNDERSTAND THAT, DON'T YOU, SIR?

A. YES, SIR.

Q. NOW, THE NIGHT IN QUESTION WERE YOU -- STRIKE THAT. YOU HAD GONE TO THE SPELL'S GROCERY STORE. IS THAT CORRECT?

A. YES, SIR.

Q. YOU WERE ON THE TELEPHONE.

A. YES, SIR.

Q. NOW, IS THE TESTIMONY OF MS. assault victim THAT Y'ALL HAD BEEN DRINKING -- IS THAT ACCURATE?

A. YES, SIR.

Q. OKAY. HOW MUCH HAD YOU BEEN DRINKING?

A. I'D BEEN DRINKING SOME BEER. I'D BEEN DRINKING SOME LIQUOR AND -- BUT I WASN'T -- I WAS NOT INTOXICATED TILL I WAS, YOU KNOW, WITHOUT ANY SENSE OR THAT I WOULD DO SOMETHING OF THE SORT INTENTIONALLY OR IN ANY WAY ON PURPOSE.

Q. ALL RIGHT. NOW, MR. ROGERS, AS IT RELATES TO STATE'S EXHIBIT NUMBER 22, SPECIFICALLY CRIMINAL SEXUAL CONDUCT WITH A MINOR THESE TWO OCCASIONS, WITH WHOM DID YOU HAVE SEXUAL RELATIONS IN THE CONTEXT OF THOSE TWO CASES?

A. assault victim.

Q. ALL RIGHT, SIR. AND LET ME ASK YOU THIS: ARE YOU MARRIED AT THE TIME?

A. YES, SIR.

Q. ARE YOU MARRIED NOW?

A. YES, SIR.

Q. DO YOU HAVE ANY CHILDREN?

A. YES, SIR.

Q. ALL RIGHT. OTHER THAN THE CHILD WITH MS.

assault victim, HOW MANY CHILDREN DO YOU HAVE, SIR?

A. FOUR.

Q. AND HOW OLD ARE THEY, SIR?

A. FROM THE AGE OF ONE, THREE, FOUR, AND SIX.

Q. NOW, YOUR WIFE IS IN THE COURTROOM TODAY?

A. YES, SIR, SHE IS.

Q. YOUR MOTHER AND STEPFATHER ARE IN THE COURTROOM TODAY?

A. YES, SIR.

Q. NOW, MR. ROGERS, WHAT KIND OF HOME DID YOU GROW UP IN?

A. I GREW UP IN A GOOD HOME TO THE BEST OF MY MOTHER'S RAISING.

Q. AND YOUR MOTHER NEVER ABUSED YOU.

A. NO, SIR.

Q. DIDN'T HAVE A LOT OF MONEY?

A. NO, SIR.

Q. BUT YOU NEVER WENT WITHOUT, DID YOU, SIR?

A. NO, SIR, WE DIDN'T.

Q. OKAY. NOW, HOW FAR DID YOU GO IN SCHOOL, MR. ROGERS?

A. TO THE MIDDLE OF TENTH GRADE.

Q. AND WHAT DID YOU DO IN THE MIDDLE OF THE TENTH GRADE, SIR?

A. I DROPPED OUT OF SCHOOL.

Q. WHY IS THAT?

A. WELL, I WAS PLACED OUT OF SCHOOL AND THEN I STARTED WORKING AND I DIDN'T GO BACK.

Q. ALL RIGHT. YOU SAY YOU WERE PLACED BY THE SCHOOL?

A. PLACED OUT OF SCHOOL.

Q. PLACED OUT OF SCHOOL. AND DID YOU -- YOU SAID YOU WENT TO WORK?

A. YES, SIR.

Q. WHAT KIND OF WORK DID YOU DO?

A. I STARTED OUT WORKING AS A CARPENTER HELPER AND COOK JOBS IN RESTAURANTS.

Q. OKAY. WHERE -- CAN YOU TELL US SOME OF THE PLACES YOU WORKED?

A. I MOSTLY WORKED IN STEAK HOUSES AND I MOSTLY WORKED AS A CARPENTER HELPER OR LABOR WORK.

Q. IN AND AROUND SUMMERVILLE?

A. YES, SIR, SUMMERVILLE AND CHARLESTON.

Q. ALL RIGHT. WHEN DID YOU GET MARRIED, SIR?

A. I GOT MARRIED JANUARY 28TH, 1990, FOUR YEARS AGO.

Q. MR. ROGERS, HAVE YOU BEEN A GOOD FATHER AND A GOOD HUSBAND TO YOUR WIFE AND CHILDREN?

A. TO THE BEST OF MY BEING, SIR.

Q. HAVE YOU STAYED AROUND HOME, THOUGH?

A. YES, SIR.

Q. YOU DID, IN FACT, HAVE A RELATIONSHIP WITH MS. assault victim, THOUGH.

A. YES, SIR.

Q. NOW, HAVE YOU -- I BELIEVE -- STRIKE THAT. BELIEVE YOU SAID YOU DRANK BEER AND LIQUOR THAT NIGHT; RIGHT? THAT DAY?

A. YES, SIR.

Q. AND HAVE YOU USED DRUGS AT ANY TIME?

A. YES, SIR.

Q. ALL RIGHT. NOW, THIS TAPE THAT WAS PLAYED, YOUR HAIR WAS IN, WHAT, BRAIDS OR DREADLOCKS OR WHAT HAVE YOU?

A. YES, SIR.

Q. AND WAS THAT THE STYLE OF THE HAIR THAT YOU HAD AT THAT PARTICULAR POINT IN TIME?

A. YES, SIR.

Q. NOW, YOU'VE BEEN IN JAIL, HAVEN'T YOU? YOU SAW MR. BROWN.

A. YES, SIR.

Q. WHAT WAS THAT FOR, SIR?

A. I WAS IN JAIL FOR PAROLE VIOLATION.

Q. OKAY. NOW, WHAT HAD YOU DONE THAT ORIGINALLY GOT YOU IN TROUBLE ON THAT PARTICULAR CHARGE? WAS THAT STEALING A CAR?

A. YES, SIR.

Q. THAT'S THE SIXTH EVENT HERE BACK IN '88, GRAND LARCENY OF A MOTOR VEHICLE?

A. YES, SIR.

Q. AND YOU, IN FACT, WENT TO THE INSTITUTION. YOU CONFORMED TO PRISON LIFE?

A. YES, SIR.

Q. AND TELL US -- IN PRISON IN SOUTH CAROLINA, DO YOU LIVE IN A BIG ROOM OR WHAT?

A. NO, SIR.

Q. WHAT KIND OF -- WHAT KIND OF AREA DO YOU LIVE IN?

A. SMALL, CONFINED AREA. EIGHT-BY-TEN, EIGHT-BY-NINE SPACE.

Q. HOW MANY PEOPLE LIVE IN THAT SPACE?

A. TWO.

Q. AND DO YOU HAVE A LOT OF SPACE TO HAVE A LOT OF THINGS LIKE A LOT OF CLOTHES, BOOKS, TELEVISION, AND WHAT HAVE YOU?

A. NO, SIR.

Q. NOW, WHAT ARE YOU ASKING THIS JURY TO DO TO YOU TODAY, SIR?

A. I'M ASKING THEM TO GRANT ME LIFE, TO LIVE.

Q. OKAY. YOU KNOW THAT WILL BE SPENT IN PRISON; RIGHT?

A. YES, SIR.
Q. WHAT KIND OF WORK DID YOU DO IN PRISON?
A. I DID CARPENTER'S WORK TO TRY TO FURTHER MY TRADE A LITTLE BIT.
Q. I BEG YOUR PARDON?
A. TO TRY TO FURTHER MY TRADE. SOME SCHOOLING. I GOT MY G.E.D.
Q. AS A MATTER OF FACT, YOU GOT YOUR G.E.D. IN JAIL, DIDN'T YOU?
A. YES, SIR.
Q. NOW, IS THERE ANY -- YOU'RE NOT RETARDED, ARE YOU, SIR?
A. NO, SIR.
Q. AND YOU'RE NOT CRAZY.
A. NO, SIR.
Q. AND YOU WERE RAISED BY A MOTHER WHO LOVED YOU?
A. YES, SIR.
Q. TRIED TO TEACH YOU RIGHT WAYS?
A. YES, SIR.
Q. NOW, WERE YOU REQUIRED TO GO TO CHURCH WHEN YOU WERE AT HOME?
A. YES, SIR.
Q. ALL RIGHT. WHAT CHURCH DID YOU GO TO?
A. I WENT TO WORLDWIDE DELIVERANCE CHURCH.

Q. IS THAT THE CHURCH YOUR MOTHER GOES TO?
A. YES, SIR.
Q. NOW, DO YOU HAVE ANY BROTHERS OR SISTERS?
A. YES, SIR.
Q. AND WHO ARE THEY AND WHERE DO THEY LIVE ROUGHLY?
A. CURTIS ROGERS, ROBERT ROGERS, FAITH N[redacted]. THEY ALL STILL LIVE IN SUMMERVILLE AND LADSON.
Q. WHAT KIND OF WORK DID YOUR MOTHER DO WHEN YOU WERE GROWING UP?
A. SHE -- RESTAURANT, CLOTHING STORE, MACY'S OF SOME SORT, YOU KNOW.
Q. HOW LONG WAS YOUR FATHER AT HOME? DO YOU REMEMBER HIM?
A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.) HE WASN'T THERE.
Q. NOW, YOUR MOTHER IS REMARRIED?
A. YES, SIR.
Q. AND TO MR. N[redacted]?
A. YES, SIR.
Q. AND HE'S IN THE COURTROOM TODAY?
A. YES, SIR.
Q. HOW LONG HAS SHE BEEN MARRIED TO MR. N[redacted]?
A. SHE'S BEEN MARRIED TO HIM FOR ABOUT MAYBE TEN YEARS OR SO.

Q. DO YOU HAVE A GOOD RELATIONSHIP WITH HIM?
A. YES, SIR.
Q. ONE MOMENT, YOUR HONOR. NOW, MR. ROGERS, YOU LEFT SCHOOL AT -- HOW OLD WERE YOU WHEN YOU LEFT SCHOOL?
A. SIXTEEN OR SEVENTEEN.
Q. AND WHERE DID YOU -- AND YOU HUNG AROUND AT PLACES LIKE CLUB 78 FROM TIME TO TIME.
A. YES, SIR.
Q. AND YOU GOT IN PROBLEMS WITH PEOPLE THERE AT CLUB 78. YOU HEARD THIS FELLOW FROM -- THAT TESTIFIED THIS MORNING?
A. YES, SIR.
Q. ALL RIGHT. DID YOU JUST COME UP FROM BEHIND HIM AND CLUB HIM LIKE HE SAID?
A. NO, SIR.
Q. WHAT OCCURRED, SIR?
A. I WAS IN THE CLUB, YOU KNOW, JUST IN THE CLUB. I'D BEEN DRINKING. A FIGHT STARTED UP OUTSIDE AND EVERYBODY WAS RUNNING IN THE CLUB AND SAYING THAT THIS FELLOW, MR. LAWRENCE, WAS OUT THERE BEATING UP ON AND CHOKING A FRIEND OF OURS.
Q. AND THAT FRIEND'S NAME WAS WHAT?
A. MACKIE. MR. MCTEER.
Q. MCTEER?

A. YES, SIR.

Q. DID YOU GET INVOLVED IN THAT SITUATION?

A. I DIDN'T RUN UP AND JUST START FIGHTING, NO. I -- WE CAME TO HIM AND TRIED TO TALK TO HIM, YOU KNOW, TO GET HIM TO LET MR. MACKIE GO. HE SAID HE WAS TALKING TO HIM. SO I SAID, "IF YOU'RE GOING TO TALK TO HIM, YOU DON'T HAVE TO BE CHOKING UP AND BEATING UP ON NOBODY TO TALK TO THEM. Y'ALL CAN GO OFF TO THE SIDE AND TALK OR WHATEVER, HOWEVER WAY MIGHT BE NECESSARY TO TALK." AND HE WOULDN'T LET HIM GO AND I JUST KEPT ASKING HIM, YOU KNOW, IF YOU'RE GOING TO TALK TO HIM TO LET HIM GO.

AND WE WERE SEPARATED BY A FENCE AND HIM AND MACKIE WAS INSIDE THE FENCE AND I WAS ON THE OTHER END OF THE FENCE AND EVERYBODY ELSE WAS ON THE OTHER END OF THE FENCE, AND HE REACHED ACROSS THE FENCE AND HE SLAPPED ME AND TOLD ME TO GO MIND MY BUSINESS AND WHEN THAT HAPPENED, YOU KNOW, I WALKED OFF. I WENT AND GOT AN ALUMINUM POLE. IT WAS NOT A BAT AND, YOU KNOW, I CAME BACK AND I ASKED HIM TO LET HIM GO AND HE KEPT TELLING EVERYBODY TO BACK OFF OR HE WAS GOING TO HURT MACKIE SOME MORE AND HE WOULD CHOKE HIM AND HIT HIM SOME MORE. WHEN HE DID THAT, I SWUNG THE POLE AND HIT HIM ON HIS ARM. I BELIEVE HIS ARM WAS BROKEN AND HE LET MACKIE GO AND WE LEFT AND AFTER THAT I GOT ARRESTED

FOR IT.

Q. WERE YOU EVER PROSECUTED FOR THAT? DID YOU HAVE TO GO TO COURT FOR THAT OR ANYTHING OF THAT SORT?

A. YES, SIR.

Q. OKAY. DID YOU EVER HAVE A TRIAL OR ANYTHING LIKE YOU HAVE HERE?

A. NO, IT WAS NOT A TRIAL.

Q. NOW, THIS FELLOW DAX PATTERSON, HOW LONG DID YOU KNOW HIM, SIR?

A. SINCE THE LATTER PART OF '90.

Q. HOW DID YOU COME TO MEET DAX?

A. HE WAS JUST IN THE NEIGHBORHOOD ON THE BASKETBALL COURT PLAYING BASKETBALL.

Q. NOW, ON THE NIGHT IN QUESTION WAS DAX DRUNK?

A. YES, SIR.

Q. WAS HE PRETTY DRUNK?

A. YES, SIR.

Q. DID YOU -- DID YOU EVER HAVE TO TAKE CARE OF DAX BEFORE WHEN HE WAS DRUNK?

A. YES, SIR.

Q. AND WHEN YOU SAY TAKE CARE OF HIM, WHAT DID YOU HAVE TO DO?

A. KEEP HIM FROM DRIVING OR KEEP HIM FROM GETTING IN ARGUMENTS WITH PEOPLE, YOU KNOW, KEEP PEOPLE FROM JUMPING ON HIM AND WHATNOT. JUST KEEP HIM

FROM. . .

Q. DAX PATTERSON IS A PRETTY OBNOXIOUS INDIVIDUAL, ISN'T HE---

A. YES, SIR.

Q. ---WHEN HE'S DRUNK?

A. YES, SIR.

Q. WAS HE OBNOXIOUS THE NIGHT THAT STEPHANIE GOT SHOT?

A. NO, SIR, NOT AT FIRST.

Q. DID HE BECOME OBNOXIOUS?

A. YES, SIR, FROM WHAT I COULD HEAR.

Q. AT ANY TIME THAT NIGHT DID YOU HAVE ANY INTENTION OF HURTING STEPHANIE B[redacted]?

A. NO, SIR.

Q. NOW, THESE POLICE OFFICERS FROM TUSKEGEE FOUND YOU IN THIS APARTMENT THAT THEY INDICATED. ISN'T THAT CORRECT, SIR?

A. YES, SIR.

Q. ALL RIGHT. NOW, JUST FOR CLARIFICATION, WERE YOU ON THE COUCH OR UNDER IT?

A. I WAS ON THE COUCH.

Q. AND, OF COURSE, YOU GAVE A STATEMENT TO THEM.

A. YES, SIR.

Q. THE BEST OF YOUR RECOLLECTION.

A. YES, SIR.

Q. DESPITE WHAT YOU'VE HEARD IN THE COURSE OF THIS TRIAL, DO YOU WANT TO CHANGE YOUR STATEMENT IN ANY WAY?

A. NO, SIR.

Q. THAT'S HOW YOU REMEMBER IT?

A. YES, SIR.

Q. NOW, DID YOU EVER LAUGH AT MR. B[redacted]?

A. NO, SIR.

Q. AT ANY TIME.

A. NO, SIR.

Q. DID YOU RUN AWAY WHEN SOMEONE SAID SOMEONE HAD BEEN SHOT?

A. YES, SIR.

Q. WHY WERE YOU CARRYING A GUN?

A. I HAD THE GUN. IT WAS AT -- WHERE WE WAS PRIOR AT AT THE -- WHERE WE WAS WORKING ON A CAR. IT HAD BEEN IN THE TRUNK OF THE CAR. IT WAS -- IT WAS MY GUN, YOU KNOW, BUT IT STAYED IN THE CAR. IT WAS -- THE SHOP WAS NORMALLY LOCKED WITH BEING THAT THE TOOLBOX WAS IN THE CAR OF THE TRUNK AND IT WAS OPEN, YOU KNOW, AND THE CAR WAS PRETTY MUCH OPEN. I TOOK IT OUT OF THE TRUNK.

Q. YOU PUT IT IN YOUR POCKET?

A. TO KEEP FROM ANYBODY GETTING A HOLD OF IT.

Q. NOW, DO YOU FEEL GOOD ABOUT WHAT HAPPENED THAT NIGHT?

A. NO, SIR.

Q. HOW DO YOU FEEL ABOUT WHAT HAPPENED THAT NIGHT, SIR?

A. I FEEL -- I FEEL BAD. I ALWAYS FELT BAD. I NEVER FELT GOOD ABOUT THE SITUATION OF ANY SORT. I NEVER HAD A CHANCE TO APOLOGIZE FOR THE SITUATION. I ALWAYS PRAY AND ASK THE LORD FOR FORGIVENESS OF THE SITUATION RIGHT AFTER IT HAPPENED UNTIL -- UP UNTIL RIGHT NOW. I NEVER INTENDED FOR THAT TO HAPPEN AND I COULD NEVER HURT A CHILD. I HAVE FOUR CHILDREN. I LOVE CHILDREN; I ALWAYS HAVE. AND TO TAKE SOMEONE'S CHILD WAS NEVER MY INTENTIONS, INTENTION, UNINTENTIONALLY OR ACCIDENT. I NEVER MEANT TO HURT LITTLE STEPHANIE B[redacted] OR ANYONE.

MR. RUNYON: ALL RIGHT. MR. ROGERS, ANSWER ANY QUESTIONS THE SOLICITOR MAY HAVE.

MR. BAILEY: MAY IT PLEASE THE COURT.

<u>CROSS-EXAMINATION</u>

BY MR. BAILEY:

Q. MR. ROGERS, YOU'VE BEEN IN THIS COURTROOM BEFORE, HAVEN'T YOU?

A. YES, SIR.

Q. BACK IN 1986 YOU STOOD RIGHT HERE. THERE WAS

A JUDGE WHERE JUDGE BROWN IS SITTING AND YOU WERE FOUND GUILTY OF CARRYING A PISTOL, WEREN'T YOU?

A. I WAS FOUND GUILTY OF POSSESSION OF A PISTOL THAT WAS SUPPOSED TO BE IN MY POSSESSION, BUT CARRYING A PISTOL, NO, I WAS NOT CARRYING A PISTOL.

Q. WELL, MAYBE I'M MISTAKEN HERE. THIS THING SAYS CARRYING A PISTOL. ARE YOU SAYING THAT'S WRONG?

A. I WAS NOT CARRYING A PISTOL, NO, SIR.

Q. WHERE WAS THE PISTOL AT?

A. IT WAS IN A CAR.

Q. AND YOU WERE IN THE CAR; RIGHT?

A. I WAS NOT IN THE CAR AT THE TIME, NO, SIR.

Q. OKAY. BUT YOU WERE FOUND GUILTY OF THE CHARGE OF CARRYING A PISTOL IN 1986. IS THAT RIGHT?

A. YES, SIR.

Q. AND, OF COURSE, THAT---

MR. RUNYON: YOUR HONOR, I'D OBJECT TO THE -- THE ACTUAL STATUTORY DESIGNATION IS UNLAWFUL POSSESSION OF A WEAPON. IT'S NOT CARRYING IT NECESSARILY.

THE COURT: I DON'T HAVE ANY IDEA. Y'ALL AGREED THAT THAT WAS THE RECORD AND I DON'T HAVE ANY IDEA ABOUT THE FACTS. GO AHEAD.

BY MR. BAILEY:

Q. ALL RIGHT. YOU WERE CHARGED AND FOUND GUILTY OF EITHER POSSESSION OR CARRYING A PISTOL; IS THAT

RIGHT?

A. YES, SIR.

Q. YOU UNLAWFULLY HAD A PISTOL IN YOUR POSSESSION AND YOU WERE FOUND GUILTY OF IT; RIGHT?

A. YES, SIR.

Q. IN THIS COURT RIGHT HERE.

A. YES, SIR.

Q. OKAY. ABOUT A YEAR LATER, EXCUSE ME, TWO YEARS LATER, 1988, YOU WERE BACK OUT HERE AGAIN, WEREN'T YOU?

A. YES, SIR.

Q. THE SAME ROOM. THERE WAS A JUDGE WHERE JUDGE BROWN IS; RIGHT?

A. THAT'S RIGHT.

Q. AND YOU WERE FOUND GUILTY AT THAT TIME OF GRAND LARCENY; IS THAT RIGHT?

A. YES, SIR.

Q. THAT WAS OF AN AUTOMOBILE YOU STOLE; RIGHT?

A. YES, SIR.

Q. OKAY. AND WHEN YOU CAME IN HERE YOU PROBABLY SAID OR DID YOU SAY, YOU KNOW, "I'M SORRY. THIS IS AN ACCIDENT"?

A. YES, SIR, NOT AN ACCIDENT. I WAS SORRY FOR WHAT I DID.

Q. YOU WERE SORRY BACK THEN AND BEFORE THAT WHEN

YOU WERE CARRYING A PISTOL OR POSSESSING THE PISTOL YOU WERE SORRY THEN, TOO, WEREN'T YOU?

A. I WASN'T SORRY FOR BEING CHARGED WITH. . . I WAS CHARGED, YOU KNOW, AND I WAS NOT -- I WAS NOT CARRYING NO PISTOL.

Q. OKAY. YOU GOT SET UP OR SOMETHING?

A. I WOULDN'T SAY I GOT SET UP, NO.

Q. YOU GOT DONE WRONG BY THE SYSTEM?

A. I FEEL I SHOULDN'T HAVE, YOU KNOW, GOTTEN THAT CHARGE BUT. . .

Q. HOW ABOUT 1990 WHEN YOU WERE UP HERE IN THIS SAME COURTROOM AND THERE WAS A JUDGE WHERE JUDGE BROWN IS NOW AND YOU WERE FOUND GUILTY OF POSSESSION OF COCAINE? DO YOU REMEMBER THAT?

A. YES, SIR.

Q. WERE YOU SORRY ABOUT THAT THEN, TOO?

A. YES, SIR.

Q. OKAY. NOW, HOW ABOUT A FEW WEEKS AGO WHEN YOU WERE IN THIS COURT YOU PLED GUILTY TO CRIMINAL SEXUAL CONDUCT WITH assault victim? IS THAT RIGHT?

A. YES, SIR.

Q. AND A WEEK LATER YOU PLED AGAIN FOR THE SAME CHILD, DIFFERENT OCCASION; RIGHT? CRIMINAL SEXUAL CONDUCT.

A. YES, SIR.

Q. WERE YOU SORRY ABOUT THAT?
A. YES, SIR, I WAS SORRY.
Q. AND SHE WAS FIFTEEN YEARS OLD AT THAT TIME?
A. YES, SIR.
Q. YOU WERE MARRIED AND YOU WERE IN YOUR TWENTIES.
A. YES, SIR. I DID NOT KNOW THAT SHE WAS FIFTEEN, NO, SIR.
Q. OKAY.
A. I WAS TOLD DIFFERENTLY.
Q. SO, EVERY TIME YOU'VE BEEN UP HERE AND FOUND GUILTY OF THESE THINGS, THIS REALLY HASN'T BEEN YOUR FAULT, HAS IT? SOMETHING'S BEEN WRONG.
A. I WOULDN'T SAY IT WASN'T MY FAULT, NO, SIR.
Q. NOW, YOU TESTIFIED YOU'RE NOT RETARDED; RIGHT?
A. NO, SIR.
Q. AND I BELIEVE YOU ALSO TESTIFIED THAT YOU WEREN'T SO INTOXICATED TO THE EXTENT THAT YOU DIDN'T HAVE ANY SENSE; IS THAT RIGHT?
A. YES, SIR.
Q. SO, ON NOVEMBER 25TH, 1992, YOU WEREN'T RETARDED AND YOU WEREN'T SO INTOXICATED YOU DIDN'T HAVE ANY SENSE; IS THAT RIGHT?
A. YES, SIR.

Q. SO YOU WERE RESPONSIBLE FOR WHATEVER YOU DID, WEREN'T YOU?
A. YES, SIR.
Q. AND YOU SHOT A LITTLE NINE-YEAR-OLD GIRL IN THE HEAD TO DEATH, DIDN'T YOU?
A. UNINTENTIONALLY, YES, SIR, I DID.
Q. YOU SHOT HER TO DEATH, DIDN'T YOU?
A. YES, SIR, I DID.
Q. ARE YOU RESPONSIBLE FOR WHAT YOU DO?
A. I AM RESPONSIBLE FOR MY PART IN THAT INCIDENT, YES, SIR.
Q. OKAY. YOUR PART. AND YOUR PART WAS SHOOTING THAT LITTLE GIRL IN THE HEAD; RIGHT?
A. YES, SIR.
Q. OKAY. WHERE DID YOU GET THE GUN FROM?
A. BOUGHT IT OFF THE STREET.
Q. BOUGHT IT OFF THE STREET OR A PERSON ON THE STREET?
A. A PERSON ON THE STREET.
Q. WELL, WHAT WAS HIS NAME?
A. I DON'T KNOW WHAT THE PERSON'S NAME WAS.
Q. WHAT DID HE LOOK LIKE?
A. HE WAS A BLACK MALE.
Q. OKAY. HOW LONG BEFORE YOU SHOT STEPHANIE [redacted] DID YOU BUY THE GUN?

A. MAYBE A COUPLE OF MONTHS, SIX MONTHS AT THE MOST.

Q. A COUPLE OF MONTHS? YOU'D ALREADY BEEN IN TROUBLE BACK IN '86. YOU GOT A FINE OR PRISON TIME FOR CARRYING A GUN, DIDN'T YOU, OR POSSESSING A GUN?

A. I WAS FINED.

Q. OKAY. AND DESPITE THAT -- I MEAN, YOU OF ALL PEOPLE KNEW IT WAS ILLEGAL TO CARRY A PISTOL, RIGHT, BECAUSE YOU'D ALREADY BEEN CONVICTED ONE TIME? WHY DID YOU BUY THAT PISTOL?

A. FOR SOME SORT OF PROTECTION.

Q. SELF-PROTECTION?

A. YES, SIR.

Q. MAKE YOU FEEL LIKE A BIG MAN?

A. NO, SIR.

Q. WHO WERE YOU AFRAID OF?

A. IN SOCIETY YOU'VE GOT A NUMBER OF PEOPLE TO BE AFRAID OF.

Q. WERE YOU AFRAID OF STEPHANIE B[redacted]?

A. NO, SIR.

Q. THAT'S WHO YOU USED THE GUN ON; RIGHT?

A. NOT INTENTIONALLY, NO, SIR.

Q. ALL RIGHT. NOW, MR. RUNYON ASKED YOU IF THAT STATEMENT YOU GAVE THOSE POLICE OFFICERS OUT IN ALABAMA WAS CORRECT; IS THAT RIGHT?

A. THAT'S CORRECT.
Q. AND YOU STICK BY THAT STATEMENT?
A. YES, SIR, I DO.
Q. AND DIDN'T YOU TELL THOSE FELLOWS OUT THERE YOU SHOT ONE TIME?
A. I SHOT ONE TIME TO MY RECOLLECTION; YES, I DID.
Q. AND THAT WAS A 380; RIGHT?
A. YES, SIR.
Q. AND YOU'RE FAMILIAR -- SINCE THAT'S YOUR GUN, YOU KNOW WHAT KIND OF AMMUNITION IT USES, DON'T YOU? A 380-CALIBER GUN USES 380-CALIBER AMMUNITION; RIGHT?
A. YES, SIR, IT DOES.
Q. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 13. THAT'S ONE OF THESE SHELL CASINGS. THAT'S THE KIND OF SHELL CASING YOU HAD IN THAT GUN; RIGHT?
A. YES, SIR.
Q. THE OTHER ONE THAT THE S.L.E.D. MAN SAID CAME OUT OF THE SAME -- SHOT BY THE SAME GUN, SAME KIND OF 380-CALIBER SHELL CASING YOU HAD; RIGHT?
A. YES, SIR.
Q. I SHOW YOU STATE'S NUMBER 10. HAVE YOU EVER SEEN THAT BEFORE? IT'S A PICTURE OF A WHEEL WITH SOME PAINT KNOCKED OFF OF IT.
A. I SEEN IT.

Q. OKAY. ARE YOU TELLING THIS JURY NOW YOU DIDN'T SHOOT THAT WHEEL?

A. I DO NOT RECOLLECT SHOOTING NO TIRE RIM, NO, SIR.

Q. OKAY. YOU DID SHOOT THE BACK WINDSHIELD, THOUGH; IS THAT RIGHT?

A. ACCIDENTALLY.

Q. YOU SHOT THE BACK WINDSHIELD.

A. YES, SIR.

Q. YOU'RE SURE OF THAT.

A. YES, SIR.

Q. YOU SAW THE GLASS SHATTER, DIDN'T YOU?

A. NO, SIR.

Q. YOU'RE STICKING WITH YOUR STORY YOU SHOT ONE TIME; RIGHT?

A. I'M STICKING WITH MY STORY THAT I CAN RECALL SHOOTING THE GUN ONE TIME.

Q. ALL RIGHT. AND YOU'VE ALREADY SAID YOU WEREN'T INTOXICATED TO THE EXTENT THAT YOU DIDN'T HAVE ANY SENSE; RIGHT?

A. YES, SIR.

Q. AND ARE YOU AS SURE OF THAT AS YOU ARE OF EVERYTHING ELSE YOU'VE SAID HERE?

A. YES, SIR.

Q. OKAY. ALL RIGHT. MR. ROGERS, AFTER THE MAN

STOPPED THE TRUCK AND YOU FOUND OUT THAT YOU'D SHOT THAT LITTLE GIRL YOU RAN OFF; RIGHT?

A. YES, SIR, I DID.

Q. OKAY. YOU DIDN'T KNOW AT THAT TIME SHE WAS ALIVE OR DEAD, DID YOU?

A. NO, SIR, I DIDN'T.

Q. THE MAN HAD BLOOD ON HIM WHEN HE GOT OUT OF THE TRUCK, DIDN'T HE?

A. I DIDN'T SEE ANY BLOOD.

Q. DIDN'T STICK AROUND LONG ENOUGH TO SEE IT, DID YOU?

A. I SEEN HIM.

Q. OKAY. NOW, WHEN YOU RAN OFF -- WHEN YOU RAN OFF, WHERE DID YOU GO?

A. I JUST RAN THROUGH SOME WOODS.

Q. OKAY. WELL, AFTER YOU RAN THROUGH SOME WOODS WHERE DID YOU GO?

A. I WENT TO A FRIEND'S HOUSE.

Q. WHAT'S THE FRIEND'S NAME?

A. I DON'T THINK, YOU KNOW. . .

Q. HUH?

A. THAT THIS FRIEND WOULD BE, YOU KNOW. . .

Q. YOU'RE UNDER OATH THERE. WHAT'S HIS NAME? HE'S A FRIEND OF YOURS.

A. IT'S A SHE.

Q. WHAT'S HER NAME?
A. WE CALL HER SISTER.
Q. HUH?
A. WE CALL HER SISTER.
Q. YOU CALL HER SISTER. I'M ASKING YOU WHAT HER NAME IS, FIRST NAME AND LAST NAME.
A. MRS. BENJAMIN. I DON'T KNOW HER FIRST NAME.
Q. LAST NAME IS BENJAMIN. WHERE DOES SHE LIVE?
A. SHE LIVES IN SUMMERVILLE.
Q. I KNOW THAT, BUT WHERE DOES SHE LIVE IN SUMMERVILLE? WHAT STREET DOES SHE LIVE ON?
A. ON [redacted] AVENUE.
Q. [redacted] AVENUE. BENJAMIN. HOW LONG DID YOU STAY THERE?
A. I DIDN'T STAY THERE LONG.
Q. WHERE DID YOU GO NEXT?
A. I WAS WALKING DOWN THE ROAD AND I HITCHHIKED A RIDE.
Q. YOU HITCHHIKED ALL THE WAY OUT TO ALABAMA?
A. NO, SIR.
Q. TOOK A BUS?
A. YES, SIR.
Q. WHERE DID YOU LEAVE FROM?
A. I LEFT FROM SUMMERVILLE.
Q. OKAY. YOU WENT DOWN TO OKAY GROCERY, GOT ON

THE BUS AND WENT TO ALABAMA; RIGHT?

A. NO, I HITCHED A RIDE.

Q. HITCHED A RIDE TO WHERE?

A. I HITCHED A RIDE OUT TO ST. GEORGE AREA.

Q. OKAY. THEN YOU GOT A BUS FROM ST. GEORGE TO ALABAMA; RIGHT?

A. YES, SIR.

Q. OKAY. WHAT HAPPENED TO YOUR 380-CALIBER SEMIAUTOMATIC PISTOL?

A. I GOT RID OF IT IN A WOODED AREA.

Q. DID YOU THROW IT AWAY?

A. YES, SIR.

Q. BECAUSE THAT WAS EVIDENCE; RIGHT?

A. I THREW IT AWAY BECAUSE I DIDN'T WANT IT ANYMORE.

Q. DIDN'T WANT IT ANYMORE? HOW COME?

A. BECAUSE I WAS -- WHAT I HAD JUST DONE.

Q. OKAY. YOU DIDN'T THROW IT AWAY BECAUSE IT WAS EVIDENCE OF A MURDER, DID YOU?

A. NO, SIR, I DID NOT.

Q. JUST DIDN'T WANT IT ANYMORE, SO YOU THREW IT IN THE WOODS?

A. YES, SIR.

Q. ALL RIGHT. NOW, WHEN YOU BOUGHT THE GUN HOW DID YOU KNOW THE GUN WAS ANY GOOD?

A. YOU CAN LOOK AT IT AND TELL.
Q. DID YOU TRY IT OUT?
A. I'VE SHOT IT BEFORE.
Q. DID YOU SHOOT AT A TARGET OR TREE OR WHAT DID YOU SHOOT AT?
A. JUST SHOOT -- JUST SHOOT IT IN A WOODED AREA.
Q. WELL, DID YOU JUST SHOOT OFF INTO THE WOODS OR DID YOU SHOOT A PARTICULAR TREE OR STUMP OR WHAT DID YOU DO TO SEE IF IT WAS A GOOD GUN?
A. SHOOT IT IN THE AIR.
Q. SHOOT IT IN THE AIR? DID YOU EVER SHOOT AT A TARGET?
A. NO, SIR.
Q. HAVE YOU EVER SHOT ANY GUN AT A TARGET?
A. BACK IN MAYBE ELEMENTARY SCHOOL OR SOMETHING.
Q. ALL RIGHT. WELL, HOW ABOUT THIS GUN YOU HAD BACK HERE IN 1986? DID YOU EVER SHOOT THAT AT A TARGET?
A. NO, SIR.
Q. ARE YOU A PRETTY GOOD SHOT?
A. I'M NOT GOING TO SAY I AM, NO, SIR.
Q. WELL, ARE YOU OR ARE YOU NOT?
A. NO, SIR.
Q. THE EXPERIENCE YOU'VE HAD WITH GUNS, UNLESS THEY'VE GOT A BENT BARREL OR SOMETHING, THEY SHOOT IN A

STRAIGHT LINE, DON'T THEY?

A. YES, SIR, THEY DO.

Q. OKAY. SO IF YOU WERE TO STAND WHERE I'M STANDING AND SHOOT AT THAT POSTER UP THERE YOU'D HIT THE POSTER IF YOU'RE POINTING AT IT; RIGHT?

A. YES, SIR.

Q. AND IF YOU SHOOT UP IN THE AIR YOU'D HIT THE CEILING; RIGHT?

A. YES, SIR.

Q. AND YOU KNEW THAT ON NOVEMBER 25TH. YOU KNEW HOW A GUN WORKED, DIDN'T YOU?

A. YES, SIR.

Q. THE BULLET COMES STRAIGHT OUT OF THE BARREL; RIGHT?

A. YES, SIR.

Q. WHEREVER THE GUN IS POINTING, THAT'S WHERE THE BULLET GOES; RIGHT?

A. YES, SIR.

Q. BACK IN ALABAMA WHEN YOU WERE AT ELGIN GREEN'S APARTMENT, PEOPLE KNOCKED ON THE DOOR.

A. YES, SIR.

Q. HOW COME YOU DIDN'T GO ANSWER THE DOOR?

A. BECAUSE I WAS SCARED. I PRETTY MUCH KNEW WHO THEY WERE.

Q. OKAY.

A. AND I JUST DIDN'T OPEN THE DOOR. I KNEW EVENTUALLY THEY WERE GOING TO COME IN.

Q. YOU CALLED YOUR BROTHER AL FROM ALABAMA; RIGHT?

A. NO, SIR.

Q. YOU DIDN'T CALL HIM?

A. NO, SIR.

Q. DID YOU TELL STEPHANIE SIMMONS THAT THE HEAT WAS ON IN SOUTH CAROLINA?

A. NO, SIR.

Q. THAT GUN WAS A SEMIAUTOMATIC; RIGHT?

A. YES, SIR.

Q. HOW MUCH DID YOU HAVE TO DRINK THAT DAY?

A. ON THE 25TH?

Q. YEAH.

A. I HAD A GOOD BIT TO DRINK.

Q. WELL, MAYBE YOUR DEFINITION OF A GOOD BIT IS DIFFERENT THAN WHAT MINE IS. HOW MUCH DID YOU HAVE IN TERMS OF QUANTITY OF ALCOHOL?

A. MORE THAN A SIX-PACK OF BEER.

Q. MORE THAN A SIX-PACK OF BEER. ALL RIGHT. WHAT KIND OF BEER WAS IT?

A. IT WAS OLD ENGLISH MALT LIQUOR.

Q. OLD ENGLISH. IS THAT A FOURTEEN-OUNCE CAN OR SIXTEEN?

A. TWELVE-OUNCE.

Q. TWELVE-OUNCE. SO YOU HAD MORE THAN TWELVE CANS.

A. NO, SIR.

Q. MORE THAN TWELVE -- MORE THAN SIX TWELVE-OUNCE CANS OF OLD ENGLISH.

A. ABOUT SIX, YES, SIR.

Q. ABOUT SIX. OKAY. WHAT ELSE HAD YOU HAD TO DRINK.

A. I HAD ABOUT ONE OR TWO DRINKS OF SOME LIQUOR.

Q. ONE OR TWO DRINKS OF LIQUOR. OKAY. ANYTHING ELSE?

A. NO, SIR.

Q. OKAY. IN SPITE OF HAVING AT LEAST EIGHT BEERS OR DRINKS, YOU'RE STILL TELLING THIS JURY UNDER OATH THAT YOU WEREN'T INTOXICATED AT THAT POINT?

A. I WAS NOT DRUNK OUT OF MY MIND, NO, SIR.

Q. OKAY. SO YOU WERE IN CONTROL.

A. YES, SIR.

Q. MR. RUNYON ASKED YOU ABOUT PRISON. YOU'VE BEEN IN PRISON BEFORE; RIGHT?

A. YES, SIR.

Q. HE ASKED YOU ABOUT TELEVISION. THEY GOT TELEVISION IN PRISON, DON'T THEY?

A. THEY HAVE TELEVISION.

Q. OKAY. COLOR T.V.'S?
A. THE STATE HAS COLOR T.V., YES, SIR.
Q. CABLE?
A. NO, SIR.
Q. NO CABLE T.V.?
A. NO, SIR.
Q. OKAY. THEY GOT A LIBRARY THERE YOU CAN USE?
A. THEY GOT A LIBRARY, LAW LIBRARY, YES, SIR.
Q. AND YOU CAN USE THAT.
A. YES, SIR.
Q. GOT A WEIGHT ROOM?
A. YEAH.
Q. BASKETBALL COURT?
A. YEAH.
Q. TO SHOOT BASKETS WHEN YOU WANT TO?
A. YEAH.
Q. THIS VERNEST LAWRENCE THAT TESTIFIED AWHILE AGO, THERE AIN'T NO DOUBT YOU HIT HIM OVER THE HEAD WITH A PIECE OF METAL; RIGHT?
A. I DID NOT HIT HIM OVER THE HEAD, NO, SIR.
Q. WHERE DID YOU HIT HIM?
A. I HIT HIM ON HIS ARMS.
Q. DID YOU SAY -- DID IT BREAK HIS ARM?
A. I BELIEVE THE MEDICAL REPORT OR WHATEVER SAID, YOU KNOW, HIS ARM WAS INJURED IN SOME FASHION.

Q. HIS ARM WAS INJURED. ALL RIGHT. YOU WERE IN PRISON FEBRUARY 9TH, 1993; IS THAT RIGHT?

A. YES, SIR.

Q. AND YOU HAD A LITTLE RUN-IN WITH A FELLOW NAMED ROWE, DIDN'T YOU?

A. WHO?

Q. ANTHONY ROWE?

A. IS THIS AN INMATE?

Q. YEAH.

A. YES, SIR.

Q. OKAY. AND YOU HIT HIM AND KICKED HIM, DIDN'T YOU?

A. WE GOT IN A FIGHT.

Q. OKAY. AND THE CORRECTIONAL OFFICERS BROKE THAT FIGHT UP AND THEN YOU BROKE LOOSE AND WENT AT HIM AGAIN, DIDN'T YOU?

A. NO, SIR. THE CORRECTIONAL OFFICERS DID NOT BREAK THE FIGHT UP.

Q. OKAY.

A. WE BROKED UP ON OUR OWN.

Q. OKAY. HOW ABOUT TELL THE JURY WHAT AN ADJUSTMENT COMMITTEE IS IN PRISON?

A. AN ADJUSTMENT COMMITTEE IS LIKE A GROUP OF PEOPLE WHO WILL JUDGE YOU. IT'S LIKE A COURT.

Q. IF YOU GET IN TROUBLE YOU HAVE LIKE A LITTLE

TRIAL THERE IN PRISON, DON'T YOU?

A. YES, SIR.

Q. I'M SORRY. I SHOULDN'T SAY PRISON. I OUGHT TO SAY CORRECTIONAL INSTITUTION BECAUSE THAT'S WHAT THEY CALL THEM; RIGHT?

A. THAT'S A PRISON.

Q. BUT THEY CALL IT -- IT'S LIKE---

A. YES, SIR.

Q. ---LIEBER CORRECTIONAL INSTITUTION IS REALLY THE NAME. IT'S NOT PRISON; RIGHT?

A. YES, SIR.

Q. OKAY. BUT WHILE YOU WERE THERE YOU WENT TO THE ADJUSTMENT COMMITTEE; IS THAT RIGHT?

A. YES, SIR.

Q. FOR ASSAULT AND BATTERY ON THAT INMATE; IS THAT RIGHT?

A. THAT'S WHAT THE CHARGE WAS.

Q. AND YOU GOT FOUND GUILTY; IS THAT RIGHT?

A. I GOT FOUND GUILTY, YES, SIR.

Q. FOR ASSAULT AND BATTERY IN PRISON.

A. FOR FIGHTING, FOR DEFENDING MYSELF, YES, SIR.

Q. OKAY. WELL, THEY FOUND YOU GUILTY OF ASSAULT AND BATTERY AND GAVE YOU THREE MONTHS LOCK-DOWN?

A. YES, SIR.

Q. YOU SAID YOU FELT BAD ABOUT WHAT HAPPENED;

RIGHT?

A. YES, SIR.

Q. THEY BROUGHT YOU BACK FROM ALABAMA FOR THE BOND HEARING. DID YOU FEEL BAD THEN?

A. YES, SIR, I DID.

Q. AND THIS THING WE SAW ON TELEVISION, THAT'S WHEN THEY BROUGHT YOU BACK FROM ALABAMA; RIGHT?

A. YES, SIR, IT IS?

MR. BAILEY: BEAR WITH ME ONE SECOND, PLEASE, YOUR HONOR. (PAUSE) YOUR HONOR, THAT'S ALL I HAVE OF THIS WITNESS AT THIS TIME.

MR. RUNYON: ONE MOMENT, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. RUNYON:

Q. NOW, MR. ROGERS, MR. BAILEY ASKED YOU ABOUT SHOOTING STEPHANIE. DID YOU EVER TELL ANYBODY THAT YOU INTENDED TO KILL STEPHANIE B[redacted]?

A. NO, SIR.

Q. DID YOU EVER INTEND TO?

A. NO, SIR.

Q. NOW, HE ASKED YOU ABOUT, QUOTE, BEING FOUND GUILTY IN THIS COURTROOM. ISN'T IT A FACT YOU PLED GUILTY?

A. TO THE JUSTICE COMMITTEE?

Q. NO, IN THIS COURTROOM RIGHT HERE. DIDN'T YOU

PLEAD GUILTY OF THESE VARIOUS OFFENSES---

A. YES, SIR.

Q. ---THE COCAINE AND WHAT HAVE YOU?

A. YES, SIR.

Q. I MEAN, YOU CAME IN AND TOLD THE JUDGE YOU WERE GUILTY.

A. YES, SIR.

Q. NOW, DOWN IN ALABAMA YOU HEARD THE POLICE KNOCKING ON THE DOOR.

A. YES, SIR.

Q. AND YOU STAYED RIGHT THERE.

A. YES, SIR.

Q. AND THEY CAME IN.

A. YES, SIR.

Q. AND YOU WENT WITH THEM.

A. YES, SIR.

Q. NOW, SO YOU HAD AT LEAST A SIX-PACK OF TWELVE-OUNCE MALT LIQUORS.

A. YES, SIR.

Q. AND SOME LIQUOR.

A. YES, SIR.

Q. AND THAT WAS OVER A PERIOD OF HOW LONG, SIR?

A. THAT WAS FROM ABOUT 1:30 THAT AFTERNOON UP UNTIL THE INCIDENT.

Q. AND YOU'RE NOT DENYING THAT YOU HAD CONTROL

OF YOURSELF. YOU WALKED DOWN TO THAT STORE, DIDN'T YOU?

A. YES, SIR, I WALKED DOWN TO THAT STORE.

Q. BUT YOU WERE INTOXICATED, WEREN'T YOU?

A. I WAS INTOXICATED.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. RUNYON: COME DOWN, MR. ROGERS. YOUR HONOR, IF WE COULD---

THE COURT: WOULD YOU LIKE TO TAKE A BREAK? LET'S DO TAKE A LITTLE BREAK. MR. FOREMAN, MEMBERS OF THE JURY, LET ME KNOW WHEN YOU'RE READY. EVERYONE ELSE REMAIN SEATED, PLEASE.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

THE COURT: JUST A MINUTE. COUNSELOR, SO I'LL KIND OF KNOW HOW TO SCHEDULE LUNCH FOR THE JURY, HOW MANY MORE WITNESSES WOULD YOU SAY YOU HAVE?

MR. RUNYON: YOUR HONOR, I HAVE -- WE HAVE MR. MCTEER SO THAT THE SHERIFF CAN -- BECAUSE HE'S IN THE CUSTODY OF THE SHERIFF AND THEN WE WOULD ANTICIPATE---

THE COURT: BE SURE TO GET HIM OVER HERE FOR ME.

MR. RUNYON: HE'S ALREADY OVER HERE, JUDGE.

THE COURT: OH, ALL RIGHT, SIR. WHO ELSE?

MR. RUNYON: AND THEN WE HAVE APPROXIMATELY SIX WITNESSES, BUT WE THINK THEY'D BE VERY SHORT, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. I WAS JUST TRYING TO BE ABLE TO TELL THE CLERK -- WHERE IS MY CLERK? I WOULD SAY YOU SHOULD BE THROUGH BY 12:30, WOULDN'T YOU SAY?

MR. RUNYON: 12:30 TO 1:00, YES, SIR.

THE COURT: OH, ALL RIGHT, SIR.

MR. RUNYON: DEPENDS ON HOW LONG MR. BAILEY WANTS TO. . .

THE COURT: WELL, I'M NOT LIMITING YOU. I WAS JUST TRYING TO SCHEDULE LUNCH.

MR. RUNYON: YES, SIR.

THE COURT: ALL RIGHT. MADAM CLERK, TELL THE JURY IT WILL BE -- TELL THE RESTAURANT IT WILL BE PROBABLY ABOUT QUARTER OF ONE IF I HAD TO GUESS FOR LUNCH FOR THEM AND GO AHEAD. . . ALL RIGHT. COURT'S IN RECESS.

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

THE COURT: THANK YOU VERY MUCH. BE SEATED, PLEASE. ALL RIGHT. BRING THE JURY IN FOR ME. BROUGHT.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT.)

THE COURT: ALL RIGHT, SIR. CALL YOUR NEXT WITNESS.

MR. RUNYON: YOUR HONOR, WE'D CALL MR. MCTEER, YOUR HONOR.

MCTEER MANIGAULT, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: GIVE US YOUR FULL NAME AND SPELL YOUR LAST NAME, PLEASE.

THE WITNESS: MCTEER MANIGAULT, M-A-N-I-G-A-U-L-T.

DIRECT EXAMINATION

BY MR. RUNYON:

Q. SIR, YOUR COMPLETE NAME IS AGAIN?

A. MCTEER MANIGAULT.

Q. OKAY. MCTEER MANIGAULT. NOW, DO YOU KNOW A VERNEST LAWRENCE?

A. YES, SIR.

Q. ALL RIGHT. HOW DID YOU KNOW MR. LAWRENCE?

A. WE GOT INTO A LITTLE SCUFFLE A COUPLE OF YEARS AGO AT THE CLUB.

Q. OKAY. DRAWING YOUR ATTENTION TO ON OR ABOUT MARCH 26TH, 1988, WERE YOU AT CLUB 78?

A. NO, SIR, AT TIPPY'S.

Q. AT TIPPY'S.
A. YES, SIR.
Q. DID YOU GET IN A FIGHT WITH MR. LAWRENCE?
A. YES, SIR.
Q. ALL RIGHT. DID MR. LAWRENCE GET THE BETTER OF YOU AT THAT TIME?
A. YES, SIR.
Q. AND WHAT WAS HE DOING TO YOU?
A. WELL, HE HAD ME BY THE -- I HAD ON A TURTLENECK AND HE GRABBED THE NECK OF IT AND THROWED ME AGAINST THE DUMPSTER AND WOULDN'T LET ME GO AND DRAGGING ME FROM THE DUMPSTER BESIDE THE FENCE WHERE THE CLUB WAS AT.
Q. OKAY. AND DID -- WAS MR. ROGERS THERE?
A. HE WAS IN THE CLUB WHEN IT STARTED UP AND HE CAME OUT LATER ON.
Q. DID HE INTERVENE IN THAT FIGHT?
A. WELL, THERE WAS A BUNCH OF THEM, YES, SIR.
Q. BUT THERE WAS A BUNCH OF PEOPLE THAT INTERVENED IN THE FIGHT?
A. YES, SIR.
Q. MR. ROGERS WAS ONE OF THEM?
A. YES, SIR.
Q. AND MR. LAWRENCE HAD -- HOW DID HE HAVE YOU AGAIN?

A. HE HAD ME BY ONE HAND AROUND THE NECK OF MY SHIRT AND HE WAS DRAGGING ME FROM THE DUMPSTER INSIDE THE FENCE.

Q. OKAY. NOW, YOU HAVE -- I SEE YOU APPEAR IN COURT TODAY IN THIS ORANGE GARB. YOU'RE AN INMATE AT THE DORCHESTER COUNTY JAIL RIGHT NOW, AREN'T YOU, SIR?

A. YES, SIR.

Q. AND YOU HAVE PROBLEMS UNRELATED TO THIS CASE; ISN'T THAT CORRECT?

A. YES, SIR.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BAILEY:

Q. MR. MANIGAULT, LET ME ASK YOU JUST A COUPLE OF QUESTIONS HERE. YOU'RE THE SAME MCTEER MANIGAULT THAT WAS GUILTY OF SHOPLIFTING IN '91?

A. YES, SIR.

Q. AND CONVICTED OF THAT? ALL RIGHT, SIR. AND ALSO BACK IN MARCH OF 1992 YOU WERE CONVICTED OF POSSESSION OF COCAINE; IS THAT CORRECT?

A. YES, SIR.

Q. ALL RIGHT, SIR. NOW, YOU'RE SURE THAT YOU WERE AT TIPPY'S AND NOT CLUB 78 WHEN THIS THING HAPPENED.

A. YES, SIR.

MR. BAILEY: OKAY. THAT'S ALL I HAVE.

THE COURT: YOU CAN COME DOWN. THANK YOU. CALL YOUR NEXT WITNESS.

MR. RUNYON: YOUR HONOR, WE WOULD CALL AT THIS TIME MRS. Applicant's mother.

applicant's mother, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. RUNYON:

Q. applicant's mother, IF YOU'D KIND OF SCOOT YOUR CHAIR UP SO YOU CAN GET TO THAT MICROPHONE AND IF YOU'D SPEAK UP SO I CAN HEAR YOU THEN I'M SURE EVERYBODY CAN HEAR YOU.

A. YES, SIR.

Q. HOW OLD ARE YOU, MA'AM?

A. I'M 41.

Q. AND WHERE DO YOU LIVE?

A. IN SUMMERVILLE. LADSON MOSTLY.

Q. ALL RIGHT. AND YOU'RE MARRIED?

A. YES, I AM.

Q. AND TO WHOM ARE YOU MARRIED?

A. MARTIN N[redacted].

Q. AND HOW LONG HAVE YOU BEEN MARRIED TO MR. N[redacted]?

A. SEVENTEEN YEARS THIS JULY.
Q. NOW, HOW MANY CHILDREN DO YOU HAVE?
A. WE HAVE FOUR.
Q. ARE THOSE CHILDREN FROM YOUR FIRST MARRIAGE OR THIS MARRIAGE OR WHAT?
A. I WAS NEVER MARRIED UNTIL MR. N[redacted]. I HAD THREE SONS AT A YOUNG AGE.
Q. IS MR. TIMOTHY ROGERS ONE OF THOSE SONS?
A. YES, HE'S MY SECOND SON.
Q. ALL RIGHT. AND YOU'VE ALWAYS WORKED TO SUPPORT YOUR FAMILY?
A. YES.
Q. OKAY. NOW, WHEN TIMOTHY WAS GROWING UP, WERE YOU -- DID HE LIVE AT HOME WITH YOU?
A. YES, HE DID.
Q. AND WAS HE A PROBLEM CHILD? HOW WAS HE AS A CHILD?
A. TIMOTHY WAS ALWAYS A GOOD BOY. WHEN I SAY THAT, TIMOTHY WAS ALWAYS LIKE THE DADDY IN THE HOUSE EVEN THOUGH HE WASN'T THE OLDEST. HE WAS MY COOK WHEN I WAS AT WORK AT A YOUNG AGE, CLEANED THE HOUSE, AND HE WAS JUST ALWAYS LIKE MY HUSBAND. WHEN I SAY THAT, IN THE TERM THAT THERE WAS NO MAN, NO MALE IN THE HOUSE UNTIL I GOT MARRIED.
Q. DID HE HAVE A GOOD RELATIONSHIP WITH MR.

N [redacted] ONCE Y'ALL GOT MARRIED?

A. YES, HE DID.

Q. AND DID HE DO FAIRLY WELL IN SCHOOL?

A. HE WAS ALWAYS A GOOD STUDENT. WHEN I SAY A GOOD STUDENT, EDUCATIONAL WISE. HE NEVER LIKED THE FACT THAT I MARRIED AND IT WASN'T HIS FATHER. THAT HURT HIM VERY MUCH.

Q. NOW, DRAWING YOUR ATTENTION TO THANKSGIVING WEEK, THAT WEDNESDAY AND THURSDAY OF 1992---

A. UH-HUH.

Q. ---WHERE WERE YOU WHEN YOU HEARD ABOUT THIS INCIDENT?

A. I WAS AT HOME. IT WAS A WEDNESDAY NIGHT, A REGULAR PRAYER SERVICE NIGHT. WE WERE GETTING READY FOR CHURCH.

Q. WHICH CHURCH IS THAT?

A. WORLDWIDE DELIVERANCE CHURCH IN SUMMERVILLE.

Q. AND WHO'S THE PASTOR THERE?

A. PASTOR AND APOSTLE MIDDLETON.

Q. NOW, WHAT OCCURRED WHEN YOU HEARD ABOUT IT? I MEAN, HOW DID YOU HEAR ABOUT IT?

A. I GOT A PHONE CALL FROM MY OTHER SON.

Q. I BEG YOUR PARDON?

A. I GOT A PHONE CALL FROM MY OTHER SON THAT TIMOTHY HAD SHOT A LITTLE GIRL.

Q. AND WHAT WAS YOUR REACTION, MA'AM?
A. I WAS DEVASTATED. I WAS HURT BECAUSE, NUMBE ONE, IT WAS A CHILD AND I WAS A MOTHER. SO I KNEW HOW A MOTHER WOULD FEEL, NO MATTER WHO IT WAS, THAT THAT WOULD HAPPEN TO HER CHILD.
Q. NOW, YOU CERTAINLY DON'T CONDONE ANYTHING THAT TIMOTHY DID THAT BROUGHT ABOUT THIS CHILD'S DEATH DO YOU?
A. NO, SIR, I DON'T.
Q. WHEN TIMOTHY LEFT SCHOOL, DID HE WORK?
A. YES, TIMMY WORKED IN SEVERAL FAST FOOD PLACES IN SUMMERVILLE.
Q. DID HE EVENTUALLY MARRY?
A. YES, HE DID.
Q. DID YOU TRY TO COUNSEL HIM ON HOW TO BE A GOOD HUSBAND?
A. COUNTLESS TIMES, YES.
Q. DID HE GET IN TROUBLE FROM TIME TO TIME?
A. YES, SIR, HE DID.
Q. DID HE DRINK LIQUOR?
A. YES, HE DID.
Q. BUT HE CONTINUED TO WORK?
A. YES, FROM ONE JOB TO ANOTHER.
Q. NOW, OTHER THAN THESE TIMES THAT HE GOT IN TROUBLE, DID HE ATTEMPT TO SUPPORT HIS FAMILY?

