



WILLIAM DANIEL

NATIONAL MOCK TRIAL
COMPETITION

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

Prosecution,

v.

BEN C. GRIFFIN,

Defendant.

1:17-CR-1530

INDICTMENT

Witnesses:

APD: Det. A. T. King

**Fulton Superior Court
September Term, 2017**

Offense (s):

1. Malice Murder
2. Voluntary Manslaughter

True BILL

Carl White

Carl White, Foreperson

Returned in open court by Grand Jury,
This 5th day of September, 2017.

Barbara Underwood

Barbara Underwood, Clerk

The defendant herein waives a copy of indictment,
list of witnesses, formal arraignment and pleads
Not guilty.

This 15th day of September, 2017

Ben C. Griffin
Defendant

Bucky Ward
Attorney for Defendant

Dudley Straight
Prosecutor

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

THE GRAND JURORS selected, chosen and sworn for the County of Fulton, to wit:

- | | |
|----------------------------------|----------------------|
| 1. Carl White, Foreperson | 13. Kip Stump |
| 2. Helen Matthews | 14. Jennifer Wyrick |
| 3. Sally Frank | 15. Brad Pitt |
| 4. Tim Swenson | 16. Mike Mears |
| 5. Mrs. H. T. Turpin | 17. T. J. Whatley |
| 6. Tina Epps | 18. Dabney Pope |
| 7. Cosmo Kramer | 19. Dianne Erickson |
| 8. Mike Juniper | 20. Matt Finklestein |
| 9. Larry Ferguson | 21. Mark Henry |
| 10. Susan Nagel | 22. Star Shine |
| 11. Lora Colander | |
| 12. Bruce Harvey | |

Count 1

In the name and behalf of the citizens of Georgia, charge and accuse Ben C. Griffin with the offense of Murder in violation of O.C.G.A. § 16-5-1(a) in that the said accused, in the County of Fulton and State of Georgia, on August 4, 2017, did then and there unlawfully, and with malice aforethought, cause the death of James Hurst, a human being, by shooting him with a pistol, contrary to the laws of said State, the good order, peace and dignity thereof.

Count 2

In the name and behalf of the citizens of Georgia, charge and accuse Ben C. Griffin with the offense of Voluntary Manslaughter in violation of O.C.G.A. § 16-5-2 in that the said accused, in the County of Fulton and State of Georgia, on August 4, 2017, did then and there unlawfully cause the death of James Hurst, a human being, by shooting him with a pistol, while acting solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person, contrary to the laws of said State, the good order, peace and dignity thereof.

Stipulations

Both parties agree to the following stipulations:

1. The defendant must be male. All other witnesses are gender neutral.
2. All procedural requirements under the Federal Rules of Procedure have been met. The Federal Rules of Evidence and Criminal Procedure apply at trial.
3. The prosecution must call Det. A. T. King and Alex Miller as witnesses in its case-in-chief.
4. The defense must call Morgan Burleson and Ben Griffin as witnesses in its case-in-chief.
5. Photographs of the bayonet, boxcutter, and .38 caliber pistol will substitute for the actual weapons being brought to court. No reference should be made to the failure to produce the actual weapons at trial.
6. The Preliminary Hearing transcript is a certified copy. All other documents are original and authentic. All statements are signed by the party giving them.
7. A *Jackson v. Denno* hearing was held on the written and oral statements of the Defendant. The statements were ruled voluntary and admissible.
8. The State Crime Lab report showed the blood alcohol content of the victim, James Hurst, to be .11 with trace amounts of cocaine noted. The blood alcohol content of Ben Griffin was .07.
9. The State Crime Lab ballistics report shows the .38 caliber bullet recovered from James Hurst was fired by the .38 caliber Colt pistol having the serial number 1234.
10. An autopsy report shows the male decedent, identified as James Hurst (white male 5'11" 183 pounds), suffered a single penetrating injury to the sternum 3 centimeters below the clavicle. There is no skin tattooing or gun residue. The wound shows cavitation and penetrating injury to the root of the aorta and right atrium. A metallic projectile consistent with a .38 caliber was recovered in the disc space of T7 and T8. The path of the projectile was a downward angle in relation to entry wound. Death would have been within 20 seconds.
11. The State Crime Lab report shows the blood on the boxcutter knife belonged to Ben Griffin. The only fingerprints on the boxcutter knife belong to James Hurst. The WWII bayonet showed only fingerprints of James Hurst. The fingerprints on the .38 caliber pistol belong to Ben Griffin. A nitrate test was done on the hands of Ben Griffin and showed that he had recently fired a gun.
12. There is no requirement in Georgia that a handgun be registered if it is carried in the

glove compartment of your vehicle.

13. Teams will be permitted to bring a tape measure to court for demonstrative purposes if they so choose.
14. Sunset on August 4, 2017 was 8:34 p.m. daylight savings time. The weather was clear.
15. The defense has given the prosecution notice of using justification self-defense.
16. No additions or deletions can be made to the jury charges.

Author's note: Ray Lee's Blue Lantern Lounge was a notorious bar/dive which was in operation for over fifty years. During that time, it was the scene of many fights, assaults, and a few homicides. The problem is based on one of those homicides. Rocking Louie's only hit was Club Savoy.

Judge Harvey Moskowitz
Preliminary Hearing
August 10, 2017

Judge Moskowitz: This is a probable cause hearing on Ben Griffin, who is charged with murder and voluntary manslaughter. Mr. Griffin is represented by Attorney Bucky Ward. The state is represented by Assistant District Attorney Barbara Harding. Ms. Harding, you may proceed.

Harding: After being duly sworn, please state your name for the record and give the court your education and experience.

King: I am Detective A. T. King. I am with the Atlanta Homicide Squad, City of Atlanta Police Department. I have a B.A. in Criminal Justice from Elon College. I served as a Lieutenant in the United States Army Military Police for two years. I then joined the Atlanta Police Department. I am Peace Officer Standards and Training Certified. After I joined the Atlanta PD, I served as a Patrol Officer for three years and was promoted to Homicide Detective two years ago. I have completed the FBI Firearms School and am a Qualified Firearms Instructor. I have also completed basic and advanced Criminal Investigation Techniques. I have investigated approximately twenty homicides.

Harding: When were you called to the Blue Grotto on August 4, 2017?

King: I received a signal 60, person shot at 19:17 and arrived ten minutes later. The Blue Grotto Lounge is located on Ponce de Leon Avenue in Fulton County. I

realized immediately upon arrival that this would be a very difficult crime scene to process. There was a large crowd gathered and many of them were drunk. The Blue Grotto has a notorious reputation. Therefore, I made the decision to close the club and clear the scene and parking lot except for the defendant's car and the victim's SUV. The defendant was in the back of a Grady Hospital ambulance awaiting transport. I told uniform officers to follow the ambulance to Grady Hospital, where the defendant could be treated, and then to take him to the homicide office, so a nitrate swab of his hands could be completed. When I arrived at the scene, the defendant's left arm had already been treated by Grady EMT's. We began interviewing the patrons for witnesses and we let them go if they had not seen anything. There was very little cooperation. We could only find two witnesses who volunteered to give statements as to what happened. Several biker-types stated that the guy had it coming but would not say anything else. The medical examiner arrived and put a temporary tent around the victim. I found a gun and bayonet in the parking lot, and I marked the location of those items for later reconstruction. After the parking lot was cleared, we began taking pictures and measurements. This was around 20:10. I sent the gun, which was a six-shot Colt revolver (serial number 1234), the World War II bayonet, and a boxcutter knife that I found in the floorboard of the victim's SUV to the State Crime Lab for analysis. I talked to Officer P. A. Kincaid, who was the first officer on the scene. He stated that as he

pulled into the parking lot, Griffin dropped the gun and raised his hands. Kincaid noticed that the defendant had been cut on his left arm. The defendant refused treatment from Grady EMT's until Kincaid took a picture of his bleeding arm. The defendant was yelling that he shot the man in self-defense. He yelled, "The son of a bitch had it coming and he got what he deserved."

Harding: Can you identify these photos please?

King: These are the photographs I took except for the picture of the defendant's arm, which was taken by Kincaid. These are photographs of the crime scene, which includes a close up of the bayonet, the pistol, the boxcutter knife, and the glove compartment of the defendant's car.

Harding: Based on your investigation Detective, did the defendant shoot James Hurst in self-defense?

King: No.

Harding: Why?

King: The victim was shot from thirty feet away. The defendant had clearly taken aim and coupled with their prior argument, I believe that the defendant shot Hurst out of deliberate revenge, which is murder.

Judge Moskowitz: Cross examination.

Ward: Detective you are aware that when someone is attacked they have no duty to retreat?

King: Yes, I am aware of that fact but the evidence at the scene indicates that the defendant wasn't being attacked.

Ward: Okay. You would agree that James Hurst had committed aggravated assault on my client?