A. IN HIS OWN WAY HE DID. HE TRIED.
Q. YOU KNOW HIS WIFE.
A. YES, I DO.
Q. SHE'S IN COURT TODAY.
A. YES, SHE IS.
Q. AND HAVE YOU HAD A FAIRLY CLOSE RELATIONSHIP WITH HER?
A. YES, I HAVE, EVEN BEFORE THEY GOT MARRIED.
Q. ALL RIGHT. HOW MANY GRANDCHILDREN DO YOU HAVE FROM THAT MARRIAGE?
A. FOUR.
Q. ALL RIGHT. ARE YOU CLOSE TO THOSE GRANDCHILDREN?
A. VERY.
Q. NOW, HAVE YOU ATTEMPTED TO HELP OUT WITH THEM SINCE TIMOTHY'S BEEN IN JAIL SINCE THIS THING?
A. YES, ALL THE TIME THEY GO TO THE SAME CHURCH AND I'M WITH THEM ALL THE TIME.
Q. NOW, WHEN TIMOTHY WAS LIVING AT HOME, DID HE GO TO CHURCH WITH YOU?
A. YES, HE DID.
Q. OKAY. SO, HE WAS BROUGHT UP TO KNOW BETTER.
A. YES, HE DID.
Q. NOW, MRS. Applicant's mother, WHAT ARE YOU ASKING -- WHAT WOULD YOU ASK THIS COURT AND THIS JURY TO DO WITH

YOUR SON IN THIS CASE?

A. I WOULD ASK THEM TO LOOK AT HIM AS A YOUNG MAN THAT IN HIS LIFETIME WAS NOT GIVEN THE SATISFACTION OF BEING REARED BY HIS OWN FATHER AND BECAUSE OF THAT - APOLOGIZE AND LOOK AT HIM AS A TROUBLED YOUNG MAN THAT TURNED TO DRUGS AND ALCOHOL AS A RESULT OF HIS DISAPPOINTMENT IN LIFE AND LOOK AT HIM AS A YOUNG MAN THAT KNOWS THE LORD BECAUSE I'VE TAUGHT HIM THAT AND LOOK AT HIM AS A PERSON THAT UNDER THE INFLUENCE OF THE DRUGS AND THE ALCOHOL DID SOMETHING TO ANOTHER FAMILY THAT CAUSED SO MUCH HURT. AND I'M SORRY BECAUSE I'M A MOTHER AND I KNOW THAT SHE'S A MOTHER ALSO AND JUST FAIRLY SPARE HIS LIFE.

Q. EVEN IF THAT LIFE IS SPENT IN PRISON.

A. EVEN IF IT'S SPENT IN PRISON.

MR. RUNYON: WE HAVE NO FURTHER QUESTIONS OF MRS. Applicant's mother AT THIS TIME, YOUR HONOR.

THE COURT: ANY QUESTIONS, SOLICITOR?

MR. BAILEY: NO CROSS-EXAMINATION, YOUR HONOR.

THE COURT: YOU MAY COME DOWN. CALL YOUR NEXT WITNESS.

THE WITNESS: THANK YOU.

MR. RUNYON: I CALL MR. MARTIN N[redacted].

MR. BAILEY: CAN WE APPROACH THE BENCH

BRIEFLY, JUDGE?

THE COURT: YES, SIR.

(WHEREUPON, A BENCH CONFERENCE WAS HELD.)

THE COURT: GO AHEAD.

MARTIN N[redacted], JR., AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. RUNYON:

Q. MR. N[redacted], YOU'RE MARRIED TO applicant's mother?

A. YES, I AM.

Q. YOU'RE TIMOTHY'S STEPFATHER?

A. YES, I AM.

Q. WHERE ARE YOU EMPLOYED, SIR?

A. I DO LANDSCAPING.

Q. OKAY. NOW, MR. N[redacted], YOU'VE BEEN MARRIED FOR SEVENTEEN YEARS NOW?

A. YES, SIR.

Q. OKAY. AND YOU'VE HELPED applicant's mother RAISE HER BOYS?

A. YES, SIR.

Q. AND Y'ALL HAVE HAD YOUR OWN CHILDREN.

A. YES, SIR, ONE.

Q. ALL RIGHT. NOW, HAVE YOU HAD A PRETTY GOOD RELATIONSHIP WITH TIMOTHY OVER THE YEARS?

A. YES, SIR.

Q. WHAT KIND OF YOUNG MAN WAS HE BEFORE HE LEFT SCHOOL?

A. BEFORE HE LEFT SCHOOL?

Q. YES, SIR.

A. HE RESPECTED ME, YOU KNOW, EVEN THOUGH THERE MIGHT HAVE BEEN DIFFERENCES, YOU KNOW, LIKE FROM THE BEGINNING WHEN WE FIRST GOT MARRIED BECAUSE I KNEW HE WAS YOUNG, YOU KNOW, AND I KNEW HIS FEELINGS AND EVERYTHING, BUT HE RESPECTED ME, YOU KNOW. AND I KNEW HE WAS HURT AND WE HAVE TALKED, YOU KNOW, ON OCCASIONS WHEN HE HAS FELT, YOU KNOW, DEPRESSED ABOUT IT, YOU KNOW, ABOUT HIS FATHER. AND I KNEW HE FELT REALLY HURT ABOUT IT AND, YOU KNOW, WE -- I KNOW ON OCCASION WE WOULD TALK AND, YOU KNOW, HE CRIED, YOU KNOW, BECAUSE, YOU KNOW, I UNDERSTAND HIS FEELINGS, YOU KNOW. HE RESPECTED ME.

Q. HOW HAS THIS INCIDENT -- HOW HAS THIS DEATH OF STEPHANIE B[redacted] AND TIMOTHY'S INVOLVEMENT IN IT AFFECTED YOUR FAMILY?

A. OH, GOD.

MR. BAILEY: YOUR HONOR, I THINK I'M GOING TO OBJECT TO THAT. I DON'T THINK IT'S GOT ANYTHING TO DO WITH THE CHARACTERISTICS OF THE DEFENDANT AND THE CIRCUMSTANCES OF THE CRIME. THESE PEOPLE ARE NOT VICTIMS AND THERE'S NO VICTIM IMPACT TESTIMONY OF THEIR

FAMILY.

THE COURT: ALL RIGHT, SIR. REPHRASE YOUR QUESTION, COUNSELOR.

MR. RUNYON: YOUR HONOR, I'D OBJECT. THESE PEOPLE ARE---

THE COURT: I'M GOING TO ALLOW IT.

MR. RUNYON: WELL, THE FAMILY OF THE ACCUSED---

THE COURT: I SAID I'M GOING TO ALLOW IT.

MR. RUNYON: OH.

BY MR. RUNYON:

Q. MR. N[redacted], HOW HAS YOUR WIFE BEEN SINCE THIS INCIDENT OCCURRED? HOW HAS SHE REACTED TO THE. . .

A. WELL, I TELL YOU FOR MANY NIGHTS, YOU KNOW, AS THE KIDS GOT OLDER WHERE, YOU KNOW, THERE WAS TIMES SHE WOULD HAVE MANY SLEEPLESS NIGHTS, YOU KNOW, AFTER THE KIDS STARTED GETTING OLDER AND, YOU KNOW, GETTING OUT WITH OTHER PEOPLE. YOU KNOW, WE TRIED TO TELL THEM, YOU KNOW, DON'T HANG WITH THIS ONE OR DON'T HANG WITH THAT ONE, YOU KNOW, AND. . . BUT IT JUST, YOU KNOW. . . IT JUST. . . IT JUST. . .

Q. ALL RIGHT. LET ME ASK YOU THIS, MR. N[redacted]. HAVE YOU EVER MET THIS FELLOW DAX PATTERSON?

A. I MEAN, WE -- I MEAN LIKE I THINK -- YEAH.

YEAH. YES, WE HAVE. YES, WE HAVE.

Q. DID YOU HAVE ANY KIND OF -- DID YOU HAVE A GOOD RELATIONSHIP WITH DAX PATTERSON?

A. WE TRIED TO TELL HIM DON'T HANG WITH HIM. W TRIED -- HIS MOTHER TOLD HIM FROM THE BEGINNING -- SHE'S ALWAYS BEEN A GOOD JUDGE OF CHARACTER ABOUT PEOPLE, MY WIFE, YOU KNOW, AND SHE TRIED TO TELL HIM DON'T HANG WITH HIM, YOU KNOW, THAT HE WAS UP TO NO GOOD OR WHATEVER. I MEAN, YOU KNOW, JUST. . .

Q. TRIED TO---

A. SHE TRIED -- SHE TRIED -- WE TRIED TO TELL HIM NOT TO HANG, YOU KNOW, WITH CERTAIN PEOPLE.

Q. NOW, MR. N[redacted], HAVE YOU ASSISTED YOUR WIF IN LOOKING AFTER YOUR STEP GRANDCHILDREN?

A. OH, YES. OH, YES.

Q. NOW, WHAT WOULD YOU ASK THIS JURY TO DO WITH MR. TIMOTHY ROGERS?

A. I'D ASK FOR -- I WOULD SAY MERCY, FOR LIFE FOR TIMOTHY.

MR. RUNYON: I HAVE NO FURTHER QUESTIONS OF THIS WITNESS.

MR. BAILEY: NO CROSS, YOUR HONOR.

THE COURT: YOU MAY COME DOWN. CALL YOUR NEXT WITNESS.

MR. RUNYON: PASTOR MIDDLETON.

CLARENCE A. MIDDLETON, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. RUNYON:

Q. REVEREND MIDDLETON, WHERE ARE YOU EMPLOYED, SIR?

A. WORLDWIDE DELIVERANCE CHURCH FOR ALL PEOPLE.

Q. AND HOW DO YOU KNOW MR. AND MRS. N[redacted]?

A. THEY ARE MY SPIRITUAL DAUGHTER AND SON.

Q. DO YOU KNOW TIMOTHY ROGERS?

A. I KNOW HIM FROM BIRTH.

Q. UP TO THE TIME THAT HE WENT OUT ON HIS OWN, DID HE COME TO YOUR CHURCH.

A. QUITE OFTEN.

Q. AND DID YOU SEE HIM GROW UP?

A. I WATCHED HIM GROW UP.

Q. WHAT KIND OF A YOUNG MAN WAS HE WHEN HE WAS GROWING UP WHEN YOU -- WHEN HE WAS COMING TO YOUR CHURCH?

A. HE WAS A GOOD YOUNG MAN. GROWING UP HE WAS LOVABLE. HE WAS VERY ALIVE AND HE JUST WAS AN OVERWHELMING PERSON.

Q. HAS HE COME TO YOU -- DID THERE COME A POINT IN TIME WHEN HE STOPPED COMING REGULARLY?

A. YEAH, OFTEN HE -- HE COMES AROUND OFTEN. HE

VISIT THE CHURCH OFTEN. HE COMES OUT. HE PLAY BALL WITH THE CHILDREN OFTEN. AND WHEN HE WASN'T DRINKING, HE WAS -- HE JUST WAS A LOVABLE YOUNG MAN TO BE AROUND.

Q. NOW, LET ME ASK YOU THIS: YOU'VE SEEN TIMOTHY WHEN HE WAS DRINKING?

A. I'VE SEEN HIM WHEN HE WAS DRINKING.

Q. YOU SAY WHEN HE WASN'T DRINKING HE WAS A LOVABLE GUY.

A. RIGHT.

Q. WHAT KIND OF GUY WAS HE WHEN HE WAS DRINKING?

A. WELL, MOSTLY STAY BY HIMSELF A LITTLE BIT, BUT HE WOULD COME AROUND. HE WASN'T A TOTALLY BAD CHILD DRINKING OR WITHOUT DRINKING IN MY PRESENCE.

Q. BUT YOU SAY YOU'VE SEEN HIM WHEN HE WAS DRINKING?

A. I SEEN HIM, I CALL IT, ON A LITTLE TIGHT SIDE.

Q. THE PAST FEW YEARS DID HE DRINK A LOT?

A. ON OCCASION. HE IS NOT, YOU KNOW, JUST AN EVERYDAY DRUNK, WHAT YOU WOULD SAY. ON OCCASION, YOU KNOW, ALL YOUNG MEN WOULD DO SOMETHING LIKE THAT ON OCCASION BUT NOT -- THIS WASN'T AN EVERYDAY THING FOR HIM.

Q. WELL, HE CERTAINLY DIDN'T COME AROUND YOU A LOT WHEN HE WAS DRINKING, DID HE?

A. NOT NORMALLY. I WOULD WALK UP ON HIM AND, YOU KNOW, I WOULD SIT DOWN AND TALK TO HIM, YOU KNOW.

Q. NOW, OF COURSE, YOU'RE FAMILIAR WITH THE EVENTS OF NOVEMBER 25TH, 1990?

A. I HEARD ABOUT IT, YES, SIR.

Q. AND, OF COURSE, YOU DON'T APPROVE OF WHATEVER TIMOTHY DID THAT NIGHT, DO YOU, SIR?

A. I DON'T CONDONE THAT.

Q. BUT HAVING KNOWN HIM AND NOT CONDONING THAT, WHAT WOULD YOU ASK THIS JURY TO DO WITH TIMOTHY?

A. I WOULD ASK THEM -- HE ADMITTED FIRING THE PISTOL THAT TAKE STEPHANIE'S LIFE. ALSO HE ADMITTED THAT IT WAS AN ACCIDENT. IN LISTENING HERE TODAY I WOULD SAY TO THE JURY AND THIS COURT THAT THE -- THE DISTURBANCE WASN'T BETWEEN TIMOTHY AND THE LITTLE B[redacted] DAUGHTER.

MR. BAILEY: JUDGE, I REALLY AM GOING TO HAVE TO OBJECT TO THIS. HE'S GIVING HIS VERSION OF WHAT HE THINKS HAPPENED.

THE COURT: YES, SIR, HE'S NOT GOING TO BE ABLE TO DO THAT, COUNSELOR.

BY MR. RUNYON:

Q. WHAT WOULD YOU ASK THIS JURY TO DO WITH MR. ROGERS?

A. I WOULD ASK THE JURY TO LOOK AT HIM AS A

YOUNG MAN AND WOULD ASK YOU TO SPARE HIS LIFE. THERE IS SOMETHING GOOD WITHIN THIS YOUNG MAN. THE WORD LET'S US KNOW THAT EVIL COMMUNICATION CORRUPT GOOD MANNER, AND DEEP DOWN WITHIN MY HEART I TRULY BELIEVE THAT HIS INTENTION---

MR. BAILEY: OBJECTION TO WHAT HIS BELIEFS ARE, JUDGE, AND I DON'T WANT A SERMON FROM HIM.

THE COURT: NO, SIR. YOU CAN'T DO THAT, COUNSELOR. I JUST ALLOWED YOU TO ASK HIM WHAT HE THOUGHT THEY OUGHT TO DO WITH HIM.

THE WITNESS: I JUST WOULD ASK THE JURY TO LOOK AT HIM AS SOME OTHER KID. HE MADE A MISTAKE AND WE ASK YOU TO SPARE HIS LIFE.

MR. RUNYON: NO FURTHER QUESTIONS OF PASTOR MIDDLETON, YOUR HONOR.

MR. BAILEY: MAY IT PLEASE THE COURT?

CROSS-EXAMINATION

BY MR. BAILEY:

Q. MR. MIDDLETON, HAVE YOU HAD OCCASION TO COUNSEL WITH MR. ROGERS HERE IN THE PAST?

A. MANY OCCASIONS.

Q. OKAY. DID YOU HAVE OCCASION TO COUNSEL WITH HIM AFTER 1986 WHEN HE WAS CHARGED WITH CARRYING A PISTOL?

A. I SPOKE WITH HIM ON MANY OCCASIONS.

Q. WELL, MY QUESTION WAS: DID YOU TALK TO HIM AFTER 1986 WHEN HE WAS CHARGED AND CONVICTED OF CARRYING A PISTOL UNLAWFULLY?

A. I TALKED WITH HIM ON -- I JUST CAN'T PICK UP THE SPECIFIC DATE. ON MANY OCCASION I COUNSELED WITH HIM. THAT'S MY JOB.

Q. YES, SIR. DURING YOUR COUNSELING SESSIONS, DID YOU EVER TELL HIM THAT IT WAS A BAD THING TO BE CARRYING A GUN AROUND?

A. YES.

Q. AND DID YOU SAY THAT BEFORE NOVEMBER 25TH, 1992?

A. MANY OCCASIONS. IN MY COUNSELING MANY OCCASIONS.

Q. DIDN'T DO MUCH GOOD, DID IT?

A. WELL, I WON'T SAY THAT. I COUNSELED WITH HIM.

Q. YOU COUNSELED WITH HIM NOT TO CARRY A GUN, BUT HE SHOT A LITTLE GIRL WITH A GUN ON NOVEMBER 25TH, 1992; RIGHT?

A. NOW, I DON'T -- IF YOU ALLOW ME TO ANSWER THESE QUESTIONS AS YOU ASK ME, I'LL BE GLAD TO.

Q. I WISH YOU WOULD. YES, SIR.

A. WOULD YOU REPEAT THAT STATEMENT?

Q. LET ME START OVER AGAIN. YOU COUNSELED

TIMOTHY ROGERS ABOUT THE DANGERS OF CARRYING A PISTOL BEFORE NOVEMBER 25TH, 1992. IS THAT RIGHT?

A. YES.

Q. OKAY. AND I THINK MY NEXT QUESTION WAS WHETHER OR NOT THAT -- WHETHER OR NOT HE HEEDED THAT ADVICE, WHETHER IT DID HIM ANY GOOD.

A. AT THE TIME WE COUNSEL WITH INDIVIDUAL WE BELIEVE THAT IT WOULD DO HIM SOME GOOD EVEN IF THEY GO ABOVE THAT AND A LITTLE WHILE LATER DO THE VERY OPPOSITE. BUT WE DID COUNSEL AND AT THE TIME WE COULD SAY IT DID HIM SOME GOOD.

Q. ALL RIGHT. DID YOU COUNSEL WITH HIM AFTER DECEMBER 20TH, 1988 WHEN HE WAS CONVICTED OF GRAND LARCENY?

A. I'M TRYING TO MAKE MYSELF CLEAR TO YOU. I COUNSELED WITH HIM QUITE FREQUENTLY. I DON'T REMEMBER ALL THE DATES RIGHT AFTER YOU ASK ME.

Q. OKAY.

A. I COUNSELED WITH HIM.

Q. ALL RIGHT. DID YOU EVER COUNSEL WITH HIM AFTER HE GOT CONVICTED IN 1990 OF POSSESSION OF COCAINE?

A. I COUNSELED WITH HIM AS -- QUITE FREQUENTLY AS I COME IN CONTACT WITH HIM I COUNSELED WITH HIM.

Q. WHEN IS THE LAST TIME YOU HAVE SEEN HIM IN

YOUR CHURCH?

A. MAYBE A FEW WEEKS BEFORE THE ACCIDENT HAPPENED. HE COME BY QUITE FREQUENTLY.

Q. AND YOU SAID THAT YOU SAW HIM ON OCCASION WHEN HE'D BEEN DRINKING. WAS THAT IN THE DAYTIME OR NIGHTTIME?

A. DAYTIME.

Q. MORNING OR AFTERNOON?

A. ONCE IN AWHILE I MIGHT SEE HIM IN THE MORNING AND ONCE IN AWHILE VERY FREQUENTLY I SEE HIM IN THE AFTERNOON.

Q. WHEREABOUTS WOULD YOU SEE HIM DRINKING IN THE MORNING?

A. I HADN'T SEEN HIM DRINKING, BUT YOU CAN TELL WHEN AN INDIVIDUAL WAS AT THE BOTTLE OR NOT.

Q. OKAY. AND HOW COULD YOU TELL HE'D BEEN DRINKING?

A. WELL, I WAS OUT IN THE WORLD, TOO, AS A KID.

Q. YEAH.

A. AND THERE WAS DAYS I DRANK, TOO. SO IF YOU'VE EVER BEEN DRINKING YOU CAN TELL WHEN ANYBODY DRINKING, HAVE SOME ALCOHOL. YOU MAY CAN'T TELL THE QUANTITY OR AMOUNT HE HAS DRINKEN, BUT YOU CAN TELL, HEY, THIS FELLOW'S DRINKING.

Q. RIGHT. BUT ALCOHOL AFFECTS DIFFERENT PEOPLE

IN DIFFERENT WAYS. WHAT DID YOU OBSERVE ABOUT TIMOTHY ROGERS---

A. WELL, NO, I CAN'T ANSWER THAT FOR YOU. YOU NEED TO CALL THAT GENTLEMAN BACK TO DEAL WITH THAT. I CAN'T TELL YOU HOW MUCH IT AFFECT HIM.

Q. NO, NO. I ASKED---

A. I CAN'T ANSWER THAT.

Q. I MIGHT HAVE MISSTATED THE QUESTION. I'M JUST TRYING TO FIND OUT HOW YOU KNEW HE WAS DRINKING, WHAT IT WAS ABOUT THE WAY HE LOOKED OR ACTED THAT LET YOU KNOW HE WAS DRINKING ON THOSE MORNINGS THAT YOU SAW HIM DOING THAT DAYTIME DRINKING.

A. I COULD SMELL IT.

Q. OKAY. ANYTHING ABOUT THE WAY HE ACTED, HIS MANNERISMS, THE WAY HE WALKED AND TALKED THAT LED YOU TO KNOW HE WAS DRINKING IN THE MORNING?

A. IF YOU SPEAK WITH ANYONE THAT HAS BEEN DRINKING---

Q. RIGHT NOW---

A. ---YOU COULD TELL IT.

Q. ---I'M JUST TALKING TO YOU.

A. BEG YOUR PARDON?

Q. I'M JUST ASKING YOU RIGHT NOW.

A. OH, IF I HAVE TALK WITH ANYONE THAT HAS BEEN DRINKING, RIGHT AWAY I KNOW IT BECAUSE I USED TO DRINK.

MR. BAILEY: OKAY. REVEREND, THAT'S ALL I HAVE. THANK YOU VERY MUCH.

MR. RUNYON: COME DOWN, PASTOR.

THE WITNESS: BLESS YOU.

MR. RUNYON: MS. ALESIA HEYWARD.

ALESIA W. HEYWARD, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. RUNYON:

Q. MS. HEYWARD, WHERE ARE YOU EMPLOYED, MA'AM?

A. I'M NOT EMPLOYED AT THE TIME.

Q. OKAY. WHAT IS YOUR OCCUPATION OR PROFESSION?

A. I'M A HOMEMAKER RIGHT NOW.

Q. OKAY. HAVE YOU EVER -- HAVE YOU EVER HAD OTHER ACTIVITIES IN THE PAST?

A. YES, I HAVE.

Q. WHAT WERE THOSE ACTIVITIES?

A. I USED TO WORK FOR ARBY'S ROAST BEEF. I WAS A TRAINER THERE. THEN I WORKED AT FOOD LAND AND THEN I ALSO TAUGHT SUNDAY SCHOOL AT WORLDWIDE DELIVERANCE CHURCH AND HELPED IN BIBLE SCHOOL AND THINGS LIKE THAT.

Q. OKAY. HOW DO YOU KNOW TIMOTHY ROGERS?

A. I KNOW TIMOTHY BECAUSE HE WAS MY SUNDAY SCHOOL STUDENT.

Q. HOW LONG WAS HE A SUNDAY SCHOOL STUDENT OF

YOURS?

A. I CAN'T TELL YOU A SPECIFIC TIME. WHEN I TOOK OVER THE CLASS IT WAS IN 1979, BUT WHEN HE WAS NO LONGER A STUDENT I CAN'T TELL YOU THAT DAY.

Q. OKAY. DID YOU -- BUT YOU CAME TO KNOW HIM AT THAT TIME?

A. OH, YES. UH-HUH.

Q. AND HOW WAS HE AS A YOUNG MAN TOWARDS YOU? WAS HE BELLIGERENT? WHAT KIND OF PERSON WAS HE?

A. NO, I NEVER HAD A PROBLEM OUT OF TIMOTHY. THERE WAS A GROUP OF STUDENTS AROUND THAT AGE. THEY WERE VERY CURIOUS AT THAT TIME AND HE WAS A PARTICIPATING STUDENT. HE PARTICIPATED.

Q. ALL RIGHT. NOW, HAVE YOU KEPT IN TOUCH WITH HIM OVER THE YEARS?

A. THROUGH THE YEARS.

Q. UP TO 1992, WHEN THIS INCIDENT OCCURRED, DID YOU SEE TIMOTHY FAIRLY REGULARLY?

A. OFF AND ON WHEN HE WOULD COME BY THE CHURCH I WOULD SEE HIM.

Q. NOW, DID TIMOTHY HAVE A DRINKING PROBLEM AT THAT TIME?

A. I CAN'T SAY THAT HE DID. PERSONALLY I HAVEN'T HAD DEALINGS WITH HIM THAT WAY.

Q. HE NEVER -- HE NEVER EXHIBITED THAT TO YOU.

A. NOT WITH ME, NO.

Q. AND -- EXCUSE ME ONE MOMENT, YOUR HONOR. ARE YOU FAMILIAR WITH HIS CHILDREN?

A. YES.

Q. ALL RIGHT. HOW DO YOU KNOW HIS CHILDREN?

A. THROUGH SUNDAY SCHOOL, THROUGH CHURCH, BIBLE PROGRAMS AT THE CHURCH AND THINGS LIKE THAT.

Q. WHO BRINGS THOSE CHILDREN -- WHO HAS BROUGHT IN THE PAST THOSE CHILDREN TO SUNDAY SCHOOL?

A. THEIR MOTHER, GRANDPARENTS.

Q. WERE YOU FAMILIAR WITH ANY MARITAL PROBLEMS MR. ROGERS HAD DURING THAT TIME?

A. AS FAR AS LIKE WHAT?

Q. WELL, WERE YOU FAMILIAR WITH ANY IF HE HAD ANY?

A. WELL, I MEAN, LIKE -- YOU MEAN LIKE DISAGREEMENT WITH HUSBAND AND WIFE, THINGS LIKE THAT?

Q. YES.

A. WELL, FROM TIME TO TIME THEY WOULD HAVE DISAGREEMENT, YES, BUT IT WAS NOTHING MAJOR, YOU KNOW, IN MY -- IN FRONT OF ME.

Q. SO, THE GRANDCHILDREN -- HIS CHILDREN WERE ALWAYS IN SUNDAY SCHOOL.

A. ALWAYS. UH-HUH.

Q. ARE THEY STILL IN SUNDAY SCHOOL?

A. STILL IN SUNDAY SCHOOL.

MR. RUNYON: NO FURTHER QUESTIONS, YOUR HONOR.

MR. BAILEY: MAY IT PLEASE THE COURT?

CROSS-EXAMINATION

BY MR. BAILEY:

Q. MS. HEYWARD, IT'S MY UNDERSTANDING WHEN MR. ROGERS' CHILDREN ARE TAKEN TO SUNDAY SCHOOL THEY'RE TAKEN BY THE MOTHER OR THE GRANDPARENTS; IS THAT RIGHT?

A. UH-HUH. THAT'S CORRECT.

Q. MR. ROGERS DOESN'T CARRY THEM TO SUNDAY SCHOOL.

A. NOT SUNDAY SCHOOL. I WOULD SEE HIM COME IN DURING SERVICES, BUT I WOULDN'T SEE HIM BRING THE CHILDREN.

Q. AS FAR AS THE CHILDREN---

A. RIGHT.

Q. ---SOMEBODY ELSE WOULD CARRY THEM.

A. USUALLY.

Q. WOULD IT BE FAIR TO SAY THAT WHENEVER MR. ROGERS HAS OCCASION TO SEE YOU NEAR THE CHURCH OR SOMEWHERE HE'S PRETTY MUCH ON HIS BEST BEHAVIOR?

A. HE'S -- YOU KNOW, HE'S NORMAL. HE'S NOT LIKE PUTTING ON A FRONT, BUT HE'S WHO I KNOW, YOU KNOW, THE TIMOTHY THAT I KNOW.

Q. ALL RIGHT. YOU DON'T SEE HIM ON WEEKENDS, FRIDAY, SATURDAY NIGHT OR ANYTHING LIKE THAT.

A. NO.

MR. BAILEY: THANK YOU. THAT'S ALL I HAVE.

MR. RUNYON: COME DOWN, MS. HEYWARD. MS. BRYANT.

ADALEE BRYANT, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. RUNYON:

Q. MS. BRYANT, WHERE DO YOU LIVE, MA'AM?

A. IN ST. GEORGE.

Q. OKAY. AND DO YOU KNOW TIMOTHY ROGERS?

A. YES, I DO.

Q. HOW DO YOU KNOW HIM?

A. HE'S MY NEPHEW.

Q. ALL RIGHT. AND ARE YOU RELATED TO HIS MOTHER?

A. YES, I AM.

Q. AND YOU'RE HER SISTER.

A. YES.

Q. OKAY. NOW, HAVE YOU KNOWN TIMOTHY ALL HIS LIFE?

A. ALL HIS LIFE.

Q. OKAY. WHEN HE WAS GROWING UP, HOW WAS HE?

A. HE WAS A VERY GOOD CHILD WHEN HE WAS GROWING UP.

Q. WHAT ABOUT AFTER HE LEFT SCHOOL AND WENT TO WORK?

A. WELL, I WASN'T LIVING AROUND THERE WHEN HE LEFT SCHOOL.

Q. OKAY. WHAT ABOUT WHEN YOU CAME BACK TO -- CAME BACK IN CONTACT WITH HIM AFTER HE LEFT SCHOOL? DID YOU SEE HIM AT THAT TIME?

A. YES, I DID.

Q. DID YOU NOTICE WHETHER OR NOT HE HAD ANY PARTICULAR PROBLEMS?

A. NO, HE NEVER HAD A PROBLEM TO ME.

Q. OKAY. HE NEVER HAD A PROBLEM WITH YOU.

A. YES.

Q. DID YOU EVER SEE HIM WHEN HE WAS DRINKING?

A. YES, I HAVE.

Q. OKAY. DURING THAT PERIOD OF TIME, WHEN WAS THAT -- LET'S SAY BACK IN -- WOULD THAT HAVE BEEN BACK IN 1992?

A. I HAVE SEEN HIM A COUPLE OF TIMES DURING THEN.

Q. DURING THEN. ALL RIGHT. HOW WAS HE WHEN HE WAS DRINKING?

A. HE WAS MOSTLY QUIET WITH ME.

Q. AND DID HE -- DID HE -- DID YOU EVER SEE HIM PHYSICALLY DRINKING LIQUOR OR BEER?

A. NOT LIQUOR, BUT SOMETIME I SEE HIM DRINK BEER.

Q. OKAY. DID HE DRINK A LOT OF BEER?

A. NO, NOT AROUND ME.

Q. NOT AROUND YOU. DID HE EVER GET BELLIGERENT IN ANY WAY AROUND YOU?

A. NO.

Q. NOW, DID YOU EVER TALK TO HIM DURING THAT PERIOD OF TIME ABOUT HIS PROBLEMS?

A. EXPLAIN THAT A LITTLE BIT BETTER.

Q. WELL, FROM 1986 ON HE HAD A FEW RUN-INS WITH THE LAW, DIDN'T HE?

A. YES.

Q. AND DID YOU EVER DISCUSS THOSE THINGS WITH HIM?

A. WELL, I TALKED WITH HIM.

Q. AND IT DIDN'T HELP MUCH BECAUSE HE SEEMED TO JUST BE DRIFTING?

A. IT HELPED TO ME, I THINK. YOU KNOW, I TALKED TO HIM. HE LISTENED AND HE. . .

Q. ALL RIGHT. NOW, MS. BRYANT, ON OR ABOUT NOVEMBER 25TH, 1992, TIMOTHY GOT IN THIS TROUBLE HE'S HERE FOR, DIDN'T HE?

A. YES.
Q. DID YOU TALK TO HIM AFTER THAT DAY, AFTER NOVEMBER 25TH, AFTER THE SHOOTING?
A. I TALKED TO HIM BUT. . . (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)
Q. WELL, DID YOU TALK TO HIM ON THE TELEPHONE?
A. YES.
Q. ALL RIGHT. AND THIS IS BEFORE HE WAS ARRESTED IN TUSKEGEE, WAS IT, OR WAS IT NOT?
A. TUHEESGEE (SIC)?
Q. TUSKEGEE, ALABAMA.
A. OH, OKAY. YES.
Q. ALL RIGHT. DESCRIBE HIS DEMEANOR WHEN HE WAS TALKING TO YOU ABOUT THIS SHOOTING. WAS HE UPSET?
A. EMOTIONALLY YOU MEAN UPSET ABOUT IT? HE WAS VERY UPSET ABOUT IT.
Q. WELL, WHEN YOU SAY HE WAS VERY UPSET ABOUT IT, WHAT DO YOU MEAN?
A. WELL, WHEN YOU GROW AROUND -- YOU KNOW, RAISED UP WITH SOMEBODY YOU CAN TELL WHEN THEY'RE UPSET IN HOW THEY TALK BECAUSE IT WAS AN ACCIDENT.
MR. BAILEY: OBJECTION TO HER CONCLUSION. I'D MOVE THAT IT BE STRICKEN AND WOULD ASK---
THE COURT: YES, SIR. HOW SHE FEELS ABOUT IT DOESN'T HAVE ANYTHING TO DO WITH IT, COUNSELOR. YOU

CAN TESTIFY TO ANYTHING HE SAID.

BY MR. RUNYON:

Q. WHAT DID HE TELL YOU DURING THAT TIME YOU SPOKE TO HIM ABOUT HOW HE FELT AND ABOUT THE SHOOTING? WHAT DID HE TELL YOU?

A. HE TOLD ME THAT IT WAS AN ACCIDENT BECAUSE IT WAS AN ACCIDENT. HE DIDN'T MEAN -- YOU KNOW, IT WAS AN ACCIDENT.

MR. RUNYON: ALL RIGHT. NO FURTHER QUESTIONS, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BAILEY:

Q. MS. BRYANT, WHEN HE TOLD YOU THIS WAS AN ACCIDENT HE CALLED YOU UP FROM ALABAMA?

A. YES, HE DID.

Q. OKAY. AND AT THAT TIME HE WAS RUNNING?

A. I GUESS HE WAS. I DON'T KNOW WHERE HE WAS AT.

Q. WELL, YOU TALKED TO HIM ON THE TELEPHONE.

A. YES.

Q. AND DID HE TELL YOU WHERE HE WAS CALLING FROM?

A. I DIDN'T BOTHER TO ASK HIM WHERE HE WAS CALLING FROM.

Q. WAS HE CALLING LOOKING FOR HELP OR WHY DID HE

CALL YOU UP?

A. I GUESS HE NEEDED SOMEBODY TO TALK TO.

Q. ALL RIGHT. AND HE TOLD YOU HE SHOT A LITTLE GIRL; RIGHT?

A. NO, HE DIDN'T SAY IT WAS A LITTLE GIRL. HE JUST SAID HE -- IT WAS -- IT WAS AN ACCIDENT.

Q. ALL RIGHT. DID HE TELL YOU HOW MANY TIMES HE SHOT?

A. NO, HE DID NOT.

Q. HE DIDN'T SAY HE SHOT ONE TIME?

A. NO, HE DID NOT.

Q. DID HE SAY THAT HE SHOT UP IN THE AIR?

A. WE DIDN'T GO INTO THAT.

Q. HE DIDN'T GIVE YOU ANY DETAIL AT ALL.

A. NO, HE DID NOT.

Q. AND, OF COURSE, WHEN YOU TALKED TO HIM DIDN'T YOU TELL HIM THAT YOU BETTER COME ON BACK HERE AND TURN YOURSELF IN TO THE POLICE IF THIS WAS AN ACCIDENT?

A. I DON'T KNOW WHERE HE WAS AT WHEN HE WAS CALLING I SAID.

Q. OKAY. BUT WHEREVER HE WAS AT, YOU KNEW THAT HE HAD SHOT SOMEBODY AND HE WAS NOT IN POLICE CUSTODY. DID YOU TELL HIM TO TURN HIMSELF IN TO THE POLICE?

A. I DIDN'T THINK ABOUT THAT AT THAT TIME.

MR. BAILEY: ALL RIGHT. THAT'S ALL I HAVE.

MR. RUNYON: COME DOWN, MS. BRYANT. YOUR HONOR, WE'D HAVE NO FURTHER WITNESSES AT THIS TIME.

THE COURT: ALL RIGHT, SIR. ANYTHING?

MR. BAILEY: NO, SIR.

THE COURT: ALL RIGHT, SIR. MR. FOREMAN, MEMBERS OF THE JURY, I'M GOING TO SEND YOU TO LUNCH. I'M GOING TO AIM FOR -- WELL, I GUESS I BETTER GIVE YOU AN HOUR AND A HALF, 2:00. THAT WILL GIVE YOU AN HOUR AND A HALF. REMEMBER, DON'T DISCUSS THE CASE, OF COURSE. HOPE YOU HAVE A GOOD LUNCH AND SEE YOU BACK IN YOUR ROOM AT 2:00. HAVE A GOOD LUNCH.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO GO TO LUNCH AT 12:25 P.M.)

THE COURT: ALL RIGHT, SIR. LET'S. . . COURT'S IN RECESS TILL 2:00. COULD I SEE YOU ALL IN CHAMBERS FOR JUST A MOMENT?

MR. RUNYON: YES, SIR.

THE COURT: THANK YOU.

(WHEREUPON, A LUNCH BREAK WAS TAKEN.)

THE COURT: THANK YOU VERY MUCH. BE SEATED, PLEASE. ALL RIGHT. LET'S SEE. I HAD AN INCIDENT THAT OCCURRED DURING THE LUNCH HOUR. WHERE IS THAT PARTY?

FROM THE COURTROOM: OVER HERE, YOUR HONOR.

THE COURT: BRING HIM UP HERE, PLEASE, AND GIVE ME ONE OF THE OFFICERS WHO HEARD -- WHO OVERHEARD

IT.

(MR. ROBERT THOMPSON, JR., APPROACHES THE BENCH.)

THE COURT: ALL RIGHT, SIR. HOW ABOUT STAND RIGHT UP THERE AND LET'S YOU AND I TALK JUST A MINUTE, PLEASE, SIR?

MR. THOMPSON: YES, SIR.

THE COURT: COULD YOU GIVE ME YOUR NAME?

MR. THOMPSON: ROBERT THOMPSON, JR.

THE COURT: ROBERT THOMPSON, JR.?

MR. THOMPSON: YES, SIR.

THE COURT: ALL RIGHT, SIR. WHAT DOES YOUR DADDY DO? IS HE LIVING?

MR. THOMPSON: MY DADDY IS RETIRED FROM THE NAVY AND RETIRED FROM MCDUGAL YOUTH CORRECTION CENTER.

THE COURT: OH, ALL RIGHT. AN INCIDENT OCCURRED UP AT THE RESTAURANT AWHILE AGO WITH THE JURY AND I'M GOING TO ASK THE OFFICERS TO TELL ME WHAT HAPPENED AND THEN I WANT YOU TO TELL ME WHETHER OR NOT THAT'S CORRECT. ALL RIGHT, SIR. WOULD YOU TELL ME?

SHERIFF: YOUR HONOR, AS THE JURY WAS LEAVING THE WESTERN SIZZLIN HE MADE A---

THE COURT: PULL THAT MIKE AROUND.

SHERIFF: HE MADE THE REMARK TO TWO OF THE FEMALE JURORS: ARE YOU GOING TO GIVE HIM THE ELECTRIC

CHAIR?

THE COURT: ALL RIGHT.

SHERIFF: NO ANSWER WAS MADE. THE JURY KEPT MOVING.

THE COURT: ALL RIGHT, SIR. MR. THOMPSON, EACH JUROR HAD A GREEN BADGE ON, SO YOU KNEW IT WAS A JURY. COULD YOU TELL ME WHY YOU DID THAT?

MR. THOMPSON: SIR, YOUR HONOR, I DIDN'T -- I THOUGHT IT WAS ALL OVER WITH TO BE HONEST WITH YOU.

THE COURT: WELL, YOU ASKED THEM---

MR. THOMPSON: I DIDN'T ASK THEM WHAT THE VERDICT WAS GOING TO BE. I ASKED THEM WHAT THE VERDICT WAS, SIR. I ASKED THEM -- I SAID -- MY WORDS: "DID HE GET THE CHAIR?" I DIDN'T ASK HIM -- THE JUROR WAS HE GOING TO GET THE CHAIR. I ASKED -- I THOUGHT THE VERDICT WAS ALREADY OVER.

THE COURT: ALL RIGHT.

MR. THOMPSON: I'VE BEEN KEEPING UP WITH THE NEWS AND THE NEWSPAPER. I THOUGHT IT WAS OVER WITH, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. WHAT DO YOU DO FOR A LIVING?

MR. THOMPSON: I USED TO BE AN IRON WORKER. I'M DISABLED RIGHT NOW. I'M FIXING TO GO IN THE HOSPITAL FOR BACK SURGERY.

THE COURT: WHEN ARE YOU GOING?

MR. THOMPSON: THE WEEK OF THE 14TH OF THIS MONTH WHICH IS ON A MONDAY.

THE COURT: OKAY. HOW MUCH HAVE YOU HAD TO DRINK?

MR. THOMPSON: SIR?

THE COURT: HOW MUCH HAVE YOU HAD TO DRINK?

MR. THOMPSON: WELL, I'VE BEEN WORKING IN MY YARD ALL DAY. I DRANK ME A FEW BEERS, SIR.

THE COURT: ALL RIGHT. DID YOU DRIVE A CAR UP THERE? YOU CAME TO PICK UP YOUR WIFE?

MR. THOMPSON: YES, SIR.

THE COURT: WELL, YOU REALLY SHOULDN'T DRIVE A CAR IN YOUR SHAPE. I'M NOT GOING TO HOLD THAT AGAINST YOU, BUT I TELL YOU WHAT I'M GOING TO DO. I DON'T BELIEVE YOU IN THE FIRST PLACE. I THINK IT'S JUST LIKE THE OFFICER SAID. I'M GOING TO SEND YOU -- LET YOU GET A BREATHALYZER AND WHEN YOU FINISH WITH HIM PUT HIM IN SOME TYPE OF HOLDING CELL AND SOMETIME LATER THIS AFTERNOON I'LL DECIDE WHAT TO DO WITH HIM. ALL RIGHT. JUST FOLLOW THE OFFICERS FOR ME, PLEASE, AND GIVE HIM A BREATHALYZER IF YOU WILL FOR ME.

ALL RIGHT. ARE YOU READY TO GO FORWARD, GENTLEMEN? I THINK WHEN I BRING THE JURY OUT I'LL JUST ASK IF ANY OF THEM FEEL THEY'VE BEEN INFLUENCED IN ANY

WAY BY THAT REMARK. I DON'T THINK BUT A COUPLE OF THEM HEARD IT TO BE QUITE FRANK WITH YOU. IS THAT WHAT YOU'D LIKE FOR ME TO DO, MR. RUNYON?

MR. RUNYON: ABSOLUTELY, YOUR HONOR.

THE COURT: ALL RIGHT. NOW, IF FOR ANY REASON YOU HAVE ANY MATTERS OF LAW TO TAKE UP AFTER I ASK THEM THAT, THEN JUST TELL ME YOU HAVE A MATTER OF LAW TO TAKE UP. IF NOT, WE'LL PROCEED ON WITH THE SUMMATIONS. NOW, MR. ROGERS, AS I HAD TOLD YOU EARLIER, YOU HAVE A RIGHT TO MAKE ANY OPENING OR CLOSING REMARKS, AT THIS TIME WOULD BE THE CLOSING REMARKS TO THE JURY.

MR. RUNYON: HE -- AS A MATTER OF HOUSEKEEPING, AFTER MR. BAILEY MAKES HIS CLOSING MR. ROGERS WILL---

THE COURT: HE WANTS TO MAKE SOME REMARKS?

MR. RUNYON: ---MAKE A CLOSING STATEMENT AND THEN I'LL CLOSE.

THE COURT: ALL RIGHT, SIR. MR. LEIENDECKER, ARE YOU GOING TO MAKE ANY REMARKS?

MR. LEIENDECKER: NO, SIR, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. BRING THE JURY OUT FOR ME. LET ME TELL Y'ALL SOMETHING BACK THERE BEFORE THE JURY COMES OUT AND I HEARD IT AWHILE AGO ALSO. SOMEBODY BACK THERE HAS GOT BUBBLE

GUM AND YOU'RE PRETTY EXPERIENCED AT IT BECAUSE I KEEP HEARING THOSE POPS BACK THERE. SO, I REALLY WOULD APPRECIATE YOU TAKING THAT BUBBLE GUM OUT OF YOUR MOUTH. THANK YOU VERY MUCH.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 2:07 P.M.)

THE COURT: NOW, MR. FOREMAN, MEMBERS OF THE JURY, I HOPE YOU HAD A GOOD LUNCH. WHILE YOU WERE AT LUNCH, I HAD A REPORT THAT SOMETHING OCCURRED. A PRETTY WELL INTOXICATED FELLOW - BECAUSE I JUST HAD HIM BEFORE ME - HAD SOME REMARKS TO SAY TO SOME OF YOU ALL AT LEAST AND I APPRECIATE YOU TELLING THE OFFICERS ABOUT IT. SOMETHING -- I FORGOT WHAT THE WORDS WERE, BUT I JUST ASK YOU THIS: IS THERE ANY MEMBER OF THE JURY WHO FEELS THEY WERE INFLUENCED IN ANY WAY BY THOSE REMARKS? IF SO, WOULD YOU HOLD YOUR HAND UP AND YOU DON'T HAVE TO. . . ALL RIGHT. THANK YOU VERY MUCH. DOESN'T APPEAR TO BE. ANYTHING FURTHER FROM THE STATE?

MR. BAILEY: NOTHING FROM THE STATE AT THIS TIME.

THE COURT: FROM THE DEFENSE?

MR. RUNYON: NOTHING FROM THE DEFENSE, YOUR HONOR.

THE COURT: THANK YOU VERY MUCH. NOW, MR.

FOREMAN, MEMBERS OF THE JURY, IT NOW BECOMES TIME FOR THE ATTORNEYS TO MAKE THEIR SUMMATIONS. THE SOLICITOR IS GOING TO BE FIRST. HE WILL SUMMARIZE HIS CASE TO YOU, FOLLOWED BY -- MR. ROGERS WILL MAKE SOME REMARKS TO YOU AND THEN FOLLOWED BY MR. RUNYON AND I'LL GIVE YOU SOME INSTRUCTIONS ON THE LAW. SO, PAY CAREFUL ATTENTION AND AS ALWAYS, AS I TOLD YOU, FEEL FREE IF ANY OF YOU DECIDE YOU WANT TO TAKE A LITTLE BREAK, MR. FOREMAN, YOU JUST TELL ME ABOUT IT AND WE'LL BE GLAD TO DO THAT. ALL RIGHT, SIR. SOLICITOR?

MR. BAILEY: THANK YOU, YOUR HONOR. LADIES AND GENTLEMEN, FOR THE LAST TIME HERE I WANT TO THANK YOU AGAIN FOR YOUR ATTENTION THROUGHOUT THIS TRIAL. THE FACT THAT Y'ALL DELIBERATED FOUR HOURS BEFORE YOU REACHED YOUR VERDICT, THAT YOU CAME BY OUT HERE AND ASKED FOR FURTHER INSTRUCTIONS AND UNTIL YOU WERE SATISFIED THAT YOU FULLY UNDERSTOOD THE LAW INDICATES TO EVERYBODY IN THIS COURTROOM HOW SERIOUSLY YOU'RE TAKING YOUR RESPONSIBILITIES, AND I THINK I CAN SPEAK FOR EVERYBODY HERE THAT WE DO DEEPLY APPRECIATE WHAT YOU'RE GOING THROUGH AND THE JOB YOU HAVE DONE AND THE JOB THAT YOU HAVE TO DO.

THIS IS THE LAST OPPORTUNITY I'LL GET TO SPEAK TO YOU BEFORE YOU DELIBERATE AND REACH A VERDICT AND THE SENTENCE BECAUSE, AGAIN, UNDER THE RULES THAT

WE FOLLOW THE DEFENSE GOES LAST. AS I SAID IN MY OPENING STATEMENT THIS MORNING, AT THIS STAGE GUILT OR INNOCENCE IS NO LONGER AN ISSUE BECAUSE EACH AND EVERY ONE OF YOU UNANIMOUSLY FOUND TIMOTHY ROGERS GUILTY OF MURDER WITH MALICE AFORETHOUGHT OF THAT NINE-YEAR-OLD CHILD. THE ONLY DECISION AGAIN IS LIFE OR DEATH. THAT IS YOUR DECISION BASED ON THE EVIDENCE YOU'VE HEARD HERE AND THE LAW THE JUDGE IS GOING TO GIVE YOU. YOU MUST DETERMINE BASED ON THE EVIDENCE THE APPROPRIATE PUNISHMENT TO FIT WHAT OCCURRED HERE, TO FIT THE CRIME.

WHEN EACH OF Y'ALL WENT THROUGH THE JURY QUALIFICATION PROCESS, YOU PUT YOUR LEFT HAND ON THE BIBLE. YOU RAISED YOUR RIGHT HAND AND YOU SWORE TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH. AND I ASKED ALL OF YOU, AFTER JUDGE BROWN QUESTIONED YOU, WHETHER OR NOT UNDER THE APPROPRIATE CIRCUMSTANCES YOU COULD BRING BACK THE DEATH PENALTY AND EACH OF YOU SAID THAT YOU COULD UNDER THOSE APPROPRIATE CIRCUMSTANCES. AND I ASKED EACH OF YOU IF YOU COULD SIGN YOUR NAME TO THAT DEATH VERDICT FORM IF YOU FELT LIKE THAT WAS A DEATH PENALTY CASE, AND EACH OF YOU SAID YOU COULD DO IT. AND I ASKED WHETHER EACH OF YOU COULD COME OUT HERE AND ANNOUNCE THAT VERDICT IN OPEN COURT IF THAT WAS YOUR DECISION AND YOU EACH SAID

YOU COULD DO IT.

SO, THE ISSUE OF WHETHER OR NOT THE DEATH PENALTY IN ITSELF IS RIGHT OR WRONG, WHETHER WE OUGHT TO HAVE A DEATH PENALTY IN THIS STATE OR NOT, IS NO LONGER AN ISSUE BECAUSE EACH OF Y'ALL HAVE SAID THAT YOU COULD DO IT. IT IS PART OF THE LAW OF THE STATE OF SOUTH CAROLINA. THE ONLY QUESTION IS WHETHER THIS CASE IS AN APPROPRIATE CASE FOR THE DEATH PENALTY. AND I TOLD YOU THAT THE EVIDENCE IN THIS CASE WOULD BE IN THREE DIFFERENT CATEGORIES: THE CIRCUMSTANCES OF THE CRIME WHICH Y'ALL HAVE HEARD A LOT ABOUT THROUGHOUT THE LAST WEEK, THE CHARACTERISTICS OF TIMOTHY ROGERS THAT Y'ALL HAVE HEARD SOMETHING ABOUT TODAY, AND THE IMPACT, THE VICTIM IMPACT ON STEPHANIE B[redacted]'S FAMILY.

AND I WANT TO SAY ONE THING. WHEN I TALK ABOUT VICTIM IMPACT, WE ALL FEEL SORRY FOR BOTH FAMILIES INVOLVED HERE. YOU'VE HEARD FROM BOTH FAMILIES, THE ROGERS FAMILY AND THE B[redacted] FAMILY. BUT THE VICTIMS ARE ON THIS SIDE OF THE COURTROOM HERE. THE B[redacted] FAMILY ARE THE VICTIMS HERE. THAT'S THE VICTIM IMPACT EVIDENCE.

LADIES AND GENTLEMEN, THE FACTS OF THIS CASE SPELL OUT A COURSE OF CONDUCT SO DEVOID OF CONSCIENCE, SO RECKLESS AND BENT ON MALICE THAT THE JUDGE TOLD YOU ABOUT AND SO LACKING IN HUMAN COMPASSION THAT IT

LITERALLY CRIES OUT FOR THE IMPOSITION OF THE DEATH PENALTY IN THIS CASE. WHAT THIS MAN HERE DID WAS A BRUTAL, SENSELESS, STUPID MURDER OF AN INNOCENT NINE-YEAR-OLD GIRL THAT HAD NEVER DONE HIM A BIT OF HARM.

HE WOULD HAVE YOU BELIEVE THIS WAS SOME TYPE OF AN ACCIDENT. LADIES AND GENTLEMEN, AN ACCIDENT IS IF I'M WALKING UP TO THIS TABLE, THE PODIUM, AND TRIP AND FALL DOWN OR IF I'M DRIVING TO THE COURTHOUSE AND I STOP AT A RED LIGHT AND BUMP THE CAR IN FRONT OF ME BECAUSE I'M NOT PAYING ATTENTION. WHEN YOU GET OUT THERE AND YOU GET DRUNK AND YOU GET A LOADED SEMIAUTOMATIC PISTOL AND YOU GO OUT TO A STORE AND PICK FIGHTS WITH PEOPLE AND PUT THAT GUN ON A MAN'S HEAD AND THREATEN TO KILL HIM WHILE HIS LITTLE GIRL CRIES IN FEAR AND THEN YOU FIRE A SHOT RIGHT SMACK INTO THE MIDDLE OF THAT BACK WINDOW AND KILL THAT CHILD, THAT IS NOT AN ACCIDENT. WE'RE ACCOUNTABLE FOR WHAT WE DO IN THIS SOCIETY.

MR. ROGERS SAYS HE FIRED ONE SHOT IN THE AIR TO SCARE THESE PEOPLE. EVERY BIT OF EVIDENCE Y'ALL HAVE HEARD FROM THE WITNESS STAND, EXCEPT FROM ROGERS, MAKES THAT STATEMENT A LIE. YOU WOULD HAVE TO DISBELIEVE EVERYTHING YOU HEARD INCLUDING THE S.L.E.D. BALLISTICS MAN, EARL ASBELL, THAT FOUND THESE TWO

MATCHING 380 SHELL CASINGS, CARVER, MIKE B[redacted], ISAIAH JENNINGS, MR. ROBINSON, MS. LINCOLN, THE TEEN-AGE GIRL, assault victim , WHO WAS WITH THEM. YOU WOULD HAVE TO DISBELIEVE ALL OF THOSE PEOPLE BECAUSE THEY ALL EITHER HEARD OR SAW TWO SHOTS. THE FIRST SHOT WAS FIRED, ACCORDING TO THE EVIDENCE, IN THIS WHEEL. THE MAN KNEW THE GUN WORKED AND THE SECOND SHOT WENT IN THIS BACK WINDOW AND KILLED THAT CHILD. IT'S NOT AN ACCIDENT.

WHEN WE COME TO COURT HERE, THE JUDGE IS IN HIS ROBE AND WE ALL HAVE OUR COATS AND TIES ON AND WE'RE ALL ON OUR BEST BEHAVIOR AND OUR BEST DEMEANOR AND WE SAY "YES, SIR" AND "NO, SIR" AND IT'S A CLINICAL, CLEAN ATMOSPHERE THAT WE HAVE IN COURT. IT'S AN ORDERLY ATMOSPHERE AND IN THIS ATMOSPHERE IT'S JUST DIFFICULT FOR ME TO CONVEY TO YOU THE HORROR OF WHAT TOOK PLACE THAT THANKSGIVING WEEKEND IN 1992. YOU JUST HAVE TO USE YOUR MIND'S EYE TO IMAGINE WHAT MR. B[redacted] AND WHAT THAT LITTLE GIRL WENT THROUGH AND WHAT JIMMY CARVER WENT THROUGH WHEN SHE WAS SHOT IN THE BACK OF THE HEAD AND SLUMPED AGAINST HER FATHER AND LITERALLY -- DIDN'T DIE IN HIS ARMS, BUT SHE DIED THE NEXT DAY AND THERE'S NO EXCUSE FOR IT. THERE'S NO EXCUSE THAT ANYBODY CAN FORGIVE YOU FOR WHAT HAPPENED REGARDLESS OF WHAT DEFENSE WITNESSES HAVE SHOWN YOU.

Y'ALL HEARD THE FACTS. I'M NOT GOING THROUGH THE FACTS AGAIN, BUT I WANT YOU TO RECALL THE WORDS THIS MAN USED WHEN HE GOT OFF THAT TELEPHONE. "I'LL GET THIS GUY" WHEN HE DROPPED THE PHONE. HE GOES OVER THERE, PUTS THE GUN TO MIKE B[redacted]'S HEAD, AND ALL MIKE B[redacted] IS TRYING TO DO IS TAKE HIS DAUGHTER AWAY FROM THAT PLACE OF DANGER. PUTS THAT GUN TO HIS HEAD AND SAYS "I'LL KILL YOU" BEFORE HE MAKES THAT FIRST SHOT. THEN LATER HE FIRES THAT SECOND FATAL SHOT.

AND DO YOU REMEMBER WHAT THE WITNESSES SAID -- WHAT MR. B[redacted] AND MR. ANTHONY RILEY WHEN THEY WERE TALKING THERE TOLD Y'ALL WHEN THE GROUP FIRST WALKED UP THERE? THAT ROGERS WAS GOING OVER TO THE TELEPHONE AND HE TOLD DAXTON PATTERSON, "YOU WATCH THESE MOTHER FUCKERS AND IF THEY CAUSE ANY PROBLEM YOU LET ME KNOW." AND YOU RECALL WHAT ANTHONY RILEY SAID? AS THOSE TWO PEOPLE RAN DOWN THE STREET KNOWING THEY HAD SHOT THAT CHILD, AFTER THEY KNEW IT, BECAUSE MIKE B[redacted] GOT OUT OF THAT TRUCK COVERED WITH BLOOD AND SAYS, "YOU SHOT MY DAUGHTER." AND AS THEY RUN DOWN THE STREET ONE OF THEM SAYS, "DID YOU GET THE MOTHER FUCKER?" AND THE OTHER ONE SAYS, "YEAH, I GOT THE MOTHER FUCKER." AND HE WANTS TO COME IN HERE IN THIS COURT AND TELL YOU THIS IS AN ACCIDENT.

JUDGE BROWN IS GOING TO TALK TO YOU ABOUT

AGGRAVATING CIRCUMSTANCES. YOU CANNOT BRING BACK THE DEATH PENALTY UNLESS YOU FIND THE STATE HAS PROVEN AT LEAST ONE AGGRAVATING CIRCUMSTANCE AND WE'VE ALLEGED TWO AGGRAVATING CIRCUMSTANCES HERE. THE FIRST IS THE MURDER OF A CHILD UNDER THE AGE OF ELEVEN YEARS OLD. YOU HAVE IN EVIDENCE STEPHANIE B[redacted]'S BIRTH CERTIFICATE. IT'S UNCONTRADICTED SHE WAS NINE YEARS OLD AT THE TIME OF HER DEATH. THAT STATUTORY AGGRAVATING CIRCUMSTANCE IS UNDISPUTED. WITH THAT PROOF ALONE YOU HAVE IT IN YOUR POWER IF YOU WANT TO TO BRING BACK THE DEATH PENALTY.

THE SECOND AGGRAVATING CIRCUMSTANCE THAT THE STATE INTRODUCED EVIDENCE ON WAS THAT STEPHANIE B[redacted] WAS KILLED WHEN ROGERS KNOWINGLY CREATED A GREAT RISK OF DEATH TO MORE THAN ONE PERSON IN A PUBLIC PLACE BY MEANS OF A WEAPON WHICH NORMALLY WOULD BE HAZARDOUS TO THE LIVES OF MORE THAN ONE PERSON. THAT ELEMENT HAS BEEN MET. YOU'VE GOT THREE PEOPLE IN THE CAB OF A PICKUP TRUCK IN A PUBLIC PLACE, A PARKING LOT, AND THERE'S A SHOT FIRED FROM A SEMIAUTOMATIC PISTOL AGAIN RIGHT INTO THE BACK WINDOW OF THAT TRUCK, RIGHT INTO THE MIDDLE OF THE BACK WINDOW OCCUPIED BY THREE PEOPLE. IT WOULD BE ALMOST IMPOSSIBLE IF SOMEBODY WASN'T HIT.

SO, AGAIN, THE PROOF OF EITHER ONE OF THESE

STATUTORY CIRCUMSTANCES -- I DON'T HAVE TO PROVE BOTH. EITHER ONE IS SUFFICIENT FOR YOU TO BRING BACK A VERDICT FOR THE DEATH PENALTY. WHEN YOU MAKE THAT LIFE AND DEATH DECISION - AND I'M NOT GOING TO STAND UP HERE AND TELL YOU IT'S AN EASY DECISION BECAUSE I KNOW IT'S THE HARDEST DECISION Y'ALL ARE GOING TO HAVE TO MAKE IN YOUR LIVES - YOU NEED TO LOOK AT THIS MAN'S CRIMINAL RECORD, NOT AS A STATUTORY AGGRAVATING CIRCUMSTANCE BUT AS A CHARACTERISTIC OF THE DEFENDANT AND THIS IS IN EVIDENCE.

WE READ THE STIPULATION THAT MR. RUNYON AND I BOTH AGREED. THIS IS HIS CRIMINAL CONVICTION RECORD. I WON'T GO OVER IT AGAIN. IT'S NINE CONVICTIONS, SOME FAIRLY INSIGNIFICANT AND SOME MORE IMPORTANT. 1986, THIS MAN WHO CLAIMS THAT HE ACCIDENTALLY SHOT THIS LITTLE GIRL IS CONVICTED IN THIS VERY SAME ROOM THAT Y'ALL ARE IN NOW FOR CARRYING A PISTOL BY A JUDGE SITTING JUST WHERE JUDGE BROWN IS. 1988, HE'S CONVICTED OF GRAND LARCENY. HE GOES TO PRISON FOR THAT. 1990, CONVICTED OF POSSESSION OF COCAINE. THEN IN 1992 - THE CONVICTION ACTUALLY TOOK PLACE AFTER THAT - BUT THE OFFENSE TOOK PLACE IN 1992. TWO CONVICTIONS FOR CRIMINAL SEXUAL CONDUCT WITH A MINOR. THAT'S A TEEN-AGE GIRL THAT HE WAS INVOLVED WITH AFTER HE WAS MARRIED AND HAD ALL THESE CHILDREN THAT HIS WITNESSES

TOLD YOU ABOUT. AND HE WAS SENT TO PRISON FOR GRAND LARCENY IN 1988 AND LATER WAS RETURNED TO PRISON. AND I REALLY SHOULDN'T USE THE WORD PRISON BECAUSE THEY DON'T CALL THEM PRISONS ANYMORE. THEY CALL THEM CORRECTIONAL INSTITUTES. YOU RECALL A CORRECTIONAL OFFICER THERE TESTIFIED THAT HE WAS AT BROAD RIVER CORRECTIONAL INSTITUTE.

THE IDEA IS THAT PRISON IS NOT SUPPOSED TO BE THERE TO PUNISH. THEY'RE THERE TO CORRECT YOU. THEY'RE TO REFORM YOU. WHEN YOU COME OUT OF PRISON, YOU OUGHT TO BE STRAIGHTENED OUT AND BE A BETTER PERSON AND BE REHABILITATED. THE PROBLEM WITH MR. ROGERS HERE IS THAT HE WENT TO PRISON. HE WASN'T CORRECTED BECAUSE WHEN HE GOT OUT OF PRISON HE WENT OUT AND HE GOT DRUNK AND HE MURDERED A NINE-YEAR-OLD GIRL. HIS STAY IN PRISON DIDN'T TEACH HIM ANYTHING.

AND WHEN Y'ALL THINK ABOUT THAT CHOICE, THAT CHOICE BETWEEN THE DEATH PENALTY AND LIFE IN PRISON, IT'S FAIR FOR Y'ALL TO ASK YOURSELVES: HOW DID THIS MAN ADJUST TO PRISON WHEN HE'S BEEN IN PRISON PREVIOUSLY? WAS HE A MODEL INMATE? DID HE TAKE ADVANTAGE OF THE BENEFITS THE PRISON WOULD OFFER HIM TO STRAIGHTEN HIMSELF OUT? OBVIOUSLY HE DIDN'T OR HE WOULDN'T BE HERE TODAY. IN THE CONFINES OF THE PRISON SYSTEM HE HAD A PROCEEDING INVOLVING ASSAULT AND

BATTERY WHERE HE GOT A THREE-MONTH LOCK-DOWN. HE WAS PUT IN PRISON WITHIN THE PRISON. SO, HERE'S A MAN THA' CAN'T EVEN BE CONTROLLED IN THE CONFINES OF THE PRISON ENVIRONMENT BECAUSE OF HIS VIOLENCE.

NOW, JUDGE BROWN IS GOING TO TELL YOU THAT YOU CAN CONSIDER ANY STATUTORY MITIGATING CIRCUMSTANCE THAT YOU MAY FIND FROM THE EVIDENCE, ANY NONSTATUTORY MITIGATING CIRCUMSTANCE THAT YOU FIND FROM THE EVIDENCE OR YOU CAN CONSIDER ANYTHING AT ALL THAT YOU WANT TO. YOU CAN RENDER A LIFE SENTENCE FOR ANY REASON OR NO REASON AT ALL AS AN ACT OF MERCY. BUT EVEN IF YOU FIND EVERY MITIGATING CIRCUMSTANCE THAT THEY'RE GOING TO TELL YOU ABOUT OR YOU MAY OTHERWISE FIND, IF YOU ALSO FIND AT LEAST ONE AGGRAVATING CIRCUMSTANCE YOU MAY BRING BACK THE DEATH PENALTY IN YOUR DISCRETION.

NOW, WHEN I SIT DOWN HERE IN A FEW MINUTES THE DEFENSE WILL GET UP HERE AND THEY'LL TAKE ISSUE WITH WHAT I SAID AND THEY'RE GOING TO BLAME OTHER PEOPLE. THEY'LL TAKE SOME BLAME FOR MR. ROGERS, BUT THEY'RE GOING TO BLAME OTHER FOLKS, TOO. THEY'RE GOING TO BLAME THE FACT THAT HIS MOTHER WASN'T MARRIED WHEN HE WAS BORN AND GREW UP AND HE HAD A STEPFATHER AND RAN WITH THE WRONG CROWD AND GOT OFF TO A BAD START AND HAD TROUBLE WITH THE LAW AS A CHILD AND THIS, THAT, AND THE OTHER.

BUT THERE'S ONE PERSON IN THIS COURTROOM THAT'S RESPONSIBLE FOR WHAT HAPPENED HERE. THE DEFENSE ATTORNEYS WOULD HAVE YOU THINK THAT MIKE B[redacted] OVER HERE IN HIS GRIEF BECAUSE HE HAD A FEW BEERS SHOULD SHARE IN THAT RESPONSIBILITY. WELL, THAT'S ABSURD. THE ONE MAN RESPONSIBLE FOR WHAT HAPPENED HERE, THE ONLY MAN THAT HAD A GUN IN HIS HAND, THE ONLY MAN THAT SHOT A NINE-YEAR-OLD GIRL IS THIS MAN RIGHT HERE, THIS DEFENDANT. AND WHAT I'M TALKING ABOUT AGAIN IS ACCOUNTABILITY. WE CAN'T HAVE A SOCIETY OF LAWS UNLESS PEOPLE ARE ACCOUNTABLE FOR THEIR CONDUCT.

NOW, I'M NOT A SOCIAL WORKER OR A PSYCHIATRIST OR A DEPARTMENT OF CORRECTIONS OFFICIAL OR ANYTHING OF THAT NATURE. I'M A PROSECUTOR. I CAN'T TELL YOU HOW THIS MAN GOT TO BE THE WAY HE IS TODAY, WHY HE DID WHAT HE DID ON NOVEMBER 25TH. THAT ISN'T MY PROBLEM TO TELL YOU HOW HE GOT HERE OR TRY TO EXPLAIN IT TO YOU. THAT'S NOT YOUR PROBLEM. THE QUESTION IS NOT HOW HE GOT TO BE THE WAY HE IS TODAY. THE QUESTION IS: WHAT DO YOU DO WITH A PERSON LIKE THIS ONCE HE'S IN OUR MIDST WITH THOSE TWO CHOICES?

I WOULD ASK YOU TO USE YOUR COMMON SENSE. NOTHING, ABSOLUTELY NOTHING, INCLUDING HIS ACCIDENT THEORY THAT'S COME OUT IN THE COURSE OF THIS TRIAL IS SUFFICIENT TO JUSTIFY ANYTHING LESS THAN THE DEATH

PENALTY IN THIS CASE. THIS MAN HERE HAS FOREVER DEPRIVED MIKE AND MELINDA B[redacted] OF THEIR ONLY CHILD. THEY'RE SEPARATED NOW. THEY'LL NEVER HAVE ANOTHER CHILD TOGETHER. MIKE B[redacted]'S IN COUNSELING BECAUSE OF THE IMPACT OF STEPHANIE'S DEATH. MELINDA B[redacted] HAS BEEN IN COUNSELING. YOU CAN SEE ON THEIR FACES AS THEY TESTIFIED THE GRIEF THEY'RE GOING THROUGH, THAT THEY'VE GONE THROUGH, AND THEY'LL GO THROUGH FOR THE REST OF THEIR LIVES. THERE WON'T BE A DAY IN THEIR LIVES FROM THIS POINT ON OUT THAT THAT WON'T BE IN THEIR MIND SOMEWHERE BECAUSE THIS MAN HERE SENSELESSLY TOOK THEIR DAUGHTER'S LIFE FOR NO REASON.

HE HAS DEPRIVED THESE PEOPLE OF THEIR ONLY CHILD. HE'S DEPRIVED THEM OF THE RIGHT TO EVER SEE THAT CHILD GRADUATE FROM HIGH SCHOOL, GO ON HER FIRST DATE, GROW UP, MARRY, HAVE CHILDREN, TO LIVE. HE HAS WIPED THAT OUT TOTALLY FOR NO REASON. SHE IS DEAD AND SHE'LL BE DEAD FOREVER. IF HER FAMILY WANTS TO VISIT HER, THEY GO TO THE CEMETERY TO SEE HER. THAT'S AS CLOSE AS THEY CAN GET TO A VISIT.

MR. ROGERS GOT UP HERE AND HE TOLD YOU A LITTLE BIT ABOUT LIFE IN PRISON. MR. RUNYON ASKED HIM A FEW QUESTIONS ABOUT IT AND I ASKED HIM A QUESTION ABOUT IT, TOO. LIFE IN PRISON MEANS HE'S IN A CELL WITH SOME OTHER PERSON. HE SAID THERE'S A TELEVISION

THERE, THAT THERE'S A LIBRARY THERE WHERE HE CAN GO LOOK AT SOME BOOKS. THERE'S A WEIGHT ROOM WHERE HE CAN GO LIFT WEIGHTS. IF HE WANTS TO PLAY BASKETBALL HE CAN PLAY BASKETBALL. IN THE MEANTIME, STEPHANIE B[redacted] IS SIX FEET IN THE GROUND.

AND I SUBMIT TO YOU THAT UNDER THE FACTS OF THIS CASE THAT THAT MAN DESERVES THE ULTIMATE PENALTY AUTHORIZED BY THE STATE OF SOUTH CAROLINA AND THAT'S TO BE PUT TO DEATH BY ELECTROCUTION. THE WAY A SOCIETY TREATS ITS CHILDREN OR OLD PEOPLE OR HELPLESS PEOPLE IS AN INDICATION OF WHETHER YOU LIVE IN A CIVILIZED SOCIETY OR NOT, AND I WOULD ASK YOU TO HAVE YOUR VERDICT SEND A MESSAGE THAT THE PEOPLE OF DORCHESTER COUNTY ARE NOT GOING TO TOLERATE A DRUNKEN EX-CONVICT SENSELESSLY MURDERING A NINE-YEAR-OLD CHILD THAT'S OUT THERE EATING A SANDWICH IN HER FATHER'S PICKUP TRUCK WEARING A JUST-SAY-NO TEE SHIRT. THE ONLY WAY YOU CAN SEND THAT MESSAGE OUT LOUD AND CLEAR IS WHEN YOU MAKE THAT CHOICE BETWEEN LIFE IN PRISON OR THE DEATH PENALTY TO COME BACK WITH THE DEATH PENALTY.

WHATEVER VERDICT YOU REACH, YOU'VE GOT TO BE ABLE TO COME OUT HERE IN THE COURTROOM AND LOOK MR. ROGERS IN THE EYE AND LET HIM KNOW JUSTICE HAS BEEN DONE, BUT YOU'VE ALSO GOT TO BE ABLE TO LOOK IN THE EYES OF MIKE B[redacted], MELINDA B[redacted], PATSY BUNCH AND

LET THEM KNOW JUSTICE HAS BEEN DONE IN THEIR CASE. THE DEFENSE IS GOING TO GET UP HERE IN A FEW MINUTES AND THEY'RE GOING TO BEG YOU FOR MERCY. THEY'RE GOING TO SAY, "DON'T TAKE THIS MAN'S LIFE. THAT'S NOT GOING TO SOLVE ANYTHING." I'M NOT ASKING FOR MERCY. I'M ASKIN FOR JUSTICE. YOU CAN'T GIVE HIM MERCY AND GIVE JUSTICE TO THIS CASE AT THE SAME TIME. IT CANNOT BE DONE.

THE PERSON DESERVING OF MERCY WAS STEPHANIE B[redacted] AND SHE CERTAINLY DIDN'T GET IT AT THE HANDS OF TIMOTHY ROGERS. FOR YOU TO HAVE JUSTICE, THE PUNISHMENT MUST FIT THE CRIME AND A SENTENCE OF LIFE IN PRISON IS JUST INSUFFICIENT TO FIT THE CRIME THIS MAN HAS COMMITTED. SO, WHEN THESE LAWYERS GET UP HERE AND ASK YOU FOR MERCY, REMEMBER THEY HAVEN'T DONE ANYTHING. THEY HAVEN'T KILLED ANYBODY. WHEN THEY BLAME ROGERS' FAMILY LIFE, ROGERS' FAMILY DIDN'T KILL ANYBODY. IF THEY BLAME THE PRISON SYSTEM, SOCIETY, REMEMBER THAT THEY DIDN'T -- SOCIETY IS NOT RESPONSIBL FOR WHAT HE DID. WE'RE ALL RESPONSIBLE FOR OUR OWN CONDUCT.

AND BY HIS RECORD TIMOTHY ROGERS HAS SHOWN THAT HE CANNOT SAFELY EXIST IN THIS SOCIETY INSIDE OR OUTSIDE OF THE PRISON SYSTEM. LOOK AT HIS CONVICTION RECORD. THAT WILL BE WITH YOU IN THE JURY ROOM. AFTEF EXTENSIVE QUESTIONING THE TWELVE, COUNTING THE

ALTERNATES, FOURTEEN OF Y'ALL WERE CHOSEN OUT OF 260 POTENTIAL JURORS BY BOTH SIDES AS BEING FAIR AND IMPARTIAL JURORS. AGAIN, EACH OF YOU RAISED YOUR HAND AND YOU SAID UNDER THE PROPER CIRCUMSTANCES I CAN BRING BACK THAT DEATH VERDICT. I CAN SIGN MY NAME. I CAN COME OUT INTO OPEN COURT AND ANNOUNCE IT, AND ON BEHALF OF THE STATE OF SOUTH CAROLINA I'M ASKING THAT IN THIS CASE WITH THIS DEFENDANT THAT YOU DO YOUR DUTY AND COME BACK WITH A VERDICT OF DEATH BY ELECTROCUTION. THANK YOU.

MR. ROGERS: I ONLY HAVE ONE -- I DON'T HAVE TOO MUCH TO SAY. I CAN SAY THAT I NEVER MEANT TO HARM THE B[redacted] FAMILY AND I NEVER WOULD HAVE MEANT TO HARM OR HURT ANY CHILD NINE YEARS OLD. I AIN'T BEEN THE BEST PERSON IN THE WORLD, BUT I KNOW AND GOD KNOWS THAT I NEVER MEANT TO KILL OR HURT OR BRING ANY HURT TO ANYBODY OF THIS SUCH IN MY ENTIRE LIFE. AND I ASK THE JURY TO SPARE MY LIFE AND NOT SEND ME TO THE ELECTRIC CHAIR FOR AN ACCIDENT THAT I'M ADMITTING I WAS WRONG AND THAT HAPPENED ON NOVEMBER THE 25TH, 1992. THANK YOU.

MR. RUNYON: MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I ALREADY TOLD YOU I WASN'T A VERY GOOD COLLEGE STUDENT, BUT THE DANGER OF A LIBERAL ARTS EDUCATION IS IS THAT YOU DO PICK UP A FEW THINGS

AND WHAT MR. BAILEY DID WAS HE MISQUOTED NOT THE MARK OF -- CIVILIZATION IS NOT MARKED BY HOW YOU TREAT YOUR CHILDREN AND OLD PEOPLE AND WHAT HAVE YOU. THE DIRECT QUOTE IS HOW YOU TREAT YOUR PRISONERS. OKAY?

NOW, WE'RE ONE OF THE FEW CIVILIZED COUNTRIES IN THE WORLD THAT STILL HAS THE DEATH PENALTY. DEATH PENALTY IS NOT AN ISSUE. I DON'T KNOW HOW I FEEL ABOUT IT, BUT THE SIMPLE FACT OF THE MATTER IS WE GOT IT. OKAY? NOW, THE QUESTION IS IS DO YOU APPLY IT IN THIS CASE? WELL, YOU KNOW, MR. BAILEY SAYS, WELL, WE SHOW THESE TWO AGGRAVATING CIRCUMSTANCES AND, THEREFORE, YOU CAN FIND AND IMPOSE DEATH. WELL, YOU CAN. THAT'S THE LAW. BUT I CAN GO BLOW UP THE WORLD TRADE CENTER AND GO TO PRISON FOR LIFE, KILL PEOPLE. OF COURSE, THAT'S A DIFFERENT JURISDICTION POSSIBLY, BUT THE SIMPLE FACT OF THE MATTER IS IS HOW DO YOU DECIDE WHAT TO DO WITH THIS MAN?

LET ME EXPLAIN SOMETHING TO YOU. NO, SO MUCH FOR WHAT THE STATE THINKS ABOUT THE FAMILY OF THE DEFENDANT. YOU KNOW, THEY'RE NOT VICTIMS. THEY'RE NOT HURT BY THIS PROCEEDING. THEY'RE NOT HURT BY WHAT HE DID. THEY CERTAINLY ARE. THEY STOOD UP HERE AND TOLD YOU HOW THEY WERE AND, I MEAN, THAT'S A PART OF THE PROBLEM, TOO. LET'S TALK ABOUT WHY YOU HEARD FROM THE FAMILY, YOU KNOW. NOBODY IS BLAMING WHAT HE DID ON THE

FACT THAT HIS MOTHER WASN'T MARRIED ORIGINALLY. THAT'S AN INSULT. THAT WOMAN RAISED THESE THREE BOYS UNTIL SHE MET A GOOD MAN. YOU HEARD HIM. HE SAT ON THAT STAND RIGHT THERE, NOT TOO GOOD AT TALKING, AND THEY DID EVERYTHING THEY COULD WITHIN THEIR POWER.

IT DIDN'T WORK ON HIM. A LOT OF IT WORKED ON HIM. HE WENT TO CHURCH. WHEN HE LEFT SCHOOL HE WORKED, BUT HE GOT MIXED UP WITH ALCOHOL AND DRUGS. AND, OF COURSE, WE'RE NOT GOING TO BLAME THE SYSTEM. YOU KNOW, HE COMES UP HERE IN THE COURTROOM -- BY THE WAY, MR. BAILEY KEPT SAYING, "YOU WERE CONVICTED." NO, HE WASN'T CONVICTED. THOSE ARE CONVICTIONS, BUT HE CAME INTO THIS COURTROOM AND HE TOLD THAT JUDGE -- HE SAID, "I'M GUILTY." EACH AND EVERY TIME UP THERE, "I'M GUILTY." HE TOLD THEM THAT I DID WRONG.

MR. BAILEY WOULD HAVE YOU BELIEVE THAT THE PRISON SYSTEM IN THIS STATE IS REALLY NICE. YOU KNOW, GOT A T.V. AND THEY GOT A PLACE TO SHOOT BASKETS AND WHAT HAVE YOU. YOU'VE BEEN LOCKED UP A FEW DAYS, NOT A LONG TIME, NOT UNDER ADVERSE CONDITIONS, BUT YOU'VE BEEN LOCKED UP. HOW WOULD YOU LIKE TO HAVE YOUR FREEDOM TAKEN FOR THE REST OF YOUR LIFE? I MEAN, THAT'S A PRETTY SEVERE PUNISHMENT. IT REALLY IS. AND YOU'VE GOTTEN A GLIMPSE OF THE PRISON LIFE, PRISON SYSTEM, PRISON LIFE.

HE SAID HE GOT IN PROBLEM (SIC) IN PRISON AND HE GOT LOCK-DOWN BECAUSE OF THIS ALTERCATION WITH THIS OTHER PRISONER. IT'S A JUNGLE IN THERE, FOLKS. THIS AIN'T NO CLUB MED, BUT LET'S FACE FACTS. AS OPPOSED TO THE ALTERNATIVE THAT'S WHAT WE'RE ASKING YOU FOR, THAT HE BE GIVEN LIFE IN PRISON AND LIFE IN PRISON IN THIS CASE MEANS LIFE IN PRISON.

NOW, WE'RE NOT GOING TO STAND UP HERE AND TELL YOU THAT, YOU KNOW, THIS MAN SHOULDN'T BE PUT TO DEATH FOR -- MR. BAILEY HAS GOT A REAL NICE APPROACH. HE SAYS WHAT WE'RE GOING TO DO IS WE WANT YOU TO PUT HIM TO DEATH BECAUSE HE WAS GUILTY OF TRESPASSING. NO. THE ONE AND THE ONLY THING THAT YOU'VE GOT TO CONSIDER IS THE CIRCUMSTANCE OF THIS CRIME. THAT'S HIS CRIMINAL RECORD; THAT'S TRUE. WAS THIS THE KIND OF SITUATION WHERE THERE WAS PLANNING, WHERE THERE WAS -- YOU KNOW, HE WAS LOOKING FOR SOMEBODY TO SHOOT OR SOMETHING LIKE THAT? NO.

THE CIRCUMSTANCES -- THE CIRCUMSTANCES OF THIS CRIME CLEARLY SHOW THAT HE CAME DOWN THERE. HE WAS ON THE PHONE. YOU KNOW, DAX PATTERSON, YOU KNOW, THE GUY THAT STARTED THIS WHOLE MESS, HE AIN'T GOING TO GO TO PRISON FOR LIFE. HE AIN'T GOING TO THE ELECTRIC CHAIR. HE STARTS THIS SITUATION. NOW, I DON'T KNOW, FOLKS. YOU KNOW, WHAT MR. ROGERS SAYS IS A LIE AND

WHAT MR. ROGERS TOLD MR. BAILEY -- HE SAID, "MR. BAILEY, YOU KNOW, I'M TELLING YOU WHAT I REMEMBER AS I REMEMBER IT AND I HEARD EVERYTHING, BUT THAT'S HOW I RECALL IT." AFTER ALL THAT MALT LIQUOR AND AFTER THE LIQUOR -- AND HE WAS GROSSLY INTOXICATED AND YOU HEARD MR. BAILEY'S WITNESS, DRUG AND ALCOHOL ABUSE COUNSELOR. WHAT DID HE SAY? WELL, IT AFFECTS YOUR RECOLLECTION, AFFECTS HOW YOU SEE THINGS AND WHAT HAVE YOU.

TIM ROGERS, YOU KNOW, HE TELLS YOU AND HE TELLS THE POLICE DOWN IN TUSKEGEE HOW HE REMEMBERS IT AND IT DOESN'T FIT WITH THE FACTS AND HE STILL SAYS, "THAT'S HOW I REMEMBER IT." AND LET'S ALSO REMEMBER WHAT THE STATE DID; OKAY? THE STATE SHOWED YOU THIS TAPE. FIRST OF ALL, YOU SAW WHAT OCCURRED. I THINK -- WELL, THE ASSISTANT SOLICITOR WHO WAS ACCOMPANYING THEM WHO IS NO LONGER SITTING AT THE TABLE, BUT IF YOU PLAY THE TAPE YOU'LL SEE THE GENTLEMAN THERE ACCOMPANYING THEM, PARTICIPATED IN THE TRIAL, AT LEAST WAS ASSISTING.

THEY PARADE HIM OUT WHEN THEY BRING HIM BACK FROM TUSKEGEE. THEY PARADE HIM OUT OF THE JAIL SO THAT THE PRESS PEOPLE CAN, YOU KNOW, GET THE CAMERA ON HIM AND WHAT HAVE YOU SO YOU CAN SHOW HIM WEARING THIS DREADLOCKS, THIS FEARFUL OR FEARSOME HAIRDO. ARE YOU

GOING TO PUT HIM IN JAIL FOR -- ARE YOU GOING TO PUT HIM IN THE ELECTRIC CHAIR BECAUSE OF HIS HAIRDO? AND WHAT DID HE SAY THEN? HE SAID THE SAME THING ON THIS TAPE THAT'S HE'S BEEN SAYING ALL ALONG. "LOOK, IT WAS AN ACCIDENT. I DIDN'T MEAN TO SHOOT THAT GIRL. YOU KNOW, I'M NOT A CHILD MURDERER IN THAT SENSE."

AND HE'S NOT ARTICULATE ENOUGH. YOU SAW HIM. HE'S NOT ARTICULATE ENOUGH TO EXPLAIN, PARTICULARLY IN THAT SHORT A PERIOD OF TIME, WHAT HE'S SAYING. AND WHAT HE'S SAYING IS IS I GOT IN THIS SITUATION. I SHOT. AND IN HIS MIND -- DOESN'T MATTER WHAT THE LEGAL EFFECT IS. THE LEGAL EFFECT IS -- YOU'VE DECIDED THAT. IT'S MURDER. OKAY? BUT HE SAID I WASN'T AIMING TO HIT ANY LITTLE GIRL. THAT SHOULD HAVE SOME BEARING ON WHAT YOU DO SENTENCE-WISE.

NOW, LET'S UNDERSTAND WHAT THE ROLE OF THE JURY IS AT THIS POINT IN TIME. YOU SEE, THE ONLY PEOPLE WHO HAVE ANY RESPONSIBILITY IN THIS WHOLE SYSTEM AT THIS POINT -- MR. BAILEY, THE SOLICITOR, HE'S JUST ASKING YOU FOR THE DEATH PENALTY; OKAY? HE'S NOT RESPONSIBLE FOR THAT. THE COURT HAS TO DO WHAT YOU SAY. THE ONLY PEOPLE WHO ARE RESPONSIBLE IF THIS MAN GOES TO THE ELECTRIC CHAIR ARE Y'ALL AND ME AND MARK LEIENDECKER, OKAY, BECAUSE NOBODY ELSE HAS RESPONSIBILITY. WE DEFEND HIM AND YOU MAKE THE

DECISION.

AT THIS STAGE OF THE PROCEEDING, HOWEVER, HIS HONOR IS GOING TO TELL YOU IF YOU'RE GOING TO IMPOSE THE DEATH PENALTY IT MUST BE UNANIMOUS. YOU REMEMBER JUST LIKE WHEN YOU WERE DECIDING ON GUILT OR INNOCENCE. IT MUST BE UNANIMOUS. IT WOULD BE OKAY IF IT WAS UNANIMOUS INSOFAR AS THE LIFE IMPRISONMENT, BUT THERE'S ONE OTHER INTERESTING THING ABOUT THIS. IF Y'ALL CANNOT AGREE---

MR. BAILEY: OBJECTION, YOUR HONOR.

THE COURT: YES, SIR. NO, SIR. GO TO YOUR ROOM JUST A MINUTE, MR. FOREMAN.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

THE COURT: COUNSELOR, YOU WERE ABOUT TO TELL THAT JURY THAT IF THEY CAN'T AGREE I MUST SENTENCE HIM TO LIFE.

MR. RUNYON: NO, SIR.

THE COURT: YOU CANNOT TELL THEM THAT. WHAT WERE YOU GOING TO SAY?

MR. RUNYON: I WAS GOING TO SAY THAT IF YOU CANNOT AGREE THE COURT WILL INSTRUCT YOU AS TO THE EFFECT OF WHAT YOU HAVE TO DO THEREAFTER.

THE COURT: COUNSELOR, I DON'T KNOW WHAT -- THAT'S JUST DOUBLE TALK. WHAT DO YOU MEAN?

MR. RUNYON: WELL, YOUR HONOR, I'M TRYING TO -- QUITE FRANKLY, IN ALL CANDOR, I WAS TRYING TO GET AS CLOSE AS I COULD. NO QUESTION ABOUT THAT.

THE COURT: WELL, YOU GOT TOO CLOSE.

MR. RUNYON: ALL RIGHT, SIR.

THE COURT: BRING THAT JURY OUT FOR ME.

MR. BAILEY: YOUR HONOR, BEFORE THEY COME OUT---

THE COURT: JUST A MINUTE. I DON'T KNOW HOW TO CURE IT.

MR. BAILEY: YOUR HONOR, BEFORE THEY CAME OUT -- I DIDN'T OBJECT AT THE TIME, BUT HE ALSO SAID SOMETHING TO THE EFFECT THAT IN THIS CASE IF YOU SENTENCE HIM TO LIFE HE WILL GET LIFE AND THERE'S A CASE THAT SAYS---

THE COURT: COUNSELOR, I DON'T WANT TO CAUTION YOU ANYMORE, BUT WE'VE BEEN OVER ALL THAT.

MR. RUNYON: YES, SIR.

THE COURT: YOU KNOW YOU CAN'T -- YOU'VE ASKED ME FOR THE NORRIS CHARGE. I TOLD YOU I WILL GIVE THEM THE NORRIS CHARGE FOR YOU, BUT DO NOT DISCUSS LIFE OR DEATH.

MR. RUNYON: YES, SIR.

THE COURT: EXCEPT IN THEIR PLAIN AND ORDINARY MEANING.

MR. RUNYON: YES, SIR.

THE COURT: THANK YOU VERY MUCH. BRING THEM BACK OUT.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT.)

THE COURT: ALL RIGHT. THANK YOU VERY MUCH, MR. FOREMAN AND MEMBERS OF THE JURY. I ALWAYS HATE TO STOP AN ATTORNEY FROM MAKING HIS SUMMATION, ESPECIALLY GOOD ATTORNEYS LIKE THESE, BUT EVERY NOW AND THEN YOU HAVE TO DO IT AND KIND OF GET BACK ON THE TRACK. ALL RIGHT. GO AHEAD, MR. RUNYON.

MR. RUNYON: MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, AS IT RELATES TO THIS QUESTION OF WHO'S TELLING THE TRUTH AND WHO'S LYING AND WHAT HAVE YOU, JUST REMEMBER WE'VE HAD TESTIMONY FROM MR. RILEY. HE DIDN'T PUT ANY OF THAT STUFF ABOUT WHAT SOMEBODY IS SUPPOSED TO HAVE SAID IN HIS STATEMENT ORIGINALLY. AND, OF COURSE, YOU KNOW, WE JUST GLOSSED OVER THE FACT THAT SOMEBODY PAID HIM A VISIT LAST SUNDAY AND ALL THAT SORT OF STUFF. RECALL THAT. THAT'S PART OF THE RECORD. THAT'S PART OF SOMETHING YOU'VE GOT TO CONSIDER.

NOW, WHAT IT ALL BOILS DOWN TO IS THAT THE CIRCUMSTANCES OF THIS CASE HAVE GOT TO CONVINCE YOU THAT THIS WAS SUCH A HEINOUS CASE THAT THIS MAN MUST GO

TO THE ELECTRIC CHAIR. AND WHEN I TALKED TO YOU AT THE CLOSING OF THE GUILT PHASE AND I TOLD YOU ABOUT IT'S TERRIBLE BECAUSE AFTER SO MANY YEARS -- THIS IS A TOUGH CASE AND WHAT HAVE YOU. BUT IN THE OTHER -- ON THE OTHER RESPECT, YOU KNOW, YOU DO GET TO THE POINT WHERE YOU HAVE TO SAY SUCH THINGS TO JURIES AS, "WELL, THIS CASE ISN'T THAT BAD A MURDER CASE." I MEAN, ISN'T THAT TERRIBLE? THAT'S TERRIBLE.

WHAT DO YOU MEAN IT'S NOT THAT BAD A MURDER CASE? WE GOT THAT FAMILY. WE GOT THAT FAMILY TORN APART. WE'VE GOT A YOUNG CHILD DEAD AND WE SAY THINGS LIKE, "WELL, THIS ISN'T THAT BAD A MURDER CASE"? EVERY MURDER CASE IS BAD, LADIES AND GENTLEMEN. EVERY MURDER CASE IS BAD. BUT THIS IS NOT SOME DEPRAVED PERSON WHO WALKED INTO A STORE ROBBING AND SHOOTING AND WHAT HAVE YOU. THIS WAS A TOTALLY SENSELESS SET OF CIRCUMSTANCES THAT ARE ALL TOO FAMILIAR TO US IN OUR SOCIETY TODAY. TOO MANY GUNS AND THERE'S TOO MUCH LIQUOR AND THERE'S TOO MUCH DRINKING. AND WE HAD A YOUNG MAN WHO DIDN'T KNOW A SINGLE PERSON ON THE OTHER SIDE WHO INTERVENED, WHO INTERVENED, IN A SITUATION AS YOU ALL RECALL THE FACTS AND THIS TERRIBLE, SENSELESS THING HAPPENED.

NOW, MR. ROGERS WENT TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS AND THE SOLICITOR WOULD HAVE YOU BELIEVE THAT THIS IS SUPPOSED TO BE SOME SORT OF

SUMMER CAMP TO REHABILITATE PEOPLE AND IT'S OBVIOUS THAT IF THERE'S REHABILITATION -- YOU KNOW, THEY DIDN'T REHABILITATE HIM. THEY DIDN'T SOLVE HIS DRINKING PROBLEM. THEY DIDN'T SOLVE ANY OF THOSE PROBLEMS. SO, SO MUCH FOR WHETHER OR NOT THE SYSTEM REHABILITATES.

HE AIN'T GOING TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS TO BE REHABILITATED IF YOU SENTENCE HIM TO LIFE. HE'S GOING THERE TO BE PUNISHED AND TO BE KEPT INCARCERATED. NOW, I DON'T KNOW WHAT MORE WE CAN SAY AS IT RELATES TO THE ULTIMATE DECISION YOU MAKE. YOU'VE GOT TO MAKE IT AND ONLY YOU CAN MAKE IT. I'M ASKING YOU TO SPARE HIS LIFE; OKAY? ONE REASON IS BECAUSE THAT'S MY JOB. THAT'S MY ROLE. I'M SUPPOSED TO ASK YOU TO SPARE HIS LIFE. BUT I'M ASKING YOU TO CONSIDER THE CIRCUMSTANCE OF THE CRIME.

AND HIS HONOR IS GOING TO TELL YOU ABOUT THOSE MITIGATING FACTORS, OKAY, THAT YOU CAN CONSIDER ALSO. YOU TAKE THE AGGRAVATING CIRCUMSTANCES AND THEN YOU TAKE THE MITIGATION SUCH AS CAPACITY AT THE TIME, THE FACT THAT HE WAS INTOXICATED, OTHER FACTORS OR, IN FACT, ANY FACTS ABOUT THIS CASE THAT YOU CONSIDER RELEVANT TO WHETHER OR NOT SOMEONE SHOULD HAVE THEIR LIFE SPARED. THAT'S WHAT HE'S GOING TO TELL YOU. LISTEN TO WHAT HIS HONOR TELLS YOU ABOUT BOTH AGGRAVATING CIRCUMSTANCES AND MITIGATING

CIRCUMSTANCES.

WE SAY THE USUAL THINGS. KILLING MR. ROGERS IN THE ELECTRIC CHAIR IS NOT GOING TO BRING BACK STEPHANIE B[redacted]. IT SURE WON'T. SHE SHOULDN'T HAVE DIED; THAT'S FOR SURE. I'M NOT SO SURE WHAT WE DO WIT REGARDS TO THE DEATH PENALTY AS YOU WILL DISCUSS IT ISN'T SOME SORT OF COMMENTARY ON MAYBE OUR SOCIETY'S DOUBTS ABOUT WHERE WE ARE AND WHAT WE DO IN THIS UNIVERSE BECAUSE, AFTER ALL, IF YOU GO TO CHURCH ON SUNDAY, IF YOU DO THAT, THEY TALK ABOUT THE CHRISTIAN ETHIC AND THE CHRISTIAN IDEAS ABOUT WHAT HAPPENS AND WHAT HAVE YOU. AND, YOU KNOW, ALL HE HAS TO DO IS MAKL HIS PEACE AND HE GOES ON TO HIS REWARD.

THE DEATH PENALTY, I WOULD SUBMIT TO YOU, IS ALMOST AN AGNOSTIC STATEMENT. I MENTIONED THAT ONE TIME TO MY BAPTIST MINISTER UNCLE AND HE HAD A FEW THINGS TO SAY AT THE TIME. IT WAS AN INTERESTING DISCUSSION. STOP AND THINK ABOUT THAT. NOW, NO ONE IS ASKING YOU TO TELL HIM WHAT HE DID WAS RIGHT. NO ONE'S ASKING YOU TO DO ANYTHING OTHER THAN SPARE HIS LIFE. THAT'S ALL. LOCK HIM AWAY. LOCK HIM AWAY. STOP AND THINK ABOUT WHAT PUNISHMENT THAT IS. YOU DON'T HAVE YOUR FREEDOM AND YOUR MOVEMENT. WELL, THERE'S A COLOR T.V. UP THERE AND YOU CAN SHOOT BASKETS; OKAY? YOU CAN LIVE IN A EIGHT-BY-NINE CELL WITH SOMEONE ELSE WITH

ABOUT EIGHTEEN INCHES ON THE WALL FOR YOUR PERSONAL BELONGINGS. STOP AND THINK ABOUT THAT.

WE ALL HAVE HOMES, APARTMENTS. WE KEEP OUR STUFF THERE. THE AMERICAN PEOPLE ARE PROBABLY THE BIGGEST CARGO CULT -- THAT'S ANOTHER PHRASE I LEARNED IN COLLEGE IN A SOCIOLOGY CLASS -- THE BIGGEST CARGO CULT IN THE WORLD. WE HAVE ALL THIS STUFF AND WE SURROUND OURSELVES WITH THINGS, LITTLE NICKNACKS HERE OR THIS OR THAT, FAVORITE BOOKS. PRETTY SOON WE FILL A WHOLE HOUSE, WHATEVER SIZE HOUSE OR APARTMENT WE LIVE IN, WITH THINGS. YOU DON'T DO THAT IN PRISON, NOT IN AN EIGHT-BY-NINE CELL WITH SOMEONE ELSE. THAT'S PUNISHMENT. THAT'S PUNISHMENT AND YOU DO THAT DAY IN AND DAY OUT FOR THE REST OF YOUR LIFE, AND THEN STOP AND THINK ABOUT THAT AND SEE IF THAT'S NOT MORE PUNISHMENT THAN SIMPLY TAKING SOMEONE OFF AND ELECTROCUTING THEM.

THEY TWIST IN THE WIND FOR THE REST OF THEIR LIFE IN A SYSTEM THAT'S NOT A VERY NICE PLACE TO BE. AND, YES, HE HAD A PROBLEM IN PRISON ONE TIME. THEY BROUGHT IN MR. BROWN WHO SAT RIGHT THERE. I BELIEVE THAT WAS HIS NAME, THE CORRECTIONS OFFICER, AND HE SAID HIS ASSOCIATION WITH MR. ROGERS WAS ALWAYS THAT HE CONFORMED TO THE RULES AND HE WAS ADAPTABLE TO PRISON LIFE. ONE TIME HE HAD A PROBLEM, ONE TIME.

ONE OF THE PROBLEMS IN A CASE LIKE THIS IS THE LAWYERS HAVE A TENDENCY NOT TO WANT TO STOP TALKING, PARTICULARLY DEFENSE LAWYERS, THAT IS, BECAUSE WHEN YOU STOP TALKING, OF COURSE, HIS HONOR IS GOING TO TELL YOU WHAT THE LAW IS AND THEN YOU HAVE TO MAKE A DECISION. YOU KIND OF FIGURE THAT AS LONG AS YOU TALK THE ULTIMATE DECISION IS NOT GOING TO BE MADE, BUT I AM GOING TO SIT DOWN. I'M GOING TO THANK YOU ON BEHALF OF MR. LEIENDECKER AND MYSELF FOR YOUR ATTENTION AND YOUR PATIENCE.

IF I HAVE SAID OR DONE ANYTHING DURING THE COURSE OF THIS TRIAL THAT HAS OFFENDED YOU, I APOLOGIZE. YOU KNOW, CALL ME UP AFTERWARDS AND GET ME DOWN THE ROAD FOR IT IF YOU WANT TO. THAT'S HOW WE LEARN. THAT'S WHY THEY CALL IT PRACTICING LAW BECAUSE WE NEVER GET IT RIGHT. I'VE ONLY BEEN AT THIS FOR TWENTY-SEVEN YEARS. NOW, I THANK YOU FOR YOUR ATTENTION. I THANK YOU FOR CONSIDERATION. THANK YOU FOR YOUR PATIENCE. MR. ROGERS DOES.

AT THE END OF YOUR DELIBERATIONS, AS HIS HONOR HAS TOLD YOU, AS BOTH MR. BAILEY AND MYSELF WILL TELL YOU, YOU OWE NO EXPLANATIONS TO ANYONE, WHATEVER THAT DECISION IS, EVEN IF IT'S THE ULTIMATE PUNISHMENT. BUT THE SIMPLE FACT OF THE MATTER IS I'M ASKING YOU TO FIND MERCY SOMEWHERE, EVEN A LITTLE BIT.

PUT HIM IN PRISON FOR THE REST OF HIS LIFE. DON'T ELECTROCUTE HIM. THANK YOU.

THE COURT: SEE IF THE ANYBODY WANTS TO COME IN OR GO OUT, MR. BAILIFF. SEE IF THERE'S ANYBODY BACK THERE WHO WANTS TO GO OUT OR COME IN. THANK YOU VERY MUCH. THANK YOU. NOW, MR. FOREMAN AND MEMBERS OF THE JURY, THE DEFENDANT, TIMOTHY ROGERS, HAS BEEN FOUND GUILTY IN THIS INDICTMENT, 93-0101, OF THE MURDER OF STEPHANIE B[redacted]. SO, NOW IT BECOMES MY DUTY TO INSTRUCT YOU AND FOR YOU TO DETERMINE WHICH SENTENCE YOU WILL RECOMMEND THAT THIS COURT IMPOSE UPON THE DEFENDANT FOR HAVING COMMITTED MURDER IN THIS CASE, EITHER LIFE OR DEATH.

IN THIS STATE DEATH IS BY ELECTROCUTION AND I WANT TO REMIND YOU WHEN I USE THE WORDS RECOMMENDATION OR RECOMMEND, ALWAYS REMEMBER THAT I MUST BY LAW IMPOSE WHATEVER SENTENCE YOU FIND. I CANNOT CHANGE YOUR RECOMMENDATION. I ALSO WANT TO CHARGE YOU -- AND INCIDENTALLY AFTER THIRTY YEARS ON THE BENCH AND FOURTEEN YEARS AS A JUDGE, JUDGES WITH MY EXPERIENCE GENERALLY CAN INSTRUCT TO THE JURY WITHOUT EVEN LOOKING AT NOTES BUT DEATH PENALTIES -- WE DON'T DO THAT MANY DEATH PENALTIES, SO I'LL BE REFERRING TO MY NOTES FROM TIME TO TIME.

I WANT TO TELL YOU THAT THOSE TERMS, LIFE

IMPRISONMENT AND DEATH PENALTY, SHOULD BE UNDERSTOOD IN THEIR ORDINARY AND PLAIN MEANING BY YOU. NO OTHER CONSIDERATION ABOUT THE EFFECT OF THE TWO SENTENCES SHOULD ENTER INTO YOUR DECISION ABOUT WHICH SENTENCE TO IMPOSE, AND NO DELIBERATIONS AND DISCUSSIONS AS TO ANY EFFECT ON THESE SENTENCES SHOULD TAKE PLACE IN YOUR JURY ROOM. SO, AS I SAID, YOU SIMPLY ACCEPT THE TWO, LIFE IMPRISONMENT AND DEATH PENALTY, AND UNDERSTAND THEM IN THEIR PLAIN AND ORDINARY MEANING.

NOW, ARRIVING AT YOUR RECOMMENDATION, YOU CAN CONSIDER ANY RELEVANT MITIGATING CIRCUMSTANCES AUTHORIZED OR ALLOWED BY LAW AND YOU MAY CONSIDER ANY SO-CALLED STATUTORY AGGRAVATING AND MITIGATING CIRCUMSTANCES WHICH ARE SUPPORTED BY THE EVIDENCE. I CHARGE YOU, THEREFORE, THAT IN ARRIVING AT YOUR DECISION AS TO THIS INDICTMENT YOU MUST FIRST DETERMINE FROM THE EVIDENCE WHICH WAS OFFERED DURING THIS SENTENCING PROCEEDING WHETHER THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE, ONE OR MORE, EXISTED BEYOND A REASONABLE DOUBT AT THE TIME THAT THE VICTIM, STEPHANIE B[redacted], IN THIS INDICTMENT WAS MURDERED. IN OTHER WORDS, THE STATE MUST PROVE THE EXISTENCE OF A STATUTORY AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT.

WELL, WHAT'S A REASONABLE DOUBT? I

INSTRUCTED YOU THAT IN THE GUILT PROCEEDING AND I TOLD YOU TO USE THOSE WORDS REASONABLE DOUBT JUST AS YOU WOULD IN YOUR ORDINARY AFFAIRS. IT'S SAID THAT A REASONABLE DOUBT IS A DOUBT WHICH WOULD MAKE A REASONABLE PERSON HESITATE TO ACT. OF COURSE, REASONABLE DOUBT, AS I TOLD YOU, COULD ARISE FROM EVIDENCE IN THE CASE OR LACK OF EVIDENCE. YOU ALONE MUST MAKE THAT DETERMINATION OF WHETHER OR NOT REASONABLE DOUBT EXISTED. YOU, THE JURY, MUST DECIDE WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE STATUTORY AGGRAVATING CIRCUMSTANCE ALLEGED BY THE STATE IN THIS CASE.

AND I WANT TO PREFACE ANY OTHER REMARKS BY SAYING THAT YOU MUST FIND A STATUTORY AGGRAVATING CIRCUMSTANCE, ONE OR MORE, OR YOU CANNOT SENTENCE THE DEFENDANT TO DEATH. BUT AS I'LL BE EXPLAINING TO YOU, YOU CAN FIND A STATUTORY AGGRAVATING CIRCUMSTANCE AND SENTENCE THE DEFENDANT TO LIFE OR DEATH FOR ANY REASON OR NO REASON. NOW, WHAT DO I MEAN BY THE TERM AGGRAVATING -- STATUTORY AGGRAVATING CIRCUMSTANCE? LADIES AND GENTLEMEN, A STATUTORY AGGRAVATING CIRCUMSTANCE IS A FACT, AN INCIDENT, A DETAIL OR AN OCCURRENCE WHICH THE GENERAL ASSEMBLY OF SOUTH CAROLINA HAS DECLARED BY STATUTE WOULD MAKE WORSE, THAT IS, TO AGGRAVATE THE OFFENSE OF MURDER WHEN THAT FACT,

INCIDENT, DETAIL OR OCCURRENCE ACCOMPANIES AN ACT OF MURDER. A STATUTORY AGGRAVATING CIRCUMSTANCE IS ONE RECOGNIZED BY STATUTE AS A CIRCUMSTANCE WHICH INCREASES GUILT OR THE ENORMITY OF THE OFFENSE OR A CIRCUMSTANCE WHICH ADDS TO THE INJURIES, CONSEQUENCES OF THE OFFENSE.

BEFORE YOU CAN RECOMMEND THE IMPOSITION OF THE DEATH SENTENCE UPON THE DEFENDANT IN THIS INDICTMENT, ALL TWELVE OF YOU MUST AGREE BEYOND A REASONABLE DOUBT THE EXISTENCE IN THIS CASE DISCLOSES THE EXISTENCE OF AT LEAST ONE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE. TO PUT IT ANOTHER WAY, AS I SAID EARLIER, UNLESS YOU, THE JURY, UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT THAT THE EVIDENCE DISCLOSES THE EXISTENCE OF AN ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE, YOU CANNOT RECOMMEND THAT THE DEFENDANT BE SENT TO DEATH.

NOW, WHAT STATUTORY AGGRAVATING CIRCUMSTANCE MAY YOU CONSIDER? THE ONLY STATUTORY AGGRAVATING CIRCUMSTANCES WHICH YOU MAY CONSIDER IN DETERMINING YOUR RECOMMENDATION AS TO THE DEFENDANT'S SENTENCE IN THIS INDICTMENT OF MURDER ARE CONTAINED IN FORM "A" I HAVE IN MY HAND CALLED STATUTORY INSTRUCTIONS AND THEY ARE AS FOLLOWS: THESE ARE THE TWO THAT YOU CAN CONSIDER. ONE, THE OFFENDER 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, AND THE SECOND ONE, THE MURDER OF A CHILD ELEVEN YEARS OF AGE OR UNDER.

IN THIS CASE, MR. FOREMAN, MEMBERS OF THE JURY, THE STATE PRESENTED EVIDENCE OF AN ALLEGED CRIMINAL ACT OR ACTS WHICH THE DEFENDANT HAS NOT BEEN CONVICTED. I INSTRUCT YOU AS TO THOSE ACTS YOU SHOULD NOT CONSIDER THEM AT ALL UNLESS YOU ARE CONVINCED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID COMMIT THOSE ACTS. HOWEVER, YOU WOULD NOT CONSIDER THEM AT ALL AS PROOF OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES. THE ALLEGED CRIMINAL ACTS NOT CONVICTED OF MAY ONLY BE CONSIDERED BY YOU IN REFERENCE TO THE CHARACTER OF THE DEFENDANT AND FOR NO OTHER PURPOSE. THE DEFENDANT IS ON TRIAL FOR HIS LIFE AND IT IS IMPORTANT THAT YOU HAVE FOR YOUR CONSIDERATION ALL PERTINENT INFORMATION ABOUT HIM. THIS EVIDENCE MAY BE CONSIDERED BY YOU AND GIVEN WHATEVER WEIGHT, IF ANY, THAT YOU FEEL IT DESERVES IN REGARD TO THE DEFENDANT'S CHARACTER ONLY.

I'VE ALREADY GIVEN YOU THE DEFENDANT -- THE DEFINITION OF REASONABLE DOUBT. IN THE EVENT, HOWEVER, THAT YOU UNANIMOUSLY FIND A REASONABLE DOUBT THAT AN

ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE EXISTED AT THE TIME THAT THE VICTIM IN THIS CASE WAS MURDERED -- LET ME REPEAT THAT. IN THE EVENT THAT YOU UNANIMOUSLY FIND THAT A REASONABLE DOUBT -- BEYOND A REASONABLE DOUBT, I MEANT TO SAY, THAT AN ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE EXISTED AT THE TIME THE VICTIM IN THIS CASE WAS MURDERED -- IN OTHER WORDS, IF YOU FIND UNANIMOUSLY THAT THERE WAS A STATUTORY AGGRAVATING CIRCUMSTANCE, THEN YOU WOULD BE AUTHORIZED, THAT IS, PERMITTED TO RECOMMEND THAT THE DEATH SENTENCE BE IMPOSED UPON THE DEFENDANT.

I'LL TELL YOU ONCE AGAIN. SHOULD YOU DETERMINE THAT AT LEAST ONE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES EXISTED AT THE TIME THAT THE MURDER HERE WAS COMMITTED IN THIS INDICTMENT AND SHOULD YOU UNANIMOUSLY RECOMMEND THAT THE SENTENCE OF DEATH BE IMPOSED UPON THE DEFENDANT, THEN YOU WOULD BE REQUIRED TO SPECIFY IN WRITING IN YOUR RECOMMENDATION THE STATUTORY AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES THAT YOU FOUND TO EXIST BEYOND A REASONABLE DOUBT. I'LL HAVE THESE FORMS TO EXPLAIN TO YOU IN JUST A MOMENT OR TWO, THESE STATUTORY INSTRUCTIONS.

NOW, YOU CAN RECOMMEND THAT THE DEFENDANT BE SENTENCED TO LIFE IMPRISONMENT EVEN IF YOU SHOULD UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT THAT ONE OR

MORE OF THE STATUTORY AGGRAVATING CIRCUMSTANCES EXISTED AT THE TIME THE MURDER WAS COMMITTED. THAT'S WHAT I WAS TELLING YOU AWHILE AGO. EVEN IF YOU FIND THAT THERE WAS A STATUTORY AGGRAVATING CIRCUMSTANCE, YOU STILL COULD RECOMMEND LIFE FOR THAT REASON OR NO REASON.

NOW, WHAT IS A STATUTORY MITIGATING CIRCUMSTANCE? A STATUTORY MITIGATING CIRCUMSTANCE IS A FACT, A DETAIL, AN INCIDENT, OR OCCURRENCE WHICH THE GENERAL ASSEMBLY OF SOUTH CAROLINA HAS DECLARED BY STATUTE WOULD REDUCE THE SEVERITY OF THE MURDER. A STATUTORY MITIGATING CIRCUMSTANCE IS ONE RECOGNIZED BY STATUTE AS A CIRCUMSTANCE WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF MORAL CULPABILITY FOR THE COMMISSION OF THE ACT OF MURDER.