King: Yes, and if your client had left it to the police, we wouldn't be here.

Ward: Do you agree that a person has the right to defend himself with deadly force if he is being attacked with deadly force?

King: Yes.

Ward: What is the length of the blade on the bayonet?

King: Sixteen inches.

Ward: Do you agree that is a deadly weapon?

King: Yes.

Ward: Did you do a blood-alcohol test on the so-called eye witness?

King: No.

Ward: So we don't know how intoxicated he/she was?

King: He/she didn't seem drunk.

Ward: Thank you for that expert opinion. Why did you not take a statement from the bikers who said James Hurst deserved what he got?

King: They were very uncooperative.

Ward: So the defense now doesn't have an opportunity to locate these witnesses. I

noticed a blue decal in the lower left corner of the rear window of Mr. Hurst's Tahoe. Doesn't that decal indicate an association with law enforcement?

King: Yes. Mr. Hurst's brother is a Deputy United States Marshall for the Southern District of Georgia.

Ward: I see. So I guess you discussed the case with him.

King: Well, because he is a family member, I told him about the homicide. But his being in law enforcement had no influence on my decisions in this case.

Ward: Thank you for volunteering that helpful information. No more questions.

Harding: The State rests.

Judge Moskowitz: Any witnesses for the defense?

Ward: No.

Judge Moskowitz: I determine that there is probable cause to bind this case over to the Grand Jury.

Atlanta Police Department
Interview of Alex Miller
Conducted by Detective A. T. King
August 4, 2017 at 21:45

King: Mr./Ms. Miller, I am taking this statement in regard to what you told me at the scene of the Blue Grotto Lounge this evening. Do you understand?

Miller: Yes.

King: When did you arrive at the Blue Grotto?

Miller: I came after work since it was Friday Happy Hour. I got there around 6:00 p.m.

King: Where do you work?

Miller: I work for Allstate Insurance Company as an insurance adjuster. I have worked there for seven years.

King: Are you from the Atlanta area?

Miller: No, I am originally from Buffalo, New York but the winters were too much for me.

King: So you got to the Blue Grotto at 6:00? How long does Happy Hour last and how much did you have to drink?

Miller: Happy Hour is from 6:00 to 8:00. Drinks are half price. I maybe had 2 or 3 mojitos. I talked with some people. The band was great and I was having a good time. I went outside around 7:15 to get some air. It was smoky in the bar and loud.

King: The first police officer on the scene said he smelled an odor of marijuana on

you when he talked to you.

Miller: Okay, fine. I was smoking a joint in the parking lot. I'm sorry. I don't want to get into any trouble. I've never been arrested before and have a good job. Someone at the bar gave me the joint.

King: I don't care. I just want you to be truthful about what you heard and saw in the parking lot. I have drawn a diagram of the scene based on what you told me. Is it correct?

Miller: Yes, that looks like the scene as I saw it. I was standing at the other row of cars halfway between the two men.

King: Tell me what you saw and heard.

Miller: I heard the door to the bar bang open and saw the guy who got shot running out to his SUV. By the way, I don't know either of these two men. I have seen them in the bar on occasion but have never talked to them. Earlier in the evening I did see them arguing at the bar. They were both loud and appeared to be drunk.

King: What time was that?

Miller: I don't remember. Anyway, a few seconds after the first guy comes out, bang, the bar door opens again and out comes the other man. He yells for the other guy to stop. He said he was going to hold him for the police who were on the way. The guy by the SUV started laughing and yelling. I remember him saying, "You

pussy. You couldn't arrest an old lady. You are just a little chicken shit. I am leaving and you can't stop me."

King: Are these the exact words?

Miller: Oh yes. I remember that because it looked like it was going to be real trouble. The guy at the SUV had already opened the driver's door. This is when he reached in and came out with a giant knife. He was waving it around saying, "come on you pussy." I can't remember all that was said but I know he was cussing.

King: I show you a photo of James Hurst. Can you identify him?

Miller: Yes, that's the guy that got shot.

King: I show you a photo of Ben Griffin. Can you identify him?

Miller: Yes, that's the shooter.

King: Please continue.

Miller: Well after the guy was waving the knife, this Griffin fellow walked over to a car and it beeped like it had been unlocked. He opened the passenger door, leaned in, and came out with a pistol. At that point, I ducked behind my car. I heard Miller yelling and cussing. When I looked up, this Griffin guy had walked away from his car towards Hurst.

King: What was the lighting in the parking lot?

Miller: It was still light. The parking lot lights had not yet come on. I don't think it

gets dark until 9:00 or so.