A MITIGATING CIRCUMSTANCE WOULD NOT CONSTITUTE EITHER JUSTIFICATION OR EXCUSE FOR THE OFFENSE IN QUESTION, THAT IS, OF MURDER. SUCH A CIRCUMSTANCE WOULD SIMPLY LESSEN ONE'S GUILT OR BLAMEWORTHINESS, THAT IS, MAKE HIM LESS BLAMEWORTHY OR LESS CULPABLE. WHILE IT IS NECESSARY FOR YOU TO FIND BEYOND A REASONABLE DOUBT THE EXISTENCE OF AT LEAST ONE STATUTORY AGGRAVATING CIRCUMSTANCE BEFORE YOU CAN RECOMMEND THAT THE DEFENDANT BE SENTENCED TO DEATH, IT

IS NOT REQUIRED THAT YOU FIND THE EXISTENCE OF AT LEAST ONE STATUTORY MITIGATING CIRCUMSTANCE OR ANY OTHER RELEVANT MITIGATING CIRCUMSTANCE IN ORDER TO RECOMMEND THAT THE DEFENDANT BE GIVEN LIFE IMPRISONMENT. AS A MATTER OF FACT, AS I SAID EARLIER, YOU MAY RECOMMEND THAT THE DEFENDANT RECEIVE A LIFE SENTENCE IRRESPECTIVE OF WHETHER YOU FIND THE EXISTENCE IN THE EVIDENCE OF AN ALLEGED STATUTORY MITIGATING CIRCUMSTANCE OR NOT OR ANY OTHER RELEVANT MITIGATING CIRCUMSTANCE.

BUT WHERE YOU DO CONSIDER AN ALLEGED STATUTORY MITIGATING CIRCUMSTANCE OR ANY OTHER RELEVANT MITIGATING CIRCUMSTANCE, IT IS PROPER FOR YOU TO CONSIDER ONLY A MITIGATING CIRCUMSTANCE THAT IS SUPPORTED BY THE EVIDENCE. AS I HAVE SAID, YOU MAY RECOMMEND A LIFE SENTENCE FOR ANY REASON OR NO REASON. IN OTHER WORDS, YOU MAY RECOMMEND THE IMPOSITION OF A LIFE SENTENCE SHOULD YOU FIND EVEN BEYOND A REASONABLE DOUBT THE EXISTENCE OF AN AGGRAVATING CIRCUMSTANCE.

IN ORDER THAT THIS BE PERFECTLY CLEAR TO YOU, I HAVE TOLD YOU THAT YOU MAY NOT CONSIDER THE STATUTORY AGGRAVATING CIRCUMSTANCE ALLEGED BY THE STATE UNLESS ALL TWELVE OF YOU AS TO THAT STATUTORY CIRCUMSTANCE FIND THE STATE HAS PROVEN THIS BEYOND A REASONABLE DOUBT. THE SAME IS NOT TRUE, HOWEVER, FOR MITIGATING CIRCUMSTANCES. IN THE CASE OF MITIGATING

CIRCUMSTANCES, YOU NEED NOT UNANIMOUSLY AGREE ON THE EXISTENCE OF EACH MITIGATING CIRCUMSTANCE NOR WOULD THE DEFENDANT HAVE TO PROVE ANY MITIGATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT BEFORE YOU MAY CONSIDER IT. RATHER, EACH MEMBER OF THE JURY MAY CONSIDER ALL MITIGATING CIRCUMSTANCES WHICH HE OR SHE FEELS TO BE SUPPORTED BY THE EVIDENCE.

NOW, WHAT STATUTORY MITIGATING CIRCUMSTANCE DOES THE DEFENDANT ALLEGE ARE INVOLVED IN THIS CASE AND THAT YOU MAY CONSIDER? THEY'RE ON PAGE 2 OF THIS STATUTORY INSTRUCTION. ONE, THE CAPACITY OF THE DEFENDANT TO APPRECIATE -- LET ME START OVER. IN DETERMINING WHETHER THE DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT OR DEATH YOU MAY CONSIDER ANY OF THE STATUTORY AGGRAVATING CIRCUMSTANCES FOUND BY YOU TO EXIST. YOU MAY ALSO CONSIDER ANY OF THE FOLLOWING STATUTORY MITIGATING CIRCUMSTANCES AND THEY ARE: THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW ARE SUBSTANTIALLY IMPAIRED.

NOW, FURTHERMORE, MR. FOREMAN, MEMBERS OF THE JURY, YOU MAY CONSIDER ANY OTHER RELEVANT MITIGATING CIRCUMSTANCE OR CIRCUMSTANCES WHICH ARE SUPPORTED BY THE EVIDENCE IN THIS CASE INCLUDING, AS I HAVE ADDED ANOTHER LIST, NONSTATUTORY MITIGATING CIRCUMSTANCES NOT

PROVED BY STATUTE BUT WHICH THE DEFENDANT CLAIMS SERVE THE SAME PURPOSE, THAT IS, REDUCE THE DEGREE OF CULPABILITY AND THEY ARE THESE AND YOU'LL HAVE THEM IN YOUR JURY ROOM. THE DEFENDANT WAS INTOXICATED AT THE TIME OF THE INCIDENT. TWO, THE DEFENDANT DID NOT BRING ON THE EVENTS WHICH LED TO THE DEATH OF THE DECEASED AND, THREE, PROOF OF ADAPTABILITY TO PRISON.

I CHARGE YOU ALSO, MR. FOREMAN AND MEMBERS OF THE JURY, THAT IN THE EVENT THAT YOU FIND ONE OR MORE OF THE ALLEGED STATUTORY MITIGATING CIRCUMSTANCE OR ANY OTHER RELEVANT MITIGATING CIRCUMSTANCE EXISTING, IN FACT, AT THE TIME THE MURDER IN THIS CASE WAS COMMITTED, SUCH A FINDING WOULD NOT PRECLUDE YOU FROM FINDING BEYOND A REASONABLE DOUBT THE EXISTENCE AT THE TIME OF THE MURDER OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES AND RECOMMENDING THE DEFENDANT BE SENTENCED TO DEATH.

IN OTHER WORDS, THE EXISTENCE OF AN ALLEGED STATUTORY MITIGATING CIRCUMSTANCE OR ANY OTHER RELEVANT MITIGATING CIRCUMSTANCE IS NOT A BAR TO THE IMPOSITION OF THE DEATH PENALTY. IN OTHER WORDS, AFTER CONSIDERING ALL OF THE EVIDENCE IF EACH OF YOU FIND BEYOND A REASONABLE DOUBT THAT A STATUTORY AGGRAVATING CIRCUMSTANCE EXISTED AT THE TIME THE MURDER WAS COMMITTED, YOU MAY RECOMMEND THAT THE DEFENDANT BE

SENTENCED TO DEATH EVEN SHOULD YOU ALSO FIND ONE OR MORE OF THE ALLEGED STATUTORY MITIGATING CIRCUMSTANCES OR ANY OTHER RELEVANT MITIGATING CIRCUMSTANCE THAT EXISTED AT THE TIME THE VICTIM WAS KILLED OR YOU MAY RECOMMEND A LIFE SENTENCE.

IN CONSIDERING WHETHER TO RECOMMEND WHETHER THE DEFENDANT IS TO BE SENTENCED TO DEATH OR LIFE IMPRISONMENT, I CHARGE YOU THAT AS JURORS YOU MUST DECIDE THE ISSUE INVOLVED IN THIS PROCEEDING WITHOUT BIAS AND WITHOUT PREJUDICE TO ANY PARTY. YOU CANNOT ALLOW YOURSELVES TO BE GOVERNED BY PREJUDICE, BY PASSION OR BY PUBLIC OPINION. BOTH THE STATE AND THE DEFENDANT HAVE THE RIGHT TO EXPECT THAT EACH OF YOU WILL CONSIDER AND IMPARTIALLY AND CAREFULLY CONSIDER ALL OF THE EVIDENCE IN THE CASE AND THAT YOU WILL FOLLOW THE LAW AS I'VE GIVEN YOU.

NOW, MR. FOREMAN AND MEMBERS OF THE JURY, I'M GOING TO GO OVER THESE STATUTORY FORMS FOR YOU. I HAVE READ TO YOU THE STATUTORY INSTRUCTIONS WHICH ARE CONTAINED HERE AND HERE'S THE INSTRUCTIONS THAT YOU'LL READ WHEN YOU GO IN THERE. ONE, IN DETERMINING WHETHER THE DEFENDANT, TIMOTHY D. ROGERS, SHOULD BE SENTENCED TO LIFE IMPRISONMENT OR DEATH FOR THE MURDER OF STEPHANIE B[redacted], YOU SHALL FIRST DETERMINE WHETHER THE STATE HAS PROVEN THE EXISTENCE OF ONE OR MORE OF

THE FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT AND I READ YOU THOSE TWO AND THEY'RE TYPED HERE.

IF YOU DO NOT UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES LISTED ABOVE, YOU SHALL INDICATE ON PART A. WHICH IS PART A. OVER HERE OF THE SENTENCING VERDICT FORM ENTITLED "JURY'S FINDING ON PROOF OF AGGRAVATING CIRCUMSTANCE." AT THIS POINT YOU WILL CEASE DELIBERATIONS AND RETURN TO THE COURTROOM WITH YOUR VERDICT WHICH IS TO BE SIGNED BY YOU, MR. FOREMAN. IN OTHER WORDS, IF YOU DO NOT FIND AN AGGRAVATING CIRCUMSTANCE YOU WILL IMMEDIATELY SIGN NUMBER ONE, MR. FOREMAN, AND HERE'S WHAT IT SAYS: WE, THE JURY, IN THE ABOVE-ENTITLED CASE DO NOT UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT THE EXISTENCE OF ANY STATUTORY AGGRAVATING CIRCUMSTANCE. THIS IS OUR VERDICT. YOU SIGN IT. YOU RETURN TO THE COURTROOM.

IF YOU DO NOT UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE ALLEGED -- WELL, I READ THAT TO YOU. IF, HOWEVER, YOU -- AND I'M READING FROM THIS -- YOU UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES LISTED ABOVE, YOU SHALL SO INDICATE ON PART 1-B OF THE SENTENCING VERDICT FORM AND THIS IS B. JUST BELOW WHAT

I JUST READ TO YOU. THIS FINDING, IF MADE BY YOU, MUST BE SIGNED BY EVERY MEMBER OF THE JURY. IN OTHER WORDS, THERE'S A PLACE FOR YOU TO WRITE DOWN THE AGGRAVATING CIRCUMSTANCE THAT YOU FIND IF YOU FIND IT AND THEN ALL TWELVE OF YOU WOULD SIGN IT. THIS FINDING, IF MADE BY YOU, MUST BE SIGNED BY EVERY MEMBER OF THE JURY.

IF YOU UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE AND DESIGNATE THIS FINDING IN PART 1-B OF THE SENTENCING VERDICT FORM ENTITLED "JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES," IF YOU FIND THE AGGRAVATING CIRCUMSTANCE, THEN YOU MUST THEN CONTINUE YOUR DELIBERATIONS IN ORDER TO DETERMINE WHETHER THE DEFENDANT, TIMOTHY ROGERS, SHOULD BE SENTENCED TO LIFE IMPRISONMENT OR DEATH BY ELECTROCUTION. IN DETERMINING WHETHER THE DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT OR DEATH, YOU MAY CONSIDER ANY OF THE STATUTORY AGGRAVATING CIRCUMSTANCES FOUND BY YOU TO EXIST BEYOND A REASONABLE DOUBT. YOU MAY ALSO CONSIDER ANY OF THE FOLLOWING STATUTORY MITIGATING CIRCUMSTANCES AND I READ ALL OF THOSE TO YOU.

WHEN YOU HAVE DETERMINED THE SENTENCE TO BE IMPOSED UPON THE DEFENDANT, INDICATE YOUR VERDICT BY COMPLETING EITHER A. OR B. OF THE FORM ENTITLED "JURY'S DETERMINATION OF THE SENTENCE TO BE IMPOSED." IF THE

UNANIMOUS VERDICT OF THE JURY IS THAT THE DEFENDANT SHOULD BE SENTENCED TO DEATH, EACH MEMBER OF THE JURY SHALL INDICATE HIS OR HER AGREEMENT WITH THE VERDICT BY SIGNING AS INDICATED. IN OTHER WORDS, THESE WILL TELL YOU, MR. FOREMAN, STEP BY STEP HOW YOU WILL PROCEED. IF YOU DO NOT FIND AN AGGRAVATING CIRCUMSTANCE, YOU WOULD JUST WRITE DOWN AND USE THAT FIRST FORM. IF YOU FIND AN AGGRAVATING CIRCUMSTANCE, YOU MUST WRITE IT DOWN AND THEN ALL TWELVE OF YOU SIGN IT AND THEN YOU WOULD CONTINUE DELIBERATING TO DETERMINE WHAT WOULD BE THE PROPER SENTENCE AND I HAVE THESE AS I'VE INDICATED HERE.

NOW, WHATEVER YOUR VERDICT, AS I SAID, ALL TWELVE OF YOU MUST AGREE. WHEN YOU SIGN THESE, MR. FOREMAN, THE FORMS WHERE IT SAYS "FOREMAN", IT INDICATES THAT ALL TWELVE OF YOU HAVE AGREED. I'M GOING TO SEND YOU TO YOUR ROOM AND I'M GOING TO SEPARATE YOU NOW FOR THE TIME BEING. IF I HAVE TO BRING ANY OF YOU OUT FOR ANY ADDITIONAL INSTRUCTIONS, I'LL BRING MY TWO ALTERNATES -- THEY'RE GOING TO PUT YOU IN ANOTHER ROOM TEMPORARILY, THE TWO OF YOU, AND I CAN'T IMPRESS UPON YOU HOW IT'S IMPORTANT TO HAVE YOU BECAUSE YOU CAN SEE IF ONE OR MORE JURORS BECOME INCAPACITATED YOU JUST TAKE THEIR PLACE.

SO, I'M GOING TO SEND YOU TO YOUR ROOM FOR

JUST A MOMENT OR TWO. IF I NEED TO BRING YOU BACK OUT FOR FURTHER INSTRUCTIONS, I'LL BRING YOU BACK. IF NOT, I'LL SEND YOU THESE IN WITH ANY EXHIBITS THERE THAT THEY HAVE INTRODUCED AND YOU CAN BEGIN YOUR DELIBERATIONS. WHEN YOU DETERMINE YOUR VERDICT, MR. FOREMAN, JUST INDICATE BY KNOCKING ON THE DOOR.

FOREMAN: YES, SIR.

THE COURT: ALL RIGHT. JUST FOLLOW THE BAILIFF.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 3:18 P.M.)

THE COURT: I THINK YOU'VE SEEN THESE FORMS, HAVE YOU NOT, COUNSELOR?

MR. RUNYON: YES, SIR.

THE COURT: ALL RIGHT, SIR. ANY EXCEPTIONS OR ADDITIONS FROM THE STATE?

MR. BAILEY: YOUR HONOR, YOU CHARGED THE JURY CORRECTLY THAT ANY PRIOR CRIMES NOT SUBJECT TO A CONVICTION SHOULD BE CONSIDERED ONLY AS TO CHARACTERISTICS OF THE DEFENDANT AND NOT TO PROVE ANY AGGRAVATING CIRCUMSTANCES?

THE COURT: YES, SIR.

MR. BAILEY: THEY'RE ALSO EVIDENCE OF CRIMES THAT WERE SUBJECT TO A CONVICTION THAT I THINK WOULD BE SUBJECT TO THAT SAME INSTRUCTION, AND I THINK JUST TO

PROTECT THE RECORD PERHAPS THAT OUGHT TO BE CHARGED. IF YOU DID CHARGE THAT I MISSED IT.

THE COURT: WELL, CRIMES THAT HE'S BEEN CONVICTED OF ORDINARILY I WOULD CHARGE THAT THEY COULD ONLY BE CONSIDERED IF THEY WERE CRIMES OF MORAL TURPITUDE AS TO HIS TRUTHFULNESS. BUT YOU'RE ASKING ME TO TELL THE JURY THEY WOULD ONLY CONSIDER THOSE CRIMES AS FAR AS HIS CHARACTER IS CONCERNED? WHAT'S YOUR POSITION, COUNSELOR?

MR. RUNYON: I'D OBJECT TO THAT INSTRUCTION, YOUR HONOR.

MR. BAILEY: YOUR HONOR, I'LL WITHDRAW IT IF HE OBJECTS TO IT. I THOUGHT IT WAS FAVORABLE TO THE DEFENDANT. I'LL WITHDRAW IT.

THE COURT: OH, ALL RIGHT, SIR. WELL, I DON'T THINK IT WOULD BE EITHER WAY. I THINK THAT IN ITSELF THE JURY WOULD UNDERSTAND GOOD AND BAD THINGS, BUT AS TO SOMETHING NOT CONVICTED OF THEY'VE GOT TO FIRST FIND THAT HE COMMITTED THEM BEYOND A REASONABLE DOUBT.

MR. BAILEY: YES, SIR.

THE COURT: IF THEY DON'T DO THAT, THEY WOULDN'T CONSIDER THEM AT ALL. BUT EVEN IF THEY FOUND THEM, THEN THEY COULD ONLY CONSIDER THEM AS TO HIS CHARACTER. ALL RIGHT, SIR.

MR. RUNYON: YOUR HONOR, WE WOULD HAVE NO ADDITIONS OR EXCEPTIONS REQUESTED. HOWEVER, THE WAIVER OF THAT EXCEPTION AS TO THE CHARGE DOES NOT IN ANY WAY WAIVE OUR ORIGINAL OBJECTION TO THE SUBMISSION OF THIS CASE UNDER THE SUBMITTED STATUTORY AGGRAVATING CIRCUMSTANCES WHICH HAD BEEN PREVIOUSLY PUT ON THE RECORD AND WHICH THE COURT HAS PREVIOUSLY RULED ON.

THE COURT: OF COURSE. ALL RIGHT. TELL THE JURY TO BEGIN THEIR -- AND HERE ARE THE STATUTORY INSTRUCTIONS. GIVE ME YOUR THING. ALL RIGHT. SEE IF YOU CAN GET TOGETHER THE EXHIBITS, FELLOWS.

(WHEREUPON, THE JURY BEGAN DELIBERATING AT 3:23 P.M.)

THE COURT: NOW, SOLICITOR, THERE WAS SOME DISCUSSIONS ABOUT THE CHARGES TO THE JURY AND I HAVE STATE'S REQUEST TO CHARGE THAT I'M GOING TO GIVE THE COURT REPORTER, ALL OF THEM, WITH THE EXCEPTION I DO NOT HAVE A FIVE. SO, IF YOU'D GIVE HER A FIVE. I DON'T EVEN KNOW WHAT IT IS.

MR. BAILEY: YES, SIR.

THE COURT: TO THE COURT REPORTER. SHE'LL HAVE REQUESTS TO CHARGE THROUGH NINE. COURT'S IN RECESS AWAITING A VERDICT OF THE JURY.

(COURT'S EXHIBIT 2 WAS RECEIVED IN EVIDENCE AND COURT RECESSED AWAITING THE JURY'S VERDICT.)

THE COURT: THANK YOU SO MUCH. BE SEATED, PLEASE. BRING THE JURY AND MY ALTERNATES, TOO.

(WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 6:00 P.M.)

THE COURT: NOW, MR. FOREMAN, MEMBERS OF THE JURY, I DON'T WANT TO KNOW HOW YOU'RE COMING ALONG. I JUST -- IT'S 6:00 AND WE WANTED TO SEE TO YOUR COMFORT AND I WANTED TO TELL YOU THAT I TALKED TO THE ATTORNEYS AND THEY HAVE GIVEN YOU A CHOICE TO DO WHATEVER YOU'D LIKE TO DO AND YOU CAN GO BACK TO YOUR ROOM AND TALK ABOUT IT, MR. FOREMAN. IT'S 6:00. I CAN SEND OUT FOR SOME SUPPER FOR YOU, BRING IT IN. I CAN -- IF YOU'RE TIRED, IT'S ALL RIGHT TO GO TO YOUR ROOM AND GO TO SUPPER AND COME BACK TOMORROW MORNING. IF YOU'D LIKE, YOU CAN GO TO YOUR ROOM, GO TO SUPPER, AND COME BACK TO DELIBERATE LATER. IT'S JUST WHATEVER YOU ALL DECIDE YOU WANT TO DO. SO, I'M GOING TO SEND YOU BACK TO YOUR ROOM AND THEN YOU CAN JUST MAKE UP YOUR MIND WHATEVER YOU WANT TO DO AND YOU CAN LET US KNOW.

FOREMAN: THANK YOU.

THE COURT: THANK YOU VERY MUCH. JUST FOLLOW THE BAILIFF.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 6:02 P.M.)

THE COURT: ANY EXCEPTIONS OR ADDITIONS FROM

THE STATE?

MR. BAILEY: NO, SIR, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. RUNYON: NO, SIR, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. COURT'S IN RECESS.

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

THE COURT: THANK YOU VERY MUCH. PLEASE BE SEATED. NOW, FOR THOSE OF YOU WHO ARE IN THE COURTROOM I UNDERSTAND THAT THE JURY HAS REACHED A VERDICT. I DON'T KNOW WHAT THE VERDICT IS. AND I KNOW THAT EMOTIONS ARE HIGH ON BOTH SIDES PERHAPS, BUT I PROMISE YOU I WILL NOT CONDONE ANY OUTBURST WHATSOEVER. SO, IF YOU HAVE A PROBLEM WITH YOUR EMOTIONS, EXCEPT SOME QUIET EMOTIONS, I'D ASK THAT YOU NOT STAY IN THE COURTROOM. ALL RIGHT. BRING THE JURY IN FOR ME.

(WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH A VERDICT AT 6:57 P.M.)

THE COURT: TAKE THOSE, MADAM CLERK, THE EXHIBITS FOR ME, PLEASE. ALL RIGHT. MADAM CLERK?

THE CLERK: LADIES AND GENTLEMEN, HAVE YOU AGREED UPON A VERDICT?

FOREMAN: WE HAVE.

THE COURT: THANK YOU. ALL RIGHT. MADAM CLERK, IF YOU WILL READ B. AND THEN YOU WILL READ THIS

ONE. THIS ONE.

THE CLERK: THE STATE OF SOUTH CAROLINA VERSUS TIMOTHY D. ROGERS: WE, THE JURY, IN THE ABOVE-ENTITLED CASE UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT THE EXISTENCE OF THE FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCES. THE DEFENDANT 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. TWO, THE MURDER OF A CHILD ELEVEN YEARS OF AGE OR UNDER. SIGNED, B. FREDERICK BERKAW, JR., RICHARD A. GRUBER, HELENE P. FLOYD, VICKIE T. KASPAR, CHERYL L. HUTTO, LESLIE B. LANE, MILDRED E. KNIGHT, NANCY J. LANGENSTEIN, ALFREDA ADDISON, RICARDO O. RIVERA, MARY ELIZABETH SMITH, AND LAURA TYSON. MARCH 5TH, 1994.

WE, THE JURY, IN THE ABOVE-ENTITLED CASE UNANIMOUSLY FIX THE PUNISHMENT OF THE DEFENDANT, TIMOTHY D. ROGERS, AT DEATH BY ELECTROCUTION SIGNED B. FREDERICK BERKAW, JR., RICHARD A. GRUBER, HELENE P. FLOYD, NANCY J. LANGENSTEIN, VICKIE KASPAR, CHERYL HUTTO, LESLIE B. LANE, MARY ELIZABETH SMITH, LAURA TYSON, ALFREDA ADDISON, MILDRED E. KNIGHT, RICARDO RIVERA. MARCH 5TH, 1994.

THE COURT: ALL RIGHT. IF THIS IS YOUR

VERDICT, MR. FOREMAN, MEMBERS OF THE JURY, WOULD YOU RAISE YOUR RIGHT HAND FOR ME, PLEASE? THANK YOU VERY MUCH. YOU MAY PUT IT DOWN. ANYTHING FROM THE STATE?

MR. BAILEY: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. RUNYON: REQUEST INDIVIDUAL POLLING OF THE JURY, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. NOW, MR. FOREMAN, MEMBERS OF THE JURY, THE CLERK IS GOING TO CALL YOUR NAME. WHEN YOUR NAME IS CALLED, I'M GOING TO ASK YOU TO STAND UP AND SHE'S GOING TO ASK YOU ONE QUESTION. SHE'S GOING TO ASK: WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT? AND YOU'LL ANSWER WHATEVER YOU'LL ANSWER AND THEN YOU'LL SIT DOWN AND SHE'LL CALL ANOTHER NAME. MADAM CLERK?

THE CLERK: RICARDO RIVERA, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR RIVERA: YES, IT IS.

THE CLERK: NANCY J. LANGENSTEIN, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR LANGENSTEIN: YES, MA'AM.

THE CLERK: LAURA E. TYSON, IS THIS YOUR VERDICT -- WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR TYSON: YES, MA'AM.
THE CLERK: MILDRED E. KNIGHT, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?
JUROR KNIGHT: YES.
THE CLERK: BERGEN F. BERKAW, JR., WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?
JUROR BERKAW: YES, IT IS.
THE CLERK: VICKIE T. KASPAR, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?
JUROR KASPAR: YES, IT IS.
THE CLERK: ALFREDA L. ADDISON, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?
JUROR ADDISON: YES, IT IS.
THE CLERK: LESLIE B. LANE, WAS YOUR VERDICT AND IS IT STILL YOUR VERDICT?
JUROR LANE: YES, IT IS.
THE CLERK: HELENE P. FLOYD, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?
JUROR FLOYD: YES, IT IS.
THE CLERK: MARY E. SMITH, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?
JUROR SMITH: YES.
THE CLERK: CHERYL L. HUTTO, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?
JUROR HUTTO: YES.

THE CLERK: RICHARD A. GRUBER, WAS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

JUROR GRUBER: YES.

THE COURT: THANK YOU VERY MUCH. ANYTHING ELSE BEFORE I DISCHARGE THE JURY FROM THE DEFENSE?

MR. RUNYON: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT. NOW, MR. FOREMAN, MEMBERS OF THE JURY, AS I TOLD YOU EARLIER SOMEONE MIGHT DISAGREE WITH YOUR VERDICT, BUT JUST REMEMBER THAT'S ONE OPINION AND I WATCHED YOU ALL VERY CAREFULLY. AS I HAVE TOLD YOU EARLIER IN THE FIRST PHASE OF THE CASE, YOU LISTENED CAREFULLY TO THE TESTIMONY. I TRULY DID NOT SEE ANYONE THAT LOOKED LIKE THEIR MIND WAS WANDERING. YOU WERE POLITE TO THE ATTORNEYS WHEN THEY MADE THEIR SUMMATIONS AND YOU LISTENED VERY CAREFULLY TO MY INSTRUCTIONS AND YOU DELIBERATED AND YOU FOLLOWED THE SYSTEM. SO, IF SOMEONE DISAGREES WITH YOUR VERDICT, JUST REMEMBER THAT'S ONE OPINION AND YOU ARE TWELVE OPINIONS.

ON BEHALF OF THIS COUNTY OF DORCHESTER AND THE STATE OF SOUTH CAROLINA AND THE COURT PERSONNEL AND THE PARTIES INVOLVED, I WANT TO TELL YOU HOW MUCH I APPRECIATE YOUR SERVICE IN THIS. I'M GOING TO SEND YOU TO YOUR ROOM FOR A MOMENT OR TWO. WE'LL HAVE TO MAKE SOME ARRANGEMENTS NOW TO GET TO YOUR ROOM AND GET YOUR

CLOTHES AND THINGS, AND IF ANY OF YOU HAVE ANY KIND OF PROBLEM THE BAILIFFS WILL BE DELIGHTED TO HELP YOU. S(THANK YOU AGAIN AND JUST FOLLOW THE BAILIFFS IF YOU WILL, PLEASE.

(WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 7:03 P.M.)

THE COURT: PASS ME THAT SENTENCE, IF YOU WILL. MR. RUNYON, THE FOREMAN INADVERTENTLY LEFT OFF THE DATE ON THE SECOND SHEET. IT WAS DATED -- THE FIRST PORTION WAS DATED MARCH THE 5TH. DO YOU HAVE ANY OBJECTION IF I PUT A FIVE THERE?

MR. RUNYON: NONE. NO OBJECTION TO THAT, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH. ALL RIGHT, SIR. I'LL HEAR ANY MOTIONS.

MR. RUNYON: YOUR HONOR, AT THIS POINT IN TIME WE WOULD MOVE FOR A NEW TRIAL OR IN THE ALTERNATIVE FOR A -- A MOTION IN ARREST OF JUDGMENT ON THE GROUNDS THAT THE STATE - EXCUSE ME - THAT THE COURT ALLOWED THE JURY TO DELIBERATE ON THE DEATH PENALTY WHEN, IN FACT, THIS CASE DID NOT FALL UNDER THE -- AND THERE WAS AN ERROR OF LAW IN ALLOWING THIS CASE TO GO TO THE JURY UNDER THE AGGRAVATING CIRCUMSTANCE AS IT RELATES TO THE WEAPON AND, FURTHERMORE, THAT THE AGGRAVATING CIRCUMSTANCE RELIED UPON BY THE STATE AS IT

RELATES TO THE DEATH OF A CHILD UNDER ELEVEN IS ARBITRARY, CAPRICIOUS, AND HAS ABSOLUTELY NO LEGISLATIVE INTENT, ALLOWS THE DEATH PENALTY TO BE IMPOSED ARBITRARILY, AND HAS NO GUIDELINES WITH WHICH TO DIRECT EITHER THE PROSECUTORS IN SEEKING -- IN DECIDING TO SEEK THE DEATH PENALTY OR ALTERNATIVELY IN GUIDING AND CHANNELING A JURY IN THEIR DECISION AS TO WHETHER TO IMPOSE THE DEATH PENALTY OR NOT.

THE COURT: ALL RIGHT, SIR. COUNSELOR, I FELT LIKE IT WAS A JURY TRIAL. I FELT LIKE IT WAS A FAIR TRIAL REALLY AND I CAN'T -- I CAN'T FIND ANY FAULT WITH THE JURY. THAT'S THE WAY THE SYSTEM OPERATES AND SO I DENY YOUR MOTION. READY TO BE SENTENCED?

MR. RUNYON: YES, YOUR HONOR.

THE COURT: ALL RIGHT. GIVE ME A CALENDAR OFF MY DESK. YOU'LL SEE IT ON THE LEFT-HAND SIDE OVER THERE IF YOU WILL, PLEASE. THANK YOU. (PAUSE) ALL RIGHT. PRIOR TO THE IMPOSITION OF THE DEATH PENALTY, I FIND AS AN AFFIRMATIVE FACT THAT THE DEATH PENALTY WAS WARRANTED UNDER THE EVIDENCE OF THE CASE AND WAS NOT A RESULT OF PREJUDICE, PASSION, OR ANY OTHER ARBITRARY FACTOR. ALL RIGHT, SIR. BRING HIM AROUND, PLEASE.

MR. RUNYON: COME AROUND, MR. ROGERS.

THE COURT: TIMOTHY D. ROGERS, YOU'VE BEEN FOUND BY THE JURY TO BE GUILTY OF THE OFFENSE OF MURDER

AND THE JURY HAS FURTHER RECOMMENDED THAT YOU BE SENTENCED TO DEATH. I ASK YOU NOW: DO YOU HAVE ANYTHING YOU WISH TO SAY AS TO WHY THE JUDGMENT OF THE LAW AND THE SENTENCE OF THE COURT SHOULD NOT NOW BE PRONOUNCED AGAINST YOU?

MR. ROGERS: I STILL STATE THAT THE KILLING OF STEPHANIE B[redacted] ON MY BEHALF WAS TRULY AN ACCIDENT.

THE COURT: ANYTHING FURTHER, COUNSELOR?

MR. RUNYON: YOUR HONOR, AS I'VE SAID BEFORE, IN CASES WHERE MANDATORY -- WHERE SENTENCING IS MANDATORY YOU ALWAYS WANT TO SAY SOMETHING. PEOPLE EXPECT YOU TO SAY SOMETHING AND AS A PRACTICAL MATTER THE ONLY THING THAT DISCUSSION AT THIS TIME WILL DO IS DELAY THE INEVITABLE. WE STAND BEFORE THE COURT. WE WOULD ASK THE COURT TO RECONSIDER ITS CERTIFICATION AS TO THE APPROPRIATENESS OF THE DEATH PENALTY BUT STAND READY FOR SENTENCING, YOUR HONOR.

THE COURT: THANK YOU. TIMOTHY D. ROGERS, IT IS THE JUDGMENT OF THE LAW AND THE SENTENCE OF THIS COURT THAT YOU, TIMOTHY D. ROGERS, A PRISONER AT THE BAR BE TAKEN TO THE COUNTY JAIL OF DORCHESTER COUNTY AND THEN TO THE STATE PENITENTIARY. HENCEFORTH, TO BE KEPT IN CLOSE AND SAFE CONFINEMENT UNTIL THE 26TH DAY OF MAY, 1994, UPON WHICH DAY BETWEEN THE HOURS OF 6:00

A.M. AND 6:00 P.M. YOU SHALL SUFFER DEATH BY ELECTROCUTION IN THE MANNER PROVIDED BY LAW. MAY GOD HAVE MERCY UPON YOUR SOUL.

MR. RUNYON: THANK YOU VERY MUCH.

THE COURT: ALL RIGHT. EVERYONE ELSE REMAIN SEATED, PLEASE.

(WHEREUPON, THE DEFENDANT EXITED THE COURTROOM.)

THE COURT: ALL RIGHT, SIR. I'M GOING TO ASK -- JUST A MINUTE, PLEASE. JUST A MINUTE, PLEASE. PLEASE JUST A MINUTE, IF YOU WILL, PLEASE. I'M GOING TO ASK THAT THIS FAMILY OVER HERE LEAVE FIRST, PLEASE. ALL THE FAMILY ON THIS SIDE LEAVE FIRST. (PAUSE) ALL RIGHT. NOW, THE FAMILY ON THIS SIDE CAN LEAVE NOW, PLEASE, AND I APPRECIATE YOUR PATIENCE. I APPRECIATE IT VERY MUCH. HERE, MADAM CLERK. HERE'S THE INDICTMENT. HERE'S THE AFFIRMATION. HERE'S THE DEATH PENALTY SENTENCE. ALL RIGHT. COURT'S ADJOURNED SINE DIE.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED AT 7:11 P.M.)

I, THE UNDERSIGNED DAPHNE D. VANN, OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE O 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 CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR DORCHESTER COUNTY, SOUTH CAROLINA, FROM THE 28TH DAY OF FEBRUARY, 1994, THROUGH THE 5TH DAY OF MARCH, 1994.

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

SEPTEMBER 15, 1994

Daphne D. Vann

DAPHNE D. VANN, COURT REPORTER

Timothy D. Rogers DOB 01-16-68
Parkway Blvd SSN 061-58-8990
Summerville, S.C.
29483

1236 1280

Date Dec. 3, 92 Page No. 1

STATEMENT OF:

It was Wednesday, November 25, 1992. I went to the corner of Pigeon Bay Road at Spell's Grocery Store. I went to use the telephone. It was approximately about 6° clock in the evening. I was accompied by my girlfriend, assault victim and Dayton Patterson. They just walked with me to use the phone and ah, cause the phone that I was using was acting up or shorting out or something. I went down there to call my brother. When I got through to him, we was talking. Then a truck pulled up. It was a beigh, small pick-up truck. The driver didn't get out of the truck at first. He just said he needed to use the phone. I told him that I would be off the phone in a minute. After I told him that, I turned my back to him to finish my conversation. I could still hear him making racist remarks. I paid no more attention after that. Then I heard Dayton telling them.... talking to the driver. He (Dayton) was saying, "He'll be off the phone in a minute." Then I noticed an argument going on then

Timothy D. Rogers 12-3-92

FORM-R3
PRICE GROUP A

TATEMENT OF: Date DEC. 2, 92 Page No. 2.

between Daxton and the two male passengers. That's when I turned around, and noticed two white males walking towards Daxton and assault victim -assault victim was pulling Daxton away from the two white males. I told my brother to hold on. I walked over to where Daxton and assault victim were. Then, when I walked over there, the driver turned around, went back to the truck and pushed his seat up. It appeared to me as if he was looking for a weapon of some sort. Then, I pulled out the gun. The gun was a 380. I fired a shot in the air with intentions on scaring them. I heard assault victim scream, and then Daxton told me I had to go, that I had shot somebody. I then ran down the street toward my uncle's church and then through the woods. That's basically what happened that night.

Timothy R. Lyons 12.3.92

Date Dec. 2, 92 Page No. 3

STATEMENT OF:

I Timothy D. Rogers have given Det. Douglas of the Tuskegee Alabama Police Department my permission to write this statement for ME. I have not been pressured or Coerced. No threats/Promises have been made towards ME. I fully understand what I am doing and what I have said.

Present during written statement
Lt. Lester C. Patrick
Det. Rodney Douglas
Det. Racell Cook

STATE OF SOUTH CAROLINA	) IN THE COURT OF
	) GENERAL SESSIONS
COUNTY OF DORCHESTER	) Indictment No. 93-GS-18-101
THE STATE	)
	)
-versus-	) MOTION TO INSTRUCT JURY
	) AS TO LIFE SENTENCE
TIMOTHY ROGERS,	) BEING WITHOUT PAROLE
	)
Defendant.	)
	)

The Defendant above named respectfully moves this Honorable Court to instruct the jury as follows:

"Ladies and Gentlemen of the Jury: I hereby charge you that in consideration of the life sentence, you should take that in its ordinary meaning. Further, I charge you that a life sentence imposed on this Defendant means life without hope for release by operation of law. In short, a life sentence for this Defendant means that he will live out his entire life in the custody of the State of South Carolina with no hope or legal ability to gain release."

It is further moved that the foregoing or language which is substantially the same be utilized.

AND IT IS SO MOVED this 7th day of March, 1994 at St. George, South Carolina.

WILLIAM L. RUNYON, JR.
MARK LEIENDECKER

By: _____
WILLIAM L. RUNYON, JR.

Attorneys for the Defendant.

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF DORCHESTER)	INDICTMENT # 93-GS-18-0101
)	
THE STATE OF SOUTH CAROLINA,)	
)	
-versus-)	STIPULATION
)	
TIMOTHY D. ROGERS,)	
)	
Defendant.)	

THE STATE AND THE DEFENDANT ABOVE NAMED STIPULATE AND AGREE THAT IF THE CLERK OF COURT FOR DORCHESTER COUNTY AND THE CLERK OF COURT FOR THE TOWN OF SUMMERVILLE WERE CALLED AS WITNESSES THEY WOULD TESTIFY THAT THEY ARE THE CUSTODIANS OF THE CONVICTION RECORDS AS SUMMARIZED ON A DOCUMENT ENTITLED "TIMOTHY D. ROGERS CRIMINAL RECORD" AND THAT SAID SUMMARY ACCURATELY REFLECTS THE OFFICIAL RECORDS OF SUCH CONVICTIONS INCLUDING THE OFFENSE DATE, CHARGE AND SENTENCE.

WALTER M. BAILEY, JR.
SOLICITOR, FIRST JUDICIAL CIRCUIT

WILLIAM L. RUNYON, JR.
ATTORNEY FOR THE DEFENDANT

_____, 1994

I attest this narrative is an objective, accurate and complete representation of the facts.

[redacted] 02-16-93

Signature of Accuser Date

Witnesses: Ofc. Anthony Brown

Evidence: N/A

Disposition of Evidence: n/a

INSTRUCTIONS TO THE ACCUSED INMATE

You have been accused of violating [redacted]. This [redacted] constitute an administrative [redacted]. [redacted] ACKNOWLEDGING YOU RECEIVED A COPY [redacted] guilt. If you do not sign for receipt, you lose your right to request [redacted] to all inmate witnesses to investigate the charges [redacted] at the Adjustment Committee hearing [redacted]

CHECK ONE:

✓ I do want my accuser present at the hearing.

___ I do not request my accuser to be present at the hearing.

✓ I do wish assistance by an inmate representative

___ I do not wish assistance by an inmate representative.

Timothy D. Rogers 116087-Y 2-16-93 4:50

Signature of Inmate SCDC# Date Time am/pm

NOTE to Officer Serving Report of Rules Violations: (See Specific Instructions on Reverse Side.)

Disposition Committee Summary

Location: BRRSHU Date: 2/25/93 Time: 8:50 AM am/pm

Committee Members: MAGISTRATE HEARING

Recorder: SHARON KENNEDY Witnesses:

CPL. CRM

Disposition: ASSAULT AND BATTERY, ADMIN. SEG 90 DAYS

[redacted]

Hearing Officer

Warden Date

Regional Administrator Date

Timothy D. Rogers 116087

Inmate SCDC#

Comment:

Comment:

TOTAL P.02

1286

FEB-14-1994 15:42 FROM HQ/OFFENDER RECORDS TO 9-1-8712643 P.02
FEB 14 '94 13:39 LIEBER 709 P02

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS REPORT OF RULES VIOLATIONS S-211
Lock-up Of Inmates

INMATE: Timothy Rogers (Name) 161087 (SCDC#)
was confined to Administrative Segregation/Deadlocked.
SPECIFIC REASON FOR LOCK-UP: Sec 4.6 para(D) Assault and Battery

(The inmate has been furnished a copy of this completed lock-up form as verified by signature below. (See Specific Instructions on Reverse Side.))

Signature of Supervisor Authorizing Lock-Up — Institution: BRAE — Date: 2-11-93 — Time: 8:58 AM

By signing this lock-up notice, I do hereby certify that I have served this lock-up notice within the 48-hour time requirement as stipulated in SCDC Policy Number 1500.13.

Refused To Sign W.T. Powell 161087
Signature of Inmate — SCDC #

Signature of Officer Serving Lock-Up Notice — Institution: BRAE — Date: 2-11-93 — Time: 9:17 AM

Narrative

VIOLATION: ASSAULT AND BATTERY — INMATE GUIDE SECTION(S): 4.6 (D) — OFFENSE(S):

Inmate Name: TIMOTHY ROGERS — SCDC# 161087-Y
Location of Infraction: BROAD RIVER R&E UNIT
CONGAREE UNIT, A-WING, RECREATION YARD — Date and Time of Infraction: 10-15 A.M.

Text:

On the above date and approximate time, I Ofc. Tommie Powell was assigned to Congaree Unit, A-wing, Recreation yard. As I unlocked the gate to let inmate Bernard Simmons, SCDC #191454 on to the recreational field and locked the gate back. Inmate Simmons and Anthony Rowe, SCDC #192857 begin to throw punches at each other which landed to the head and chest of each inmate. At that time inmates Timothy Rogers, SCDC #161087-Y and Eric Wright, SCDC #165088-Y ran up to inmate Rowe and began to kick and punch him. I ordered all inmates to stop fighting, they refused by continuing to kick and punch inmate Rowe. I then called for assistance. Ofc. Anthony Brown assisted me by instructing all inmates to stop fighting and back up to the fence, which they did. As Ofc. Brown went inside to get handcuffs inmates Simmons, Rogers and Wright ran toward inmate Rowe and begin to kick and punch inmate Rowe a second time. All inmates were separated and escorted to their assigned cells. Inmate Rogers was informed that he would be charged with the above rules violation.

TIMOTHY D. ROGERS

CRIMINAL RECORD

	OFFENSE DATE	CHARGE/ INDICTMENT #	COURT	SENTENCE
1)	11/22/85	TRESPASSING AFTER NOTICE WARRANT #B468538	SUMMERVILLE MUNICIPAL COURT	$216 FINE OR 30 DAYS
2)	4/22/87	POSSESSION OF MARIJUANA WARRANT #B792983	SUMMERVILLE MUNICIPAL COURT	FORFEITED $216 BOND
3)	7/31/87	SHOPLIFTING WARRANT #B873643	SUMMERVILLE MUNICIPAL COURT	FORFEITED $218 BOND
4)	3/26/88	RESISTING ARREST WARRANT #C071539	SUMMERVILLE MUNICIPAL COURT	FORFEITED $118 BOND
5)	12/20/88	GRAND LARCENY OF A VEHICLE INDICTMENT #89-GS-18-135	COURT OF GENERAL SESSIONS FOR DORCHESTER CO.	INDETERMINATE SENTENCE NOT TO EXCEED 6 YEARS IMPRISONMENT
6)	9/14/90	POSSESSION OF COCAINE INDICTMENT #91-GS-18-129	COURT OF GENERAL SESSIONS FOR DORCHESTER CO.	45 DAYS IMPRISONMENT
7)	8/92	CRIMINAL SEXUAL CONDUCT WITH A MINOR, 2ND DEGREE INDICTMENT #94-GS-18-047	COURT OF GENERAL SESSIONS FOR DORCHESTER CO.	7 YEARS IMPRISONMENT
8)	9/92	CRIMINAL SEXUAL CONDUCT WITH A MINOR, 2ND DEGREE INDICTMENT #94-GS-18-048	COURT OF GENERAL SESSIONS FOR DORCHESTER CO.	7 YEARS IMPRISONMENT CONCURRENT WITH PRIOR 7 YEAR SENTENCE

WITNESSES

ARREST WARRANT #:

94DCR04

Arrested on November 25, 1992

ACTION OF GRAND JURY

Foreman: _____
Grand Jury

[redacted]

VERDICT

Foreman: _____
Petit Jury
Date: _____

DOCKET #: 94GS18-0047

THE STATE OF SOUTH CAROLINA
County of Dorchester

COURT OF GENERAL SESSIONS

Term: January, 1994

[redacted]

THE STATE

vs.

Timothy Rogers

[redacted]

INDICTMENT FOR

0159

CRIMINAL SEXUAL CONDUCT WITH MINOR

SECOND DEGREE (16-3-655)

1289
1245

STATE OF SOUTH CAROLINA)
)
County of Dorchester)

INDICTMENT #94GS18-0047

At a Court of General Sessions, convened on January 24, 1994, the Grand Jurors of Dorchester County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT WITH MINOR SECOND DEGREE (16-3-655)

That Timothy Rogers did in Dorchester County at various times during the month of August, 1992, wilfully and unlawfully engage in criminal sexual conduct in the second degree in that Timothy Rogers engaged in sexual battery, to wit: sexual intercourse with assault victim and that the said [redacted] assault victim was 15 years old and the defendant was older than her.

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

SOLICITOR Walt Bailey

JAN 19 '94 12:44 WALTER M BAILEY JR ATTORNEY 803 871 2643 TO: P02

WITNESSES

DOCKET #: 94GS18-0048

THE STATE OF SOUTH CAROLINA
County of Dorchester

COURT OF GENERAL SESSIONS

Term: January, 1994

[redacted]

THE STATE

vs.

Timothy Rogers

[redacted]

INDICTMENT FOR

0159

CRIMINAL SEXUAL CONDUCT WITH MINOR

SECOND DEGREE (16-3-655)

ARREST WARRANT #:

94DOR05

Arrested on November 25, 1992

ACTION OF GRAND JURY

Foreman: _____
Grand Jury

[redacted]

VERDICT

Foreman: _____
Petit Jury
Date: _____

STATE OF SOUTH CAROLINA)
) INDICTMENT #94GS18-0048 1291
County of Dorchester)

At a Court of General Sessions, convened on January 24, 1994, the Grand Jurors of Dorchester County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT WITH MINOR SECOND DEGREE (16-3-655)

That Timothy Rogers did in Dorchester County at various times during the month of September, 1992, wilfully and unlawfully engage in criminal sexual conduct in the second degree in that Timothy Rogers engaged in sexual battery, to wit: sexual intercourse with assault victim and that the said [redacted] assault victim was 15 years old and the defendant was older than her.

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

SOLICITOR _____

TRUE CERTIFIED COPY

WITNESSES

93 OCT 28 AM 11 36

Det. D. B. Shankle

MARGIE CARN KIRKLAND
CLERK OF COURT
DORCHESTER COUNTY

DOCKET #: 93GS18-0101

THE STATE OF SOUTH CAROLINA
County of Dorchester

COURT OF GENERAL SESSIONS

Term: February, 1993

THE STATE

vs.

Timothy D. Rogers

ARREST WARRANT #:

D446899

Arrested on December 08, 1992

INDICTMENT FOR

0116

MURDER

16-3-20

ACTION OF GRAND JURY

True Bill

Foreman: [signature]
Grand Jury

VERDICT

(1) Guilty of Murder "✓"
(2) Guilty of Involuntary manslaughter "___".
(3) Not Guilty "___".

Foreman: [signature]
Petit Jury

Date: March 3, 1994.

Note: Use check "✓" mark in one (1) space, 1, 2, or 3 & foreman sign his name

STATE OF SOUTH CAROLINA)
) **INDICTMENT #93GS18-0101**
County of Dorchester)

At a Court of General Sessions, convened on February 08, 1993, the Grand Jurors of Dorchester County present upon their oath:

COUNT: **MURDER**
16-3-20

That Timothy D. Rogers, did in Dorchester County on or about November 25, 1992, feloniously, wilfully and with malice aforethought, kill one (Stephanie B[redacted]) by means of shooting her in the back of the head with a .38 cal. pistol, and that the said Stephanie B[redacted] did die in Charleston as a proximate result thereof on or about the __26th___ day of November, 1992.

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

SOLICITOR B. Hamm Bell

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF DORCHESTER	)	INDICTMENT NOS. 93-GS-18-101
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
-versus-	)	NOTICE OF INTENT TO SEEK THE DEATH PENALTY
	)	
TIMOTHY D. ROGERS,	)	
	)	
Defendant.	)	

TO THE DEFENDANT, TIMOTHY D. ROGERS, AND HIS ATTORNEY, WILLIAM L. RUNYON, JR.:

YOU WILL PLEASE TAKE NOTICE, that, pursuant to Section 16-3-26 SC Code Ann., 1992 Cumm. Supp., upon trial of the above entitled action at least thirty (30) days from the date of service hereof and of which you will be timely notified, the imposition of a sentence of death upon the Defendant, Timothy D. Rogers, will be sought by the State.

WALTER M. BAILEY, JR.
SOLICITOR, FIRST JUDICIAL CIRCUIT
134 East Richardson Avenue
Summerville, South Carolina, 29483
(803) 871-2640

January 27, 1993

TRUE CERTIFIED COPY
'93 AUG 3 AM 10 35
CLERK OF COURT
DORCHESTER CO.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER	)	INDICTMENT NOS. 92-GS-18-101
THE STATE OF SOUTH CAROLINA,	)	
-versus-	)	NOTICE OF EVIDENCE IN AGGRAVATION
TIMOTHY D. ROGERS,	)	
Defendant.	)	

TRUE CERTIFIED COPY '93 DEC 3 AM 10:25 DORCHESTER CLERK OF COURT

TO THE DEFENDANT, TIMOTHY D. ROGERS, AND HIS ATTORNEY, WILLIAM L. RUNYON, JR.:

YOU WILL PLEASE TAKE NOTICE, that, pursuant to Section 16-3-20, SC Code Ann., 1992 Cumm. Supp., upon trial of the above entitled action at least thirty (30) days from the date of service hereof and of which you will be timely notified, the State will seek to introduce into evidence aggravating circumstances in the above matter as follows, to wit:

(1) The Defendant by his act of murder of Stephanie B[redacted] 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.

(2) The murder of a child eleven years of age or under, i.e., Stephanie B[redacted].

Walt M. Bailey

WALTER M. BAILEY, JR.
SOLICITOR, FIRST JUDICIAL CIRCUIT
134 East Richardson Avenue
Summerville, South Carolina, 29483
(803) 871-2640

January 27, 1993

'93 AUG 13 AM TRUE COPY

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER	INDICTMENT # 93-GS-18-0101
THE STATE OF SOUTH CAROLINA,	
-versus-	NOTICE OF EVIDENCE IN AGGRAVATION OF THE PUNISHMENT
TIMOTHY D. ROGERS,	
Defendant.	

TO THE DEFENDANT, TIMOTHY D. ROGERS, AND HIS ATTORNEY, WILLIAM L. RUNYON, JR.:

YOU WILL PLEASE TAKE NOTICE, that during the sentencing phase of the above entitled capital murder case to determine whether the defendant, Timothy D. Rogers, should be sentenced to death or life imprisonment, the State will seek to introduce into as evidence in aggravation of the punishment to be imposed upon the defendant the evidenced as set forth hereinbelow.

The State alleges that the murder of Stephanie B[redacted] was committed while in the commission or progress of, and/or accompanied by, the following crimes or acts: (1) the defendant by his act of murder of Stephanie B[redacted] 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; and/or (2) the murder of a child eleven years of age or under, i.e., Stephanie B[redacted].

The State will present evidence as to the defendant's character, mentality, background, prior adult and juvenile acts of violence, adult and juvenile crimes and other unlawful conduct, prior adult and juvenile violations of laws, rules, regulations and/or ordinances, prior criminal adult and juvenile records and the nature of said crimes, propensity to commit or attempt to commit acts of violence or bodily harm as an adult and a juvenile, propensity for violence and unlawful conduct as an adult and a juvenile, disregard for peace and good order as an adult and a juvenile, and other similar characteristics of the defendant, as an adult and a juvenile, by the testimony of victims, witnesses, police officers, statements by the defendant and other relevant testimony, photographs and exhibits. Lockett v. Ohio; State v. Shaw. The State will further present as evidence in the sentencing trial all items of evidence, testimony and exhibits that were admitted during the first or guilt phase.

The State will further present evidence of circumstances surrounding the crimes herein and the characteristics of the defendant who committed the crimes. Evidence will also be presented to show the cause and/or manner in which the murder and crimes were committed including, but not limited to, photographs, video tapes, other tapes and diagrams of the crime scenes and victims and testimony related thereto, including statements by the defendant. State v. Goolsby; State v. Shaw.

The State will further present evidence, testimony, and exhibits as to the defendant's character and conduct while incarcerated in jails and/or prisons; disregard and violations of rules, regulations, laws and/or ordinances; disrespectful, disruptive and uncooperative actions and conduct; and all other such acts and conduct while incarcerated.

The State will further present evidence and testimony and exhibits as to the defendant's character, statements and conduct relating to his release or parole from jails and/or prisons; mental or physical evaluations of the defendant; opinions as to the defendant's character, propensity for violence and unlawful conduct, disregard for peace and good order and to commit such acts in the future.

The State will further present evidence of circumstances surrounding the murder of Stephanie B[redacted] and the characteristics of Timothy D. Rogers who committed the murder. Evidence will be presented to show the cause and/or manner in which the murder was committed including, but not limited to, the murder weapons, photographs, video tapes, other tape recordings and diagrams of the crime scene and victim and testimony related thereto, including statements by the defendant.

The State will further present detailed evidence of circumstances surrounding the arrest and apprehension of Timothy D. Rogers in Macon County, Alabama, including, but not limited to, weapons, photographs, recordings, diagrams,exhibits, statements by the defendant and testimony related thereto.

The State will further present evidence as to victim impact evidence, evidence of the emotional impact of the crimes on the families of the victims, the consequences of the crimes on the families of the victims and arguments relating thereto pursuant to Payne v. Tennessee, 111 S.Ct. 2597 (1991).

WALTER M. BAILEY, JR.
SOLICITOR, FIRST JUDICIAL CIRCUIT
134 East Richardson Avenue
Summerville, South Carolina, 29483
803-871-2640

July 29, 1993

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF GENERAL SESSIONS

1256

TRUE CERTIFIED COPY
94 OCT 28 AM 11 35
MARGIE CANN MCKENZIE
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA,)
)
VS.) STATUTORY INSTRUCTIONS
)
TIMOTHY D. ROGERS) 93-GS-18-0101
)
DEFENDANT.)

(1) IN DETERMINING WHETHER THE DEFENDANT, TIMOTHY D. ROGERS, SHOULD BE SENTENCED TO LIFE IMPRISONMENT OR DEATH FOR THE MURDER OF STEPHANIE [redacted], YOU SHALL FIRST DETERMINE WHETHER THE STATE HAS PROVEN THE EXISTENCE OF ONE OR MORE OF THE FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE DOUBT:

1. THE OFFENDER 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.

2. THE MURDER OF A CHILD ELEVEN YEARS OF AGE OR UNDER.

(2) IF YOU DO NOT UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES LISTED ABOVE, YOU SHALL SO INDICATE ON PART (a) OF THE SENTENCING VERDICT FORM ENTITLED "JURY'S FINDING ON PROOF OF AGGRAVATING CIRCUMSTANCES." AT THIS POINT, YOU WILL CEASE DELIBERATIONS AND RETURN TO THE COURTROOM WITH YOUR VERDICT, WHICH IS TO BE SIGNED BY THE FOREMAN.

(3) IF, HOWEVER, YOU UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES LISTED ABOVE, YOU SHALL SO INDICATE ON PART I(b) OF THE SENTENCING VERDICT FORMS. THIS FINDING, IF MADE BY YOU, MUST BE SIGNED BY EVERY MEMBER OF THE JURY. IF YOU UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES AND DESIGNATE THIS FINDING ON PART I(b) OF THE SENTENCING VERDICT FORM ENTITLED "JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES," YOU MUST THEN CONTINUE YOUR DELIBERATIONS IN ORDER TO DETERMINE WHETHER THE DEFENDANT, TIMOTHY

D. ROGERS, SHOULD BE SENTENCED TO LIFE IMPRISONMENT OR TO DEATH BY ELECTROCUTION.

(4) IN DETERMINING WHETHER THE DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT OR TO DEATH, YOU MAY CONSIDER ANY OF THE STATUTORY AGGRAVATING CIRCUMSTANCES FOUND BY YOU TO EXIST BEYOND A REASONABLE DOUBT. YOU MAY ALSO CONSIDER ANY OF THE FOLLOWING STATUTORY MITIGATING CIRCUMSTANCES:

1. THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED.

FURTHERMORE, YOU MAY CONSIDER ANY OTHER RELEVANT MITIGATING CIRCUMSTANCES WHICH ARE SUPPORTED BY THE EVIDENCE IN THIS CASE, INCLUDING, BUT NOT LIMITED OT THE FOLLOWING:

1. THE DEFENDANT WAS INTOXICATED AT THE TIME OF THE INCIDENT.
2. THE DEFENDANT DID NOT BRING ON THE EVENTS WHICH LED TO THE DEATH OF THE DECEASED.
3. PROOF OF ADAPTABILITY TO PRISON.

(5) WHEN YOU HAVE DETERMINED THE SENTENCE TO BE IMPOSED UPON THE DEFENDANT, INDICATE YOUR VERDICT BY COMPLETING EITHER (a) OR (b) OF THE FORM ENTITLED "JURY'S DETERMINATION OF THE SENTENCE TO BE IMPOSED." IF THE UNANIMOUS VERDICT OF THE JURY IS THAT THE DEFENDANT SHOULD BE SENTENCED TO DEATH, EACH MEMBER OF THE JURY SHALL INDICATE HIS OR HER AGREEMENT WITH THE VERDICT BY SIGNING AS INDICATED.

TRUE CERTIFIED COPY
1994 MAR 28 AM 11 35
JOHN M. KISSICK
CLERK OF COURT
DORCHESTER COUNTY

LUKE N. BROWN, JR.
PRESIDING JUDGE
FIRST JUDICIAL CIRCUIT

MARCH 5, 1994
ST. GEORGE, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
VS.)
)
TIMOTHY D. ROGERS,)
)
DEFENDANT.)

PART I

JURY'S FINDING ON PROOF OF AGGRAVATING CIRCUMSTANCES

93-GS-18-0101

TRUE COPY '94 OCT 28 11 38 MARGIE CLERK

COMPLETE EITHER (a) OR (b), AS APPROPRIATE:

(a) WE, THE JURY IN THE ABOVE-ENTITLED CASE, DO NOT UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT THE EXISTENCE OF ANY STATUTORY AGGRAVATING CIRCUMSTANCE. THIS IS OUR VERDICT.

SIGNED _____
FOREMAN

(b) WE, THE JURY IN THE ABOVE-ENTITLED CASE, UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT THE EXISTENCE OF THE FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCE(S):

1 THE OFFENDER 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 1 PERSON

2. THE MURDER OF A CHILD 11 YEARS OF AGE OR UNDER

SIGNED:

B. Frederick Berkenkamp — FOREMAN
Mildred E Knight — JUROR
Richard A Miller — JUROR
Nancy J Montgomery — JUROR
Helene P Floyd — JUROR
Alfriora Addison — JUROR
Rickie L Kaspar — JUROR
Ricardo O. Rivera — JUROR
Cheryl L. Hutto — JUROR
Mary Elizabeth Lee Smith — JUROR
Leslie B. Dare — JUROR
Jimmie L Bryson — JUROR

MARCH 5, 1994
ST. GEORGE, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
VS.)
)
TIMOTHY D. ROGERS,)
)
DEFENDANT.)

PART II

JURY'S DETERMINATION OF THE SENTENCE TO BE IMPOSED

93-GS-18-0101

COMPLETE EITHER (a) OR (b), AS APPROPRIATE:

(a) WE, THE JURY IN THE ABOVE-ENTITLED CASE, HAVING FOUND BEYOND A REASONABLE DOUBT THE EXISTENCE OF A STATUTORY AGGRAVATING CIRCUMSTANCE AS INDICATED IN PART I(b), FIX THE PUNISHMENT OF THE DEFENDANT, TIMOTHY D. ROGERS, AT IMPRISONMENT IN THE STATE PENITENTIARY FOR THE BALANCE OF HIS NATURAL LIFE.

SIGNED _____
FOREMAN

(b) WE, THE JURY IN THE ABOVE-ENTITLED CASE, UNANIMOUSLY FIX THE PUNISHMENT OF THE DEFENDANT, TIMOTHY D. ROGERS, AT DEATH BY ELECTROCUTION.

SIGNED:

B. Frederick Berkeley Jr. — FOREMAN
Leslie B. Lane — JUROR
Richard A. Gilbert — JUROR
Mary Elizabeth Smith — JUROR
Helene P. Floyd — JUROR
Laura B. Hayes — JUROR
Nancy G. Langenstein — JUROR
Orfreda Addison — JUROR
Vickie D. Kaspar — JUROR
Milane E. Knight — JUROR
Cheryl L. Hutto — JUROR
Ricardo O. Rivera — JUROR

MARCH 5, 1994
ST. GEORGE, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF GENERAL SESSIONS

TRUE CERTIFIED COPY

'94 OCT 28 AM 11 35

MARGIE CARN MCKISSICK
CLERK OF COURT
DORCHESTER COUNTY

THE STATE)
)
VS.) 93-GS-18-0101
)
TIMOTHY D. ROGERS,)
)
DEFENDANT.)

SENTENCING - DEATH PENALTY

TIMOTHY D. ROGERS, YOU HAVE BEEN FOUND BY THE JURY TO BE GUILTY OF THE OFFENSE OF MURDER, AND THE JURY HAS FURTHER RECOMMENDED THAT YOU BE SENTENCED TO DEATH. I ASK YOU NOW, DO YOU HAVE ANYTHING YOU WISH TO SAY AS TO WHY THE JUDGMENT OF THE LAW AND THE SENTENCE OF THE COURT SHOULD NOT NOW BE PRONOUNCED AGAINST YOU?

TIMOTHY D. ROGERS, IT IS THE JUDGMENT OF THE LAW AND THE SENTENCE OF THIS COURT THAT YOU, TIMOTHY D. ROGERS, THE PRISONER AT THE BAR, BE TAKEN TO THE COUNTY JAIL OF DORCHESTER COUNTY AND THENCE TO THE STATE PENITENTIARY, HENCEFORTH TO BE KEPT IN CLOSE AND SAFE CONFINEMENT UNTIL THE 26th DAY OF May, 1994, UPON WHICH DAY BETWEEN THE HOURS OF 6:00 O'CLOCK A.M., AND 6:00 O'CLOCK P.M., YOU SHALL SUFFER DEATH BY ELECTROCUTION IN THE MANNER PROVIDED BY LAW.

HON. LUKE N. BROWN, JR.
PRESIDING JUDGE

March 5, 1994
DATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF GENERAL SESSIONS

TRUE CERTIFIED COPY
'94 OCT 28 AM 11 35
MARGIE CARR MCKISSICK
CLERK OF COURT
DORCHESTER COUNTY

THE STATE)
)
VS.) 93-GS-18-0101
)
TIMOTHY D. ROGERS,)
)
DEFENDANT.)

AFFIRMATION

PRIOR TO THE IMPOSITION OF THE DEATH PENALTY, I FIND AS AN AFFIRMATIVE FACT THAT THE DEATH PENALTY WAS WARRANTED UNDER THE EVIDENCE OF THE CASE AND WAS NOT A RESULT OF PREJUDICE, PASSION OR ANY OTHER ARBITRARY FACTOR.

HON. LUKE N. BROWN, JR.
PRESIDING JUDGE

March 5, 1994
DATE

STATE OF SOUTH CAROLINA	) IN THE COURT OF
	) GENERAL SESSIONS
COUNTY OF DORCHESTER	) Indictment No. 93-GS-18-101
THE STATE	)
	)
-versus-	) MOTION IN LIMINE
	)
TIMOTHY ROGERS,	)
	)
Defendant.	)
	)

The Defendant above named respect fully moves that this Honorable Court limit the prosecution as follows:

1. From introducing by exhibit, testimony or otherwise for consideration by the jury any criminal record, sentence or other fact which would convey to the jury the Defendant's parole status and/or performance.

2. From referencing the term "parole" in any manner.

AND IT IS SO MOVED THIS 7TH DAY OF MARCH, 1994., at St. George, South Carolina.

WILLIAM L. RUNYON, JR.
MARK LEDENDECKER

By: _____
WILLIAM L. RUNYON, JR.

Attorneys for the Defendant.

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF GENERAL SESSIONS
THE STATE -versus- TIMOTHY ROGERS, Defendant. (appointed)	)	MOTION

A TRUE COPY
CLERK OF COURT
DORCHESTER COUNTY
DATE: 12-22-92
Margie K. Gasque
McKissick

The Defendant(s) by and through Counsel, hereby move(s) this Honorable Court pursuant to Brady v. Maryland and/or the applicable Rules of Practice for the Circuit Court as follows:

A. To reveal and disclose the following evidence:

1) All exculpatory evidence.

2) All inculpatory evidence.

3) All results of scientific tests made on persons and/or items of evidence herein whether offered as evidence or not offered as evidence.

4) All written statements taken by police and/or state or government agents and/or agencies.

5) The names, addresses of all potential witnesses and all N.C.I.C., C.A.L.E.S. and/or other records of said witnesses.

6) The names, addresses and/or information and/or evidence gathered from confidential informants together with all promises, bargains and/or inducements received by said informants in return for their cooperation.

B. As it relates to witnesses including informants, to reveal and disclose for inspection and/or copying

all files, accountings, notes, academic records and/or military records that are maintained on, by or about said individuals.

C. As it relates to the jury panel, to give to the Counsel for the Defendant all N.C.I.C. and/or C.A.L.E.S. reports on the jury venire which is available to the State.

AND IT IS SO MOVED this 15th day of December, 1992.

WILLIAM L. RUNYON, JR.
One Carriage Lane
Building B, Suite 203
Charleston, SC 29407
(803) 571-3515

Attorney for Defendant.

Charleston, SC

1309
1265

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	GENERAL SESSIONS
COUNTY OF DORCHESTER	)	INDICTMENT NO. 93-GS-18-101
THE STATE	)	
	)	
-versus-	)	ORDER FOR DISCOVERY
	)	
TIMOTHY D. ROGERS,	)	
	)	
Defendant.	)	

'93 AUG 19 PM 12:55

TRUE CERTIFIED COPY

The above-captioned matter is a capital case. The Defendant filed discovery Motions in this matter. The Motions were heard in open Court on August 17, 1993. At that time it was presented on the record that the Solicitor had no objections to the entry of an Order of Discovery. Likewise it would be in the interest of justice that the Defendant engage in mutual discovery. Accordingly, it is hereby

#1 CWW, Jr.

ORDERED, ADJUDGED AND DECREED that the State shall provide to defense counsel all information, evidence, scientific reports and/or any information related to the Defendant to the Defense Counsel, and the State shall provide all materials required by Brady v. Maryland and the foregoing shall be referenced, but not limited, to the following evidence, to wit:

1. All exculpatory evidence.

~~2. All inculpatory evidence~~. CWW, Jr.

3. All scientific tests results and reports whether or not they are to be offered as evidence.

4. All written reports, statements and notes of any investigative or police agency.

5. The names and addresses of all potential witnesses together with all police records of same, if any.

6. The names and addresses of, and/or information gathered from, confidential informants.

7. The promises, bargains and/or inducements offered and/or accepted by any witness and/or potential witness.

8. The jury information utilized by the State for jury selection.

9. Any and all such reports, information and/or evidence set out in the State's notice of evidence in aggravation and notice of evidence in aggravation of the punishment.

And it is further

ORDERED, ADJUDGED AND DECREED that the defense shall engage in reciprocal discovery and shall:

1. Provide to the State all evidence as it relates to the defense of alibi.

2. Provide to the State all scientific reports which it intends to use.

3. Provide to the State a witness list prior to trial; however, this list may be expanded during any trial.

4. Provide to the State all written statements of witnesses.

AND IT IS SO ORDERED this 19 day of August, 1993 at St. George, South Carolina.

S/Charles W. Whetstone, Jr.
CHARLES WILLIAM WHETSTONE, JR.
Judge
First Judicial Circuit

#3

STATE OF SOUTH CAROLINA	IN THE COURT OF
COUNTY OF DORCHESTER	GENERAL SESSIONS
THE STATE	
-versus-	MOTION
TIMOTHY ROGERS,	
Defendant.	

The Defendant above named by and through Counsel respectfully moves this Honorable Court as follows:

1. For a speedy trial on the charge of Murder.

AND IT IS SO MOVED this 18th day of January, 1993 at Charleston, South Carolina.

WILLIAM L. RUNYON, JR.
One Carriage Lane
Building B, Suite 203
Charleston, SC 29407
(803) 571-3515

Attorney for Defendant.

DEFENSE OF INDIGENTS ACT

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA	)	
COUNTY OF DORCHESTER	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
VS	)	ORDER OF APPOINTMENT OF LEGAL
	)	COUNSEL FOR INDIGENT DEFENDANT
	)	
Timothy Rogers	)	

The defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, William Runyon, Attorney-at Law, is appointed as counsel for the defendant.

This 11 day of Dec, 1992
at _____ (am pm)

Granston Pinckney

STATE OF SOUTH CAROLINA) IN THE COURT OF
) GENERAL SESSIONS
COUNTY OF DORCHESTER)

THE STATE)
)
-versus-) MOTIONS
)
TIMOTHY D. ROGERS,)
)
Defendant.)

The Defendant above named respectfully moves this Hnorable Court as follows:

1. To have additional counsel appointed at this time. Granted 8-1-93

2. To order that work may proceed and costs for services may be incurred inasmuch as the Solicitor has stated in correspondence and to the press that this case is a "capital" case.

AND IT IS SO MOVED this 30th day of March, 1993 at Charleston, South Carolina.

WILLIAM L. RUNYON, JR.
One Carriage Lane
Building B, Suite 203
Charleston, SC 29407
(803) 571-3515

Attorney for Defendant.

A TRUE COPY
CLERK OF COURT
DORCHESTER COUNTY
DATE: 4-2-93
Margie L. Cesar
M. Kinsey

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	GENERAL SESSIONS
COUNTY OF DORCHESTER	)	INDICTMENT NO. 93-GS-18-101
THE STATE	)	
	)	
-versus-	)	ORDER APPOINTING
	)	ADDITIONAL COUNSEL
TIMOTHY D. ROGERS,	)	
	)	
Defendant.	)	

TRUE CERTIFIED COPY
'93 AUG 19 PM 12:56
CLERK

It appears that the above-captioned matter, having been arraigned as a capital case, that the appointment of additional counsel is required by statute and requested by both the State and the Defense. William L. Runyon, Jr., Esq. of the Charleston Bar, having been appointed in this matter in December 1992, it is now

ORDERED, ADJUDGED AND DECREED, that Charles Feeley of the Dorchester Bar is hereby appointed to represent the Defendant in the capital case, and he, together with William L. Runyon, Jr., Esq., shall represent the Defendant until relieved by this Court.

AND IT IS SO ORDERED at St. George, South Carolina after being heard on the record.

S/ Charles W. Whetstone, Jr.
CHARLES WILLIAM WHETSTONE, JR.
Judge
First Judicial Circuit

Dated: August 19, 1993

STATE OF SOUTH CAROLINA	) IN THE COURT OF
	) GENERAL SESSIONS
COUNTY OF DORCHESTER	)
	)
THE STATE	)
	)
-versus-	) ORDER REQUIRING
	) MEDICAL EVALUATION
TIMOTHY ROGERS,	)
	)
Defendant.	)

FILED
DEC 7 PM 11 96
CLERK OF COURT
DORCHESTER COUNTY

The Defendant above named is presently in custody and is charged with murder. The State has served notice of its intent to seek the death penalty. The Defendant is represented by appointed Counsel and is indigent. Defense Counsel seeks to have a complete medical evaluation performed. By agreement, the Medical University of South Carolina appears to be the medical facility best equipped to handle the requested evaluation. It is contemplated that this will be done on an out-patient basis. It is also contemplated that this should not act to impede the trial of this matter at the end of the month of February. It is clear that the State of South Carolina is required to pay for the services rendered by the Medical University of South Carolina. Likewise, no initial limitations are to be placed on the medical facility saving and excepting avoiding any "extraordinary" procedures. Accordingly, it is hereby

ORDERED, ADJUDGED AND DECREED that the Defendant shall be taken to the Medical University of South Carolina for a complete medical evaluation so that the state of his health may be ascer-

tained; and it is further

ORDERED, ADJUDGED AND DECREED that he shall be transported by the Dorchester County Sheriff and/or his designees; and it is further

ORDERED, ADJUDGED AND DECREED that the Defendant shall be examined by and/or under the supervision of Board-certified physicians to ascertain whether or not he has any condition which needs treatment and/or would have a bearing on his guilt or innocence and/or on the sentence which should be imposed; and it is further

ORDERED, ADJUDGED AND DECREED that, unless medically mandated, the evaluation should be performed on an out-patient basis; and it is further

ORDERED, ADJUDGED AND DECREED that the complete medical evaluation should include all necessary laboratory tests, x-rays and/or other procedures necessary for the examining physician to be able to render his/her opinion as to the state of the Defendant's health, provided that extraordinary procedures should not be attempted unless called for by the medical protocols in this case. By way of example and only by way of example, a C.A.T. scan should not be ordered unless the examining physician or physicians have some medical determination and/or history which standard medical protocols would mandate the ordering of such a procedure; and it is further

ORDERED, ADJUDGED AND DECREED that the State of South Carolina

should be billed for all costs and charges by directing the billing to the following address:

Indigent Defense Department
Post Office Box 50447
Columbia, SC 29250

The foregoing billings should be the usual and customary charges for procedures and services performed, and a certified copy of this Order should accompany said billing; and it is further

ORDERED, ADJUDGED AND DECREED that the results of the evaluation, including any additional medical and/or psychiatric recommendations, should be supplied along with the test results and conclusions of the examiners to:

William L. Runyon, Jr., Esq.
One Carriage Lane
Building B, Suite 203
Charleston, SC 29407

and it is further

ORDERED, ADJUDGED AND DECREED that the foregoing evaluation and rendering of the aforesaid report should be accomplished by January 19, 1994; and it is further

ORDERED, ADJUDGED AND DECREED that the Defendant shall be removed from the Dorchester County Jail and the County as many times as necessary to accomplish this evaluation, and the Honorable Sheriff of Dorchester County is hereby authorized to move the Defendant to the Charleston County Jail if same will facilitate the evaluation and if agreed upon by the Honorable Sheriff of Charles-

ton County.

AND IT IS SO ORDERED this 18 day of January, 1994 at St. George, South Carolina.

S/
LUKE N. BROWN
Presiding Judge
Common Pleas/General Sessions

STATE OF SOUTH CAROLINA	) IN THE COURT OF
	) GENERAL SESSIONS
COUNTY OF DORCHESTER	) INDICTMENT NO. 93-GS-18-101
THE STATE	)
	)
-versus-	) MOTION TO QUASH NOTICE
	) OF AGGRAVATING CIRCUMSTANCES
TIMOTHY ROGERS,	)
	)
Defendant.	)
	)

The Defendant above named by and through his undersigned counsel respectfully moves this Honorable Court as follows:

1. To quash the Notice of Aggravating Circumstances relating to the use of weapon dangerous to more than one person on the grounds that same is unconstitutional and/or the circumstances herein do not allow the constitutional use of this circumstance in aggravation.

2. To quash the aggravating circumstance of the death of a child under eleven (1) since the law of South Carolina would make nearly every homicide of a child under eleven (11) a capital case. The law is not applied in that manner, however, and cases such as this are the result of bias, prejudice, local concerns and/or other factors, none of which can be codified and amount to a prosecution discretion which far exceeds the boundaries set out by the United States Supreme Court in such cases as Furman v. Georgia.

AND IT IS SO MOVED this 24th day of February, 1994 at St.

George, South Carolina.

WILLIAM L. RUNYON, JR.
MARK LEIENDECKER

By: _____
WILLIAM L. RUNYON, JR.

Counsel for Defendant.

STATE'S REQUEST TO CHARGE NO. 1

'In its popular sense, the term 'malice' conveys the meaning of hatred, ill-will, or hostility toward another. In its legal sense, however, as it is employed in the description of murder, it does not of necessity import ill-will toward the individual injured, but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief; in other words, a malicious killing is where the act is done without legal justification, excuse, or extenuation, and malice has been frequently, substantially so defined as consisting of the intentional doing of a wrongful act toward another without legal justification or excuse.' State v. Heyward, 15 SE2d 669, 197 SC 375 (1941); State v. Mouzon, 99 SE2d 672, 231 SC 655 (1957) (intoxicated motorist killing pedestrian).

STATE'S REQUEST TO CHARGE NO. 2

". . . , a person may be guilty of murder although there was no actual or specific intent to kill, general malice being sufficient without a specific intent to kill. Accordingly, if an unlawful act, dangerous to, and indicating disregard of, human life, causes the death of another, the perpetrator is guilty of murder, although he did not intend to kill." 40 CJS 866, Homicide, Section 20.

STATE'S REQUEST TO CHARGE NO. 3

"Where a person intentionally discharges a firearm into a crowd of people with a disregard of consequences and a death results therefrom, he is guilty of murder." 5 ALR 603.

Objection.

No Record.

STATE'S REQUEST TO CHARGE NO. 4

"The killing of a person by an intentional discharge of a firearm into a crowd of people with a disregard of consequences constitutes murder." 23 ALR 1555.

Object
No Crowd.

STATE'S REQUEST TO CHARGE NO. 5

Under the doctrine of "transferred intent" the actor's intent to kill his intended victim is said to be transferred to his actual victim. All that is required for murder is the mental state of malice, provided by the intent to kill a human being, coupled with an act which caused the death of a human being. State v. Horne, 319 SE2d 703 (1984).

STATE'S REQUEST TO CHARGE NO. 6

Where a defendant intends to kill or seriously injure one person, but kills another, a defendant may be found guilty of murder or manslaughter. If malice is found at the time of the killing, even if a third party is killed rather than the intended victim, the defendant is guilty of murder. State v. Gandy, 334 SE2d 65 (1984).

Given in the law.
O.K.

STATE'S REQUEST TO CHARGE NO. 7

"Since legal malice does not require ill will toward the victim, the crime may be murder although the person killed was not the one whom accused intended to kill, as where the victim is mistaken for another, or where one shooting at another kills a bystander or third person coming within range, ... Actual malice toward the unintended victim is not necessary. The grade of the crime in such cases will be the same as though accused had killed the person whom he had intended to kill." 40 CJS 864 Homicide, Section 18.

STATE'S REQUEST TO CHARGE NO. 8

. . . Motive is not an essential element of crime and need not be shown, although the presence or absence of evidence of a motive may be considered in determining whether there was the criminal intent, which is an essential element in every common law crime. State v. Thrailkill, 73 SC 318 (1905).

1330
1286

COMMITMENT

DORCHESTER COUNTY
South Carolina

IN THE COURT OF GENERAL SESSIONS
Indicted for
MURDER 93-GS-18-0101

The State

vs.

TIMOTHY D. ROGERS

Guilty of

MURDER

Sentence

The sentence of the Court is: that you TIMOTHY D. ROGERS be confined upon the public works of _____ County for a period of _____ at hard labor for a like period in the State Penitentiary _____

DEATH BY ELECTROCUTION

Date Sentenced

Presiding Judge

I certify that the foregoing facts in this case are true according to the official records thereof.

Date March 5, 1994

Marie Carr McTissick
Clerk of Court — Seal

When a prisoner is committed to the Penitentiary more than 10 days after sentence was imposed the reason therefore should be stated on the lines below or if he began to serve sentence in the county and is later transferred to the Penitentiary, that fact should, by all means, be entered on these lines left blank for such purposes.

93 MAY 27 AM 11:28
CLERK OF COURT
DORCHESTER CO. S.C.

HARRIOTT'S PRINT SHOP 563-3484

State of South Carolina,

COUNTY OF DORCHESTER

First Circuit

1287

MARCH 5, Term 1994

THE STATE OF SOUTH CAROLINA

against

TIMOTHY D. ROGERS

Certified Copy of Sentence of Court

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT
INDICTMENT NO. 93-GS-18-101

STATE OF SOUTH CAROLINA)
)
versus)
TIMOTHY D. ROGERS,)
DEFENDANT)

TRANSCRIPT OF RECORD

HEARING DATE:
AUGUST 17 AND 19, 1993

BEFORE:

THE HONORABLE CHARLES W. WHETSTONE, JR., PRESIDING JUDGE

APPEARANCES:

WALTER BAILEY, ESQUIRE
SOLICITOR

FOR THE STATE

WILLIAM L. RUNYAN, JR., ESQUIRE
ATTORNEY AT LAW

FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

DATE:

AUGUST 17, 1993

SOLICITOR BAILEY: Your Honor, we've got Mr. Runyan here for Timothy Rogers, right?

THE COURT: Uh huh.

SOLICITOR BAILEY: We'd like to do that first.

THE COURT: All right, sir.

SOLICITOR BAILEY: We've also got some motions to present to you.

Your Honor, we have Indictment No. 93-GS-18-101, "The State versus Timothy D. Rogers." Your Honor, this is before you at this time for the purposes of arraigning Mr. Rogers on a murder charge.

THE COURT: All right, sir.

SOLICITOR BAILEY: And serving Notice Of Intent To Seek The Death Penalty and aggravating circumstances on Mr. Rogers and his attorney.

THE COURT: All right, sir. You may proceed. Go ahead.

SOLICITOR BAILEY: Okay.

Are you Timothy D. Rogers?

DEFENDANT: Yes ---

SOLICITOR BAILEY: Raise your right hand. Are you Timothy Rogers?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

DEFENDANT: Yes, sir.

SOLICITOR BAILEY: Okay, Mr. Rogers, I'm going to read the indictment to you. It states that-- "Indictment 93-GS-18-101. At a Court of General Sessions, convened on February 8, 1993, the Grand Jurors of Dorchester County present upon their oath: COUNT: MURDER. Section 16-3-20; that Timothy D. Rogers, did in Dorchester County on or about November 25, 1992, feloniously, wilfully and with malice aforethought, kill one Stephanie B[redacted] by means of shooting her in the back of the head with a thirty-eight calibre pistol, and that the said Stephanie B[redacted] did die in Charleston as a proximate result thereof on or about the Twenty-sixth day of November, Nineteen ninety-two. Against the peace and dignity of the State, and contrary to the statute in such case made and provided." To that indictment, how do you plead?

DEFENDANT: Not guilty.

SOLICITOR BAILEY: How do you wish to be tried?

DEFENDANT: By God and my country.

SOLICITOR BAILEY: Your Honor, I'd like the record to reflect that I'm serving Mr. Runyan and Mr. Rogers with certified copies of Notice Of Intent To Seek The Death Penalty and Notice of Aggravating

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Circumstances.

THE COURT: All right, sir, that's noted for the record.

MR. RUNYAN: Also for the record, Your Honor, note that the indictment which I believe the statute requires to be served upon us is appended to the said notice.

THE COURT: All right, sir.

MR. RUNYAN: And served. We've been served. Thank you very much, Mr. Bailey.

SOLICITOR BAILEY: Your Honor, Mr. Runyan is appointed in the case and, of course, there needs to be a second lawyer appointed. Do you want to do that at this time or ---

MR. RUNYAN: Your Honor, I likewise made a motion for that, for additional counsel, and perhaps we can take that up when we take the rest of the motions up, after -- at a more appropriate time. I have a lawyer who I would like to suggest to the Court, who has agreed to serve.

THE COURT: All right, sir. I'll be happy to consider that but we also have two new public defenders in Dorchester County, too.

MR. RUNYAN: Yes, sir. I'm, I'll work with anyone the Court says, Judge, I was just trying to ---

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

THE COURT: All right, sir. Well, I'll be happy to hear the name of anyone that you would suggest, and I'll consider that as well as the public defenders.

MR. RUNYAN: All right, sir. Mr. ---

SOLICITOR BAILEY: I'll -- I'm sorry, go ahead.

MR. RUNYAN: Go ahead.

SOLICITOR BAILEY: Mr. Runyan has several motions he's filed. Your Honor, I can agree to most of what he's asked for, not all of it. If Your Honor would like we could strike the next jury on the trial and perhaps take those motions up after that.

THE COURT: That's fine. All right, then, let's do that. Thank you.

SOLICITOR BAILEY: Thank you, Your Honor.

(RECESS)

SOLICITOR BAILEY: Your Honor, Mr. Runyan has a motion.

THE COURT: All right, Mr. Runyan?

MR. RUNYAN: Your Honor, among our numerous motions, we have fairly basically one motion that has fifty-three different parts. We've discussed with the Solicitor the question of discovery, and he has consented to our discovery motions, obviously. The second matter which we would ask the Court to address is

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

the one for additional counsel. Both of the Solicitors' are moving for the same, and I'm asking for additional counsel. Your Honor, the, Mr. Wise of the Public Defender's office, or the Public Defender system here in Dorchester County apparently has represented, or been in some business association with the, with the victim's family, and he, he presents, he indicates he has a conflict. There were two people with my client that night, and they were likewise charged. And it was my understanding from Mr. Loy, who was the previous Public Defender, that he was representing, the Public Defender would be representing one or both of those, quote, co-defendants. Now, they may wind up being witnesses, I don't know, but as a practical matter, ---

THE COURT: Well, all of Mr. Loy's cases have either gone to Mr. Wise or Mr. Fealey, isn't that right, Solicitor?

SOLICITOR BAILEY: Mr. Loy represented a juvenile girl that was charged with the same offenses, Your Honor. I'm not sure which one of them now represents her.

MR. RUNYAN: And as a practical matter, that's the only reason why I sought to inquire of other lawyers as to whether or not they would be willing to be appointed.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

THE COURT: All right, sir.

MR. RUNYAN: And, and because we, we anticipate there may be a conflict in that, in that fashion. Obviously, I would be willing to work with Mr. Fealey if he's, if he's available.

THE COURT: All right, sir. Well, let's determine what happened to Mr. Loy's clients, and you have a suggestion, then, as to someone who is willing to serve?

MR. RUNYAN: Your Honor, Mr., Mr. L. A. Barnwell, of the Charleston Bar, the, he's a former Public Defender down there, he's been involved in numerous murder cases. He's never handled a capital case, but he's, he's, and he's been practicing law for nearly twenty years; or Mr. Richard Buchanan, of the Charleston Bar, he's a former Assistant Solicitor. He's been involved in the prosecution of homicide cases and what have you. He's now in a position of private practice. From my experience, with checking with my friends in the Dorchester County Bar, most have, have some conflict in these cases, they either represent the Police Department, or the Sheriff, or what have you, so that's why I checked around the Charleston Bar. Of course, that's how I wound up here, too, ---

THE COURT: Yes, sir.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

MR. RUNYAN: --- because of the various conflicts. But I have no problem working with Mr. Fealey or anyone else.

THE COURT: All right, sir. Well, I'll make that determination today, then, and let you know.

MR. RUNYAN: All right, sir. Additionally, Your Honor, the Sheriff of Dorchester County and his department, as usual, is most accommodating, and is as accommodating as he can be, particularly in a capital case, but the, Mr. Rogers is currently incarcerated at Kirkland. He's, he had his parole revoked for leaving the State during this incident, and he originally was at Leiber, and we would ask the Court to entertain a motion to give us an, at least a directive Order to the South Carolina Department of Corrections to transfer him to Leiber as soon as they have a space available, versus leaving him at Kirkland. A, it would be far easier to, to contact him from Charleston, it would be quicker to drive there and what have you; B, he would not be necessarily confined in the Dorchester County Jail where the facilities are quite limited, and it might place a strain on the security facilities of the jail. And we'd ask the Court to entertain that motion to have him moved to Leiber at the first convenient time for the South Carolina Department of Corrections.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

THE COURT: Any objections to that, Solicitor?

SOLICITOR BAILEY: No, sir, Your Honor, I have written the Department of Corrections and made that request that they send him down to Leiber, but, of course, that's totally unavailable unless you order it.

THE COURT: I'll order it, then.

MR. RUNYAN: In addition to that, Your Honor, we have, one of our motions is to, is to -- and the Solicitor, in his Notice to, what he put us on notice of this morning is that he's going to present all sorts of, or may present all sorts of records and what have you. We've asked, we made a motion for the South Carolina Department of Corrections to provide us with a complete copy of his file, and we, as part of our discovery process. Obviously, I don't think the Solicitor has an objection, but I don't think the SCDC is necessarily just going to send us a copy because we asked for it. They like to have things in their files.

THE COURT: All right, sir. I'll be happy to order that, too. Any objection, Solicitor?

SOLICITOR BAILEY: No, sir.

MR. RUNYAN: Your Honor, then the next series of matters, we have a series of expense matters which are, we don't need to take them all up at this point in

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

time, but back in April I started to, I've written several letters trying to deal with the County on the possible expenditures for this case. I forwarded expenses, some medical evaluations, psychological evaluations, etcetera, and they were not postured to sit down and either work out a budget or work out some other method to, so we can hold down expenses. And so, we've reached that stage now where Court Administration has set this case for February, so we're going to have to get our investigator, we're going to have to get the psychological and medical evaluations done that we need done. And we have contacted three investigators. The one which we would like to obtain would be Mr. Walter Mitchell, who's a former SLED agent, to conduct the appropriate investigation which would, in fact, take him all the way to Tuskegee, Alabama. And we'd ask the Court to approve in theory at least the, we would submit to the Court the appropriate financial figures on that, to approve our retention of Mr. Mitchell in lining up those defenses.

THE COURT: I don't have any problem with that so long as you give me a budget.

MR. RUNYAN: Yes, sir, we've got that.

THE COURT: I want some proposed expenditures before I approve anything so I'll know what kind of

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

budget you're going to be able to live with and what the top end expenditure we're talking about is.

MR. RUNYAN: All right, sir, then, I'll ---

THE COURT: Have you had any conversations with Mr. Frampton, who represents County Council, in regard to the expenditures?

MR. RUNYAN: Yes, sir, I've got several letters here, Your Honor, starting back in April, and, and my friend, Mr. Frampton, and I understand, has not been authorized to respond to any of the letters.

THE COURT: Yes, sir, well, I understand that.

MR. RUNYAN: And I think now perhaps, that the County has taken the position that until, quote, formerly served, that they would not, they would not even discuss it. I think, at this juncture perhaps we, we, the circumstances have changed, somewhat for the county. And, but I have four letters and I'll be more than happy to submit those with my proposed budget, too, for the record, for my attempts to work with Dorchester County.

THE COURT: All right, sir. If you would, please, when you submit me a copy of that also send a copy of the letter to Mr. Frampton so County Council will know what's going on, and if they want to have

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

some input I'll invite them to have input into it.

MR. RUNYAN: Yes, sir.

THE COURT: Thank you.

MR. RUNYAN: Thank you very much. That would cover most of the areas that we would have. That would leave us with a few motions to handle, but they, it probably would not be appropriate to discuss now, because there would be a predicate to establish before the Court could entertain them.

THE COURT: All right, sir. Anything further, Solicitor?

SOLICITOR BAILEY: Your Honor, the only other thing, I discussed this with Mr. Runyan a few minutes ago. The indictment for murder is a computer generated indictment and references a code section, 16-3-20, I believe, which actually doesn't prohi -- doesn't make the crime of murder illegal, it just sets out the penalties in capital murder cases as opposed to non-capital murder cases. Mr. Runyan advised me he has no problem with the form of that indictment, and I just wanted that on the record.

MR. RUNYAN: Yes, Your Honor, for the record, obviously, murder is a common law crime in this State. The, I take the posture that what -- you might have a hybrid kind of situation where the statutory penalties

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

augment the common law, but as a practical matter and for all intents and purposes, we're on notice. We understand the statute, and personally I think that the, it may be a moot question, I think that the law in South Carolina actually constitutes a common law and statutory offense, but be that as it may, we have no objections to that wording in the statute, we have no objections to the form of the -- excuse me, that was the statute, that wording in the indictment, and we have no objections to the form of the indictment. As I told Mr. Bailey, we would have motions to quash the aggravating circumstances, at least on of them and possibly both, later on down the road, but that's, that would be something for the Court to consider.

THE COURT: All right.

MR. RUNYAN: That has nothing to do with the form of the indictment itself. We have no objection to the form of the indictment.

THE COURT: Now, who is going to draw me these two Orders? Mr. Bailey, are you going to draw me this Order of transfer to Leiber and the Order to get a copy of the file?

MR. RUNYAN: I, I thought, well, I thought I would ---

SOLICITOR BAILEY: Okay.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

MR. RUNYAN: --- my friend, Mr. Bailey, is pretty busy as a Solicitor, Judge, and I'd be more than happy to draw those and get those back up here. I'm suppose to come back up on Thursday for some other matters, ---

THE COURT: That will be fine.

MR. RUNYAN: --- and I'll be more than happy to bring them then.

THE COURT: All right, sir. All right, anything further?

MR. RUNYAN: Nothing further, Your Honor.

THE COURT: Okay, thank you.

MR. RUNYAN: Thank you very much.

(RECESS)

DATE:

AUGUST 19, 1993

THE COURT: I'm going to appoint Mr. Fealey as the co-counsel in the Rogers case.

MR. RUNYAN: All right, and Your Honor, as it relates to the discovery Order that was handed up, there are three of them there, I did them separately so that they would be separate and easier to handle and other people wouldn't have to wade through all the extraneous stuff, as it relates to the discovery Order, which may be the second or third Order I've handed up, ---

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

THE COURT: Yes, sir.

MR. RUNYAN: --- we have no objections to the, to the Court striking through and initialing the strike-through of Number Two, which is requiring the State to give us all inculpatory evidence. The Solicitor has indicated he's going to give us the entire file, but at the same time, he just didn't want to be bound to -- and I agree with that, I've got no problem with that.

THE COURT: Yes, sir, all right. Thank you, sir.

MR. RUNYAN: Thank you, Your Honor.

THE COURT: Solicitor, other than that, you have no objection to this Order? Have you had a chance to look at it?

SOLICITOR BAILEY: I have looked at it, Your Honor, and I have no objection to it. That's stuff I'm going to do anyway.

(RECESS)

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE 17TH AND 19TH DAYS OF AUGUST, 1993.

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

DATE: APRIL 23, 1994

Harry A. Walker

(MRS.) HARRY A. WALKER

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

STATE OF SOUTH CAROLINA]
]
COUNTY OF DORCHESTER]
]

IN THE
COURT OF GENERAL SESSIONS

CASE NO.: 93-GS-18-101

STATE OF SOUTH CAROLINA,]
]
PLAINTIFF,]
]
VS.]
]
TIMOTHY D. ROGERS,]
]
DEFENDANT.]
]

COPY

TRANSCRIPT OF RECORD

FEBRUARY 2, 1994
ST. GEORGE, SOUTH CAROLINA

B E F O R E:

HONORABLE JUDGE CHARLES W. WHETSTONE, JR., JUDGE.

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

WALTER M. BAILEY, SOLICITOR
ATTORNEY FOR THE STATE

WILLIAM L. RUNYON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

CAROL L. LeFEBVRE
COURT REPORTER

THE COURT: ALL RIGHT, MR. RUNYON, YOU REPRESENT MR. ROGERS?

MR. RUNYON: YES, YOUR HONOR.

THE COURT: HAVE YOU EXPLAINED TO HIM THIS CHARGE, THE POSSIBLE PUNISHMENT, AND HIS RIGHTS?

MR. RUNYON: ABSOLUTELY, YOUR HONOR, NUMEROUS OCCASIONS.

THE COURT: IN YOUR OPINION DOES HE UNDERSTAND THE CHARGE, THE POSSIBLE PUNISHMENT, AND HIS RIGHTS?

MR. RUNYON: YES, YOUR HONOR.

THE COURT: HOW DOES HE INDICATE TO YOU HE WISHES TO PLEAD, GUILTY OR NOT GUILTY?

MR. RUNYON: GUILTY, AS PER IS TENDERED, SIGNATURE---

THE COURT: ALL RIGHT, TAKE THE CHILD OUTSIDE, PLEASE.

(WHEREUPON, A CHILD WAS TAKEN OUTSIDE THE COURTROOM.)

DO YOU AGREE WITH HIS DECISION TO PLEAD GUILTY?

MR. RUNYON: ABSOLUTELY, YOUR HONOR.

THE COURT: ARE YOU SATISFIED FROM YOUR REVIEW OF THE FACTS AND CIRCUMSTANCES SURROUNDING MR. ROGERS' CASE THAT THE STATE HAS SUFFICIENT EVIDENCE TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT?

MR. RUNYON: OVER THE COURSE OF 15 MONTHS, YOUR

HONOR, WELL, THERE'S NO QUESTION ABOUT THAT.

THE COURT: MR. ROGERS, RAISE YOUR RIGHT HAND, PLEASE.

(WHEREUPON, TIMOTHY D. ROGERS, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

MR. ROGERS, I'M GOING TO BE ASKING YOU SOME QUESTIONS. IF YOU DON'T UNDERSTAND SOMETHING THAT I SAY, STOP ME AND I'LL LET YOU TALK TO MR. RUNYON. I'M ASKING YOU THESE QUESTIONS TO BE SURE THAT YOU UNDERSTAND WHAT YOU'RE DOING AND THAT YOUR PLEA OF GUILTY IS FREE AND VOLUNTARY. ALL RIGHT, SIR?

MR. ROGERS: (SHOOK HIS HEAD UP AND DOWN, INDICATING AN AFFIRMATIVE RESPONSE.)

THE COURT: UNDERSTAND?

MR. ROGERS: YES, SIR.

THE COURT: ALL RIGHT, SIR. PLEASE RESPOND SO I CAN HEAR YOU AND SO THE COURT REPORTER CAN TAKE DOWN WHAT YOU'RE SAYING. SHE CAN'T TYPE A NOD OF THE HEAD. ALL RIGHT, SIR?

MR. ROGERS: YES, SIR.

THE COURT: HOW OLD ARE YOU, MR. ROGERS?

MR. ROGERS: TWENTY-FIVE (25).

THE COURT: AND HOW FAR DID YOU GO IN SCHOOL?

MR. ROGERS: TENTH.

THE COURT: WHEN YOU LAST WORKED, WHAT KIND OF WORK DID YOU DO?

MR. ROGERS: RESTAURANT.

THE COURT: HAVE YOU EVER BEEN TREATED FOR ALCOHOL OR DRUG ABUSE OR ANY KIND OF MENTAL ILLNESS?

MR. ROGERS: YES, SIR.

THE COURT: WHAT WERE YOU TREATED FOR AND WHEN?

MR. ROGERS: ALCOHOL AND DRUGS BACK IN '80'S.

THE COURT: STILL HAVE THE PROBLEM OR DID YOU SUCCESSFULLY COMPLETE THE TREATMENT?

MR. ROGERS: I DIDN'T COMPLETE IT.

THE COURT: DIDN'T COMPLETE IT. YOU STILL HAVE AN ALCOHOL AND A DRUG PROBLEM?

MR. ROGERS: NOT -- NOT LATELY.

THE COURT: WELL, I KNOW YOU'VE BEEN IN JAIL FOR AWHILE, BUT I MEAN, DO YOU STILL NEED TREATMENT FOR YOUR ALCOHOL AND DRUG PROBLEM?

MR. ROGERS: YEAH, I PROBABLY CAN USE SOME.

THE COURT: ARE YOU TODAY UNDER THE INFLUENCE OF ANY ALCOHOL, DRUGS OR MEDICATION?

MR. ROGERS: NO, SIR.

THE COURT: HAVE YOU HAD ANY ALCOHOL, DRUGS, OR MEDICATION IN THE LAST 24 HOURS?

MR. ROGERS: NO, SIR.

THE COURT: IS THERE ANYTHING TODAY, WHETHER IT

BE A PHYSICAL, MENTAL, OR AN EMOTIONAL PROBLEM THAT IS KEEPING YOU FROM UNDERSTANDING WHAT WE'RE DOING HERE?

MR. ROGERS: NO, SIR.

THE COURT: NOW, YOUR LAWYER HAS TOLD ME HE HAS EXPLAINED TO YOU THIS CHARGE AND THE POSSIBLE PUNISHMENT. IS THAT RIGHT?

MR. ROGERS: YES, SIR.

THE COURT: DO YOU UNDERSTAND THAT FOR MURDER I CAN PUT YOU IN JAIL FOR LIFE IMPRISONMENT?

MR. ROGERS: YES, SIR.

THE COURT: THAT MEANS FOR THE REST OF YOUR LIFE. YOU UNDERSTAND THAT?

MR. ROGERS: YES, SIR.

THE COURT: DO YOU STILL WANT TO PLEAD GUILTY?

MR. ROGERS: YES, SIR.

THE COURT: DO YOU UNDERSTAND THAT, WHEN YOU PLEAD GUILTY, MR. ROGERS, YOU GIVE UP CERTAIN IMPORTANT CONSTITUTIONAL RIGHTS? YOU GIVE UP YOUR RIGHT TO REMAIN SILENT, YOU GIVE UP YOUR RIGHT TO A JURY TRIAL, AND YOU GIVE UP YOUR RIGHT TO CONFRONT THE WITNESSES AGAINST YOU. WHAT THOSE RIGHTS MEAN IS, THAT IN YOUR CASE -- AND I UNDERSTAND IN THIS PARTICULAR CASE YOU HAVE BEEN SERVED WITH NOTICE OF THE DEATH PENALTY -- THAT IN THIS PARTICULAR CASE WE WOULD GO THROUGH A TRIAL, A DEATH PENALTY TRIAL, THAT WOULD BE IN TWO PHASES. SO, WE'D HAVE TO PICK A JURY.

THE JURY SELECTION PROCESS IN THIS TRIAL WOULD BE DIFFERENT THAN IN A NORMAL TRIAL. WE WOULD SUMMONS THE JURY HERE AND WE WOULD INDIVIDUALLY QUESTION THE JURORS. I WOULD QUESTION THEM AND THE SOLICITOR WOULD AND YOUR ATTORNEY WOULD AND THEN WE WOULD SELECT A NUMBER OF JURORS AND FROM THAT LIST WE WOULD STRIKE THE JURY. YOU WOULD HAVE TEN PREEMPTORY STRIKES ONCE WE SELECTED THAT PANEL AND MR. RUNYON WOULD ASSIST YOU IN THAT ENTIRE PROCESS. IT WOULD TAKE A COUPLE DAYS TO DO ALL OF THAT.

ONCE WE HAD TWELVE JURORS AND TWO ALTERNATES, THEN THE STATE WOULD HAVE THE OBLIGATION TO PRESENT ENOUGH EVIDENCE AND TESTIMONY TO THAT JURY TO CONVINCE THEM THAT YOU'RE GUILTY BEYOND A REASONABLE DOUBT. YOU DON'T HAVE TO PROVE YOURSELF INNOCENT, THE STATE'S GOT TO PROVE YOU GUILTY. SO, THEY WOULD CALL WHATEVER WITNESSES THEY HAVE, YOU WOULD SEE WHO THE WITNESSES ARE, AND MR. RUNYON WOULD CROSS-EXAMINE THOSE WITNESSES FOR YOU. THAT WOULD BE YOUR RIGHT TO CONFRONT THE WITNESSES AGAINST YOU.

YOU HAVE A RIGHT TO REMAIN SILENT. THAT MEANS THAT YOU DON'T HAVE TO TESTIFY. IF YOU DON'T TESTIFY, I'LL TELL THE JURY THAT THEY CAN'T HOLD THAT AGAINST YOU AND CAN'T EVEN TALK ABOUT THAT IN THE JURY ROOM. UNDERSTAND?

MR. ROGERS: YES.

THE COURT: IF WE WENT THROUGH THAT PROCESS AND THE JURY FOUND YOU GUILTY, THEN WE WOULD GO ON INTO WHAT'S

CALLED A PENALTY PHASE WHERE THAT SAME JURY WOULD HEAR CIRCUMSTANCES AND AGGRAVATION AND IN MITIGATION AND DETERMINE WHETHER YOU SHOULD BE SENTENCED TO DEATH OR TO LIFE IMPRISONMENT. YOU UNDERSTAND THAT ALSO, THAT THAT'S THE WAY THE PROCESS WORKS?

MR. ROGERS: YES, SIR.

THE COURT: YOU WOULD HAVE THE RIGHT IN THAT PHASE OF THE TRIAL TO SAY WHATEVER YOU WANTED TO SAY AND YOU COULD MAKE A FINAL ARGUMENT OR STATEMENT TO THE JURY AFTER THE STATE HAD FINISHED DOING EVERYTHING THEY WANTED TO DO. YOU WOULD HAVE THE RIGHT TO SAY WHATEVER YOU WANT TO SAY. YOU UNDERSTAND THAT?

MR. ROGERS: YES, SIR.

THE COURT: AND YOU UNDERSTAND THAT BY ENTERING THIS GUILTY PLEA YOU'RE GIVING UP YOUR RIGHT TO ALL OF THAT PROCESS: THAT JURY-TRIAL PROCESS, THE FIRST PHASE, THE SECOND PHASE, AND YOU'RE PLEADING GUILTY AND GIVING ALL THAT UP. DO YOU UNDERSTAND ALL OF THAT?

MR. ROGERS: YES, SIR.

THE COURT: YOU UNDERSTAND, IN THAT SECOND PHASE OF THE TRIAL, THE STATE WOULD HAVE TO PROVE CIRCUMSTANCES OF AGGRAVATION THAT WERE INVOLVED IN THIS PARTICULAR CASE SUFFICIENT TO CONVINCE THE JURY THAT THEY SHOULD GIVE YOU THE DEATH PENALTY. AND IF THEY WEREN'T CONVINCED, THEY WOULD GIVE YOU LIFE IMPRISONMENT. DO YOU UNDERSTAND THAT?

MR. ROGERS: YES, SIR.

THE COURT: OKAY. THERE ARE VARIOUS CIRCUMSTANCES OF AGGRAVATION.

SOLICITOR, WHAT CIRCUMSTANCES OF AGGRAVATION WOULD YOU ALLEGE EXISTED IN THIS CASE?

MR. BAILEY: YOUR HONOR, WE'VE ALLEGED TWO CIRCUMSTANCES OF AGGRAVATION: ONE, BEING THAT THE VICTIM OF THE MURDER IN THIS CASE WAS A CHILD UNDER THE AGE OF ELEVEN, AND THE OTHER BEING THAT -- ONE SECOND, YOUR HONOR -- THAT THE DEFENDANT 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.

THE COURT: THOSE ARE THE TWO CIRCUMSTANCES OF AGGRAVATION THAT THE SOLICITOR SAYS WOULD APPLY IN YOUR CASE. THAT WOULD BE A MATTER OF PROOF AGAIN. AND THERE ARE CIRCUMSTANCES OF MITIGATION THAT YOU AND YOUR ATTORNEY COULD RAISE IN RESPONSE TO THAT AND THEY ARE LISTED OUT IN THE DEATH PENALTY STATUTE AS SET FORTH IN 16-320. THEY ARE NUMBERED ONE THROUGH TEN, AND I'M SURE YOU AND YOUR LAWYER HAVE TALKED ABOUT ALL THAT. YOU BEEN THROUGH ALL THAT WITH YOUR ATTORNEY?

MR. ROGERS: YES, SIR.

THE COURT: ALL RIGHT, SIR. ANY QUESTIONS ABOUT ANY OF THAT?

MR. ROGERS: NO, SIR.

THE COURT: SO, YOU UNDERSTAND WHAT YOU'RE GIVING UP BY PLEADING GUILTY?

MR. ROGERS: YES, SIR.

THE COURT: ALL RIGHT. THAT'S YOUR RIGHTS TO YOUR JURY TRIAL, YOUR RIGHT TO CONFRONT THE WITNESSES AGAINST YOU, AND YOUR RIGHT TO REMAIN SILENT. YOU UNDERSTAND ALL THOSE RIGHTS AND YOU WANT TO GIVE THEM UP AND PLEAD GUILTY?

MR. ROGERS: YES, SIR.

THE COURT: UNDERSTANDING THE NATURE OF THE CHARGE AGAINST AND THE CONSEQUENCES OF YOUR GUILTY PLEA, HOW DO YOU WISH TO PLEAD, GUILTY OR NOT GUILTY?

MR. ROGERS: GUILTY.

THE COURT: DO YOU UNDERSTAND THAT, WHEN YOU PLEAD GUILTY, YOU ADMIT THAT THIS CHARGE AGAINST YOU IS TRUTH?

(PAUSE.)

MR. ROGERS: YES, SIR.

THE COURT: SO, GUILT -- BY SAYING -- BY SAYING YOU ARE GUILTY, YOU'RE ADMITTING THAT YOU DID COMMIT THE CRIME OF MURDER. DO YOU UNDERSTAND THAT?

MR. ROGERS: YES, SIR.

THE COURT: DO YOU FURTHER UNDERSTAND THAT, WHEN YOU PLEAD GUILTY, YOU GIVE UP ANY DEFENSES THAT YOU MIGHT

HAVE TO THIS CHARGE?

MR. ROGERS: YES, SIR.

THE COURT: DO YOU FURTHER UNDERSTAND THAT, WHEN YOU PLEAD GUILTY, YOU GIVE UP YOUR RIGHT TO CHALLENGE ANY DEFECTS IN THE STATE'S CASE? THAT MEANS, IF THEY DID ANYTHING WRONG IN PREPARING THE CASE, IF THEY TOOK A STATEMENT FROM YOU IMPROPERLY, IF THEY DIDN'T GIVE YOU YOUR MIRANDA RIGHTS, WHATEVER THEY MIGHT HAVE DONE, ONCE YOU PLEAD GUILTY YOU CAN'T CHALLENGE THAT. UNDERSTAND?

MR. ROGERS: YES, SIR.

THE COURT: DID YOU COMMIT THIS OFFENSE?

MR. ROGERS: YES, SIR.

THE COURT: TELL ME WHAT YOU DID, PLEASE.

MR. ROGERS: I ACCIDENTALLY SHOT LITTLE STEPHANIE B[redacted].

THE COURT: WELL, YOU ACCIDENTALLY SHOT HER OR YOU INTENTIONALLY SHOT HER?

MR. ROGERS: I ACCIDENTALLY SHOT HER.

MR. RUNYON: YOUR HONOR, THE CIRCUMSTANCES THAT HE'S SAYING, HE NEVER -- HE NEVER -- BY OPERATION OF LAW, THE INTENT WAS THERE. WHAT HE'S SAYING WAS, HE DID NOT SET OUT WITH AN INTENT TO DO HARM TO THIS YOUNG CHILD. I'M SURE A RENDITION OF THE FACTS WILL CLARIFY THAT FOR THE COURT.

THE COURT: ALL RIGHT, SIR.

GIVE ME THE FACTS, SOLICITOR.

MR. BAILEY: YOUR HONOR, THIS OCCURRED BACK IN NOVEMBER OF 1992. MIKE B[redacted], WHO WAS THE CHILD'S FATHER SEATED HERE IN THE TAN COAT, WENT TO SPELL'S GROCERY STORE RIGHT OUTSIDE OF SUMMERVILLE TO -- THEY WERE GOING OUT OF TOWN FOR THE HOLIDAY WEEKEND. THEY STOPPED THERE AT THE STORE TO GET THE CHILD SOMETHING TO EAT. MR. B[redacted] WAS DRIVING HIS PICKUP TRUCK. HE HAD A FRIEND OF HIS NAMED CARVER WHO WAS RIDING IN THE RIGHT-HAND PASSENGER SEAT. STEPHANIE, WHO WAS NINE YEARS OLD AT THAT TIME, WAS SEATED IN THE MIDDLE.

THEY PULLED IN FRONT OF SPELL'S STORE AND THE CHILD WENT INSIDE TO GET A SANDWICH. WHILE SHE WAS INSIDE -- I THINK MR. B[redacted] WENT IN MOMENTARILY -- HE SAW A FRIEND OF HIS, ANTHONY RILEY, AND RILEY AND MR. B[redacted] WENT AROUND TO THE SIDE OF THE STORE AND ENGAGED IN A CONVERSATION. ABOUT THIS TIME ROGERS, A BOY NAMED DAXTON PATERSON, AND A 15-YEAR-OLD GIRL CAME WALKING DOWN THE ROAD TOWARDS SPELL'S STORE. THIS GROUP, ALL THREE OF THEM, HAD BEEN DRINKING AND APPARENTLY PRETTY HEAVILY. THEY WENT BY MR. RILEY AND MR. B[redacted], WHO WERE STANDING ON THE CORNER TALKING. ROGERS WENT TO THE PAY PHONE AND DAXTON PATERSON STAYED AROUND THE AREA WHERE RILEY AND MR. B[redacted] WERE AND TRIED TO PROVOKE A CONFRONTATION. HE SPIT ON ONE OF THE PEOPLE'S SHOES. THERE WAS PROFANITY USED. RILEY, WHO

LIVED DOWN THE ROAD, LEFT ON FOOT TO GO HOME. MR. B[redacted] WENT BACK TOWARD THE TRUCK IN AN ATTEMPT TO LEAVE. BY THAT TIME THE CHILD HAD COME OUT OF THE STORE AND GOT IN THE TRUCK, WHICH WAS STILL PARKED OUTSIDE OF THE STORE. THERE WAS AN ALTERCATION BETWEEN MR. B[redacted] AND DAXTON PATERSON IN WHICH MR. B[redacted] WAS TRYING TO LEAVE, PATERSON WAS HOLDING ON THE DOOR AND TRYING TO GET HIM TO STAY SO HE COULD CONTINUE THIS ARGUMENT.

AT THAT TIME ROGERS DROPPED THE TELEPHONE, WALKED OVER TO THE TRUCK, AND PULLED OUT A .380 CALIBER PISTOL AND PUT IT ON MR. B[redacted]'S HEAD AND MADE THREATS AGAINST HIM. B[redacted] PUT THE TRUCK IN GEAR IN AN ATTEMPT TO LEAVE AND STARTED TO PULL OUT. JUST PRIOR TO HIM LEAVING -- AND RIGHT AFTER HE HAD THE GUN AGAINST MR. B[redacted]'S HEAD HE DROPPED THE PISTOL DOWN AND FIRED ONE ROUND INTO THE REAR WHEEL OF THE TRUCK. AT THAT POINT MR. B[redacted] TRIED TO PULL OUT. ROGERS THEN RAN BEHIND THE TRUCK, FIRED ONE SHOT INTO THE CAB WHICH WAS OCCUPIED BY THE THREE PEOPLE, MR. B[redacted], MR. CARVER, AND STEPHANIE IN THE MIDDLE, AND THE CHILD WAS STRUCK IN THE BACK OF THE HEAD. SHE DIED THE NEXT DAY FROM THAT BULLET WOUND TO THE HEAD.

THE COURT: IS THAT WHAT HAPPENED, MR. ROGERS?