King: Please continue.

Miller: The shooter started yelling, “You can’t cut me and get away with it.” That is when I noticed he had blood on his left arm. Griffin said, “You are going to pay for this.” The man by the SUV started laughing. I remember he said something about having sex with some woman. This really set Griffin off. Griffin began yelling and cussing. Hurst was just swinging the big knife around and around saying he was leaving. Griffin said, “No you’re not.” At that point, I saw him raise his gun in his right hand, pull the hammer back, and bang. I turned and looked at Hurst who was behind his SUV. He staggered back a few steps, looked down at his chest, and fell over on his back. I don’t know where the knife was. About that time a police car pulled into the lot. Griffin threw the gun down and raised his hands.

King: Are you sure you could see everything?

Miller: I told you all I know. All this happened so fast, and I was really scared. You are not going to arrest me, are you?

King: Thank you for staying and telling us what happened. A lot of people didn’t want to cooperate.

Miller: I hope he pleads guilty because I don’t want to testify.

Atlanta Police Department
Interview of Defendant Ben Griffin
Conducted by Det. A. T. King
August 5, 2017 at 00:30

King: Mr. Griffin, I advised you of your right to an attorney and you have waived your *Miranda* warnings and chose to talk to me. You understand anything you say may be used against you in a court of law?

Griffin: Yes, I understand and waive my rights. I want to tell you what really happened. I shot James in self-defense.

King: I will get to that later. Tell me about yourself.

Griffin: I'm a native Atlantan. I was raised in Midtown. I went to Grady High School with James. We played football together. I was a left guard and he was a right guard. We tolerated each other until we had a falling out over my girlfriend, Molly McGuire. Molly and I had a very close relationship and James started spreading lies about me on Facebook, which led to my break-up with Molly. Since that time, we have not liked each other. We went to different colleges, James to Alabama and me to Florida State. During that time, we would occasionally run into each other at parties. James was always shooting off his mouth about Ala-damn-bama football. James was what you would call a bully. I just ignored him.

King: Isn't it true that James started dating Molly McGuire recently and that made you angry.

Griffin: Absolutely not. I was over her. I admit she is one good-looking woman but I have moved on. I just blew James off when he tried to bring her name up around me.

King: Please continue.

Griffin: I majored in Real Estate at Florida State and started working at Caldwell Real Estate. Now I have a small firm called Value Real Estate. We do real estate appraisals. My business is doing very well. I have three employees.

King: Are you married?

Griffin: No and I'm not dating anyone.

King: Have you tried to contact Molly McGuire in the last few months?

Griffin: I did hear she got a divorce from the rich slug she married so I might have talked to her several times. We are just friends.

King: Have you ever had trouble with the law before?

Griffin: No I have never been in trouble except for an occasional traffic ticket.

King: Isn't it true that the police were called several months ago when you got into a physical fight with James Hurst at the Blue Grotto Lounge?

Griffin: Yes, but I wasn't arrested. It started when James got in my face about the big game at the start of the upcoming season on September 2nd between Alabama and Florida State. James was going on about how Alabama was going to whip our ass. He got mad and hit me in the nose and I let him have it. I knocked one of his

teeth out. The police broke it up but that's all. James did say he was going to get me and I'd better watch out.

King: Did you tell the police about these alleged threats?

Griffin: No, I just wanted him to stay away from me.

King: Okay. Let's talk about what happened last night.

Griffin: I went to the Grotto last night because they have a beach party happy hour. I got there around 6:00 and listened to the music. I went to the bar to get a beer when James comes up and slaps me on the back and starts talking trash about how Florida State sucks. Then he started talking about Molly and how cute she was. I got a beer from Morgan and went back to listen to the music. James follows me like a puppy nipping at your feet. Pick, pick, pick. That's James. He was a big jerk. Nobody liked him. I knew his business was bust because he couldn't get along with anyone. He was a complete asshole.

King: Tell me about what happened later on at the bar.

Griffin: I was at the bar getting another beer talking to some guy about the racecar driver Dale Earnhart. James was standing there, butts in, and says Bill Elliott, "Awesome Bill from Dawsonville," was the greatest driver. We started shouting at each other. I can't exactly remember what I said but we argued and I pushed him. He left. Several minutes later he's back arguing about something else. He pushes me and I hit him in the stomach. The next thing I know, he has slashed me with a

knife on my left shoulder. He cut me real bad. I had to have fifteen stitches.

King: Is it true you refused EMT treatment at the scene until police took a picture of your arm? Was that to help your case of self-defense?