MR. ROGERS: NO, SIR.

THE COURT: TELL ME WHAT HAPPENED THEN, MR. ROGERS.

MR. ROGERS: I WENT TO THE STORE TO USE THE PHONE ACCOMPANIED BY DAXTON AND assault victim. THE STORE TO WHICH THE PHONE WAS AT WAS NOT EVEN OPEN. MR. B[redacted], ACCOMPANIED BY JAMES CARVER AND HIS DAUGHTER, PULLED UP BY THE PHONE AND TOLD ME THEY NEEDED TO USE THE PHONE. YOU KNOW, AND I TOLD THEM I WOULD BE OFF THE PHONE SHORTLY. IF NOT, YOU KNOW, THERE WAS ANOTHER PAY PHONE NOT EVEN A MILE DOWN THE ROAD, THEY COULD GO AND USE THAT ONE. HE INSISTED THAT HE NEEDED TO USE THAT PHONE. SO, I TOLD HIM, WELL, WHATEVER, AND I IGNORED HIM, I TURNED MY BACK, CONTINUED WITH MY CONVERSATION ON THE PHONE. I HEARD HIM MUMBLING AND ARGUING WITH DAXTON WHILE I WAS STILL CONVERSATING (SIC) ON THE PHONE.

WHEN I TURNED AROUND, MR. B[redacted] AND JAMES CARVER WERE OUT OF THE TRUCK APPROACHING assault victim AND DAXTON. assault victim WAS PULLING DAXTON BACK FROM THE ARGUMENT AND DAXTON WAS ARGUING. I WAS ON THE PHONE, I PUT THE PHONE -- I TOLD THE PARTY IN WHICH I WAS TALKING TO ON THE PHONE TO HOLD ON, THAT I'M GOING TO SEE WHAT'S GOING ON. WHEN I WALKED IN BETWEEN THE TWO PARTIES, MR. B[redacted] TURNED AROUND AND WENT BACK TO HIS TRUCK, RAISED HIS REAR -- HIS BACK SEAT AND REACHED IN AND WAS COMING OUT WITH AN OBJECT. I FIRED A SHOT ABOVE THE TRUCK, INTENDING TO FIRE A SHOT ABOVE THE TRUCK, AND THAT'S WHEN I ACCIDENTALLY HIT THE GIRL. IT WAS SUPPOSED TO BE A SHOT, YOU KNOW, TO SCARE THEM FOR WHATEVER

HE HAD INTENTIONS ON BRINGING FROM OUT BEHIND THAT SEAT. YOU KNOW, BUT THE SHOT ACCIDENTALLY HIT LITTLE STEPHANIE. AND, YOU KNOW---

THE COURT: DID YOU FIRE A SHOT BEFORE THAT AT THE BACK WHEEL OF THE TRUCK?

MR. ROGERS: NO, SIR.

THE COURT: WHERE DID YOU GET YOUR GUN FROM?

MR. ROGERS: WHERE'D I GET MY GUN FROM?

THE COURT: YES, SIR. YOU HAD IT IN YOUR POCKET OR WHERE WAS IT?

MR. ROGERS: IT WAS IN MY POCKET.

THE COURT: DO YOU HAVE A PERMIT TO BE CARRYING THAT GUN?

MR. ROGERS: NO, SIR.

MR. RUNYON: HE WAS ON PAROLE AT THE TIME, YOUR HONOR, HE WASN'T SUPPOSED TO HAVE A GUN.

THE COURT: ALL RIGHT.

DID MR. B[redacted] HAVE A GUN? DID HE PULL A GUN ON YOU?

MR. ROGERS: HE WAS PULLING SOMETHING FROM HIS BACK SEAT.

THE COURT: I DIDN'T ASK YOU THAT. I SAID, "DID HE PULL A GUN ON YOU?"

MR. ROGERS: NO, I SAID HE WAS PULLING SOMETHING FROM HIS BACK SEAT.

THE COURT: WAS HE DRIVING AWAY OR WAS HE OUTSIDE THE TRUCK, WHEN YOU FIRED YOUR SHOT?

MR. ROGERS: NO, HE WASN'T, HE WAS OUTSIDE OF HIS TRUCK.

THE COURT: HE WAS OUTSIDE OF HIS TRUCK COMING TOWARDS YOU OR TRYING TO GET SOMETHING OUT OF THE BACK OF IT?

MR. ROGERS: HE WAS GETTING SOMETHING OUT OF THE BACK SEAT OF THE TRUCK.

THE COURT: SO, HE WAS OUTSIDE THE TRUCK, WHEN YOU FIRED THE SHOT THAT YOU FIRED THAT WENT INTO THE CAB AND KILLED THE -- KILLED STEPHANIE?

MR. ROGERS: YES, SIR.

THE COURT: ALL RIGHT, SIR. SO, YOU'RE NOT PLEADING GUILTY TO MURDER THEN?

(WHEREUPON, DEFENDANT AND HIS COUNSEL CONFER.)

YOU KNOW, EITHER YOU'RE PLEADING GUILTY OR YOU'RE PLEADING IT WAS AN ACCIDENT OR WHATEVER YOU'RE PLEADING, BUT YOU NEED TO TELL ME WHAT YOU'RE PLEADING NOW.

(WHEREUPON, DEFENDANT AND HIS COUNSEL CONTINUE TO CONFER.)

MR. ROGERS: NOT GUILTY TO MURDER.

MR. BAILEY: YOUR HONOR, I WANT TO TELL MR. ROGERS -- MR. RUNYON KNOWS THIS -- THIS IS HIS LAST

OPPORTUNITY TO ENTER A PLEA. THE DEATH PENALTY TRIAL IS SCHEDULED FOR FEBRUARY 28TH. THERE WILL BE NO NEGOTIATIONS FROM THIS POINT ON.

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: THAT'S IT.

THE COURT: THE JURY NOTICES, I UNDERSTAND, ARE READY TO BE SENT OUT. I WANT THE NOTICES SENT OUT TODAY.

MR. ROGERS, YOU'RE NOTIFIED THAT SINCE YOU WERE NOT ABLE TO GET THROUGH THIS PROCESS THAT YOUR CASE IS SCHEDULED FOR FEBRUARY THE 28TH. THE JURY SELECTION WILL BEGIN ON THAT MONDAY AND YOU NEED TO BE PREPARED TO GO FORWARD. THE STATE HAS ALREADY SERVED YOU WITH THE DEATH PENALTY NOTICE, THAT'S STILL IN EFFECT, AND THE JURY NOTICES WILL GO OUT TODAY OR EITHER TOMORROW. SO, THAT'S YOUR NOTICE. THANK YOU, SIR.

MR. RUNYON: YOUR HONOR, FOR THE RECORD, WE HAVE BEEN -- WE HAVE THAT NOTICE, WE'VE BEEN SERVED WITH THE NOTICE OF THAT TIME, WE ARE BEING PREPARED FOR TRIAL. THERE ARE NO LEGITIMATE GROUNDS TO ASK FOR CONTINUANCE AND WE'LL BE PREPARED TO GO FORWARD.

THE COURT: ALL RIGHT, SIR. AND YOU'LL KEEP MR. WISE AS YOUR CO-COUNSEL, IS THAT RIGHT, OR MISTER---

MR. BAILEY: LEIENDECKER, I BELIEVE.

THE COURT: MAYBE MR. LEIENDECKER?

MR. RUNYON: YES, SIR.

THE COURT: VERY GOOD. THANK YOU.

MR. BAILEY: THANK YOU.

MR. RUNYON: THANK YOU VERY MUCH.

THE COURT: BE PREPARED TO GO FORWARD THAT MONDAY. THANK YOU.

END OF REQUESTED TRANSCRIPT OF RECORD - - -

STATE OF SOUTH CAROLINA]
COUNTY OF DORCHESTER]

C E R T I F I C A T E

I, THE UNDERSIGNED, CAROL L. LeFEBVRE, OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE 2ND DAY OF FEBRUARY, 1994.

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

FEBRUARY 8, 1994

Carol L. LeFebvre

CAROL L. LeFEBVRE
CIRCUIT COURT REPORTER

The State of South Carolina

2322

OFFICE OF SOLICITOR
First Judicial Circuit

134 East Richardson Avenue
Summerville, SC 29483
(803) 871-2640
FAX (803) 871-2643

WALTER BAILEY
Solicitor

Courthouse, Amelia Street
Post Office Box 1525
Orangeburg, SC 29116
(803) 533-6251 or 533-6137

April 18, 1994

Clyde N. Davis, Jr., Clerk
The Supreme Court of South Carolina
P. O. Box 11330
Columbia, South Carolina 29211

Re: State v. Timothy D. Rogers
93GS18-0101

Dear Mr. Davis:

I have enclosed Report Of The Trial Judge on the above referenced case which was forwarded to my office in error.

If you have any questions in regards to this, please contact Debbie Sapp in Mr. Walter Bailey's office at #[redacted].

Thanking you in advance for your help in this matter, I remain

Sincerely,

Peggy T. Dupuis
Secretary

PTD:

Enclosure

RECEIVED
APR 19 1994
S.C. Supreme Court

2323

XVII. REPORT OF THE TRIAL JUDGE

OF THE

COURT OF GENERAL SESSIONS FOR DORCHESTER COUNTY,

SOUTH CAROLINA*

The State v. TIMOTHY D. ROGERS

Docket No. 93-GS-18-101

A. Data Concerning the Defendant**

1. Name ROGERS, TIMOTHY, DION (Last, First, Middle) 2. Date of Birth [redacted] (Mo. Day Yr.)

3. Social Security Number [ ] [redacted] [ ] Unknown

4. Sex: M [X] F [ ]

5. Race: W [ ] B [X] Other (Specify): _____

6. Education - Highest Grade Completed:

1 2 3 4 5 6 7 8 9 (10) 11 12 (Circle One) 13 14 15 16 (College) GED 1989

7. Do you have an opinion as to the defendant's intelligence level?

Yes [X] No [ ]

If so, is it

a. Below Average [ ]
b. Average [X]
c. Above Average [ ]

8. Was a psychiatric evaluation performed? Yes [X] No [ ]

a. If performed,*** by whom? THOMAS W. BEHRMANN, M.D.
b. If performed, is defendant
(1) Able to distinguish right from wrong? Yes [X] No [ ]
(2) Able to cooperate intelligently in his own defense? [X] [ ]
c. If performed, were character or behavior disorders found? [X] [ ]
(If answer is yes please elaborate)

POLYSUBSTANCE ABUSE

FILED
APR 19 1994
COURT

*Attach separate sheets where insufficient space provided for response.
**Separate report must be submitted for each defendant sentenced to death.
***If more than one evaluation was performed, attach a separate response for each evaluation.

9. Does the defendant have a record of prior convictions? 2324

Yes [X] No [ ]

a. If so, either attach hereto a record manifesting such prior conviction(s) or list the offense(s), the date(s) of the offense(s) and the sentence(s) imposed:

Offense	Date of Offense	Sentence Imposed
1. PLEASE SEE THE DEFENDANT'S RECORD ATTACHED HERETO.		
2.		
3.		
4.		
5.		
6.		

10. Was the defendant a resident or nonresident of the county in which trial was held?

Resident [X] Nonresident [ ]

B. Data Concerning Pre-Trial Matters

1. The defendant was arrested on DECEMBER 8, ____, 19 92.

2. Was a preliminary hearing requested? Yes [ ] No [X]

3. Was a preliminary hearing conducted? Yes [ ] No [X]

4. The defendant was indicted at the FEBRUARY, 19 93 Term of the Court of General Sessions for DORCHESTER County, South Carolina.

5. List each charge alleged in the indictment.

a. MURDER.

b. ____

c. ____

d. ____

e. ____

f. ____

6. The defendant was arraigned on AUGUST 17, ____, 1993.

a. If not arraigned, did the defendant waive arraignment?

Yes [ ] No [ ] N/A

7. Was the defendant provided with a true copy of the whole indictment at least three days prior to his trial thereupon?

Yes [X] No [ ]

a. If not, did the defendant waive this right to a three-day sight of the indictment?

Yes [ ] No [ ] N/A

8. Did the Solicitor notify the defendant at least thirty days before trial that the State would seek the imposition of the death penalty upon the defendant?

Yes [X] No [ ]

9. Did the Solicitor make known to the defendant in writing prior to trial the evidence in aggravation of punishment thereafter introduced by the State during the trial or during the sentencing proceeding?

Yes [X] No [ ]

10. Did the defendant move for a change of venue?

Yes [ ] No [X]

a. If so, was the venue changed?

Yes [ ] No [ ]

(1) If so, designate the county _____.

C. Data Concerning the Trial

1. The defendant was brought to trial in the Court of General Sessions for DORCHESTER County, South Carolina, on FEBRUARY 28 ____, 1994, during the FEBRUARY, 1994 Term of that Court.

2. How did the defendant plead? Guilty [ ]
Not Guilty [X]

3. List each offense of which the defendant was convicted and each offense of which the defendant was acquitted:

a. The offense(s) of which the defendant was convicted:

(1) MURDER

(2) _____

(3) _____

(4) _____

(5) _____

b. The offense(s) of which the defendant was acquitted:

(1) N/A

(2) _____

(3) _____

(4) _____

(5) _____

4. On what date and at what time did the conviction(s) occur?

MARCH 3 _____, 19 94, at APPROXIMATELY 6:00 o'clock, P .m.

D. Data Relating to Sentencing Proceeding*

1. Before whom was the defendant's sentencing proceeding conducted?

the trial jury [X] the trial judge [ ]
a new jury [ ] a new trial judge [ ]

a. If conducted before the trial jury,

(1) On what date and at what time was the sentencing proceeding held?

MARCH 5 _____, 19 94, at APPROXIMATELY 9:00 o'clock, a .m.

(a) If such proceeding was conducted less than twenty-four hours after the defendant's conviction, did the defendant waive the twenty-four hour waiting period?

Yes [ ] No [ ] N/A

b. If conducted before the trial judge or a new trial judge, N/A

(1) And if the defendant was convicted by a jury,

(a) Did the defendant and the State waive having the trial jury recommend sentence?

Yes [ ] No [ ]

*The term "sentencing proceeding" includes the term "resentencing proceeding".

"1" If not, was the sentencing proceeding conducted by the trial judge because the case, due to non-prejudicial error, had been remanded to the trial court for resentencing based upon the record and argument of counsel?

Yes [ ] No [ ] N/A

(b) On what date and at what time was the sentencing proceeding held?

_____ _____, 19_____, at N/A

_____o'clock,_____.m.

"1" If such proceeding was conducted less than twenty-four hours after the defendant's conviction, did the defendant waive the twenty-four hour waiting period?

Yes [ ] No [ ] N/A

(2) And if the defendant was convicted upon a plea of guilty, on what date was the sentencing proceeding held? N/A

_____ _____, 19_____.

c. If conducted before a new jury,

(1) On what date was the sentencing proceeding held? N/A

_____ _____, 19_____.

(2) Was such proceeding conducted by the same judge who presided over the defendant's trial?

Yes [ ] No [ ] N/A

2. Which of the following statutory aggravating circumstances were instructed, if the sentencing proceeding was conducted before a jury, and which of those circumstances were found, irrespective of whether or not that proceeding was conducted before a jury or a trial judge?

	Instructed	Found
a. Murder was committed while in the commission of		
(1) Rape	[ ]	[ ]
(2) Assault with intent to ravish	[ ]	[ ]
(3) Kidnapping	[ ]	[ ]
(4) Burglary	[ ]	[ ]
(5) Robbery while armed with a deadly weapon	[ ]	[ ]
(6) Larceny with use of a deadly weapon	[ ]	[ ]
(7) Housebreaking	[ ]	[ ]
(8) Killing by poison	[ ]	[ ]
b. Murder was committed by a person with a prior record of conviction for murder.	[ ]	[ ]

	Instructed	Found
c. The offender 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 would normally be, hazardous to the lives of more than one person.	[X]	[X]
d. The offender committed the offense of murder for himself or another for the purpose of receiving money or any other thing of monetary value.	[ ]	[ ]
e. The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty.	[ ]	[ ]
f. The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.	[ ]	[ ]
g. The offense of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.	[ ]	[X]

THE MURDER OF A CHILD 11 YEARS OF AGE OR UNDER (X)

3. Was (were) the aggravating circumstance(s) found supported by the evidence?

   Yes [X] No [ ]

4. Was there evidence of mitigating circumstances?

   Yes [X] No [ ]

5. If so, which of the following mitigating circumstances was in evidence?

   a. The defendant has no significant history of prior criminal activity involving the use of violence against another person. [ ]

   b. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance. [ ]

   c. The victim was a participant in the defendant's conduct or consented to the act. [ ]

   d. The defendant was an accomplice in a murder committed by another person and his participation was relatively minor. [ ]

   e. The defendant acted under duress or under the domination of another person. [ ]

   f. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. [X]

g. The age or mentality of the defendant at the time of the crime(s). [ ]

h. The defendant was provoked by the victim into committing murder. [ ]

i. The defendant was below the age of eighteen at the time of the crime(s). [ ]

j. Other. [ ]

Please explain if (j) is checked.

_____

_____

_____

_____

_____

_____

_____

6. If tried with a jury, was the jury instructed to consider the circumstances in 5 as mitigating circumstances?

Yes [X] No [ ]

7. Was the jury provided in writing for its deliberation the statutory instructions as to aggravating and mitigating circumstances?

Yes [X] No [ ]

8. As trial judge, did you, prior to imposing the sentence of death upon the defendant, find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion or any other arbitrary factor?

Yes [X] No [ ]

E. Data Relating to Offense(s)

1. Was there evidence that the defendant, at the time the offense(s) was (were) committed, was

a. Under the influence of alcohol? Yes [X] No [ ]

b. Under the influence of narcotics or other dangerous drugs? Yes [ ] No [X]

2. Was (were) any weapon(s) used in the commission of the crime of murder?

Yes [X] No [ ]

a. If so, check each weapon used

(1) Poison [ ]
(2) Pistol (SEMI AUTOMATIC [X]
(3) Rifle [ ]
(4) Shotgun [ ]
(5) Blunt instrument (Describe)

_____ [ ]

(6) Sharp instrument (Describe)

_____ [ ]

(7) Motor vehicle [ ]
(8) Other (Describe)

_____ [ ]

3. Cause of death. GUNSHOT WOUND TO HEAD.

4. County in which the body was found. *DORCHESTER
*VICTIM WAS SHOT IN DORCHESTER COUNTY BUT DIED THE NEXT DAY IN CHARLESTON COU

5. County in which the murder occurred if different from county in which the body was found. _____

F. Data Relating to Victim

1. What was the victim's age? 9

2. Was the victim related by blood or marriage to the defendant?

Yes [ ] No [X]

a. If so, what was the relationship? _____

3. Was the victim the same race as the defendant? Yes [ ] No [X]

4. Was the victim the same sex as the defendant? Yes [ ] No [X]

5. Was the victim physically harmed or tortured? Yes [ ] No [X]

If yes, state nature of harm or extent of torture:

C Data Concerning Defense Counsel

1. Who was (were) the defendant's attorney(s) and what was (were) his (their) mailing address(es):

	Name	Mailing Address
a.	WILLIAM L. RUNYON, ESQ.	[redacted] CHARLESTON, SC, 29407
b.		
c.	MARK LEIENDECKER, ESQ.	[redacted] SUMMERVILLE, SC, 29485
d.		

2. Did the defendant retain his own counsel or did the court appoint defense counsel?

Retained by defendant [ ]
Appointed by court [X]

a. Specify for each such counsel, the date retained or appointed, the number of years as a licensed attorney and the number of years of actual felony trial experience.

	Name	Date retained or appointed	Years experience at attorney	Years felony trial experience
(1)	WILLIAM L. RUNYON	DEC. 15, 1992	27 YEARS	23 YEARS
(2)	MARK LEIENDECKER	DEC. 17, 1993	12 YEARS	8 YEARS
(3)				
(4)				

3. Identify by name each attorney who, at the time of his appointment, was employed by the Public Defender's Office

MARK LEIENDECKER

4. Did each counsel serve throughout the trial?

Yes [XX] No [ ]

a. If not, explain in detail.

I. Chronology of Case

			Elapsed Time
1.	Date of offense	NOVEMBER 25, 1992	
2.	Date of arrest	DECEMBER 8, 1992	13 DAYS
3.	Date trial began	FEBRUARY 28, 1994	446 DAYS
4.	Date sentence imposed	MARCH 5, 1994	5 DAYS
5.	Date post trial motions ruled on	NONE	
6.	Date trial judge's report completed	MARCH ,, 1994	
7.	*Date received by Supreme Court		
8.	*Date sentence review completed		
9.	*Total elapsed days		

*To be completed by Supreme Court

Judge, Court of General Sessions

Dorchester County,
South Carolina

April 1, 1994
Date

STATE OF SOUTH CAROLINA	) IN THE COURT OF
	) GENERAL SESSIONS
COUNTY OF DORCHESTER	) Indictment No. 93-GS-18-101
THE STATE	)
-versus-	) NOTICE OF INTENTION TO APPEAL
TIMOTHY ROGERS,	)
Defendant.	)

TO THE HONORABLE WALTER BAILEY, SOLICITOR, FIRST JUDICIAL CIRCUIT:

The Defendant above named, by and through his undersigned Counsel, hereby serves notice of his intention to appeal to the South Carolina Supreme Court his conviction of Guilty of Murder entered March 3, 1994 in St. George, South Carolina and his sentence of Death entered March 5th, 1994, and his grounds for this appeal will be set out separately in accordance with the law and as preserved upon the record herein.

AND IT IS SO NOTICED this 5th day of March, 1994.

WILLIAM L. RUNYON, JR.
MARK LEIENDECKER

By: _____
WILLIAM L. RUNYON, JR.

Attorneys for the Defendant.

WILLIAM L. RUNYON, JR.
Attorney at Law
ONE CARRIAGE LANE
BUILDING B, SUITE 203
CHARLESTON, SOUTH CAROLINA 29407

MILE: (803) 766-5085

TELEPHONE: (803) 571-3515

March 4, 1994

Clerk of Court
Dorchester County
P.O. Box 158
St. George, SC 29477

Re: The State vs. Timothy Rogers
Indictment No. 93-GS-18-101

Dear Madame Clerk:

Enclosed please find NOTICE OF INTENTION TO APPEAL and AFFIDAVIT OF SERVICE in connection with the above matter. Please file originals and return certified copies to me in the self-addressed, stamped envelope provided for your convenience.

Thanking you, I remain

Sincerely,

William L. Runyon, Jr.

WLR,Jr.:lg
enclosures

STATE OF SOUTH CAROLINA	) IN THE COURT OF
	) GENERAL SESSIONS
COUNTY OF DORCHESTER	) Indictment No. 93-GS-18-101
THE STATE	)
	)
-versus-	) AFFIDAVIT OF SERVICE
	)
TIMOTHY ROGERS,	)
	)
Defendant.	)

PERSONALLY APPEARED before me WILLIAM L. RUNYON, JR., ESQ., who, being duly sworn, deposes and says that he served the NOTICE OF INTENTION TO APPEAL in the above matter by personal delivery of same on _____, March 5th, 1994 to Hon. Walter Bailey, Dorchester County Solicitor, at 134 E. Richardson Avenue, Summerville, SC 29483.

WILLIAM L. RUNYON, JR.

SWORN TO before me this 5th day of March, 1994.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 7-29-03

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Luke N. Brown, Jr., Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY ROGERS,

APPELLANT.

FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUES ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT 6

CONCLUSION 27

CERTIFICATE OF COUNSEL FOR APPELLANT 28

TABLE OF AUTHORITIES

Cases:

Casey v. State, 305 S.C. 445, 409 S.E.2d 391 (1991) . . . 15

Gardner v. Florida, 430 U.S. 349, 97 S.Ct. 1197 (1977) 14, 26

Simmons v. South Carolina, 114 S.Ct. 2187 (1994) 24, 25, 27

State v. Davis, 50 S.C. 405, 27 S.E. 905 (1897) 13

State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989) . . 15

State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951) . . . 15

State v. Gilliam, 296 S.C. 395, 373 S.E.2d 596 (1988) . . 15

State v. Jackson, 301 S.C. 41, 389 S.E.2d 650 (1990) . . 16

State v. Judge, 208 S.C. 497, 38 S.E.2d 715 (1946) . . . 14

State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989) 14

State v. Lowry, __ S.C. __, 434 S.E.2d 272 (1993) . . 14, 16

State v. Martin, 216 S.C. 219, 57 S.E.2d 55 (1949) . 13, 14

State v. Norris, 285 S.C. 86, 328 S.E.2d 339 (1985) . . . 25

State v. Penland, 275 S.C. 537, 273 S.E.2d 765 (1981) . . 16

State v. Plemmons, 286 S.C. 78, 332 S.E.2d 765 (1985) . . 14

State v. Robertson, 191 S.C. 509, 5 S.E.2d 285 (1939) . . 14

State v. Simmons, ___ S.C. ___, 427 S.E.2d 175 (1993) . . 25

State v. Southerland, ___ S.C. ___, 447 S.E.2d 862 (1994) 25, 26

Other Authorities:

40 CJS Homicide §81 13

S.C. Code §16-1-60 . . . . . 5, 19

S.C. Code §24-21-640 . . . . . 5, 19, 24, 29

STATEMENT OF ISSUES ON APPEAL

1.

The judge erred by refusing to instruct the jury on voluntary manslaughter, where appellant's statement and other evidence in the case would have supported a verdict finding him guilty of the lesser offense.

2.

The judge erred by refusing to instruct the jury that "a life sentence imposed on this defendant means life without hope for release by operation of law," because appellant, who had previously been convicted of two violent crimes, would have been ineligible for parole under S.C. Code §24-21-640 if sentenced to life and the state made his future dangerousness a major issue at sentencing.

STATEMENT OF THE CASE

A Dorchester County grand jury indicted Timothy D. Rogers on February 8, 1993 for murder in the shooting of nine-year-old Stephanie B[redacted] on November 25, 1992; brain-dead, she died the next day when life-support systems were disconnected. Rogers was black and the victim was white. The state served notice of its intention to seek the death penalty and the first notice of evidence in aggravation on January 27, 1993, and an amended notice of evidence in aggravation on July 29.

Judge Charles W. Whetstone, Jr., held pretrial hearings on August 17 and 19, 1993. On February 2, 1994, appellant was to plead guilty to murder, but withdrew the plea after contesting the state's version of the facts and stating, "I accidentally shot little Stephanie B[redacted]" during a confrontation with her father, after Mike B[redacted] reached into his pickup truck and "was coming out with an object." February 2 ROA, p. 2313, line 11 - p. 2317, line 6.

Rogers went to trial before Judge Luke N. Brown, Jr., and a jury from February 28 to March 5, 1994. He did not testify or make a statement to the jury during the first phase. The judge charged the jury on murder and involuntary manslaughter; he refused an instruction on voluntary manslaughter, a ruling which provided the first issue in this brief. The jury found Rogers guilty of murder at 6:00 p.m. on March 3.

Sentencing began at 9:00 on March 5. Rogers testified and made a final statement to the jury. He had two prior

convictions for second degree criminal sexual conduct with a minor, crimes defined as violent in S.C. Code §16-1-60. Defense counsel requested an instruction that "a life sentence imposed on this defendant means life without hope for release by operation of law" pursuant to S.C. Code §24-21-640. ROA p. 1048, line 4 - p. 1050, line 2; ROA p. 1239. The judge denied this request and limited himself to a "plain and ordinary meaning" charge, which gave rise to the second issue in this brief.

To get a death sentence, the state relied on two statutory aggravating circumstances: (1) the killing of a child under the age of eleven, and (2) a killing which 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. The defense submitted the statutory mitigating circumstance that the capacity of appellant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired and the following non-statutory mitigating circumstances: (1) appellant was intoxicated at the time of the incident, (2) appellant did not bring on the events which led to the death of the deceased, and (3) proof of adaptability to prison.

The jury deliberated for three and one-half hours before recommending death. The judge affirmed their recommendation and sentenced Rogers to death by electrocution. He filed his final report on the case on April 18, 1994.

ARGUMENT

1. **THE JUDGE ERRED BY REFUSING TO INSTRUCT THE JURY ON VOLUNTARY MANSLAUGHTER, WHERE APPELLANT'S STATEMENT AND OTHER EVIDENCE IN THE CASE WOULD HAVE SUPPORTED A VERDICT FINDING HIM GUILTY OF THE LESSER OFFENSE.**

The state charged appellant with murder in the shooting death of nine-year-old Stephanie B[redacted]. She was a passenger in her father's pickup truck when a bullet fired by appellant from a semi-automatic pistol traversed the cab from back windshield to front, striking her in the back of the head and exiting above her left eye.

Mike B[redacted], the victim's father, testified that he drove Stephanie and a friend, Jimmy Carver, to Spell's Grocery Store "[f]or Stephanie to get a sandwich." ROA p. 720, lines 5-16. The three were going to the lake to fish and hunt for squirrels. ROA p. 718, lines 7-9. They had two guns: a shotgun behind the seat and Carver's pistol, resting at the bottom of a basket of clothes in the bed of the truck. ROA p. 119, lines 9-21. They arrived at the store around 6:00 p.m.; B[redacted] had been drinking beer since 4:00. ROA p. 717, lines 6-20.

Stephanie went into the store. B[redacted] saw "a black friend of mine," Anthony Riley, talking on the outdoor telephone. ROA p. 725, line 20 - p. 726, line 21. He talked with Riley, then went in the store and bought another beer. ROA p. 727, lines 3-14. Stephanie returned to the truck where Carver waited, and B[redacted] resumed his conversation with

Riley. ROA p. 728, line 5 - p. 729, line 1.

Appellant and his girlfriend, assault victim and a male named Daxton Patterson walked up behind B[redacted] and Riley. ROA p. 729, lines 3-15. B[redacted] had never seen the three before. ROA p. 730, lines 12-15.

According to B[redacted], either appellant or Patterson said, "Don't fuck with them crack-head motherfuckers." ROA p. 730, lines 16-20. Appellant went to the telephone, and Patterson began pacing from appellant to Riley and B[redacted]. ROA p. 730, line 20 - p. 731, line 1. Patterson said, "Come on, you white son of a bitch... Come on, so I can beat your ass." ROA p. 731, lines 2-5. B[redacted] testified, "We just stood there and ignored him." ROA p. 732, lines 1 and 2. Patterson flipped a cigarette off of Riley's shoe and Riley left. ROA p. 732, lines 3-12.

B[redacted] testified he went to get in the pickup to leave, but Patterson "kept pulling my door and wouldn't let me close it and kept getting in karate stands wanting to fight me and all this." ROA p. 732, lines 18-23. Jimmy Carver got out of the truck and moved toward the gun in the laundry basket. ROA p. 732, line 24 - p. 733, line 4; ROA p. 755, line 8 - p. 756, line 2. According to B[redacted], appellant stepped between him and Patterson, pulled out a semi-automatic, placed it against B[redacted]'s forehead and said, "I'll kill you." ROA p. 733, lines 7-11; ROA p. 734, lines 9-13.

B[redacted] said his daughter was "in a hard cry." ROA p.

735, lines 14 and 15. Appellant lowered the gun toward the ground and fired one shot, which ricocheted off of the rear driver's side tire. ROA p. 735, lines 15-17; ROA p. 868, lines 15-20. B[redacted] testified that appellant spit in his face. ROA p. 735, lines 18-24.

B[redacted] got his door closed and was waiting to pull out of the parking lot when he heard a gunshot shatter the back window. ROA p. 735, line 25 - p. 736, line 13. Realizing that his daughter had been hit, he pulled back up to the store intending to call for help and said to appellant and Patterson, "You just shot my daughter." ROA p. 737, line 14 - p. 738, line 4. According to B[redacted], "[T]hey stood there and laughed at me." ROA p. 738, line 4. He went into the grocery store to call for help, and when he came back out, appellant, Patterson and [assault victim] had run away. ROA p. 738, line 7-16.

Anthony Riley testified that, when appellant, Patterson and [assault victim] first approached, appellant asked Patterson for a quarter, then said, "Stand right there and listen to them and if they talk about us, I'll take care of the motherfuckers." ROA p. 799, line 25 - p. 801, line 9. After he left the store, Riley heard two shots. ROA p. 803, lines 1-25. Shortly after, he testified, two people ran from the direction of the grocery store past his house; one asked, "Did you get the motherfucker?" and the other responded, "Yeah, I got the motherfucker." ROA p. 813, line 1 - p. 814, line 13. Several minutes later, a black female followed. ROA p. 814, lines 14-

25.

When he heard the shots, Riley had initially thought that Mike B[redacted] was firing into the air. ROA p. 618, lines 14-16. B[redacted] was a constable with the county magistrate's office. ROA p. 715, lines 5-14. Riley said, "I know he's qualified to tote a gun... but I know he have a short patient (sic), and I always tell him if he come around on me... I don't want him to bring no gun around me." ROA p. 816, lines 3-13.

assault victim testified that appellant was her boyfriend in November 1992 and that they had since had a child together. ROA p. 824, lines 6-11. [Incidentally, assault victim was the victim in the two second degree criminal sexual conduct with a minor convictions which would have rendered appellant ineligible for parole had be been sentenced to life imprisonment. See Tr. p. __ - _____.] She, appellant and Patterson had been drinking "[q]uite a bit" of beer and "white liquor" that afternoon and appellant was "[s]ort of drunk." ROA p. 825, line 9 - p. 826, line 25. While appellant was talking on the telephone, "Dax [Patterson] started arguing with the people and he spit on them... I went by the phone, and Tim turned around and they got into an argument. He got into the argument with them." ROA p. 831, lines 8-25. The argument escalated. ROA p. 836, lines 8-12. "They were yelling back and forth," assault victim said. ROA p. 838, lines 14-19. Everybody was angry and visibly mad. ROA p. 838, lines 20-22; ROA p. 841, lines 4-9. She turned

her back and began talking on the phone, then heard a gunshot. ROA p. 839, lines 18-24. She said, "A couple of minutes [later], I heard a second gunshot and I turned around. They were gone... Tim and Dax was gone and the two guys were yelling and I saw the blood and I got scared and run." ROA p. 833, lines 15-20. She testified that the truck was "pulling off" when the second shot was fired. ROA p. 833, line 21 - p. 834, line 4.

James Carver's testimony essentially followed Mike B[redacted]'s. When Daxton Patterson confronted B[redacted] at the truck, Carver said, "I got out the truck and walked down the passenger's side of the bed of the truck to the end of the bed, the back of the truck." ROA p. 943, lines 8-10. This was, as noted, in the direction of his pistol. He added that he got out "[t]o keep anything from happening. I figured there was a fight going to start and I was going to get between them to keep it from happening." ROA p. 943, lines 11-14. He testified he heard appellant say to the person on the other end of the line, "Hold on. Let me get this fellow." ROA p. 943, line 22 - p. 944, line 8. Appellant intervened between Patterson and B[redacted]. ROA p. 955, lines 20-22. Carver described the circumstances of the fatal shot:

> When he [B[redacted]] went to pull the truck away, he stopped for traffic. I turned around to see what was going on behind us. I seen Timothy Rogers raise the pistol that he had in his hand at that time, and I seen him fire one shot... It was straight at the back window of the pickup... I seen the flash from the end

> of the barrel and I seen when the bullet hit the back window. Stephanie slumped over on her father, and I turned to Mike and I told him, I said, "Stephanie has been hit."

ROA p. 946, line 12 - p. 947, line 9.

He denied that B[redacted] had ever reached for the shotgun behind the seat or that he had been trying to get his pistol from the laundry basket. ROA p. 949, lines 12-15.

Appellant was arrested one week after the shooting, on December 2 in Tuskegee, Alabama. ROA p. 907, line 7 - p. 909, line 1. He told arresting officers the shooting was "accidental" and "he was in some sort of altercation and never intended to shoot anybody." ROA p. 913, lines 4-14. He said he fired a shot into the air because he believed B[redacted] "to be reaching behind his seat for a weapon." ROA p. 918, line 9 - p. 919, line 7. The state introduced appellant's written statement into evidence without objection. ROA p. 911, line 2 - p. 912, line 5. The statement read, in relevant part:

> I went down there [Spell's Grocery Store] to call my brother. When I got through to him, we was talking. Then a truck pulled up... The driver didn't get out of the truck at first. He just said he needed to use the phone. I told him that I would be off the phone in a minute. After I told him that, I turned my back to him to finish my conversation. I could still hear him making racist remarks. I paid no more attention after that. Then I heard Daxton... talking to the driver [B[redacted]]. He (Daxton) was saying, "He'll be off the phone in a minute."
>
> Then, I noticed an argument going on between Daxton and the two male

> passengers. That's when I turned around and noticed two white males walking towards Daxton and [assault victim] [assault victim] was pulling Daxton away from the two white males. I told my brother to hold on. I walked over to where Daxton and [assault victim] were. Then, when I walked over there, the driver turned around, went back to the truck and pushed his seat up. It appeared to me as if he was looking for a weapon of some sort. Then, I pulled out the gun... I fired a shot in the air with intentions of scaring them. I heard [assault victim] scream, and then Daxton told me I had to go, that I had shot somebody. I then ran down the street toward my uncle's church and then through the woods. That's basically what happened that night.

ROA p. 1236 and 1237.

Based on this evidence, especially appellant's statement, defense counsel requested an instruction on voluntary manslaughter. ROA p. 968, lines 8-10. The solicitor disagreed. ROA p. 971, lines 17-24. The judge charged murder and involuntary manslaughter, but refused to charge voluntary manslaughter. ROA p. 976, line 24 - p. 977, line 2; ROA p. 1019, lines 16-19. When defense counsel took exception to the judge's omission of a voluntary manslaughter charge, the judge responded, "[Y]ou can't have voluntary manslaughter when you take the position this was an accidental killing." ROA p. 1031, lines 10-25.

After the jury had deliberated for two hours, they sent the judge a note asking "to be reinstructed on malice aforethought and the difference between manslaughter and murder." ROA p. 1033, lines 5-9. After two more hours, they

found appellant guilty of murder. Defense counsel moved for a new trial based on the judge's refusal to submit voluntary manslaughter to the jury. ROA p. 1042, lines 9-21. The judge denied the motion. ROA p. 1042, lines 22 and 23.

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Martin, 216 S.C. 219, 57 S.E.2d 55 (1949). "In order to reduce a homicide to manslaughter, the provocation must be adequate, or such as the law deems sufficient to produce the degree of passion required to mitigate the crime, that is to say, such as will negate the element of malice." 40 CJS Homicide §81, p. 460. The provocation must be such as "to produce in the minds of persons ordinarily constituted the highest degree of exasperation, rage, anger, sudden resentment, or terror, rendering the mind incapable of cool reflection." State v. Davis, 50 S.C. 405, 27 S.E. 905, 911 (1897).

> [W]hat and will not constitute a reasonable provocation is perhaps the only difficulty in applying the otherwise well-defined distinction between the crimes of murder and manslaughter. The line which distinguishes between those provocations which will and which will not extenuate the offense is not, nor can it be, certainly defined. Those provocations which are in themselves calculated to provoke a high degree of resentment, and which ordinarily serve to induce a great degree of violence, when compared with those that are slight and trivial, and from which a great degree of violence does not usually follow, may serve as a general outline to mark the distinction, and when applied with

> judgment and discretion, will usually lead to correct results.

Martin, 57 S.E.2d at 57.

Where death is caused by use of a deadly weapon, words alone, however opprobrious, are not sufficient to constitute legal provocation. State v. Plemmons, 286 S.C. 78, 332 S.E.2d 765 (1985). "Rather, when death is caused by the use of a deadly weapon, the opprobrious words must be accompanied by the appearance of an assault -- by some overt, threatening act -- which could have produced the heat of passion." State v. Lowry, __ S.C. __, 434 S.E.2d 272, 274 (1993), citing State v. Judge, 208 S.C. 497, 38 S.E.2d 715 (1946).

The evidence presented at trial determines the law charged to the jury. State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989). A judge commits reversible error when he fails to give a requested charge on an issue raised by the indictment and the evidence presented. State v. Robertson, 191 S.C. 509, 5 S.E.2d 285 (1939). "[T]o warrant the court in eliminating the defense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." State v. Gardner, 219 S.C. 97, 64 S.E.2d 130, 134 (1951).

The judge erred by refusing to instruct the jury on voluntary manslaughter, where appellant's statement and other evidence in the case would have supported a verdict finding appellant guilty of the lesser offense. He incorrectly believed that "you can't have voluntary manslaughter when you

take the position this was an accidental killing." ROA p. 1031, lines 10-25. Appellant was entitled to an instruction on any theory of defense supported by the evidence, including voluntary manslaughter, even though he claimed the shooting was accidental. See Casey v. State, 305 S.C. 445, 409 S.E.2d 391 (1991), and State v. Gilliam, 296 S.C. 395, 373 S.E.2d 596 (1988). The jury could have failed to find that the killing was accidental, but could have found sufficient legal provocation and heat of passion to conclude appellant was guilty of voluntary manslaughter. Their question to the judge during deliberations about "malice aforethought and the difference between manslaughter and murder" indicated their doubt about the existence of malice.

Mike B[redacted] had been drinking. According to appellant's statement, B[redacted] initiated the confrontation by making "racist remarks." Such words, especially where accompanied by hostile acts, are sufficiently provocative. See State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989).

Appellant's statement continued:

> I noticed an argument going on then between Daxton and the two male passengers. That's when I turned around and noticed two white males walking towards Daxton and [assault victim]. [assault victim] was pulling Daxton away from the two white males. I walked over to where Daxton and [assault victim] were. Then, when I walked over there, the driver turned around, went back to the truck and pushed his seat up. It appeared to me as if he was looking for a weapon of some sort. Then, I pulled out the gun.

In fact, there was a shotgun behind the seat, and Jimmy Carver admitted he had walked toward the pistol concealed in a clothes basket in the bed of the truck. Appellant told police he drew his gun and fired the fatal shot at this instant, contrary to the testimony of B[redacted] Carver and [assault victim] who testified that he shot at the truck as it was leaving the parking lot.

According to appellant's statement, in addition to B[redacted]'s racist comments, B[redacted] and Jimmy Carver were about to initiate a physical encounter when the shooting occurred. The Court held this combination of word and deed to be sufficiently provocative to negate malice in State v. Lowry. After considering appellant's statement and the fact that there actually was a weapon behind the seat in the truck, the jury could have found that B[redacted] was attempting to arm himself, which by itself the Court has found to be sufficiently provocative. See State v. Jackson, 301 S.C. 41, 389 S.E.2d 650 (1990), and State v. Penland, 275 S.C. 537, 273 S.E.2d 765 (1981).

The evidence in this case supported a verdict finding appellant guilty of voluntary manslaughter, yet the judge refused to instruct the jury on that lesser offense because he mistakenly believed appellant had forfeited that charge by telling the police the shooting was accidental. The omission of this instruction entitled appellant to a new trial.

2. **THE JUDGE ERRED BY REFUSING TO INSTRUCT THE JURY THAT "A LIFE SENTENCE IMPOSED ON THIS DEFENDANT MEANS LIFE WITHOUT HOPE FOR RELEASE BY OPERATION OF LAW," BECAUSE APPELLANT, WHO HAD PREVIOUSLY BEEN CONVICTED OF TWO VIOLENT CRIMES WOULD HAVE BEEN INELIGIBLE FOR PAROLE UNDER S.C. CODE §24-21-640 IF SENTENCED TO LIFE AND THE STATE MADE HIS FUTURE DANGEROUSNESS A MAJOR ISSUE AT SENTENCING.**

At the start of sentencing, defense counsel filed a written motion asking the judge to prohibit the prosecution (1) "[f]rom introducing by exhibit, testimony or otherwise for consideration by the jury any criminal record, sentence or other fact which would convey to the jury the defendant's parole status and/or performance," and (2) "[f]rom referencing the term 'parole' in any manner." ROA p. 1262. According to defense counsel, "[T]he solicitor had indicated he's not going to mention that. He's not going to argue about that." ROA p. 1047, line 21 - 1048, line 2.

Defense counsel also asked the judge to give this instruction:

> "Ladies and gentlemen of the jury: I hereby charge you that, in consideration of the life sentence, you should take that in its ordinary meaning. Further, I charge that a life sentence imposed on this defendant means life without hope for release by operation of law. In short, a life sentence for this defendant means that he will live out his entire life in the custody of the State of South Carolina with no hope or legal ability to gain release."

Tr. p. 1239.

Counsel told the judge, "[I]n his situation, a life sentence

means life without parole. I would reference the court to the Simmons case, which was recently argued in the United States Supreme Court." ROA p. 1048, line 4 - p. 1049, line 2. The judge denied this request, stating, "I have no idea what either the Supreme Court of South Carolina or the United States Supreme Court would rule on life without parole because of some type of convictions... I will however, if you wish, charge the jury to consider the words life and death in their plain and ordinary meaning." ROA p. 1049, lines 3-17. Counsel assented to that charge, but expressly stated he was not waiving his original request. ROA p. 1049, line 23 - p. 1050, line 2.

The state introduced evidence appellant had been convicted of second degree criminal sexual conduct with a minor (the victim in each instance being assault victim, the mother of his child) in August and September 1992. This offense was defined as a violent crime in S.C. Code §16-1-60, so appellant would have been ineligible for parole if sentenced to life imprisonment under S.C. Code §24-21-640, which provides, "The [parole] board must not grant parole, nor is parole authorized, to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in §16-1-60."

Appellant testified at sentencing he had not intended to shoot Stephanie B[redacted]. ROA p. 1107, lines 14-16. On cross-

examination, the solicitor asked appellant about his criminal record and focused on his recidivism:

> Q. Mr. Rogers, you've been in this courtroom before, haven't you?
>
> A. Yes, sir...
>
> Q. [Y]ou were found guilty of the charge of carrying a pistol in 1986. Is that right?
>
> A. Yes, sir...
>
> Q. In this court right here.
>
> A. Yes, sir.
>
> Q. Okay. About a year later -- excuse me two years later, 1988 -- you were back out here again, weren't you?
>
> A. Yes, sir.
>
> Q. The same room... And you were found guilty at that time of grand larceny. Is that right?
>
> A. Yes, sir...
>
> Q. How about 1990, when you were up here in this same courtroom and there was a judge where Judge Brown is now, and you were found guilty of possession of cocaine? Do you remember that?
>
> A. Yes, sir...
>
> Q. Now, how about a few weeks ago when you were in this court, you pled guilty to criminal sexual conduct with [redacted] (assault victim)? Is that right?
>
> A. Yes, sir.
>
> Q. And a week later, you pled again for the same child different occasion, right? Criminal sexual conduct.
>
> A. Yes, sir.

ROA p. 1120, line 22 - p. 1123, line 25.

The solicitor returned to this theme during the cross-examination of appellant's preacher, Reverend Clarence Middleton:

> Q. Mr. Middleton, have you had occasion to counsel with Mr. Rogers here in the past?
>
> A. Many occasions.
>
> Q. Okay. Did you have occasion to counsel with him after 1986 when he was charged with carrying a pistol?
>
> A. I spoke with him on many occasions.
>
> Q. Well, my question was, did you talk to him after 1986 when he was charged and convicted of carrying a pistol unlawfully?
>
> A. I talked with him on -- I just can't pick up the specific date. On many occasions, I counseled with him. That's my job.
>
> Q. Yes, sir. During your counseling sessions, did you ever tell him that it was a bad thing to be carrying a gun around?
>
> A. Yes.
>
> Q. And did you say that before November 25, 1992?
>
> A. Many occasions. In my counseling, many occasions.
>
> Q. Didn't do much good, did it?
>
> A. Well, I won't say that. I counseled with him.
>
> Q. You counseled with him not to carry a gun, but he shot a little girl with a gun on November 25, 1992, right?

> A. Now, I don't -- If you allow me to answer these questions as you ask me, I'll be glad to.
>
> Q. I wish you would. Yes, sir.
>
> A. Would you repeat that statement?
>
> Q. Let me start over again. You counseled Timothy Rogers about the dangers of carrying a pistol before November 25, 1992. Is that right?
>
> A. Yes.
>
> Q. Okay. And I think my next question was whether or not that -- whether not he heeded that advice, whether it did him any good.
>
> A. At the time we counsel with individual (sic), we believe that it would do him some good, even if they go above that and a little while later do the very opposite. But we did counsel and, at the time, we could say it did him some good.

ROA p. 1159, line 19 - p. 1161, line 11.

The solicitor in his closing argument stressed appellant's future dangerousness to society should the jury elect to sentence him to life imprisonment:

> This is his criminal conviction record. I won't go over it again. It's nine convictions, some fairly insignificant and some more important. 1986, this man who claims that he accidentally shot this little girl is convicted in this very same room that ya'll are in now for carrying a pistol by a judge sitting just where Judge Brown is. 1988, he's convicted of grand larceny. He goes to prison for that. 1990, convicted of possession of cocaine. Then, in 1992 -- the conviction actually took place after that, but the offense took place in 1992 -- two convictions for criminal sexual conduct with a minor. That's a teenage girl that he was involved with...

> And he was sent to prison for grand larceny in 1988 and later was returned to prison. And I really shouldn't use the word prison, because they don't call them prisons anymore. They call them correctional institutes. You recall, a correctional officer there testified that he was at Broad River Correctional Institute. The idea is that prison is not supposed to be there to punish. They're there to correct you. They're there to reform you. When you come out of prison, you ought to be straightened out and be a better person and be rehabilitated. The problem with Mr. Rogers here is that he went to prison. He wasn't corrected, because when he got out of prison, he went out and he got drunk and he murdered a nine-year-old girl. His stay in prison didn't teach him anything.
>
> And when ya'll think about that choice, that choice between the death penalty and life in prison, it's fair for ya'll to ask yourselves: how did this man adjust to prison when he's been in prison previously? Was he a model inmate? Did he take advantage of the benefits the prison would offer him to straighten himself out? Obviously he didn't, or he wouldn't be here today...
>
> Now, I'm not a social worker or a psychiatrist or a department of corrections official or anything of that nature. I'm a prosecutor. I can't tell you how this man got to be the way he is today, why he did what he did on November 25th. That isn't my problem to tell you how he got here or try to explain it to you. That's not your problem. The question is not how he got to be the way he is today. The question is: what do you do with a person like this once he's in our midst with those two choices?... And by his record, Timothy Rogers has shown that he cannot safely exist in this society inside or outside of the prison system.

ROA p. 1187, line 11 - p. 1193, line 24.

In his closing argument, defense counsel sought to stress that "life in prison in this case means life in prison." ROA p. 1196, line 16 - p. 1197, line 7. The solicitor objected. ROA p. 1201, lines 11-15. The judge sustained the objection, stating, "Counselor, I don't want to caution you anymore, but we've been all over that... Do not discuss life or death... [e]xcept in their plain and ordinary meaning." ROA p. 1201, lines 16-25.

The defense never got to argue that life imprisonment for appellant meant he would never be released from prison. The judge instructed the jury that life and death were to be understood "in their plain and ordinary meaning" and that "[n]o other consideration about the effect of the two sentences should enter into your decision about which sentence to impose, and no deliberations and discussions as to any effect on these sentences should take place in your jury room." ROA p. 1208, line 25 - p. 1209, line 9.

The judge erred by refusing to instruct the jury that "a life sentence imposed on this defendant means life without hope for release by operation of law," because appellant, who had previously been convicted of two violent crimes would have been ineligible for parole under S.C. Code §24-21-640 if sentenced to life and the state made his future dangerousness a major issue at sentencing.

Under the circumstances of this case, in the wake of Simmons v. South Carolina, 114 S.Ct. 2187 (1994), the "plain

and ordinary meaning" charge of State v. Norris, 285 S.C. 86, 328 S.E.2d 339 (1985), is no longer sufficiently informative:

> It can hardly be questioned that most juries lack accurate information about the precise meaning of "life imprisonment" as defined by the states... An instruction directing juries that life imprisonment should be understood in its "plain and ordinary" meaning does nothing to dispel the misunderstanding reasonable jurors may have about the way in which any particular state defines "life imprisonment."

114 S.Ct. at 2187.

After Simmons, "[W]here the defendant's future dangerousness is at issue, and state law prohibits the defendant's release on parole, due process requires that the sentencing jury be informed that the defendant is parole ineligible." 114 S.Ct. at 2190. This Court feels that due process is satisfied when a defendant is allowed "to bring parole ineligibility to the jury's attention by way of argument by the defense counsel or an instruction from the court." State v. Southerland, ___ S.C. ___, 447 S.E.2d 862, 868 (1994).

The opinion in State v. Simmons, ___ S.C. ___, 427 S.E.2d 175 (1993), was issued on February 1, 1993 and rehearing denied on March 10. Appellant went to trial one year later. The United States Supreme Court decided Simmons v. South Carolina four months after appellant had been sentenced to death. The solicitor in appellant's case obviously modeled a portion of his closing argument on the solicitor's "future dangerousness" argument in Simmons. For example, the

prosecutor in Simmons argued, "[W]e are not concerned about how he got shaped. We are concerned about what to do with him now that he is in our midst." Simmons, 114 S.Ct. at 2203 (Scalia and Thomas, JJ., dissenting). In this case, the solicitor argued, "The question is not how he got to be the way he is today. The question is: what do you do with a person like this once he's in our midst with those two choices?" ROA p. 1190, lines 18-21.

The solicitor's argument, coupled with his cross-examination of appellant and Reverend Middleton and the judge's refusal to inform the jury that a life sentence meant life imprisonment without possibility of parole, prevented appellant "from rebutting information that the sentencing authority considered, and upon which it may have relied, in imposing the sentence of death." 114 S.Ct. at 2194. The due process clause does not allow the execution of a person "on the basis of information which he had no opportunity to deny or explain." Gardner v. Florida, 430 U.S. 349, 97 S.Ct. 1197, 1207 (1977).

While Justices Ginsberg and O'Connor noted in their concurring opinions in Simmons that due process might be satisfied if defense counsel was permitted to inform the jury that a defendant was parole ineligible, they envisioned counsel being able to apprise the jury directly and unequivocally of that fact. In Southerland, 447 S.E.2d at 868, "defense counsel informed the jury throughout closing

argument that life imprisonment meant that he would never be released from prison." This case, the judge sustained the solicitor's objection when defense counsel argued that "life in prison in this case means life in prison," and cautioned defense counsel, "Do not discuss life or death... [e]xcept in their plain and ordinary meaning." ROA p. 1196, line 16 - p. 1201, line 25. Counsel was expressly forbidden from informing the jury that appellant would not be eligible for parole if sentenced to life, and this information did not reach the jury by other means.

The net result in this case of the state's evidence and argument and the judge's omission is the same as in Simmons:

> [T]he jury reasonably may have believed that petitioner could be released on parole if he were not executed. To the extent this misunderstanding pervaded the jury's deliberations, it had the effect of creating a false choice between sentencing petitioner to death and sentencing him to a limited period of incarceration. This grievous misperception was encouraged by the trial court's refusal to provide the jury with accurate information regarding petitioner's parole ineligibility, and by the state's repeated suggestion that petitioner would pose a future danger to society if he were not executed... The state thus succeeded in securing a death sentence on the ground, at least in part, of petitioner's future dangerousness, while at the same time concealing from the sentencing jury the true meaning of its noncapital sentencing alternative, namely, that life imprisonment meant life without parole.

114 S.Ct. at 2193.

For this reason, the Court should vacate appellant's death sentence.

CONCLUSION

The judge erred by refusing to instruct the jury on voluntary manslaughter, where appellant's statement and other evidence in the case would have supported a verdict finding appellant guilty of the lesser offense. The Court should reverse appellant's conviction for murder.

The judge erred by refusing to instruct the jury that "a life sentence imposed on this defendant means life without hope for release by operation of law," because appellant, who had previously been convicted of two violent crimes would have been ineligible for parole under S.C. Code §24-21-640 if sentenced to life and the state made his future dangerousness a major issue at sentencing. The Court should vacate appellant's death sentence.

Respectfully submitted,

Joseph L. Savitz, III
Deputy Chief Attorney

July 26, 1995

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 210(b), SCACR.

July 26, 1995

Joseph L. Savitz, III
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Luke N. Brown, Jr., Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY ROGERS,

APPELLANT.

CERTIFICATE OF SERVICE

I certify that three (3) copies of the final brief of appellant in this case has been served on opposing counsel, William Edgar Salter, III, Esquire, this 26th day of July, 1995.

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 26th day of July, 1995.

(L.S.)
Notary Public for South Carolina

My Commission Expires: 3/24/2003.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Dorchester County

The Honorable Luke N. Brown, Jr., Judge

THE STATE,

Respondent,

v.

TIMOTHY D. ROGERS,

Appellant.

FINAL BRIEF OF RESPONDENT

CHARLES MOLONY CONDON
Attorney General

JOHN W. McINTOSH
Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WALTER M. BAILEY, JR.
Solicitor, First Judicial Circuit

134 East Richardson Avenue
Summerville, South Carolina 29483
(803) 871-2640

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL vi

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 3

ARGUMENT

I. The trial judge properly refused to instruct the jury on the lesser-included offense of voluntary manslaughter because the evidence presented at trial did not support such an instruction.. 23

A. HOW ISSUE DEVELOPED AT TRIAL 23

B. LAW\ANALYSIS 24

II. The trial judge did not abuse his discretion by denying Appellant's request-to-charge that a sentence of life imprisonment imposed on Appellant "means life without hope for relief by operation of law" because the State did not rely upon Appellant's general future dangerousness to society as a reason for the jury to impose the death penalty, and because defense counsel repeatedly informed the jury, in his closing argument, that life imprisonment meant that Appellant would be "in prison for the rest of his life." 36

A. HOW ISSUE DEVELOPED AT TRIAL 37

B. LAW/ANALYSIS 44

CONCLUSION 59

TABLE OF AUTHORITIES

Cases:

Allridge v. Scott, 41 F.3d 213,
222 n 12 (5th Cir. 1994) 46, 49

Boyde v. California, 494 U.S. 370, 380,
110 S.Ct. 1190, 1198 (1990) 55

Chapman v. California, 386 U.S. 18,
87 S.Ct. 824 (1967) 56-58

Donnelly v. DeChristoforo, 416 U.S. 637,
647 S.Ct. 1868 (1974) 48

Francis v. Franklin, 471 U.S. 307, 324 n.9,
105 S.Ct. 1965, 1976 n.9 (1985) 56

Gardner v. Florida, 430 U.S. 349,
97 S.Ct. 1197 (1977) 53

Greer v. Miller, 483 U.S. 756, 766 n. 7,
107 S.Ct. 3102, 3109 n.7 (1987) 56

Miranda v. Arizona, 384 U.S. 436,
86 S.Ct. 1602 (1966) 14

Rose v. Clark, 478 U.S 570,
106 S.Ct. 3101 (1986) 57-58

Simmons v. South Carolina, ___ U.S. ___,
114 S.Ct. 2187 (1994) 37, 45-51, 53-56, 58

Skipper v. South Carolina, 476 U.S. 1,
106 S.Ct. 1699 (1986) 53, 56

State v. Atchison, 268 S.C. 588,
235 S.E.2d 295 (1977) 57

State v. Atkins, 293 S.C. 294,
306 S.E.2d 302 (1987) 44, 54

State v. Britt, 235 S.C. 395,
111 S.E.2d 669 (1960) 25

State v. Butler, 237 S.C. 452, 290 S.E.2d 1,
cert. denied, 459 U.S. 932,
103 S.Ct. 242 (1982) 25, 31, 35

State v. Damon, 285 S.C. 125,
328 S.E.2d 628 (1985) 25

State v. Davis, 306 S.C. 246,
411 S.E.2d 220 (1991) 54

State v. Dingle, 279 S.C. 278,
306 S.E.2d 223 (1983) 25

State v. Doctor, 306 S.C. 527,
413 S.E.2d 36 (1992) 32

State v. Edwards, 194 S.C. 410,
10 S.E.2d 587 (1940) 25

State v. Foxworth, 269 S.C. 496,
238 S.E.2d 172 (1977) 32

State v. Funchess, 267 S.C. 427, 430,
229 S.E.2d 331, 332 (1976) 32, 33

State v. Gadsden, ___ S.C. ___,
442 S.E.2d 594 (1994) 25, 31, 33, 35

State v. Gallman, 79 S.C. 229, 60 S.E. 682 (1908) 28

State v. Gardner, 219 S.C. 97,
64 S.E.2d 130 (1951) 25, 28

State v. Gill, 273 S.C. 190,
255 S.E.2d 455 (1979) 39

State v. Gilliam, 296 S.C. 395,
373 S.E.2d 596 (1988) 28, 33

State v. Goodson, 140 S.C. 357,
138 S.E. 816 (1927) 28

State v. Griffin, 277 S.C. 193,
285 S.E.2d 631 (1981) 28

State v. Harvey, 220 S.C. 506,
68 S.E.2d 409 (1951) 25

State v. Heyward, 197 S.C. 371,
15 S.E.2d 669 (1941) 31

State v. Howard, 295 S.C. 462,
369 S.E.2d 132 (1988), cert. denied,
490 U.S. 113 (1989) 32

State v. Jackson, 301 S.C. 41,
389 S.E.2d 272 (1993) 33

State v. Jefferies, ___ S.C. ___,
447 S.E.2d 427 (1994), cert. denied,
___ U.S. ___, 115 S.Ct. 911 (1995) 53, 56, 58

State v. Johnson, 298 S.C. 496,
381 S.E.2d 732 (1989) 57

State v. Lowery, ___ S.C. ___,
434 S.E.2d 272 (1993) 34, 35

State v. Martin, 216 S.C. 129,
57 S.E.2d 55 (1949) 34

State v. McCants, 28 S.C.L. (1 Speers) 384 (1843) 28

State v. Morris, 307 S.C. 480,
415 S.E.2d 819 (Ct.App. 1992) 32

State v. Norris, 253 S.C. 31,
168 S.E.2d 564 (1969) 25, 28, 33, 35

State v. Norris, 285 S.C. 86,
328 S.E.2d 339 (1985) 50-52, 54, 56

State v. Patterson, 285 S.C. 5,
327 S.E.2d 650 (1984) 57-58

State v. Plemmons, 286 S.C. 78,
332 S.E.2d 765 (1985) 25, 28, 31, 33, 35

State v. South, 285 S.C. 529,
331 S.E.2d 775 (1985) 48

State v. Southerland, ___ S.C. ___,
447 S.E.2d 862, 868 (1994) 45, 46, 53, 56

State v. Summer, 55 S.C. 32, 35,
32 S.E. 771, 772 (1899) 25, 28

State v. Torrence, 305 S.C. 45,
406 S.E.2d 315, (1991) 33, 38, 44, 45, 50

State v. Tyson, 283 S.C. 375, 379,
323 S.E.2d 770, 772 (1984) 25, 28, 31, 33, 35

State v. Varner, ___ S.C. ___,
423 S.E.2d 133 (1992) 39

United States ex rel. Collins v. Welborn,
868 F.Supp. 950, 992-993 (N.D.Ill. 1994) 47, 49

Other Authorities:

S. C. Code Ann. § 16-1-60 (Supp. 1993) 39

S.C. Code Ann. § 16-3-20(B) (Supp. 1994) 1, 2

S.C. Code Ann. § 16-3-20(C)(a)(3)&(10) (Supp. 1994) . . . 2

S.C. Code Ann. § 16-3-20(C)(b)(6) (Supp. 1994) 2

S.C. Code Ann. § 16-3-25 (1991) 2

S. C. Code Ann. §16-3-28 (Supp. 1994) 42

S.C. Code Ann. § 24-21-640 (Supp. 1993) 39, 49

Rule 207(b)(1)(C), SCACR 1

The Criminal Law of South Carolina, pp. 151-152 (2d Ed. 1989) . . . 26, 27, 28, 31, 33, 35

The State, A-1, April 18, 1995 5

U. S. Const. Amend. XIV 37, 44, 49, 53, 55, 56

1993 Acts and Joint Resolutions No. 184, Section 8 . . . 39

STATEMENT OF ISSUES ON APPEAL

I.

Did the trial judge properly refuse to instruct the jury on the lesser-included offense of voluntary manslaughter because the evidence presented at trial did not support such an instruction?

II.

Did the trial judge abuse his discretion by denying Appellant's request-to-charge that a sentence of life imprisonment imposed on Appellant "means life without hope for relief by operation of law" because the State did not rely upon Appellant's general future dangerousness to society as a reason for the jury to impose the death penalty, and because defense counsel repeatedly informed the jury, in his closing argument, that life imprisonment meant that Appellant would be "in prison for the rest of his life"?

STATEMENT OF THE CASE

The Dorchester County Grand Jury indicted Appellant[1] for murder, at the February, 1993 term of court. On January 27, 1993, the State served its Notice of Intent To Seek The Death Penalty and Notice Of Evidence In Aggravation. It served an amended Notice of Evidence In Aggravation on July 29, 1993.

The Honorable Charles W. Whetstone, Jr., held pre-trial hearings on August 17 and 19, 1993. Appellant again appeared before Judge Whetstone on February 2, 1994 to plead guilty to murder. However, he withdrew his plea before it was accepted by the judge. The State there upon notified Appellant that it would seek the death penalty in the ensuing jury trial, and that there would be no further plea negotiations.

On February 28 - March 5, 1994, Appellant was tried by The Hon. Luke N. Brown, Jr., and a jury. He was represented at trial by William Runyon, Esquire, and Mark Leiendecker, Esquire. The State was represented by the Honorable Walter M. Bailey, Jr., Solicitor for the First Judicial Circuit, and Assistant Solicitor Harrison Bell. The jury found Appellant guilty of murder on March 3.

Following Appellant's exercise of his right to a twenty-four hour waiting period, see S.C. Code Ann. § 16-3-20(B) (Supp. 1994), a sentencing proceeding was held on March 5,

---

[1]The State would note that Appellant's Statement of the Case is not in compliance with Rule 207(b)(1)(C), SCACR because it contains contested matters. Therefore, The State denies anything contained therein which is not expressly admitted, qualified or explained, either in Respondent's statement of the case, or elsewhere within the Final Brief of Respondent.

1994. The State relied upon two statutory aggravating circumstances: (1) that the offender, 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, and (2) that Appellant killed a child under the age of eleven years old. See § 16-3-20(C)(a)(3)&(10). Appellant relied upon the statutory mitigating circumstance that his capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of the law was substantially impaired, see § 16-3-20(C)(b)(6), as well as three non-statutory mitigating circumstances. After hearing all of the evidence and listening to arguments from the prosecution, defense counsel and Appellant, the jury unanimously found the existence of both statutory aggravating circumstances and sentenced Appellant to death on March 5. Judge Brown imposed sentence upon Appellant on that same day. Before imposing sentence, Judge Brown found as an affirmative fact that the death penalty was warranted under the evidence presented, and that it was not the result of prejudice, passion, or any other arbitrary factor.

A timely Notice of Appeal was served and filed. This appeal consolidates Appellant's direct appeal with this Court's sentence review under S.C. Code Ann. § 16-3-25 (1991).

STATEMENT OF FACTS

The direct and circumstantial evidence presented at trial, viewed in the light most favorable to the State, is as follows. In November, 1992, Mr. Mike B[redacted] lived in Summerville, South Carolina, with his wife and his nine-year old daughter, Stephanie. On the week of November 25, 1992, the B[redacted] were staying on a houseboat at Santee Resort, with Mrs. B[redacted]'s parents. Because school was in session, Mr. B[redacted] drove Stephanie back to Summerville for school each weekday morning. He returned in the afternoons, and took her back to Santee Resort. On Wednesday, November 25, 1992, he drove to Summerville to pick her up in the mid-afternoon. She came home from school around 3:30 p.m., and they left several minutes later. (R. p. 714, line 4 - p. 717, line 9; p. 742, line 1 - p. 743, line 17).

They first stopped at a grocery store. Mr. B[redacted] bought some food for Stephanie, and he purchased a twelve-pack of beer for himself. He drank one of these beers around 4:00 p.m. Mr. B[redacted] had also asked his friend, Jimmy Carver, to go fishing and squirrel hunting with him at the Santee Resort. So, he and Stephanie left the grocery store and went to the logging company, where Mr. Carver lived and worked. However, Mr. Carver was not there. When he finally returned, he had a flat tire. So, they waited until he fixed the flat tire. While Mr. B[redacted] was waiting on Mr. Carver to finish changing the tire, he drank one or two more beers. Nevertheless, he was not intoxicated, and he was able to drive without any

difficulty. (R. p. 717, line 6 - p. 720, line 8; p. 740, lines 2-15; p. 743, line 18 - p. 744, line 12; p. 928, line 9 - p. 934, line 17; p. 950, lines 6-8).

Before they left, Stephanie put Mr. Carver's 410 shotgun behind the seat in the truck. This gun was not loaded. Mr. Carver also brought a 9mm pistol, which was underneath some clothes in a clothes basket.[2] They put the basket in the bed of the truck. They left Mr. Carver's residence around 5:55 p.m. (R. p. 717, line 6 - p. 720, line 8; p. 740, lines 2-15; p. 743, line 18 - p. 744, line 12; p. 928, line 9 - p. 934, line 17; p. 950, lines 6-8).

Because Stephanie was hungry, they stopped to get her a sandwich at Spell's store, which is on Pigeon Bay Road in Summerville. It was shortly after 6:00 p.m. Mr. B[redacted] parked his truck parallel to the store and near a pay telephone. He and Stephanie went inside to get her a sandwich. However, Mr. Carver stayed in the truck. On his way into the store, Mr. B[redacted] saw Mr. Anthony Riley, another friend, talking on the telephone.[3] (R. p. 720, line 9 - p. 729, line 2; p. 729, line 24 - p. 730, line 4; p. 744, line 4 - p. 745, line 1; p. 791, line 16 - p. 797, line 7).

When Mr. B[redacted] came out of the store, he spoke to Mr. Riley for several minutes. Then, he went back inside to check

---

[2]Mr. Carver took this weapon in case he needed it for deer hunting.

[3]While Mr. B[redacted] and Mr. Carver are white, Mr. Riley is black.

on his daughter.[4] After Stephanie got her sandwich, they walked out of the store. Stephanie got into the truck, but Mr. B[redacted] wanted to finish his conversation with Mr. Riley. Therefore, he walked over to the corner of Pigeon Bay Road and spoke with his friend. Unfortunately, this decision soon to prove to be fatal for his daughter. (R. p. 720, line 9 - p. 729, line 2; p. 729, line 24 - p. 730, line 4; p. 744, line 4 - p. 745, line 1; p. 934, line 7 - p. 939, line 20).

As Mr. B[redacted] and Mr. Riley were talking, Appellant,[5] assault victim ([assault victim]) and Daxton Patterson (Patterson) walked up behind them from Pigeon Bay Road. (They had come from the direction of Mr. Riley's house).[6] Neither Mr. B[redacted] nor Mr. Carver had ever seen these people before. (Mr. Riley had seen Appellant, but not Patterson or [assault victim]. According to Mr. Riley, Appellant asked Patterson for a quarter. He then told Patterson, "'Stand right there and listen to them, and if they talk about us I'll take care of the mother fuckers."[7] (R. p. 728, line 8 - p. 732, line 2; p.

---

[4]He bought another beer on this occasion, but did not drink it.

[5]Appellant and [assault victim] are black. Patterson is white. Also, at the time of the incident, Appellant was not as clean cut and well groomed as he was at trial. Rather, he had long braided hair or "dreadlocks", similar to those worn by Rastafarian inmates who led a prison riot at Broad River Correctional Institute on April 17, 1995. See "Inmates heard; hostages freed," The State, A-1, April 18, 1995.

[6]This portion of Pigeon Bay Road dead ends a short distance away from Mr. Riley's home.

[7]Mr. B[redacted] recalled either Appellant or Patterson saying, "Don't fuck with them crack-head-mother fuckers. . . ."

734, lines 19-25; p. 745, line 2 - p. 748, line 7; p. 754, line 16 - p. 755, line 1; p. 764, lines 19-24; p. 798, line 13 - p. 801, line 13; p. 939, line 21 - p. 941, line 15; p. 958, lines 18-21).

Then, Appellant walked over to the telephone, which was approximately twenty feet or so away from Mr. B[redacted] and Mr. Riley. While Appellant talked on the phone, Mr. B[redacted] and Mr. Riley continued their conversation. However, Patterson soon began pacing back and forth between them and the telephone booth. Also, even though no one had said or done anything to Patterson, he did his best to provoke both Mr. B[redacted] and Mr. Riley into a fight. He told Mr. B[redacted], "Come on you white son-of-a-bitch. . . . Come on so I can beat your ass." (R. p. 728, line 8 - p. 732, line 2; p. 734, lines 19-25; p. 745, line 2 - p. 748, line 7; p. 754, line 16 - p. 755, line 1; p. 764, lines 19-24; p. 801, line 10 - p. 802, line 15; p. 939, line 21 - p. 941, line 15; p. 958, lines 18-21).

Mr. B[redacted] and Mr. Riley ignored Patterson's taunts. When Patterson flipped a lit cigarette on Mr. Riley's shoe, Mr. Riley simply left the store and walked back home. Mr. B[redacted] did not want any trouble either, so he decided to leave. He walked back over to his truck and got into it. Yet, Patterson would not let him leave. Every time he tried to close the door, Patterson pulled on it and would not let him close it. Patterson also kept trying to fight him. At some point, Mr. B[redacted] got out of the truck and told

Patterson they did not want any trouble. Still, Patterson would not let him close the door. Instead, Patterson attempted to goad him into a fight and obstructed his efforts to close the door. (R. p. 731, line 22 - p. 733, line 14; p. 748, line 4 - p. 749, line 14; p. 754, line 16 - p. 755, line 11; p. 756, lines 11-14; p. 758, line 23 - p. 759, line 4; p. 760, lines 13-22; p. 764, line 19 - p. 765, line 14; p. 801, line 14 - p. 803, line 3; p. 818, line 24 - p. 819, line 14; p. 941, line 18 - p. 944, line 5; p. 953, line 19 - p. 955, line 19; p. 958, line 18 - p. 959, line 10).[8]

After Mr. Riley left, Mr. B[redacted] and Patterson struggled over the door for several minutes. Appellant told the person to whom he had been talking, "Hold on. Let me get this fellow." Then, he dropped the phone and walked over to the truck. He reached into his jacket pocket and pulled out a .380 caliber semi-automatic pistol. He pointed this gun at Mr. B[redacted]'s forehead and said, "I'll kill you." Neither Mr. B[redacted] nor Mr. Carver had done anything to provoke or threaten Appellant, Patterson, or assault victim.[9] As soon as Appellant pointed the gun at Mr. B[redacted], Stephanie began crying very hard. When she made eye contact with Appellant,

---

[8]During this brief exchange, Mr. Carver momentarily got out of the cab of the truck. However, he did not make any effort to get the 9mm pistol. Rather, he started to walk between Patterson and his friend, to prevent Patterson from starting a fight. He immediately returned to the truck because this was unnecessary: Mr. B[redacted] reacted calmly to Patterson's taunts and no blows were exchanged.

[9]To the contrary, Mr. B[redacted] had gotten out of the truck at one point and reassured Appellant that he was not looking for trouble.

he backed up and lowered the pistol from her father's forehead. Then, he shot once at the back (driver's side) left hubcap of the pickup truck. He also spit on Mr. B[redacted] (R. p. 733, line 7 - p. 735, line 17; p. 748, line 11 - p. 750, line 2; p. 760, lines 13-22; p. 763, lines 1-10; p. 943, line 22 - p. 945, line 20; p. 955, line 22 - p. 956, line 11; p. 960, lines 10-24).

Finally, Mr. B[redacted] was able to close his door. He immediately cranked up his truck and attempted to leave the parking lot. As he was in the middle of a "wide swing" to pull out onto Richardson Avenue,[10] Appellant pointed the gun at the truck and fired a second shot. This bullet went through the rear window of the cab and struck Stephanie in the back of the head. (R. p. 734, line 19 - p. 740, line 24; p. 750, line 9 - p. 753, line 3; p. 754, line 16 - p. 755, line 1; p. 761, lines 4-8; p. 945, line 21 - p. 949, line 21; p. 950, lines 19-25; p. 953, line 19 - p. 957, line 12; p. 960, lines 10-24).

As soon as Mr. B[redacted] realized his daughter had been shot, he pulled back around and parked in front of the store. When he got out of the truck, he yelled at Appellant and Patterson, "'You just shot my daughter. . . .'" However, they stood there and laughed at him. Then, they took off running. Mr. B[redacted] went into the store and asked for someone to call for help. (R. p. 734, line 19 - p. 740, line 24; p. 750, line

---

[10]Both Mr. Carver and Mr. B[redacted] testified that the truck was headed forward. Therefore, Appellant, Patterson and assault victim could not have been hit by it.

9 - p. 753, line 3; p. 754, line 16 - p. 755, line 1; p. 761, lines 4-8; p. 945, line 21 - p. 949, line 21; p. 950, lines 19-25; p. 953, line 19 - p. 957, line 12; p. 960, lines 10-24).

Meanwhile, Mr. Carver went over to the pay telephone and called the operator. He asked the operator to send both the Sheriff's Department and an ambulance to the scene. Both Mr. B[redacted] and Mr. Carver denied pulling a weapon on Appellant, Patterson, or [assault victim] They also denied doing anything else which could have provoked Patterson's behavior or Appellant's shooting of Stephanie. (R. p. 734, line 19 - p. 740, line 24; p. 750, line 9 - p. 753, line 3; p. 754, line 16 - p. 755, line 1; p. 761, lines 4-8; p. 945, line 21 - p. 949, line 21; p. 950, lines 19-25; p. 953, line 19 - p. 957, line 12; p. 960, lines 10-24).

As noted, Mr. Riley left Spell's store before the shooting occurred. He ran all of the way home because Appellant and Patterson were "looking for trouble, and he did not want to be alone with them on a dark road. However, he heard a gunshot before he reached his house. He heard a second shot as soon as he reached his house. Afterwards, he walked inside momentarily. Then, he went back out onto the porch and smoked a cigarette. As he was standing outside, he saw two men run by his house. Although he could not identify either of these men, they were coming from the direction of Spell's Grocery Store, and he had not passed anyone on the way home from the store. He heard the first man ask, "'Did you

get the mother fucker?'" The second man said, "'Yeah, I got the mother fucker.'" Roughly a minute later, Mr. Riley saw the girl he had previously seen at the grocery store (assault victim) as she ran by his house. (R. p. 802, line 16 - p. 805, line 14; p. 813, line 1 - p. 815, line 25).

EMS personnel arrived at the scene shortly after the shooting, and Stephanie was transported to Trident Hospital, for treatment of her head wound. However, she never regained consciousness, and she died the following day as a result of this wound. (R. p. 854, line 6 - p. 859, line 19).

assault victim [11] is Appellant's seventeen year old girl-friend.[12] assault victim spent the afternoon of November 25, 1992, with Appellant and Patterson, who were working on an automobile at a house on Pigeon Bay Road. All three were drinking beer and some "white liquor" that Patterson had brought with him. assault victim was not very intoxicated, but both Patterson and Appellant drank "[q]uite a bit. . . ." At some point, they walked up Pigeon Bay Road and went to Spell's Grocery Store. Appellant carried a .380 caliber semi-automatic pistol with him.[13] (R. p. 822, line 22 - p. 828,

---

[11]The State originally filed a Juvenile Petition in Family Court, charging assault victim with murder, as a result of the November 25, 1992 incident. Her case was later waived up to the Court of General Sessions. However, the State agreed to dismiss the charges against her if she testified truthfully (R. p. 834, line 23 - p. 835, line 9), and the charges were later dismissed. (See R. p. 879, line 16).

[12]He is also the father of her child.

[13]assault victim had seen the gun in Appellant's possession earlier that day.

line 7).

When they reached the store, Appellant walked over to the telephone and made a call. However, Patterson soon began arguing with two men who were present.[14] The confrontation was not violent, and assault victim could not hear what was being said. Neither of these men were fighting with Patterson, nor had they done doing anything else to make him mad. Yet, at some point, he spit on one of them. Appellant then turned around, dropped the telephone, and began arguing with the men as well. When he did so, assault victim went over to the phone and started talking to the person on the other end of the conversation. (R. p. 829, line 1 – p. 832, line 19; p. 835, line 18 – p. 836, line 12; p. 837, line 10 – p. 839, line 20).

While she was talking on the phone, she heard a gunshot. She turned around and saw Appellant pointing the gun at the bottom of the truck. She then turned back around and resumed her conversation, "A couple of minutes" later, she heard a second gunshot and turned around again. The truck was in the process of leaving the store. Appellant was standing in back of the truck, with the gun in his hand. Appellant and Patterson immediately ran away from the scene. The other two men were yelling. assault victim got scared because she saw blood. Therefore, she also ran away from the store. Neither of the two men had threatened Appellant, her, or Patterson at any time. Nor had they done anything to provoke Appellant or

---

[14] assault victim claimed that both men were white, and that she did not see Patterson arguing with a black man.

Patterson. (R. p. 833, line 15 - p. 834, line 22; p. 839, line 7 - p. 841, line 14).

Several other people were present at Spell's store when the shooting occurred. Mr. Isaiah Jennings walked up to the store shortly before closing time. He saw a white man outside of the store. This man came up to him and attempted to pick a fight, but Mr. Jennings walked into the store. His cousin, Herthenia Lincoln, and Mr. James Robinson (the store's clerk) were also in the store. Several minutes later, all three witnesses heard two gunshots. After the second shot, Mr. B[redacted] ran into the store and asked the owner to call the police because someone had shot his daughter in the head. (R. p. 842, line 3 - p. 847, line 16; p. 848, line 4 - p. 853, line 6).

Detective Earl V. Asbell is a Crime Scene Technician employed by the Dorchester County Sheriff's Department. He arrived at Spell's store around 7:00 p.m. on November 25. He then photographed the scene and searched for evidence. He saw where a bullet had entered through the rear window of the truck's cab. This bullet passed through the cab and exited through the front windshield. (See State's Exhibits 1-7). Also, he photographed an area of the back, left (driver's side) tire of the truck, where the paint had been knocked off of the vehicle. (See State's Exhibit 10). (R. p. 859, line 25 - p. 870, line 13; p. 881, lines 12-22; p. 884, line 1 - p. 889, line 23).

Detective Asbell found a spent .380 caliber cartridge

(State's Exhibit 13) on the ground, underneath the front of the truck. (See State's Exhibit 8). He found another spent .380 caliber cartridge (State's Exhibit 13) on the ground to the left of the truck. Subsequent expert analysis by SLED Agent David Collins, a firearms examiner, showed that both of these cartridges had been fired by the same weapon. Agent Collins further opined that the defect to the left rear wheel of the truck was consistent with having been caused by a bullet. (R. p. 859, line 25 - p. 870, line 13; p. 881, lines 12-22; p. 884, line 1 - p. 889, line 23).

In addition to the spent cartridges, Detective Asbell found a very small piece of lead on the far left window of the store front, and a piece of a copper bullet "jacket" on the sidewalk behind a garbage can. (See State's Exhibits 14-A and 14-B). However, these items were of no evidentiary value. Detective Asbell also measured the parking lot at Spell's store. His measurements corroborated eyewitness testimony that the parking lot was a closely-confined area. (R. p. 870, line 22 - p. 881, line 22; p. 882, line 10 - p. 883, line 4; p. 884, line 1 - p. 889, line 25).

Following the murder, Appellant fled the State of South Carolina. On November 29, 1992, he showed up at the home of Ms. Stephanie Simmons, a student at Tuskegee University, in Alabama. Appellant told Ms. Simmons that he needed a place to stay, but he did not explain why he was in Alabama. Although Ms. Simmons was preparing to go to Montgomery with her friends, she allowed him to use her telephone. Later that

week, she saw Appellant sitting down on the steps of her apartment complex. (R. p. 894, line 10 - p. 898, line 1).

Several days after the murder, Detective David Shankle, of the Dorchester County Sheriff's Department, obtained an arrest warrant charging Appellant with Stephanie's murder. He faxed a copy of this arrest warrant to Detective Rodney Douglas, of the Tuskegee Police Department. Detective Douglas then obtained a fugitive warrant for Appellant's arrest. Based upon information that Appellant might be on the campus of Tuskegee University, on December 2, Detective Rogers and several other officers[15] went to the apartment of a student named Elgin Green. They knocked on the door and rang the doorbell, but no one answered. So, they stationed themselves around the apartment until one of the officers obtained a master key to it. Then, they entered the apartment. Although each of the officers identified himself, no one responded. The officers subsequently found Appellant hiding underneath a sofa. (R. p. 892, line 19 - p. 893, line 23; p. 906, line 5 - p. 909, line 1; p. 913, line 22 - p. 916, line 6; p. 919, line 21 - p. 920, line 5).

After the officers arrested Appellant, Detective Douglas read Appellant's *Miranda* rights[16] to him and transported him to the county jail. Appellant was again advised of his

---

[15]He was accompanied by Chief McLaughlin, of the Tuskegee University Police Department, as well as Lieutenant Lester Patrick of the Tuskegee Police Department and an agent from the Alabama Bureau of Investigations.

[16]Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966).

rights. This time, he signed a written waiver thereof. (See State's Exhibit 19). Following this waiver, Appellant freely and voluntarily gave a statement. In this self-serving attempt to limit his culpability,[17] Appellant claimed that he thought the man in the pickup (Mr. B[redacted]) was reaching behind the seat for a weapon. Therefore, he allegedly fired a single shot into the air to scare the man. Several days later, Detective Shankle went to Tuskegee and transported Appellant back to South Carolina. (R. p. 893, lines 20-23; p. 908, line 22 - p. 913, line 14; p. 915, line 21 - p. 917, line 10; p. 918, line 20 - p. 919, line 15; p. 920, line 23 - p. 923, line 10; State's Exhibits 17-18).

Dr. Clay A. Nichols is a forensic pathologist employed by the Medical University of South Carolina. On November 27, 1992, he performed an autopsy on Stephanie B[redacted]'s body. The cause of death was cerebral laceration and skull fracture, due to a distant gunshot wound[18] to the head. The bullet had entered the left back portion of Stephanie's head, approximately two inches from the top of her head and roughly one inch to the left of midline. It had passed through her

---

[17]See Argument I, infra. Appellant claimed that he overheard the truck driver (Mr. B[redacted]) making racist remarks. However, all of the eyewitnesses -including his girlfriend- testified that B[redacted] had not done anything to provoke either Patterson or Appellant. More importantly, Appellant's claim would not seem to be credible. The State submits it is extremely unlikely that Mr. B[redacted] would direct racist remarks towards Patterson, who is white, in front of his own friend (Mr. Riley), who is black.

[18]This shot was fired at least several inches away from Stephanie, but it could have been fired at the maximum firing range of the weapon.

cerebral hemisphere (which controls a person's motor functions and thought functions), and it had exited approximately three inches from the top of her head and 1.5 inches to the left of midline. Thus, the bullet had followed a slightly downward trajectory. Dr. Nichols found some brain tissue protruding from the exit wound. This indicated swelling and inflammation, which was a sign that Stephanie had survived for some time after the injury. Dr. Nichols opined that she had died approximately twenty-four hours after the injury. (R. p. 771, line 2 - p. 778, line 11; State's Exhibit 4).

After hearing all of this evidence, the jury found Appellant guilty of murder. In the sentencing phase, the State re-introduced all the evidence that it had admitted in the guilt phase. (R. p. 1054, lines 13-23). It also showed the jury a videotape in which Appellant told members of the news media that the shooting was accidental because he did not mean to shoot Stephanie. "You know, I'm not a child murderer in that sense." (See State's Exhibit 20).

The State likewise introduced Appellant's prior criminal record. (See State's Exhibit 21). On November 22, 1985, he was convicted of trespass after notice and was sentenced to thirty days imprisonment, or a $216.00 fine. In 1986, he was convicted of carrying a pistol. He received a sentence of six months in prison and was fined $350.00. In April, 1987, he forfeited a $216.00 bond on a charge of possession of marijuana. In July, 1987, he was convicted of shoplifting and again forfeited bond. (See R. p. 1056, line 16 - p. 1057,

line 19; State's Exhibit 21).

On March 26, 1988, he was convicted of resisting arrest and forfeited a $118.00 bond. On December 20, 1988, he was convicted of grand larceny of a vehicle. He received an indeterminate sentence not to exceed six years imprisonment. Then, on September 14, 1990, he was convicted of possession of cocaine and was sentenced to forty-five days imprisonment. (See R. p. 1056, line 16 - p. 1057, line 19; State's Exhibit 21).

Still, he could not keep out of trouble. In August, 1992, he was indicted for criminal sexual conduct with a minor in the second degree.[19] He pled guilty to this charge and was sentenced to seven years imprisonment. In September, 1992, he was again charged with criminal sexual conduct with a minor in the second degree. He pled guilty and received a concurrent seven year sentence on this conviction. (R. p. 1057, lines 17-24; State's Exhibit 21).

Additionally, several witnesses testified as to Appellant's character, as well as the impact of the murder on the victim's family. Mr. Vernest Lawrence first met Appellant around midnight on March 26, 1988. Appellant and another man were fighting in the parking lot of Club 78, located on Highway 78 in Summerville. Mr. Lawrence and another man separated Appellant and the person with whom he was fighting. However, Appellant soon came around a corner and hit Mr.

---

[19]See Argument II, infra. These charges involved assault victim, who was fifteen at the time.

Lawrence in the back of the head with a baseball bat. (R. p. 1058, line 1 - p. 1062, line 21; p. 1066, lines 19-21).

Mr. Lawrence's friend took him home. He later went to the doctor. He also signed a warrant for Appellant's arrest, but the case never went to court. Mr. Lawrence had not done anything to provoke Appellant, and that he had not even met Appellant before this assault. (R. p. 1058, line 1 - p. 1062, line 21; p. 1066, lines 19-21).

Mr. Anthony Brown is a Correctional Officer assigned to the Reception and Evaluation Unit of the Broad River Correctional Institution. His duties are to supervise, control and insure the safety of the inmates in that unit. On the morning of February 9, 1993, Appellant was accused of being involved in an altercation with another inmate. Although Mr. Brown claimed that his only recollection was that Appellant had conformed and adapted to life in prison, Appellant later testified and admitted that he had received three months in lockup, as punishment for this incident. (R. p. 1068, line 19 - p. 1070, line 22; p. 1072, lines 9-18; p. 1137, line 1 - p. 1138, line 24).

Mrs. Palace "Patsy" Bunch is Stephanie's maternal grandmother. Stephanie[20] was Mr. and Mrs. Bunch's only granddaughter, and they had been very close to her. Before her death, the Bunchs saw Stephanie every week, and she spent many weekends with them. She routinely went to church with

---

[20]The State introduced two photographs of Stephanie. (See State's Exhibits 23 and 25).

her grandparents, and she helped her grandmother cook. She also helped plant flowers or do other yard work. Likewise, she liked fishing, and her grandparents often took her to the house boat so that she could fish. (R. p. 1074, line 17 - p. 1077, line 10; p. 1079, line 19 - p. 1081, line 13).

Before her murder, Stephanie had been involved in a number of activities at school, such as the Future Astronauts club, the "Just Say No" club, and an environmental club. More importantly, Stephanie and her grandfather had been very close. After his second stroke, in May, 1992, he was so upset about his condition that he would not either eat or speak to anyone. However, his attitude changed when he saw his granddaughter. She visited him every day while he was in intensive care, and she managed to convince him to eat. As a result, she was "a big factor" in his recovery. Even after his discharge from the hospital, she often went with him to the rehabilitation center and helped him with his recovery. (R. p. 1077, line 12 - p. 1085, line 6; State's Exhibit 23).

The Bunchs were at the Santee Resort on November 25, when they learned that Stephanie had been shot. They immediately left and drove to Charleston. They saw Stephanie the next morning at the hospital. All of Stephanie's organs were donated to the hospital after her death, which was in accordance with her wishes. Her death has profoundly effected Mr. and Mrs. Bunch. ". . . [T]here's a whole big empty place. You hear . . . a child say "'grandma'" and you look around." Also, neither Mrs. Bunch nor her husband will ever see

Stephanie grow up, graduate, get married, or have children. Moreover, Mr. Bunch probably would have progressed further with his therapy if Stephanie had been there to help him. (See R. p. 1077, line 12 - p. 1085, line 6; State's Exhibit 23).

Melinda B[redacted] is Stephanie's mother. According to Mrs. B[redacted], Stephanie was a very happy nine year old[21] child, and she liked to help whomever she could, including her family, teachers, and even a handicapped student in school. Stephanie was a fairly good student, who was in the fourth grade and had good attendance. Mrs. B[redacted] was also on the houseboat when she found out Stephanie had been shot, and she saw Stephanie at the hospital before Stephanie's death. As a result of the murder, Mrs. B[redacted] has been treated by two counselors, and she is scared to ever have another child. (R. p. 1085, line 14 - p. 1090, line 14; State's Exhibits 24-26).

Mr. B[redacted] testified that he and Stephanie had been close prior to her death. Because of Mrs. B[redacted]'s work schedule, he assumed many of the child-raising responsibilities. For example, he regularly took Stephanie to and from school. Also, he took her to see her first concert. Stephanie enjoyed fishing, listening to country music, and going to car races with her father. In fact, Mr. B[redacted] built a race car and named it after her. At the time of her death, Stephanie was wearing a jump suit that her grandmother

---

[21]Stephanie's birth certificate was introduced as State's Exhibit 24.

had made for her, with American flags on it. She was also wearing a "Just Say No" t-shirt. (R. p. 1090, line 22 - p. 1095, line 1; p. 1099, line 16 - p. 1105, line 9).

Mr. B[redacted] characterized Stephanie's murder as a "a terrible loss, very terrible." Aside from the fact that he can no longer do any of the things which they enjoyed doing together, he has had problems with alcohol abuse since her death, and he has been counseled by Mr. Richard L. Lawhon. Likewise, at the time of trial, he was taking three different types of medication which were prescribed by his family physician. Also, he and his wife have separated. Finally, he stated that "there is not a day or night that [goes] by" that he does not think about Stephanie. Also, "there's nights that go by that I hear that shot in that window and I reach out and grab her in dreams and holler her name." (R. p. 1090, line 22 - p. 1095, line 1; p. 1099, line 16 - p. 1105, line 9).

Appellant testified and exercised his right to last argument in the sentencing phase. He admitted that he and Patterson had been drinking on the night of the murder. He also conceded that he often had to protect Patterson because Patterson is very obnoxious and belligerent when drinking. He further admitted that he disposed of the murder weapon immediately after the incident "[b]ecause [of] what I had just done," and that he went to Alabama that evening. Although he acknowledged that he understood he had been convicted of murder for killing Stephanie, he was unrepentant for his crime. Instead, he claimed the shooting was "an accident",

and that he had not intended to kill either Stephanie or anyone else in the truck. He further claimed that his statement to the police in Alabama accurately described what had happened on November 25, 1992. (R. p. 1107, line 3 - p. 1108, line 11; p. 1111, lines 5-10; p. 1120, lines 1-16; p. 1124, line 22 - p. 1125, line 19; p. 1126, line 12 - p. 1135, line 19; p. 1194, lines 11-21).

After hearing this evidence, the jury sentenced Appellant to death.

ARGUMENT

I.

The trial judge properly refused to instruct the jury on the lesser-included offense of voluntary manslaughter because the evidence presented at trial did not support such an instruction. (Appellant's Argument I).

Appellant's first claim is the trial judge erred by refusing to charge the jury on the lesser-included offense of voluntary manslaughter. He maintains that his statement to police and the inferences from other evidence presented by the State would have supported a jury verdict finding him guilty of manslaughter. (See Initial Brief of Appellant at pp. 6-17). The State disagrees and submits that his contentions are patently without merit. Because there was no evidence of either a sufficient legal provocation, or that the killing was in the sudden heat of passion, the trial judge properly denied the requested instruction.

A. HOW ISSUE DEVELOPED AT TRIAL

During the charge conference, Appellant requested jury instructions on both voluntary and involuntary manslaughter. He claimed that his statement to police in Alabama (State's Exhibit 18) warranted the submission of both lesser offenses to the jury. With respect to a charge on voluntary manslaughter, he argued that his statement ". . . meets the bare minimum for showing words which provoke[d] a confrontation which resulted in, according to that statement, . . . more of a fight than what the State's witnesses have

said." He also maintained that racist remarks supposedly made by the victim's father constituted sufficient legal provocation. (R. p. 968, line 8 - p. 97, line 11; p. 973, line 16 - p. 975, line 18).

The State opposed the requested instruction on voluntary manslaughter because there was no evidence of sufficient legal provocation, and because Appellant had claimed in his statement that the killing was not an intentional homicide. (R. p. 971, lines 17-24; p. 975, line 19 - p. 976, line 23). The trial judge agreed to charge involuntary manslaughter, and he later charged the jury thereon. However, he refused to charge voluntary manslaughter because it was not supported by the evidence. In particular, he noted the absence of any evidence of sufficient legal provocation. (R. p. 973, lines 2-15; p. 976, line 24 -977, line 2. See also R. p. 973, line 2 - p. 976, line 2).

Appellant later excepted to the trial judge's failure to charge the jury on voluntary manslaughter (see R. p. 1019, lines 16-19; p. 1031, lines 10-25), and he moved for a new trial on this basis, as well. The trial judge denied his motion. (R. p. 1042, lines 9-23).

B. LAW\ANALYSIS

There was no error. It is well settled that the law to be charged is determined from the evidence produced at trial. Where the evidence presented at a murder trial does not support a conviction for the lesser offense of voluntary manslaughter, the trial judge is not required to charge the

jury as to manslaughter. State v. Damon, 285 S.C. 125, 328 S.E.2d 628 (1985); State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983); State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1960); State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951). In fact, it is improper to do so. Id. See also State v. Edwards, 194 S.C. 410, 10 S.E.2d 587 (1940).

Manslaughter is defined as the unlawful killing of a human being in a sudden heat of passion upon sufficient legal provocation. State v. Gadsden, ___ S.C. ___, 442 S.E.2d 594 (1994); State v. Norris, 253 S.C. 31, 168 S.E.2d 564 (1969); State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951); State v. Dingle, supra. Heat of passion alone will not reduce murder to voluntary manslaughter. There must also be sufficient legal provocation present at the time of the killing. State v. Tyson, 283 S.C. 375, 379, 323 S.E.2d 770, 772 (1984). Further, where a killing is caused by use of a deadly weapon, words alone - no matter how offensive - are not sufficient to constitute sufficient legal provocation. See, e.g., State v. Plemmons, 286 S.C. 78, 332 S.E.2d 765 (1985); State v. Butler, 237 S.C. 452, 290 S.E.2d 1, cert. denied, 459 U.S. 932, 103 S.Ct. 242 (1982).

One of the earliest comprehensive statements of the law of voluntary manslaughter appears in State v. Summer, 55 S.C. 32, 35, 32 S.E. 771, 772 (1899).

> Manslaughter is the unlawful killing of a human being, in sudden heat and passion, upon sufficient legal provocation. Sufficient for what? Sufficient to create that sudden heat and passion. Then you say, "To what extent does the

> sudden heat and passion go?" It must go to that extent that the reason is partially or entirely dethroned, the man is not himself, and if he kills, then, for that provocation, and not for some past provocation, if he slays his fellow being just then for that provocation, and not to punish him for something else gone before, and while in that heat and passion, and before he cooled, or had time to cool. . . . If there is legal provocation, and it is sufficient to create such a great heat and passion that reason is partially or entirely dethroned, the man is not himself and he slays his fellow man before he cooled or had time to cool. . . . Then the law says, "I am so mindful of the weakness of human nature that I will not call such killing as that murder; I will call it manslaughter."

Likewise, in McAninch and Fairey, The Criminal Law of South Carolina, pp. 151-152 (2d Ed. 1989), the authors explain that:

> In order for an intentional and unlawful killing to be without malice and therefore manslaughter instead of murder, the killing must occur during the heat of passion aroused by adequate provocation and before the passion has cooled or has had time to cool.
>
> As indicated by the foregoing, the heat of passion test has both a subjective and an objective element: that is, the killer's passions must in fact be inflamed and the provocation must have been such that it would have inflamed the passions of the *ordinary reasonable person* . . . . The provocation must "produce in the mind of *persons ordinarily constituted*, the highest degree of exasperation, rage, anger, sudden resentment or terror, rendering the mind incapable of cool reflection." [citation omitted]. . . . [S]udden heat of passion "need not dethrone reason entirely, or shut out knowledge and volition, [yet] must be such as would naturally disturb the sway

> of reason and render the mind of an *ordinary person* incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." [citation omitted]. Still, even though one's passions may have been adequately inflamed so as to meet the subjective test. . . such an intentional killing would not be deemed to be without malice and therefore manslaughter, unless the passions were so inflamed by *objectively adequate or "reasonably sufficient" provocation*.

(Citations omitted) (emphasis added).

The cooling off period is explained, as follows:

> ["Cooling off"] means that even though the defendant's passions were sufficiently inflamed by legally adequate provocation, if at the time of the killing his passion had cooled or sufficient time had elapsed so that the passions of the *ordinary reasonable person* would have cooled, then the killing is murder and not manslaughter.

McAninch and Fairey, supra at 158. (Citation omitted) (emphasis added).

Based on the above-referenced authorities, one can clearly see that the crime of voluntary manslaughter has three elements. First, the defendant must be in "the heat of passion." His passion, anger, and emotion must actually be aroused. This is a subjective element. Second, the defendant's actions must be based on or caused by "sufficient legal provocation." This is an objective test, and the defendant is judged by the "reasonable man" standard. Third, there must be insufficient time to "cool off." This is also an objective element, which is determined by reference to the "reasonable man" standard. If enough time elapses between

sufficient or legal provocation and the homicide, such that a reasonable man would no longer be in the heat of passion, then the defendant may not claim voluntary manslaughter. A failure to produce evidence as to *any* one of these elements is sufficient to justify a court in refusing a charge on voluntary manslaughter. State v. Gilliam, 296 S.C. 395, 373 S.E.2d 596 (1988); State v. Plemmons, supra; State v. Tyson, 283 S.C. 375, 323 S.E.2d 770 (1984); State v. Griffin, 277 S.C. 193, 285 S.E.2d 631 (1981); State v. Norris, supra; State v. Gardner, supra; State v. Goodson, 140 S.C. 357, 138 S.E. 816 (1927); State v. Gallman, 79 S.C. 229, 60 S.E. 682 (1908); Summer, supra; State v. McCants, 28 S.C.L. (1 Speers) 384 (1843); McAninch and Fairey, supra.

Applying these well settled legal principles to the case at bar, it is clear the trial judge properly refused to instruct the jury on the lesser-included offense of voluntary manslaughter because there was no evidence that the killing occurred in a sudden heat of passion upon a sufficient legal provocation. Notwithstanding Appellant's contentions to the contrary, the State's evidence clearly showed that he acted with malice aforethought and was guilty of murder. All of the eyewitnesses presented by the State - including Appellant's teenage girlfriend - testified that neither Mr. B[redacted], Mr. Carver, nor Mr. Riley did anything to provoke or threaten Appellant, Patterson, or Assault Victim. Instead, all of the trouble was instigated by Appellant and Patterson, who had been drinking fairly heavily. (See Statement of Facts, supra).

Before Appellant began talking on the telephone, he told Patterson, "Stand right there and listen to them, and if they talk about us I'll take care of the mother fuckers," or words to this effect. While Appellant was talking on the telephone, Patterson began taunting Mr. B[redacted] and Mr. Riley, for no apparent reason. They did their best to ignore him; and, when Patterson flipped his cigarette on Mr. Riley's shoe, Mr. Riley simply left the store. At that point, Mr. B[redacted] also attempted to get into his car and leave. However, Patterson obstructed his efforts to do so. Patterson also continued to goad Mr. B[redacted] into a fight. (See R. p. 714, line 4 - p. 733, line 4; p. 745, line 2 - p. 748, line 21; p. 754, line 16 - p. 756, line 14; p. 791, line 16 - p. 803, line 3; p. 822, line 22 - p. 832, line 23; p. 928, line 9 - p. 944, line 1. See also Statement of Facts, supra).

During the course of Mr. B[redacted]'s struggle to close the door, Appellant told the person on the other end of the telephone conversation, "Hold on. Let me get this fellow." He then dropped the telephone. He walked over to the truck and began arguing with Mr. B[redacted]. Even though Mr. B[redacted] assured Appellant that he did not want any trouble,[22] Appellant brandished a. 380 caliber semi-automatic pistol. He pointed this weapon at Mr. B[redacted]'s head and said, "I'll kill you." Stephanie immediately started crying. Appellant then lowered his weapon and fired at the left rear tire of the

[22]Neither Mr. B[redacted] nor Mr. Carver had made any movement towards the unloaded 410 shotgun or the 9mm pistol in the bed of the truck at any point during the argument.

truck. He also spit in Mr. B[redacted]'s face. (R. p. 732, line 24 - p. 736, line 4; p. 739, line 22 - p. 740, line 15; p. 749, line 2 - p. 750, line 13; p. 755, line 2 - p. 756, line 14; p. 758, line 14 - p. 761, line 3; p. 763, lines 1-10; p. 831, line 23 - p. 833, line 14; p. 943, line 22 - p. 945, line 20; p. 948, line 25 - p. 949, line 21; p. 955, line 10 - p. 956, line 11. See also Statement of Facts, supra).

Eventually, Mr. B[redacted] managed to close his door. He cranked up his truck and pulled away from Appellant and Patterson. As Mr. B[redacted] was in the process of leaving the parking lot, Appellant pointed his pistol at the truck and fired a shot. This bullet struck Stephanie in the head. After the shooting, Mr. B[redacted] pulled back in front of the store. When he got out of the car, he yelled at Appellant, "You just shot my daughter." However, Appellant and Patterson just laughed at him. Then, they ran away from the store. (R. p. 735, line 25 - p. 740, line 24; p. 750, line 9 - p. 752, line 22; p. 803, line 10 - p. 805, line 14; p. 813, line 1 - p. 815, line 14; p. 833, line 15 - p. 835, line 21; p. 839, line 17 - p. 841, line 14; p. 842, line 3 - p. 889, line 19; p. 945, line 22 - p. 949, line 21; "Statement of Facts, supra).

Several minutes after the shooting, Mr. Riley saw two men run by his house. Although he could not identify these men, they had come from the direction of Spell's Store, and he had not passed anyone on his way home. The first man asked the second man, "Did you get the mother fucker?" The second man

replied, "Yeah, I got the mother fucker." Several other witnesses who were in the store at the time of the shooting heard two shots fired, as did Mr. Riley. Also, police subsequently found two spent .380 caliber cartridges in the area where the shooting occurred. (R. p. 735, line 25 - p. 740, line 24; p. 750, line 9 - p. 752, line 22; p. 803, line 10 - p. 805, line 14; p. 813, line 1 - p. 815, line 14; p. 833, line 15 - p. 835, line 21; p. 839, line 17 - p. 841, line 14; p. 842, line 3 - p. 889, line 19; p. 945, line 22 - p. 949, line 21. See also Statement of Facts, supra).

Therefore, the trial judge properly refused to instruct the jury on the lesser-included offense of voluntary manslaughter because Appellant cannot show, objectively, that the killing was based upon "sufficient legal provocation," or that he acted in a subjective "sudden heat of passion." See State v. Plemmons, supra; State v. Butler, supra; see also State v. Gadsden, supra; State v. Tyson, supra; McAninch and Fairey, supra. Rather, the State's evidence reasonably tended to prove that Appellant shot Stephanie with malice aforethought. Id. See also State v. Heyward, 197 S.C. 371, 15 S.E.2d 669 (1941)(recognizing doctrine of "transferred intent").

Further, Appellant's contention that the introduction of State's Exhibit 18 warranted a jury instruction on voluntary manslaughter is flawed in two fundamental respects. First, it ignores the well settled rule that ". . . [t]he *[p]resence of evidence* to sustain a conviction for a crime of a lesser degree

determines whether it should be submitted to the jury and the 'mere contention that the jury might accept the State's evidence in part and might reject it in part will not suffice.'" State v. Funchess, 267 S.C. 427, 430, 229 S.E.2d 331, 332 (1976) (emphasis in original). See also State v. Foxworth, 269 S.C. 496, 238 S.E.2d 172 (1977); State v. Morris, 307 S.C. 480, 415 S.E.2d 819 (Ct.App. 1992), cert. denied.

More importantly, Appellant's argument overlooks the theory underlying the admissibility of a defendant's custodial statement. Such a statement is admissible as a statement against penal interest. State v. Howard, 295 S.C. 462, 369 S.E.2d 132 (1988), cert. denied, 490 U.S. 113 (1989). See also State v. Doctor, 306 S.C. 527, 413 S.E.2d 36 (1992). However, the statement is not necessarily admitted to prove the truth of the matter asserted in it. Any suggestion that the State offered Appellant's statement for the truth asserted therein is belied by the Solicitor's closing argument, in which he pointed out that virtually every key point in the statement was clearly refuted by eyewitness testimony and the physical evidence found at the scene. (See R. p. 996, line 9 - p. 1001, line 19).

Thus, this Court should not consider Appellant's statement, alone, in determining whether the trial judge erred in refusing the requested instruction. Rather, the statement must be considered in light of the other evidence presented by

the State. State v. Funchess, supra.[23] All of this evidence showed that the homicide was murder.

Therefore, State v. Jackson, 301 S.C. 41, 389 S.E.2d 272 (1993) is readily distinguishable[24] from this case. In Jackson, the defendant testified that the victim came into her house reached into his pocket and said, "I've come to kill you, bitch." The defendant then shot the victim. Id. In the present case, however, Appellant did not testify or present any witnesses in the guilt phase. As a result, the State's evidence that Mr. B[redacted] and Mr. Carver did nothing to provoke either Appellant or Patterson was undisputed, and Appellant was not entitled to a jury instruction on voluntary manslaughter. See State v. Gadsden, supra; State v. Plemmons, supra; State v. Norris, supra; State v. Tyson, supra; McAninch and Fairey, supra.[25]

Even assuming *arguendo* that a defendant's statement, when introduced by the State as part of its case-in-chief, might otherwise warrant a jury instruction on the lesser-included offense, Appellant's claim is still without merit. Appellant

---

[23]The State submits that the trial judge erred by submitting involuntary manslaughter for the reasons stated herein. However, Appellant was not prejudiced by this error, and he was not entitled to any relief based thereon.

[24]It should be noted that Appellant did not cite Jackson or many of the other authorities found in his brief when he argued this issue to the lower court. Therefore, this Court should not consider these on direct appeal. See State v. Torrence, 305 S.C. 45, ___, 406 S.E.2d 315, 323-329 (1991) (Toal, J., concurring in result).

[25]State v. Gilliam, 296 S.C. 395, 373 S.E.2d 596 (1988) is similarly distinguishable, since Gilliam presented evidence which would have supported a jury instruction on manslaughter.

simply cannot show either a sudden heat of passion or sufficient legal provocation. His statement indicates that he ignored allegedly racist comments made by Mr. B[redacted] while he was talking on the phone. He later intervened in the argument between Patterson and the two men when he saw the men approaching Patterson and [Assault Victim]. ([Assault Victim] was pulling Patterson away from the men). Because Appellant thought Mr. B[redacted] was trying to find a weapon in the truck, Appellant pulled out his own pistol and fired a single shot into the air, "with intentions on scaring them." He then ran away when Patterson told him that he had shot somebody. (See State's Exhibit 18, R. pp. ___ - ___).

Clearly, Appellant's statement indicates that he was not acting in sudden heat of passion upon sufficient legal provocation. Rather, he fired a shot into the air in an effort to scare Mr. B[redacted] and Mr. Carver away from Patterson and [Assault Victim]. Allegedly, this is the shot which struck Stephanie and killed her. Thus, assuming Appellant's statement is true, and further assuming that it could support a jury instruction on a lesser-included offense, at most it would only support a jury instruction on involuntary manslaughter. As noted, this offense was submitted to the jury.

Finally, Appellant's reliance upon State v. Martin, 216 S.C. 129, 57 S.E.2d 55 (1949) and State v. Lowery, ___ S.C. ___, 434 S.E.2d 272 (1993) is misplaced. As noted by this Court in Martin, the facts of that case were highly unusual.

The deceased had raped and beaten the defendant's wife on numerous occasions over the course of two years. When the deceased came to the defendant's house and called out for the defendant's wife (with the apparent intention of causing her further harm), the defendant, who was suffering from malaria, grabbed a shotgun and killed the deceased. Under these facts, this Court held that it was error for the trial judge not to submit the lesser-included offense of voluntary manslaughter to the jury. Id. Nor, does this Court's holding in Lowery require reversal because even State's Exhibit 18 indicates that the killing was not in the sudden heat of passion based upon sufficient legal provocation. See State v. Tyson, supra.

Therefore, the trial judge properly denied Appellant's requested instruction because there was no evidence he was guilty only of voluntary manslaughter. Id. See also State v. Gadsden, supra; State v. Plemmons, supra; State v. Butler, supra; State v. Norris, supra.; McAninch and Fairey, supra.

II.

The trial judge did not abuse his discretion by denying Appellant's request-to-charge that a sentence of life imprisonment imposed on Appellant "means life without hope for relief by operation of law" because the State did not rely upon Appellant's general future dangerousness to society as a reason for the jury to impose the death penalty, and because defense counsel repeatedly informed the jury, in his closing argument, that life imprisonment meant that Appellant would be "in prison for the rest of his life." (Appellant's Argument II).

Appellant's second claim is that the trial judge erroneously refused to instruct the jury, in accordance with his request-to-charge, that "a life sentence imposed on [Appellant] means life without hope for any release by operation of law." He claims that this was error because the State allegedly relied upon his future dangerousness as a reason for sentencing him to death, and he would not be eligible for parole if sentenced to life imprisonment based on his two prior convictions for criminal sexual conduct with a minor in the second degree. (See Initial Brief of Appellant at p. 18 - 27).

The State disagrees and submits that Appellant's claim is without merit. The State did not rely upon Appellant's general future dangerousness to society as a reason for the jury to sentence him to death. Instead, the State relied upon his inadaptability to life in prison and the fact he will be

a danger to harm others in prison. Furthermore, defense counsel conveyed the substance of the requested instruction to the jury, by arguing that a sentence of "life imprisonment" would "put him in prison for the rest of his life." Also, neither the trial judge's jury instructions nor the Solicitor's argument lessened this understanding of the term "life imprisonment", in any manner; and, there was never any suggestion that Appellant would ever be released on parole if sentence to life imprisonment. Therefore, the trial judge's ruling did not deny Appellant Due Process because Appellant was allowed to rebut the State's showing of future dangerousness. As a result, Appellant's death sentence must be affirmed. Contra Simmons v. South Carolina, ___ U.S. ___, 114 S.Ct. 2187 (1994) (plurality opinion).

A. HOW ISSUE DEVELOPED AT TRIAL.

At the beginning of the sentencing phase, Appellant made a motion for the trial judge to instruct the jury that "a life sentence means life without parole." He based this request, in part, upon his belief that the State would introduce his prior criminal record. He asserted that this record would make him ineligible for parole if sentenced to life imprisonment. Appellant also pointed out that the United States Supreme Court had recently heard oral arguments in Simmons v. South Carolina, supra, which allegedly involved the same issue. (R. p. 1048, line 4 - p. 1049, line 2).