Griffin: Hell yes, that picture shows that James attacked me first. I was not armed and he could have killed me.

King: So what happened next?

Griffin: Hurst said, "I told you I'd get you" and took off running out the door like the coward he was. Morgan was yelling for me to stop.

King: Why did you follow him outside?

Griffin: I didn't want him to get away. I was attacked. I have a right to arrest him and turn him over to the police. I saw it on CSI New Orleans.

King: Yes, but you say you weren't armed. What did you intend to do?

Griffin: I was going to keep him talking until the police arrived.

King: Well it didn't go down like that did it?

Griffin: I'm sorry for what happened but I had to defend myself. That son-of-a-bitch had it coming.

King: What do you mean by had it coming?

Griffin: He would have killed me. I could see it in his eyes. He's hated me for years.

King: What did you say to James?

Griffin: I don't remember exactly. I do remember he was at the door of his truck. I told him not to leave; the police were coming. He laughed, said "Go to hell," then he reached in his truck and pulled out a freaking bayonet.

King: Did he say anything?

Griffin: Just that he wasn't staying. He was cussing and yelling and waving that damn bayonet around. He walked to the back of his SUV. I thought he was going to seriously hurt me. That's why I went and got my gun.

King: Do you have a permit for this pistol?

Griffin: No because I just keep it in the glove compartment of my car. I showed James that I was armed and he needed to lay down the bayonet. He said he was going to carve me up like a Thanksgiving turkey. He started to advance on me so I fired my gun.

King: What do you mean by advance?

Griffin: He started walking toward me, making threatening gestures with the knife. I don't remember; it happened so fast. I just shot the gun. I really wasn't aiming. I thought I had missed him. Then he fell over.

King: Did you intend to shoot James?

Griffin: I did but I was really trying to wound him, not kill him. I'm sorry he's dead. My life is ruined.

King: Maybe, but James no longer has one.

Atlanta Police Department
Interview of Morgan Burleson
Interview conducted by Det. A. T. King
August 4, 2017 at 22:30

King: Are you the bartender at the Blue Grotto Lounge?

Burleson: Yes, I've worked there for about three years. Before that I was the bartender at the Piedmont Driving Club. A definite change of scenery.

King: Why did you leave the PDC?

Burleson: I make a lot more money in tips at the Blue Grotto. It's probably because I mix a really strong drink. People get their money's worth.

King: Did you know James Hurst and Ben Griffin?

Burleson: Yes. They were both regulars in the bar. They would come in several times a week, especially Happy Hour on Fridays. During the summer, it's Beach Party Happy Hour from 6:00 to 8:00. Drinks are half price and we have a band. Tonight we had Rocking Louie and the Mammer Jammers, a Carolina Beach group. A lot of people come in to shag dance. It's a popular dance on the Strand on Myrtle Beach. The Grotto is a very diverse bar. You have rich lawyers, bikers, truck drivers, school teachers, whatever.

King: Okay. Do you know when James and Ben came in tonight.

Burleson: I can guarantee that they did not come in together. They hate each other's guts.

King: What do you know about their relationship?

Burleson: Only what they told me over drinks. I don't know them personally. It seems their bad blood began in high school. James said it started over a girl, Molly. Apparently, she was Ben's girlfriend. To hear Ben talk, he really loved her. I know James went to the University of Alabama and majored in construction. Ben went to Florida State and was in real estate. They were always arguing about who was better in football, Alabama or Florida State. It was the SEC versus the ACC. They also liked stock car racing and would argue about that all the time. About six months ago, James started dating this Molly woman who was recently divorced. I think this really made Ben mad. James was a big mouth, especially when he had a few drinks in him. He was a nice guy but could be real pushy. Ben was more low key. It was clear to me from my conversations with James that he was extremely jealous of Ben. Ben was very successful. He was a nice-looking guy who had a lot going for him. James, on the other hand, wasn't doing so hot. I think his home remodeling business was failing. Every chance James had to give Ben grief, he took it. Tonight was no exception. I think they both came in around 6:00 p.m. at the start of Happy Hour. I don't recall what they were drinking or if I served them. James usually has tequila and Ben has beer. Around 7:00, James asked me to get him a margarita. He appeared to be drunk. I asked him if he had driven to the bar. He said no and that he was taking Uber. Otherwise I wouldn't have served him.

King: Did you see them arguing tonight?

Burleson: Yes, around 7:00 they got into it at the bar.

King: Tell me what you saw and heard.