For these reasons, Appellant claimed that he was entitled to the following jury instruction:

> ". . . I hereby charge you that in consideration of the life sentence, you should take that in the its ordinary meaning. Further, I charge you that a life sentence imposed on this Defendant means life without hope for a release by operation of law. In short, a life sentence for this Defendant means that he will live out his entire life in the custody of the State of South Carolina with no hope or legal ability to gain release."

(R.p. ___).

However, the trial judge indicated that he generally did not instruct the jury on the meaning of a "life sentence" or on parole. Thus, he denied the requested instruction, apparently based upon this Court's decision in State v. Torrence, 305 S.C 45, 55-60, 406 S.E.2d 315, 321-323 (1991) (Chandler, J, concurring in result). However, he agreed to charge the jury to consider the words "life" and "death" in their plain and ordinary meaning. Without waiving his original request, Appellant consented to the trial judge's proposed charge. (R. p. 1049, line 3 - p. 1050, line 3).

The State thereafter introduced Appellant's prior criminal record in the sentencing phase. (See Statement of Facts, supra). In pertinent part, the State introduced evidence that Appellant had been convicted of criminal sexual conduct with a minor in the second degree in August, 1992 and in September, 1992. Appellant had received concurrent seven year sentences for each of these convictions. (R. p. 1057, line 19 - 24. See also Stipulation, R. pp. ___ - ___). Both of these convictions involved Appellant's then-fifteen year old girlfriend, Assault Victim, who testified as a witness for

the State in the guilt phase. (Id.; R. p. 1123, line 18 - p. 1124, line 10). [26]

Although these particular convictions clearly did not involve any act of violence by Appellant, at the time of his trial they were nevertheless considered defined "violent crimes" under S. C. Code Ann. § 16-1-60 (Supp. 1993) by the Attorney General's Office.[27] As a result, these convictions would have made Appellant ineligible for parole if sentenced to life imprisonment in the present case. See S.C. Code Ann. § 24-21-640 (Supp. 1993). See also State v. Varner, ___ S.C.

---

[26]The State also introduced a number of other convictions, including a conviction for unlawful possession of a weapon as well as a conviction for assault and battery. The latter offense occurred while Appellant was previously incarcerated.

[27]In 1991, the Attorney General's Office issued an opinion that criminal sexual conduct with a minor in the second degree, set forth in S.C. Code Ann. § 16-3-655 (Supp. 1991) was a "violent crime" as defined in § 16-1-60. 1991 Op. Atty. Gen. No. 91-56, p. 118. Subsequent to the opinion of the Attorney General and after this murder, § 16-1-60 was specifically amended to list as a defined violent crime "criminal sexual conduct with minors, first and second degree (Section 16-3-655) ...." 1993 Acts and Joint Resolutions No. 184, Section 8, effective January 1, 1994. Contrary to the opinion of the Attorney General, it could be argued that when the case was tried in February, 1994, a conviction for criminal sexual conduct with a minor was not a defined "violent crime" because it was not specifically listed in the defined violent crime definition until January 1, 1994, since the event occurred prior to that time and the 1993 Act also included the (now repealed) subsection (B) which stated that "for a person to be considered guilty of a violent crime, the offense must be defined as a violent crime pursuant to subsection (A) at the time of the commission of the crime." Cf. State v. Gill, 273 S.C. 190, 255 S.E.2d 455 (1979) (trial Court erred in refusing to find that "statutory rape" was not a crime involving the use of violence against another person where force or violence is not an element of the offense). The State would note that the executive departments have interpreted this crime to be defined as a "violent" crime, consistent with the 1991 opinion of the Attorney General.

___, 423 S.E.2d 133 (1992) (absent controlling statute to the contrary, the common law requires that a convicted criminal receive the punishment in effect at the time he is sentenced, unless it is greater than punishment provided for when the offense was committed).

Appellant testified on his own behalf in the sentencing phase. On direct examination, the following exchange occurred between defense counsel and Appellant:

> "Q. Now, What are you asking this jury to do to you today, Sir?
>
> A. I'm Asking them to grant me life, to live.
>
> Q. Okay. You know that will be spent in prison; right?
>
> A. Yes, sir.

(R. p. 1112, line 21 - p. 1113, line 1). He also testified about the conditions of prison life. He indicated that two inmates share one small, confined, 8 x 10 cell, and he asserted that he would be able to adapt to life in prison. (R. p. 1111, line 18 - p. 113, line 15).

Several other defense witnesses, including Appellant's mother, his stepfather and a preacher asked the jury to spare Appellant's life. Also, his mother specifically asked the jury to spare his life, even if it meant that he would spend the rest of his life in prison. (R. p. 1150, line 24 - p. 1151, line 15; p. 1155, line 16 - 19; p. 1158, line 9 - p. 1159, line 2; p. 1159, lines 11-13).

In the State's closing argument, the Solicitor argued that the unique facts of this case warranted imposition of the

death penalty because these facts showed a brutal, senseless and malicious murder of a nine year old girl who had never harmed Appellant. The Solicitor also refuted Appellant's testimony that this shooting was somehow accidental, and he stressed that the evidence presented clearly supported both of the alleged statutory aggravating circumstances. (R. p. 1180, line 11 - p. 1187, line 3). The Solicitor then focused upon Appellant's prior convictions and suggested that these convictions showed that Appellant was not adaptable to prison life.

Although the Solicitor did thereafter focus upon Appellant's future dangerousness, he did not argue that Appellant would be a danger to society generally in the future. Likewise, he did not suggest that Appellant could be released, either on parole or otherwise, if sentenced to life in prison. Rather, the Solicitor simply pointed out that Appellant's own prior record indicated that Appellant would be a danger to other inmates if sentenced to life imprisonment, and that Appellant could not be controlled in prison. Specifically, the Solicitor pointed to Appellant's assault and battery conviction which occurred while he was previously incarcerated and noted that "here's a man that can't even be controlled in the confines of the prison environment because of his violence." The Solicitor later noted that ". . . by his record Timothy Rogers has shown that he cannot safely exist in this society inside or outside of the prison system." Therefore, the Solicitor maintained that the only appropriate

punishment was death by electrocution. (R. p. 1187, line 3 - p. 1194, line 9).

Appellant subsequently made a brief closing argument to the jury. See S. C. Code Ann. § 16-3-28 (Supp. 1994). He again maintained, as he had in his testimony, that he had never meant to harm either the B[redacted] family or any nine year old child. Also, he asked the jury "to spare my life and not send me to the electric chair. . .". (R. p. 1194, lines 11-21).

Defense counsel then argued that Appellant should be sentenced to life in prison based upon the evidence before the sentencing jury. In the course of this argument, counsel defined the term "life imprisonment" for the jury. After explaining that the prison system was not as comfortable and luxurious as the Solicitor would have the jury believe, he asked the jurors:

> How would you like to have your freedom taken away for the rest of your life? I mean, that's a pretty severe punishment. It really is. And you have gotten a glimpse of the prison life, prison system, prison life.
>
> He said he got in problem (sic) in prison and he got lock down because of this altercation with this other prisoner. It's a jungle in there, folks. This ain't no Club Med, but let's face facts. As opposed to the alternative that's what we're asking you for, that he be given life in prison *and life in prison in this case means life in prison*.

(R. p. 1196, line 21 - p. 1197, line 7) (emphasis added).

Later in his argument, counsel acknowledged that

Appellant had not been rehabilitated when he was previously incarcerated. However, counsel maintained that if sentenced to life imprisonment, Appellant was not going to prison to be rehabilitated. Instead, he was going there to be punished and kept incarcerated. After suggesting that killing Appellant in the electric chair would not bring the victim back, counsel made the following comments:

> "*No one's asking you to do anything other than spare his life. That's all. Lock him away*. Lock him away. Stop and think about what punishment that is. You don't have your freedom and your movement. . . . You can live in an eight - nine cell with someone else with about eighteen inches on the wall for your personal belongings. Stop and think about that. We all have homes, apartments. We keep our stuff there. . . . You don't do that in prison, not in an eight - by - nine cell with someone else. That's punishment. And *you do that day in and day out for the rest of your life*, and then stop and think about that and see if that's not more punishment than simply taking someone off and electrocuting them.
>
> *They twist in the wind for the rest of their life in a system that's not a very nice place to be.*

(R. p. 1205, line 19 - p. 1206, line 19). (emphasis added).

While counsel admitted that Appellant had one previous problem in prison, he noted that the State's own witness had indicated that Appellant was adaptable to prison life. Finally, he stated that ". . . the simple fact of the matter is I'm asking you to find mercy somewhere, even a little bit. *Put him in prison for the rest of his life*. Don't electrocute him." (R. p. 1206, line 20 - p. 1208, line 2) (emphasis added).

Following defense counsel's argument, the trial judge

charged the jury on the law to be applied in determining the appropriate sentence in this case. He first explained that it was the jury's duty to recommend which sentence should be imposed, and that whatever sentence they recommended would actually be imposed. He also explained that in South Carolina, death is by electrocution. (R. p. 1208, line 3 - 24). He then gave a "plain and ordinary meaning" instruction[28] to the jury:

> I want to tell you that those terms, life imprisonment and death penalty, should be understood in their ordinary and plain meaning by you. No other consideration about the effect of the two sentences should enter into your decision about which sentence to impose, and no deliberations and discussions as to any effect on these sentences should take place in your jury room. So, as I said, you simply accepted the two, life imprisonment and death penalty, and understand them in their plain and ordinary meaning.

(R. p. 1208, line 25 - p. 1209, line 9). The trial judge subsequently used the terms "life", "life imprisonment" and "life in prison", as well as, "death" and "death penalty", without providing any further definition of these terms. (R. p. 1209, line 10 - p. 1222, line 6).

B. LAW/ANALYSIS

In State v. Torrence, supra, a majority of this Court held that parole eligibility was not a relevant mitigating circumstance under State law. Therefore, the Court held that parole eligibility or ineligibility should not be considered

---

[28]See State v. Atkins, 293 S.C. 294, 306 S.E.2d 302 (1987).

by a capital sentencing jury. 305 S.C. at 55-60, 406 S.E.2d at 321-323 (Chandler, J, concurring in result). In Simmons v. South Carolina, Justice O'Conner opined for a plurality of the United States Supreme Court that "[w]here the State puts the defendant's future dangerousness in issue, and the only available alternative sentence to death is life imprisonment without possibility of parole, due process entitles the defendant to inform the capital sentencing jury - by either argument or instruction - that he is parole ineligible." ___ U.S. at ___, 114 S.Ct. at 2201 (O'Conner, J, concurring in judgment). See also Simmons, ___ U.S. at ___, 114 S.Ct. at 2199 (Ginsburg, J, concurring). However, in those instances where either the prosecution does not rely upon a capital defendant's future dangerousness or parole is available, States remain free to determine whether a capital sentencing jury should be informed of the defendant's parole eligibility. Id. at ___, 114 S.Ct. at 220 (O'Conner, J, concurring in judgment). See also ___ U.S. at ___, 114 S.Ct. at 2196 (Opinion of Blackman, J.).

In State v. Southerland, ___ S.C. ___, 447 S.E.2d 862, 868 (1994), this Court adopted the rule set forth in Simmons. The Court also held that in future death penalty cases where the defendant's future dangerousness is at issue under Simmons, and State law prohibits the defendant's release on parole, if the sentencing jury inquires about the meaning of life imprisonment or counsel requests a jury charge concerning parole eligibility, the following charge should be given:

> If you sentence the defendant to death you must assume that the sentence will be carried out. If a recommendation of death is not made the defendant shall be sentenced to life imprisonment without the possibility of parole.

Id.

Initially, the State submits that Simmons does not apply in this case because the State did not argue Appellant's general future dangerousness to society. In Justice Blackman's opinion, he noted that even after the Court's decision in Simmons, the prosecution ". . . is free to argue that the defendant will pose a danger to others in prison and that executing him is the only means of eliminating the safety of other inmates or prison staff." Simmons, ___ U.S. at ___, 114 S.Ct. at 2194-2195 n 5 (Opinion of Blackman, J). In Allridge v. Scott, 41 F.3d 213, 222 n 12 (5th Cir. 1994), the Fifth Circuit Court of Appeals rejected the petitioner's claim that the trial judge had erred by excluding evidence and refusing to charge the jury that he would in fact be parole ineligible if sentenced to life imprisonment. The Court noted that Simmons did not apply because he was not parole ineligible as a matter of law. Id. at 220 - 222.

In strong *dicta*, the Court also noted that Simmons is limited "to those cases in which the [S]tate argues that the defendant is a future danger to *free* society. But when the [S]tate argues that the defendant poses a future danger to *everybody*, fellow inmates included, then Simmons is inapplicable because whether the defendant is eligible for parole is

irrelevant." Therefore, the Court noted that the petitioner's claim would be without merit since the prosecution had pointed out that petitioner had committed acts of violence against other prisoners during a previous incarceration, and that he posed a future danger wherever he may be. Id. at 222 n. 12 (emphasis in original).

Similarly, in United States ex rel. Collins v. Welborn, 868 F.Supp. 950, 992-993 (N.D.Ill. 1994), the District Court observed in *dicta* that the petitioners' claim was without merit because the prosecution had argued that petitioners would be dangerous to others in prison, or if they escaped from prison. However, there was never any argument that they would present a danger if released or paroled from prison. Thus, the State had not placed their future dangerousness to the community in issue and Simmons did not apply. Id.

Likewise, in the present case, the State did not suggest, in any fashion, that Appellant would be a threat to society or that he would ever be paroled if sentenced to life imprisonment. Rather, the State focused upon Appellant's prior criminal record, and urged the jury to reject the non-statutory mitigating circumstance (which was later submitted to the jury) that Appellant was adaptable to prison life. The State also noted that one of Appellant's convictions involved an act of violence within the prison system and suggested that ". . . . here's a man that can't even be controlled in the confines of the prison environment because of his violence." (R. p. 1187, line 3 - p. 1189, line 4). After focusing upon

the brutal and senseless nature of the murder, the State again noted that ". . . . by his record Timothy Rogers has shown that he cannot safely exist in this society inside or outside the prison system. Look at his conviction record." (R. p. 1193, line 21 - 24).

Therefore, the State did not suggest that Appellant would constitute a future danger to society if sentenced to life imprisonment. Any suggestion that the Solicitor argued Appellant's general future dangerousness to society ignores the well settled rule that "a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that the jury, sitting through lengthy exhortation will draw that meaning from the plethora of less damaging interpretations." Donnelly v. DeChristoforo, 416 U.S. 637, 647 S.Ct. 1868 (1974). See also State v. South, 285 S.C. 529, 331 S.E.2d 775 (1985). Such a construction of the Solicitor's argument also fails to recognize a crucial difference between the present argument and the general future dangerousness argument in Simmons. Unlike the prosecutor in Simmons, in this case the Solicitor did not suggest that the jury's verdict "will be an act of self-defense." See Simmons, ___ U.S. ___, 114 S.Ct. at 2200. (O'Conner, J, concurring in judgment); Simmons ___ U.S. at ___, 114 S.Ct. at 2910 - 2191 (Opinion of Blackman, J).

Thus, it would not be reasonable to assume that the jury would have understood the present argument as meaning that Appellant would be a danger to society in the future if

sentenced to life imprisonment. To the contrary, a reasonable construction of the Solicitor's argument is that Appellant will remain a danger to commit further violent acts in prison, based upon his previous conduct therein. Thus, life imprisonment was not an adequate or appropriate punishment.

Moreover, Appellant admitted on cross-examination that he had committed the prior assault and battery on a fellow inmate while he was in prison, and that the Adjustment Committee placed him in lock-down for three months as punishment. He likewise admitted that he had been involved in an altercation with Mr. Vernest Lawrence, although he maintained that Lawrence was the aggressor. He also denied that he hit Lawrence in the head with a bat. However, he conceded he had broken Lawrence's arm with a pole. He further admitted that he had been convicted of an unlawful possession of a pistol. (See R. p. 1111, line 18 - p. 1117, line 7; p. 1120, line 22 - p. 1138, line 24). Under these circumstances, where the State suggested that Appellant will constitute a future danger to those in prison, as opposed to society generally, Simmons does not apply. Id. at 2194 - 2195 n. 5 (Opinion of Blackman, J); Allridge v. Scott, supra; United States ex rel Collins v. Welborn, supra.

Even assuming *arguendo* that this Court finds that the Solicitor relied upon Appellant's future dangerousness to society as a basis for sentencing him to death, the trial judge's ruling still did not deprive Appellant of his right to Due Process under Simmons v. South Carolina, supra. In

Simmons, the defendant sought to rebut the prosecution's generalized argument of future dangerousness by presenting evidence that, due to his unique psychological problems, his dangerousness was limited to elderly women, and there was no reason to expect further violent acts once he was isolated in prison. He later requested a parole ineligibility instruction in accordance with § 24-21-640, and he made an *in camera* proffer of evidence conclusively establishing his parole ineligibility. The trial judge denied this requested instruction. Simmons then submitted an alternative instruction, which was also denied. 114 S.Ct. at 2191 - 2192 (Opinion of Blackman, J).

During the subsequent jury deliberations, the jury asked whether imposition of a life sentence carried the possibility of parole. In response, the trial judge gave a jury instruction in accordance with this Court's decision in State v. Torrence, supra. See also State v. Norris, 285 S.C. 86, 328 S.E.2d 339 (1985). On direct appeal, the United States Supreme Court reversed Simmons' death sentence. The Court held that the trial judge erred in denying the requested instruction for two reasons. First, the Court found that Simmons was prevented from rebutting information that the sentencing authority considered, and which it may have relied upon in imposing the death penalty. The State raised the issue of Simmons' general future dangerousness, but it blocked all of his efforts to demonstrate that he would never be released on parole, and thus would not pose a future danger to

society. Simmons v. South Carolina. ___ U.S. at ___, 114 S.Ct. at 2200 - 2201 (O'Conner, J, concurring in judgment). See also Simmons, ___ U.S. at ___, 114 S.Ct. at 2192 - 2195 (Opinion of Blackman, J); Simmons, ___ U.S. at ___, 114 S.Ct. at 2199 (Ginsburg, J).

Second, the Court also focused on the fact that the Norris charge did not satisfactorily inform the jury of Simmons' parole ineligibility. Id. at ____, 114 S.Ct. at 2201 (O'Conner, J, concurring in judgment). In particular, Justice Blackman held that the trial judge's instruction to the jury in Simmons that they were not to consider parole and that parole was not a proper issue for their consideration was confusing and misleading. In his view, this instruction "suggested that parole *was* available but that the jury, for some unstated reason, should be blind to this fact. Undoubtedly, the instruction was confusing and frustrating to the jury, given the arguments by both the prosecution and the defense relating to [Simmons'] future dangerousness, and the obvious relevance of [his] parole ineligibility to the jury's formidable sentencing task." Id. at 2197 (Opinion of Blackman, J) (emphasis in original).

In contrast, the State submits that neither of these concerns are present in this case despite the trial judge's ruling. As noted, both Appellant and his mother testified that they were asking the jury to spare his life, even if it meant he would spend the rest of his life in prison. (See part II, 4 supra).

Also, and not withstanding Appellant's claim to the contrary, defense counsel repeatedly defined the phrase "life imprisonment" in terms which were substantially similar to his requested instruction. He repeatedly asked the jurors to spare Appellant's life, and he emphasized that "life imprisonment" was a severe punishment. After assuring the jury that the prison system was not as nice as the Solicitor had suggested, counsel asked the jurors "How would you like to have your freedom taken for the rest of your life? I mean, that's a pretty severe punishment. It really is. And you've gotten a glimpse of the prison life . . .." Counsel down-played Appellant's one violent incident in prison, by noting that "[i]t's a jungle in there, folks"; and, he explained that "as opposed to the alternative that's what we're asking you for, that he given life in prison and *life in prison in this case means life in prison*." (R. p. 1194, line 22 - p. 1200, line 1) (emphasis added).

Following an objection by the State,[29] defense counsel again emphasized the harsh nature of prison life, and he repeatedly asked the jury to spare Appellant's life. Counsel

---

[29]The State objected when Appellant attempted to inform the jury that the trial judge would sentence Appellant to life imprisonment if they weren't able to arrive at a verdict. The State also noted that Appellant had previously defined the term "life imprisonment" and asked that he not be allowed to do so again. The trial judge noted that he would give a Norris instruction, he and admonished counsel "do not discuss life or death . . . [e]xcept in their plain and ordinary meaning." (R. p. 1200 line 10 - p. 1202, line 2). Despite this ruling, the State did not object to Appellant's subsequent definitions of the term "life imprisonment".

again focused on the lack of personal freedom or privacy:

> That's punishment and you do that *day in and day out for the rest of your life*, and then stop and think about that and see if that's not more punishment than simply taking someone off and electrocuting them.
>
> *They twist in the wind for the rest of their life in a system that is not a very nice place* to be.

(R. p. 1202, line 12 - p. 1206, line 19) (emphasis added). Finally, counsel asked the jury to have mercy and "put [Appellant] in prison *for the rest of his life*. Don't electrocute him." (R. p. 1206, line 20 - p. 1208, line 2).

Therefore, unlike the situation presented in Simmons, Appellant was not prevented from rebutting information that the sentencing authority considered and upon which it may have relied in sentencing him to death. To the contrary, defense counsel fully and repeatedly informed the jury that a sentence of "life imprisonment" meant that Appellant would be in prison for the rest of his life. See State v. Southerland, supra. Contra Simmons v. South Carolina, supra; Skipper v. South Carolina, 476 U.S. 1, 106 S.Ct. 1699 (1986); Gardner v. Florida, 430 U.S. 349, 97 S.Ct. 1197 (1977). Because counsel fully defined "life imprisonment" for the jury in this fashion, there was no Due Process violation. Id. See also State v. Jefferies, ___ S.C. ___, 447 S.E.2d 427 (1994), cert. denied, ___ U.S. ___, ___ S.Ct. ___ (1994).

Furthermore, this understanding of the term "life imprisonment" was not lessened or undermined, in any manner, either by the Solicitor's closing argument or the trial

judge's jury instructions. The Solicitor used the term "life in prison" without providing any definition, other than to suggest that the jury's determination of the appropriate sentence was a "life and death decision". (See R. p. 1181, line 6 -11; p. 1186, line 25 - p. 1187, line 10). Also, he did not suggest, at any point during his argument, that Appellant would ever be released on parole or otherwise, if sentenced to life imprisonment. Instead, the Solicitor urged the jury to impose the death penalty because it was the only appropriate penalty under the facts and circumstances of this case. (See part II A, supra).

Likewise, the trial judge's jury instruction did not dilute the definition of "life imprisonment" which defense counsel had previously given to the jury. Although the trial judge's plain and ordinary meaning instruction was, standing alone, deficient under Simmons, it did not contain any definition which was contrary to that provided by defense counsel. Also, the trial judge's jury instruction did not contain the second prong of the Norris charge - i.e., that the jury was not instructed that they were not to consider parole, or that parole was not a proper issue for their consideration.[30] It is this portion of the instruction in Simmons which Justice Blackman found was confusing and frustrating to the jury. See Simmons, ___ U.S. at ___, 114 S.Ct. at 2197 (Opinion of Blackman, J).

---

[30]Thus, the "plain and ordinary meaning" instruction of Atkins and State v. Davis, 306 S.C. 246, 411 S.E.2d 220 (1991) is different from a full Norris charge.

Therefore, unlike Simmons, there is no "reasonable likelihood that the jury . . . . applied the challenged instruction in a way that prevent[ed] the consideration of constitutionally relevant evidence." See Boyde v. California, 494 U.S. 370, 380, 110 S.Ct. 1190, 1198 (1990). Cf. Simmons, ___ U.S. at ___, 114 S.Ct. at 2197 (Opinion of Blackman, J). Rather, the only "reasonable likelihood" is that the sentencing jury understood the plain and ordinary meaning of "life imprisonment" to be that Appellant would remain in prison "for the rest of his life," if he was sentenced to life imprisonment. Id.

Nor did any member of the petit jury raise a question as to parole eligibility or ineligibility, either during individual *voir dire*, or during deliberations. (See R. p. 91, line 1 - p. 100, line 11; p. 116, line 2 - p. 126, line 6; p. 156, line 4 - p. 166, line 22; p. 179, line 12 - p. 187, line 20; p. 321, line 9 - p. 331, line 4; p. 332, line 14 - p. 342, line 11; p. 380, line 5 - p. 392, line 8; p. 445, line 8 - p. 453, line 24; p. 478, line 12 - p. 488, line 11; p. 499, line 18 - p. 509, line 5; p. 597, line 12 - p. 606, line 12; p. 637, line 1 - p. 644, line 2).[31] Based on the foregoing, the

---

[31]Likewise, none of the other *veniremen* who were presented but struck from the petit jury raised any question as to whether Appellant would be eligible for parole if he was sentenced to life imprisonment. (R. p. 156, 4 - p. 166, line 22; p. 168, line 7 - p. 177, line 1; p. 189, line 13 - p. 201, line 5; p. 256, line 23 - p. 265, line 7; p. 266, line 17 - p. 280, line 16; p. 455, line 8 - p. 464, line 12; p. 489, line 23 - p. 497, line 24; p. 566, line 24 - p. 582, line 11; p. 617, line 2 - p. 625, line 21). In fact, the only *veniremen* who raised any question, whatsoever, concerning parole eligibility

State submits that the sentencing jurors must be presumed to have heard, understood and correctly followed the definition of "life imprisonment" which defense counsel gave to them. See Greer v. Miller, 483 U.S. 756, 766 n. 7, 107 S.Ct. 3102, 3109 n.7 (1987); Francis v. Franklin, 471 U.S. 307, 324 n.9, 105 S.Ct. 1965, 1075 n.9 (1985); State v. Jefferies, supra. Cf. Simmons v. South Carolina, supra.

Therefore, there was no violation of Appellant's right to Due Process under Simmons v. South Carolina, supra, since unlike the defendant in Simmons, Appellant was able to rebut the State's showing of future dangerousness by informing the sentencing phase jury, through argument of counsel, that he would spend the rest of his life in prison if sentenced to life imprisonment. Contra Simmons v. South Carolina, supra; Skipper v. South Carolina, supra. Because the trial judge's ruling did not deprive Appellant of Due Process Appellant's argument must be rejected, and his sentence of death must be affirmed. Id. See also State v.Southerland, supra.

Finally, and assuming arguendo that the Court finds that the trial judge erred in refusing Appellant's requested instruction, any error must be viewed as non-prejudicial and harmless beyond a reasonable doubt under Chapman v. California, 386 U.S. 18, 87 S.Ct. 824 (1967). In Chapman, the

---

was Juror James L. Mann. (The trial judge gave a Norris charge to Juror Mann when the issue was presented). (See R. p. 292, line 23 - p. 307, line 4). However, Juror Mann did not serve as a petit juror, nor was he even presented as a potential juror. (See jury selection sheet, R. pp. ___ - ___).

United States Supreme Court recognized that even error of constitutional magnitude may be harmless if, considering the entire record on appeal, the reviewing court finds beyond a reasonable doubt that the error did not contribute to the verdict. Id. See also Rose v. Clark, 478 U.S 570, 106 S.Ct. 3101 (1986); State v. Johnson, 298 S.C. 496, 381 S.E.2d 7321 (1989); State v. Patterson, 285 S.C. 5, 327 S.E.2d 650 (1984); State v. Atchison, 268 S.C. 588, 235 S.E.2d 295 (1977).

Here, the State presented overwhelming evidence which reasonably proved the existence of both statutory aggravating circumstances beyond a reasonable doubt. Further, Appellant admitted that he had committed an assault and battery while previously incarcerated. More importantly, defense counsel repeatedly defined "life imprisonment" using terms which were virtually identical to those in his request-to-charge; and, he specifically informed the jury that a verdict of "life imprisonment" meant that Appellant would remain "in prison for the rest of his life". Further, for the above-stated reasons, the State submits that neither the Solicitor's closing argument nor the trial judge's "plain and ordinary meaning" charge diminished this understanding of the phrase "life imprisonment." To the contrary, the Solicitor's reminder to the sentencing jury that their's was a "life or death decision," would have reinforced the definition of "life imprisonment" subsequently provided by defense counsel.

Thus, the jury heard Appellant's definitions of "life imprisonment," and they did not hear any contrary definition

which lessened or diminished this definition. As a result, the State submits it borders on the ridiculous to suggest that the jury would have understood "life imprisonment" other than as it was defined for them by defense counsel. Therefore, any error must be considered harmless under Chapman v. California, supra. See also Rose v. Clark, supra; State v. Jefferies, supra; State v. Patterson, supra; Contra Simmons v. South Carolina, supra.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the conviction and sentence of death must be affirmed.

Respectfully submitted,

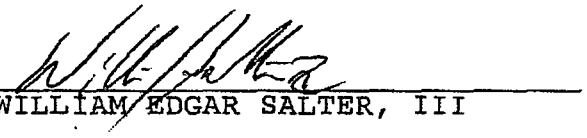
CHARLES MOLONY CONDON
Attorney General

JOHN W. McINTOSH
Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

WALTER M. BAILEY, JR.
Solicitor, First Judicial Circuit

BY: 
WILLIAM EDGAR SALTER, III

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 7, 1995
WES

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Dorchester County

The Honorable Luke N. Brown, Jr., Judge

THE STATE,

Respondent,

v.

TIMOTHY D. ROGERS,

Appellant.

PROOF OF SERVICE

I, William Edgar Salter, III, Counsel for the Respondent, certify that I have today served the within Brief of Respondent upon Appellant by depositing three copies of same in the United States mail, postage prepaid, addressed to his attorney of record, Joseph L. Savitz, III, Esquire, Deputy Chief Attorney, South Carolina Office of appellate Defense, 1122 Lady Street, Suite 940, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

WILLIAM EDGAR SALTER, III
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

July 7, 1995

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Dorchester County

The Honorable Luke N. Brown, Jr., Judge

THE STATE,

Respondent,

v.

TIMOTHY D. ROGERS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 210(b), SCACR.

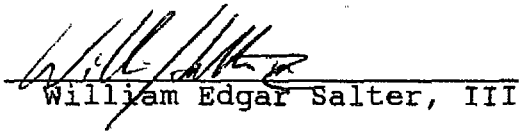
CHARLES MOLONY CONDON
Attorney General

JOHN W. McINTOSH
Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

WALTER M. BAILEY, JR.
Solicitor, First Judicial Circuit

By: 
William Edgar Salter, III

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 7, 1995

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Timothy D. Rogers, Appellant.

Appeal From Dorchester County
Luke N. Brown, Jr., Special Circuit Court Judge

Opinion No. 24366
Heard October 31, 1995 - Filed January 22, 1996

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Deputy Chief Attorney Joseph L. Savitz, III, of S. C. Office of Appellate Defense, of Columbia, for Appellant.

Attorney General Charles Molony Condon, Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General William Edgar Salter, III, all of Columbia; and Solicitor Walter M. Bailey, Jr., of Summerville, for Respondent.

TOAL, A.J.: This is an appeal of Appellant Timothy Rogers's conviction and subsequent death sentence for murder.

FACTUAL/PROCEDURAL BACKGROUND

On November 25, 1992, Appellant Timothy Rogers shot nine-year-old Stephanie B[redacted]n the head. Stephanie died the next day.

Rogers was tried on February 28 through March 5, 1994 for Stephanie's murder. The State sought the death penalty, citing as aggravating factors Stephanie's age and the danger Rogers's action had posed to others. Rogers did not testify during the guilt phase of his trial, although the State introduced into evidence a statement Rogers had made to police after his arrest.

According to Rogers's statement, Rogers was speaking on the telephone outside Spell's Grocery Store when Stephanie's father Mike B[redacted] pulled up in a pick-up truck accompanied by his daughter Stephanie and another male, Jimmy Carver. B[redacted] told Rogers he needed to use the telephone, and Rogers informed B[redacted] he would be off shortly. B[redacted] and his friend Carver then began making racist remarks, which Rogers ignored. (R. p. 1236). However, Rogers could hear B[redacted] and Carver arguing with Rogers's friend Daxton Patterson. Rogers's girlfriend assault victim was also present. When B[redacted] and Carver approached Patterson and assault victim, Rogers "walked over to where [Patterson] and assault victim] were." (R. p. 1237). B[redacted] then "turned around, went back to the truck and pushed his seat up." (R. p. 1237). It appeared to Rogers that B[redacted] "was looking for a weapon of some sort." (R. p. 1237). Rogers asserts he fired a shot in the air to scare B[redacted] and Carver. (R. p. 1237). Apparently that shot killed Stephanie.

Not surprisingly, other witnesses perceived the events of November 25th quite differently. B[redacted] testified that he stopped at Spell's Grocery Store so that Stephanie could get a sandwich before they went fishing. While at the store, B[redacted] saw his friend Anthony Riley, and the two of them began to talk. Carver stayed in the truck. While B[redacted] and Riley were talking, Rogers, Patterson, and assault victim came up behind them. Rogers went to talk on the telephone, but Patterson began to taunt and threaten Riley and B[redacted]. Riley and B[redacted] ignored Patterson. When Patterson flicked a cigarette on Riley's shoe, Riley left the store. (R. p. 732).

According to B[redacted]'s testimony, B[redacted] then tried to get in his truck to leave, but Patterson prevented B[redacted] from leaving by pulling on the door of the truck. At some point, Carver got out of the truck and began walking toward the back of it. As Patterson and B[redacted] struggled by the door, Rogers approached, stepped between them, put a gun to B[redacted]'s head, and said, "I'll kill you." (R. pp. 733-34). Rogers then lowered the gun and fired a shot that hit no one. As B[redacted] once again tried to get in his truck, Rogers spit in B[redacted]'s face. (R. pp. 734-35). When B[redacted] finally got back into his truck and began to drive away, Rogers fired a shot into the back window of the truck. That shot hit Stephanie, who had been sitting in the truck crying during the incident. (R. pp. 735-37). Carver's testimony was similar to B[redacted]'s. Carver specifically denied that B[redacted] had ever reached in the truck for his gun, as Rogers had asserted. (R. p. 949).

Rogers's girlfriend assault victim testified that B[redacted], Carver, Patterson, and Rogers were involved in a heated confrontation, which Patterson had begun. When assault victim turned around to go talk on the telephone, she heard two shots. The second shot was fired as the truck was driving away. (R. p. 833-34).

Based largely on Rogers's statement, defense counsel requested a jury charge on voluntary manslaughter. (R. p. 968). After discussing the issue with the prosecution and defense counsel, the trial judge refused the instruction. (R. pp. 976, 1019). The jury returned with a verdict of murder.

During the solicitor's closing arguments at the penalty phase, the solicitor asked: "What do you do with a person like this once he's in our midst . . . ?" (R. p. 1190). The

solicitor also said that "by his record Timothy Rogers has shown that he cannot safely exist in this society inside *or outside* of the prison system." (R. p. 1193).

Defense counsel requested a jury instruction informing the jury that if it sentenced Rogers to life in prison, Rogers would never be eligible for parole. (R. pp. 1048-50, 1239). The trial judge refused the proposed instruction and gave a "plain and ordinary meaning" charge pursuant to *State v. Norris*, 285 S.C. 86, 328 S.E.2d 339 (1985). The trial judge sentenced Rogers to death in accordance with the jury's recommendation.

Rogers appeals.

LAW/ANALYSIS

I. Guilt Phase

Rogers contends that when combined with certain other testimony, his statement to the police contains evidence that could support a finding of voluntary manslaughter. The trial judge refused to charge voluntary manslaughter because he believed that "you can't have voluntary manslaughter when you take the position this was an accidental killing." (R. p. 1031). Rogers asserts the trial judge erred in refusing to charge voluntary manslaughter. We disagree.

The trial judge's reason for refusing to charge voluntary manslaughter -- that one is not entitled to a voluntary manslaughter charge when one contends a killing was accidental -- was incorrect. We have previously held that where there is evidence to support charging the jury on either of two offenses (or affirmative defenses), both offenses (or defenses) must be charged, even if the two seem inconsistent. *See State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988)(finding trial judge erred in refusing to charge both self-defense and voluntary manslaughter because they are mutually exclusive). If there was evidence to support a jury charge on voluntary manslaughter, the trial judge should have charged the jury on both voluntary manslaughter and accident. Therefore, we must determine whether there was evidence to support a charge on voluntary manslaughter.

Voluntary manslaughter is the unlawful killing of another in sudden heat of passion upon sufficient legal provocation. *E.g., State v. Lowry*, ___ S.C. ___, 434 S.E.2d 272 (1993). Rogers asserts that the combination of the racist statements allegedly made by B[redacted] and Carter and B[redacted]'s alleged leaning into his truck constituted sufficient legal provocation. We disagree.

Here, there was absolutely no evidence of sufficient legal provocation. First, the racist statements that Rogers alleges B[redacted] and Carver made are legally insufficient to constitute such legal provocation because mere words, no matter how opprobrious, are insufficient to constitute adequate legal provocation when death is caused by the use of a deadly weapon. *E.g., State v. Butler*, 277 S.C. 452, 290 S.E.2d 1, *cert. denied*, 459 U.S. 932, 103 S. Ct. 242, 74 L. Ed. 2d 191 (1982). Instead, when death is caused by use of a deadly weapon, offending words must be accompanied by an "overt, threatening act . . . which

could have produced the heat of passion." *Lowry*, ___ S.C. at ___, 434 S.E.2d at 274. B[redacted]'s allegedly leaning in his truck simply does not constitute an overt, threatening act adequate to constitute sufficient legal provocation.

The cases relied upon by Rogers are clearly distinguishable. In *Lowry*, we found that the trial judge should have charged voluntary manslaughter where the defendant shot the decedent after the decedent taunted the defendant then moved toward him in a menacing fashion with his arms outstretched as if to grab him. *Id.* at ___, 434 S.E.2d at 273. The Court found that a jury could reasonably conclude that when taken together, the menacing words and the actions constituted a legal provocation sufficient to produce sudden heat of passion. *Id.* at ___, 434 S.E.2d at 274. In *State v. Jackson*, 301 S.C. 41, 389 S.E.2d 650 (1990), voluntary manslaughter was properly charged where there was evidence that the decedent approached the defendant, reached into his pocket, and said "I'm come to kill you, bitch." *Id.* at 43, 389 S.E.2d at 651. In both *Lowry* and *Jackson*, the threat was clear and overt.

In this case, there was *no* overt threat: According to Rogers's own statement, B[redacted] was, in fact, moving *away* from Rogers and made no statements evincing an intent to injure Rogers. Furthermore, there was no evidence that B[redacted] had struck or assaulted anyone. In fact, none of the persons describing the incident, including Rogers himself, points to anything that would indicate an overt threat to Rogers. Given these facts, we find there was no evidence of sufficient legal provocation, and the trial judge did not err in refusing to charge voluntary manslaughter.

II. Sentencing Phase

Rogers next argues that he was entitled to a jury charge that if sentenced to life in prison, he would never be eligible for parole. *See Simmons v. South Carolina*, ___ U.S. ___, 114 S. Ct. 2187, 129 L. Ed. 2d 133 (1994); *State v. Southerland*, ___ S.C. ___, 447 S.E.2d 862 (1994), *cert. denied*, ___ U.S. ___, 115 S. Ct. 1136, 130 L. Ed. 2d 1096 (1995). We agree.

In *Simmons*, a plurality of the United States Supreme Court held that when a capital defendant would be ineligible for parole if sentenced to life in prison and the State argues the defendant's future dangerousness as a basis for imposition of the death penalty, the defendant is entitled to have the jury informed of his ineligibility for parole either by way of arguments by defense counsel or instruction by the trial judge. *Id.* at ___, 114 S. Ct. at 2187, 129 L. Ed. 2d at 146. We have since held that the trial judge *must* charge a capital defendant's parole ineligibility when future dangerousness is at issue and the defendant requests such a charge. *Southerland*, ___ S.C. at ___, 447 S.E.2d at 868.

Although the State does not seriously dispute that Rogers would have been ineligible

for parole if sentenced to life in prison,[1] it attempts to distinguish *Simmons* by claiming that the prosecution argued only that Rogers posed a future danger *to other prisoners*, rather than to free society. We disagree.

During closing arguments of the sentencing phase of Rogers's trial, the prosecution certainly argued that Rogers posed a danger to other prison inmates. The prosecution also suggested, however, that Rogers was dangerous to society in general. In fact, the prosecution's closing argument was similar in several respects to that used by the prosecutor in *Simmons*. Specifically, the prosecutor in this case asked about Rogers: "What do you do about a person like this once he's in our midst with these two choices [life and death]?" (R. p. 1190). In *Simmons*, the United States Supreme Court found that the same question, when asked in the same context, raised the issue of the defendant's future dangerousness.

Moreover, the prosecution in the present case made several other statements that raised the possibility of Rogers's future dangerousness to society. Later during closing arguments, the prosecutor alluded to the threat Rogers posed to society, stating that "by his record Timothy Rogers has shown that he cannot safely exist in this society inside *or outside* of the prison system." (R. p. 1193)(emphasis added). Finally, during the sentencing phase, both Rogers and Rogers's pastor testified. The prosecution's cross-examination of both witnesses focused on Rogers's extensive criminal record and history of recidivism. (R. pp. 1120-23, 1159-61). The prosecutor seized on this theme during closing argument, suggesting, in essence, that Rogers was beyond rehabilitation and would always be dangerous:

> This is his criminal conviction record. . . . It's nine convictions, some fairly insignificant and some more important. . . . The idea is that prison is not supposed to be there to punish. They're there to correct you. They're there to reform you. When you come out of prison, you ought to be straightened out and be a better person and be rehabilitated. The problem with Mr. Rogers here is that he went to prison. He wasn't corrected, because when he got out of prison, he went out and he got drunk and he murdered a nine-year-old girl. His stay in prison didn't teach him anything.

(R. pp. 1187-88). It is clear from these statements that the prosecution raised the issue of Rogers's future dangerousness to society as a reason for imposition of the death penalty. Accordingly, *Simmons* applies, and Rogers was entitled to have the jury informed of his parole ineligibility.

The State next contends that even assuming the prosecution raised Rogers's future dangerousness, *Simmons* was satisfied because defense counsel informed the jury during

---

[1]Rogers was twice convicted of violating S.C. Code Ann. § 16-3-655 (1985)(criminal sexual conduct with a minor), which crimes we find constituted violent crimes within the meaning of the original version of S.C. Code Ann. § 16-1-60, 1986 S.C. Acts 2992, when they were committed in August and September 1992. *See* 1991 Op. Atty. Gen. 91-46, p. 118.

closing arguments that Rogers was parole ineligible. We disagree. Although defense counsel attempted to argue to the jury that "life in prison in this case means life in prison," (R. p. 1197), the trial judge expressly excluded counsel from directly informing the jury of Rogers's parole ineligibility and instructed him not to discuss life or death "except in their plain and ordinary meaning." (R. p. 1201). Moreover, defense counsel requested a jury instruction on parole ineligibility, but the trial judge refused to give it and instead gave the plain and ordinary meaning instruction from *State v. Norris*, 285 S.C. 86, 328 S.E.2d 339 (1985).[2]

Rogers was entitled to a charge on parole ineligibility. Therefore, we reverse his sentence and remand for resentencing.

CONCLUSION

For the foregoing reasons, Appellant's conviction is **AFFIRMED**, but his sentence is **REVERSED** and the case is **REMANDED** for a retrial of the penalty phase of the trial.

FINNEY, C.J., MOORE, WALLER and BURNETT, JJ., concur.

[2]At the time of Rogers's trial, the United States Supreme Court had not yet issued its opinion in *Simmons*. At that time, therefore, the trial judge was bound by our ruling in *Simmons* and prior cases and gave the *Norris* charge, as was appropriate under the circumstances.

The Supreme Court of South Carolina

CLYDE N. DAVIS, JR.
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. Box 11330
COLUMBIA, S.C. 29211
(803) 734-1080
Fax (803) 734-1499

February 7, 1996

The Honorable Margie K. Carn McKissick
Clerk of Court, Dorchester County
Post Office Box 158
St. George, SC 29477

REMITTITUR

Re: The State v. Timothy D. Rogers
No: 93-GS-18-101

Dear Ms. McKissick:

The above referenced matter is hereby remitted to the trial court. A copy of the judgment/opinion of this Court is enclosed.

By copy of this letter we are advising all counsel of the action of the Court in this matter.

Very truly yours,

CLERK

CND,Jr./lda

Enclosure

cc: Joseph L. Savitz, III, Esquire

ATTORNEY GENERAL'S OFFICE
RECEIVED 2-8-96
ADMINISTRATIVE INSTRUCTIONS
FILE OPEN END

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM DORCHESTER COUNTY

Judge Charles William Whetstone, Jr.

THE STATE,

RESPONDENT,

V.

TIMOTHY D. ROGERS,

APPELLANT.

RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

SOUTH CAROLINA OFFICE
OF APPELLATE DEFENSE
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

Attorney for Appellant

CHARLES M. CONDON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WALTER M. BAILEY, JR.
Solicitor, First Judicial Circuit
134 East Richardson Avenue
Summerville, SC 29483
(803) 871-2640

Attorneys for Respondent

INDEX

1. TRANSCRIPT OF TRIAL: DECEMBER 2-5, 1996

A. VOIR DIRE.....2

B. RESENTENCING

WITNESSES:

MICHAEL GEORGE B[redacted]
assault victim.....601
ISAIAH JENNINGS.....646
HERTHENIA LINCOLN.....662
JAMES ROBINSON.....665
GEORGE SCHARFF.....669
DR. CLAY NICHOLS.....672
JEFF ROGERS.....680
EARL VINCENT ASBELL.....692
DAVID J. COLLINS.....693
LESTER PATRICK.....707
JAMES CARVER.....713
PRISCILLA MACK.....719
MELINDA B[redacted].....755
MIKE B[redacted].....810
PALACE BUNCH.....818
TIMOTHY D. ROGERS.....826
JESSIE MIDDLETON.....846
ELAINE WILLIAMS.....914
applicant's mother.....917
.....920

CHARGE OF THE COURT.....998

SENTENCE.....1021

2. PRETRIAL HEARING: FEBRUARY 8, 1996.....1031

3. PRETRIAL HEARING: NOVEMBER 20, 1996.....1037

4. CRIMINAL SEXUAL CONDUCT INDICTMENT: JANUARY 24, 1994.....1100

5. TRIAL JUDGE'S REPORT.....1104

6. APPELLANT'S REQUEST-TO-CHARGE ON STATUTORY MITIGATING CIRCUMSTANCES.....1115

7. CERTIFICATE OF APPELLANT.....1117

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF
GENERAL SESSIONS

STATE OF SOUTH CAROLINA,
Plaintiff

-vs-

TIMOTHY D. ROGERS,
Defendant

TRANSCRIPT OF RECORD
VOLUME I
No. 93-GS-18-101

December 2, 1996
St. George, South Carolina

B E F O R E:

HONORABLE CHARLES W. WHETSTONE, JR., Judge; and a jury.

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

WALTER M. BAILEY, JR.
Solicitor
B. HARRISON BELL, JR.
Assistant Solicitor
Attorneys for the State.

MARK A. LEIENDECKER
Assistant Public Defender
WILLIAM L. RUNYON, JR.
Attorneys for the Defendant.

KAREN MULLINS
Circuit Court Reporter

I N D E X

WITNESS	PAGES
Voir Dire	2 - 274

(WHEREUPON, the following was held in chambers, in the presence of the defendant.)

THE COURT: Okay, let's go on the record. For the record, all the solicitors are present, Mr. Bailey and Mr. Bell. Mr. Runyon and Mr. Leiendecker are also present and Mr. Rogers is now present.

The purpose of this in chambers meeting is to deal with some additional jurors who have requested excuses. I was called about these last Tuesday, and I put off excusing them until today until we could do something on the record. So let's deal with them now. You want to tell me about them, please, ma'am.

MS. FOOTMAN: Okay, the one that you have in front of you is a full-time student.

THE COURT: Okay, this is Dwayne A Lewis, who writes, I am a full-time student at Trident Tech and have five exams for my classes that are scheduled this week.

As with the other full-time students, I would take the position that this one needs to be transferred to another term. Any objection from the state?

MR. BAILEY: No, no objection.

MR. RUNYON: None from defense, Your Honor.

MR. LEIENDECKER: Number 165, Your Honor?

THE COURT: That is number -- yeah, 165. Thank you.

MS. FOOTMAN: This lady, she served in May of this

year. And she was requesting an exemption for that reason.

THE COURT: That's No. 227, Rebecca L. Schaffner, S-C-H-A-F-F-N-E-R. She would be excused by statute. Any objection from the state?

MR. BAILEY: No.

THE COURT: From the defense?

MR. RUNYON: None from defense, Your Honor.

THE COURT: All right, she's excused.

MS. FOOTMAN: And I asked you about No. 247, Mary Spinharney, she was -- you excused her over in Moncks Corner that day, but she forwarded a doctor's excuse since then.

THE COURT: Okay. So she has forwarded a doctor's excuse, she's excused. Any objection from the state?

MR. BAILEY: None from the state.

MR. RUNYON: None from defense, Your Honor.

MS. FOOTMAN: And the other two were requesting it but you told them to appear.

THE COURT: Okay. And that is No. 248, Russell D. Stallings, I have full custody of my child and she is four years of age. The problem with that is he does work full-time, so we'll need to deal with that, he is a tow truck driver, so he needs to be here.

And then No. 131, Michael A. Hillery, says on December

the 11th I am leaving the country for three weeks. He's an insurance adjuster, but we should be able to deal with that. So he needs to be here. Any objection from the state?

MR. BAILEY: No.

THE COURT: From the defendant?

MR. RUNYON: None from the defense, Your Honor.

MS. MCKISSICK: Also, I had one this morning, the mother said that the child was in school but she was going to come anyway, her last name's Smith. So she's on her way.

MS. FOOTMAN: Number 241.

MS. MCKISSICK: She's on her way.

THE COURT: Okay, what I plan to do with those that have excuses, is I'll go through the normal jury questioning for the statutory exemptions and go down through the over 65 and people with children under the age of seven years who do not work outside the home. But I'm not going to take up emergencies or excuses or anything like that today on the record with all the other jurors here, all those will be put off until they come in for individual questioning. Any objection from the state?

MR. BAILEY: No, sir.

THE COURT: From the defendant.

MR. RUNYON: None from defense, Your Honor.

MR. LEIENDECKER: No, sir.

THE COURT: Okay. When we get to the -- when I have the solicitor call the case I'll need your witness lists. I plan to have the defendant stand and ask the usual question, whether anybody knows him. I'll call out the list of witnesses. And what I will ask the jurors to do in response is to stand and give us their name only, nothing further at this time other than that, so you can take names as to who stands and who knows who.

And also whether anybody's heard or read anything about the case. Again we'll ask if they will stand and give us their name only and we'll follow that up with individual questioning.

And, we'll have the three type of juror form in the jury room for them to look at.

Of course, the individual questioning will be paired down substantially because we do not need to ask about the guilt phase.

Now also in the previous meeting in Moncks Corner we talked about the possibility of addressing the fact that Mr. Rogers is not eligible for parole. My understanding was at that time that neither side objected to my telling the jury, when we start this, that he is not eligible for parole; is that correct?

MR. BAILEY: Correct, Your Honor.

MR. RUNYON: That's correct, Your Honor.
THE COURT: That's correct, okay.
MR. RUNYON: As a matter of fact we would -- had you not made that ruling we would have given you a specific request to charge.
THE COURT: I'm going to tell the jury that in the initial instruction for the entire panel, that this is for the purpose of deciding between a life sentence and the death penalty and that the defendant is not entitled to parole. That'll be told to the general panel up front this morning. And then when we get to individual questioning we'll hit on that subject again, that is, their choices are between life and death. Okay.
Any further requests from the state about the individual questioning?
MR. BAILEY: No, sir.
THE COURT: From the defendant?
MR. RUNYON: None from defense, Your Honor.
THE COURT: Okay, is either side -- I probably don't need to ask that, sorry. Any other questions that either side requests at this point, in the individual questioning?
MR. BAILEY: No, sir.
MR. RUNYON: No, Your Honor.
THE COURT: Is there anything else from the state that

we need to deal with at this time?

MR. BAILEY: The only thing I can think of right now is security. They -- the jail has those lockable braces that the court -- the Supreme Court approved in the Tucker case. They can't find the keys to them.

I think since Mr. Rogers is a convicted murderer and the jury's going to know it that the -- the need for him not to appear shackled is somewhat diminished, but I think it's still there. And I don't know whether Mr. Moultrie's out there or not, but.

THE COURT: Well, are you requesting then that he be shackled, Solicitor?

MR. BAILEY: No, sir, I -- I'm just -- just broaching that subject and I think that's something for the Department of Corrections and the Sheriff's Office to -- to address.

THE COURT: Well, I don't have a request from them that he be shackled yet, until I receive that request I'll assume he will not be shackled. I -- nobody's expressed a desire to have him shackled and that he's such a security risk that he needs to be shackled. So my position right now is he doesn't need to be shackled. Unless I hear otherwise from the security.

Now, Mr. Rogers.

THE DEFENDANT: Sir.

THE COURT: Now I'm relying on you to go along with that and understand that you will not be shackled unless you show some indication you're going to do otherwise, that is, you're going to misbehave, you think you can behave yourself and sit out there and not be shackled?

THE DEFENDANT: Oh, I know I can.

THE COURT: All right. I'm -- I'm putting that on you now, you understand you're not going to be shackled, I'm not going to direct that you be shackled until I see some indication otherwise that you aren't going to be able to control yourself.

THE DEFENDANT: Okay.

THE COURT: All right, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Any other requests from you at this time?

THE DEFENDANT: No, sir.

THE COURT: All right, sir. Thank you, sir. We'll adjourn this hearing unless I have something else.

MS. FOOTMAN: Yes, I wanted to -- for the record I wanted them to know that I got the list back from the Sheriff's Department. And there's several that we're unable to locate and I don't think you all have those. So should I go over them now?

THE COURT: Yes, ma'am, tell them -- tell us -- tell

them who they are now.

MS. FOOTMAN: Okay. Number 2 -- all of these are unable to locate. Number five, No. 8, No. 14, No.---

MR. BAILEY: Slow down just a little bit. 16's next?

MS. FOOTMAN: Yeah, 16. Number 30, 31, 38, 40.

THE COURT: 38 and 40.

MS. FOOTMAN: 45, 54, 57, No. 60, No. 88, No. 90, 95, 98, 100, 103, 105, 107, 111, 114, 127, No. 145, 157, No. 169, No. 200, 201, 212, 214, No. 231, 243, 253, 254. And 258 they did not send me anything back on that person. Number 266, 271, 277, 290, and 295. That's it.

THE COURT: Okay. All right, I need your proposed witness list from both sides, please, so I can look those over.

MR. BAILEY: It's on your desk out there.

THE COURT: On the desk, all right. How about yours?

MR. RUNYON: Your Honor, we'll -- we'll give you a proposed witness list, we -- that's still in a state of flux right now. Because some people from the Department of Corrections are going to let us know whether or not they will or won't come.

THE COURT: Well, I need as many as you know of so I can ask the jury if---

MR. RUNYON: Oh, yeah. Well, basically we're going to have -- I'll give you the list of his family testifying.

The rest are going to be in a state of flux depending upon the records and what he wants to put in and a couple of people may -- may be reluctant and I'm not going to bring a reluctant witness down here. Even if -- even if I have -- even if I have the subpoena power.

THE COURT: Give me as many as you know of for questioning purposes. All right. Thank you.

(WHEREUPON, the following was held in open court.)

THE COURT: Ladies and gentlemen, I have some questions to ask you to determine your qualifications to serve on the jury panel. Would all jurors please stand and raise your right hand, please.

(Jury panel was duly sworn.)

Now, ladies and gentlemen, as I ask these questions if any of the questions apply to you or you think they may apply to you, please stand and let me question you further.

Is there any member of the jury panel who does not live in Dorchester County? If you don't live in Dorchester County, please stand. Tell me your name, please, sir.

JUROR: Michael Weger, Charleston County.

THE COURT: You live in Charleston County? You are excused. Thank you, sir.

CLERK OF COURT: Michael who?

JUROR: 276.
THE COURT: Yes, sir?
JUROR: Bernard Hollenbeck, live in Dorchester County.
THE COURT: You live in Dorchester County?
JUROR: I mean, Charleston County, I'm sorry, sir.
THE COURT: All right, sir, if you live in Charleston County you're excused. Need your number again, please, sir.
JUROR: 138.
THE COURT: Thank you, sir. Yes, ma'am?
JUROR: April Smith, I live in Dorchester County, but I go to school in -- in Columbia.
THE COURT: Okay. You need to stay with us then if you live in Dorchester County.
JUROR: But we have final exams this week.
THE COURT: All right, come on up here and let me talk to you. I thought we already transferred her.
(Court consulted juror.)
THE COURT: Okay, Ms. Smith is a full-time student at Benedict College and she has exams, she's transferred to another term, she'll be notified when to come back. Yes, sir?
JUROR: 77, Danny Durant.
THE COURT: What county do you live in?
JUROR: Berkeley.

THE COURT: All right, sir, you are excused, thank you.

THE COURT: Yes, sir?

JUROR: 248, Berkeley.

THE COURT: Berkeley County?

JUROR: Yes, sir.

THE COURT: All right, sir. You are excused. Thank you. Yes, sir?

JUROR: Well, I'm 68 years old.

THE COURT: I'm going to get to that in just a minute. Just have a seat, I'm going to work down a list of questions and we'll get to that in just a minute.

Is there any member of the jury panel who works within the walls of the courthouse? If you work in the courthouse, please stand.

(No response.)

Is there any member of the jury panel who holds a law enforcement commission with or without pay? If so, please stand. Tell me your name, please.

JUROR: Correctional Institution, sir.

THE COURT: All right, sir. And tell me your name.

JUROR: Brian F. Darby.

THE COURT: You're entitled to be excused if you want to be.

JUROR: I'd rather be.