Burleson: Ben pushed James out of the way because James was in his face saying that Bama was going to kick the Semi-holes ass. James had his back to me. Ben started cussing a blue streak calling him an asshole, and so forth. James backed off and went down the bar to where some bikers we parked. These guys I would not mess with. They ran him off quick.

King: I assume you were waiting on a lot of customers during this time.

Burleson: Yes, it was a busy night but I was keeping an eye on James and Ben because I had called the police on another occasion when they had gotten into a physical fight at the bar.

King: When was this fight?

Burleson: About two months ago. Police broke it up, calmed them down, and let them go. Neither one of them got arrested because they didn't want to press charges.

King: Continue.

Burleson: After getting run off by the bikers, James came back to the bar and started pestering Ben. This time the argument was about the best stock car driver, Dale Earnhart or Bill Elliott. I told them to quiet down or they were out of the club and I was calling the police. A few minutes later, they started arguing again. I

heard Molly's name, then Ben pushed James, and the next thing I know James comes out with something in his hand and cuts Ben on his left arm. Ben backs up yelling and James takes off out the door. Ben starts after him. I tell him, "No, I'm calling the police. Let them handle this." He says no way. Ben said, "he's getting away and I'm going to stop him." He said he was going to make a citizen's arrest. I pleaded with him to leave James alone. He was drunk and dangerous. Ben turned and went out the door yelling, "I'm going to get him. That bastard can't get away with this." I had dialed 911 and the police were coming. A short time later, I heard a gunshot. I ran outside. Ben had his hands up and the police were arresting him. I saw James lying on the ground behind his Tahoe.

King: Did you see anyone else in the parking lot?

Burleson: No.

King: Did Ben say anything?

Burleson: Yes, he said he shot that son of a bitch in self-defense. He was coming after him with a knife.

King: Did you walk over to where James was?

Burleson: Yes, I could tell he was dead. He was shot right through the heart. There was a big bayonet on the ground next to him.

King: What do you think happened?

Burleson: James started this fight as usual. It got out of hand and now he's dead. If

Ben said he shot him in self-defense, I believe him.

Jury Charges

Presumption Of Innocence; Burden Of Proof; Reasonable Doubt

The defendant is presumed to be innocent until proven guilty. The defendant enters upon the trial of the case with a presumption of innocence in his/her favor. This presumption remains with the defendant until it is overcome by the State with evidence that is sufficient to convince you beyond a reasonable doubt that the defendant is guilty of the offense charged. No person shall be convicted of any crime unless and until each element of the crime as charged is proven beyond a reasonable doubt.

The burden of proof rests upon the State to prove every material allegation of the indictment and every essential element of the crime charged beyond a reasonable doubt. There is no burden of proof upon the defendant whatsoever, and the burden never shifts to the defendant to introduce evidence or to prove innocence. (When a defense-except insanity-is raised by the evidence, the burden is on the State to negate or disprove it beyond a reasonable doubt.)

However, the State is not required to prove the guilt of the accused beyond all doubt or to a mathematical certainty. A reasonable doubt means just what it says. A reasonable doubt is a doubt of a fair-minded, impartial juror honestly seeking the truth. A reasonable doubt is a doubt based upon common sense and reason. It does not mean a vague or arbitrary doubt but is a doubt for which a reason can be given, arising from a consideration of the evidence, a lack of evidence, or a conflict in the evidence.

After giving consideration to all of the facts and circumstances of this case, if your minds are wavering, unsettled, or unsatisfied, then that is a doubt of the law, and you should acquit the defendant. But, if that doubt does not exist in your minds as to the guilt of the accused, then you would be authorized to convict the defendant.

If the State fails to prove the defendant's guilt beyond a reasonable doubt, it would be your duty to acquit the defendant.

Credibility Of Witnesses

You must determine the credibility or believability of the witnesses. It is for you to determine which witness or witnesses you believe or do not believe, if there are some whom you do not believe.

In deciding credibility, you may consider all of the facts and circumstances of the case, the manner in which the witnesses testify, their intelligence, their interest or lack of interest in the case, their means and opportunity for knowing the facts about which they testify, the nature of the facts about which they testify, the probability or improbability of their testimony, and the occurrences about which they testify. You may also consider their personal credibility insofar as it may have been shown in your presence and by the evidence.

Credibility of Statement

You should consider with great care and caution the evidence of any statement made by the defendant. The jury may believe any statement in whole or in part, believing that which you find to be true and rejecting that which you find to be untrue. Upon you alone rests the duty to apply the general rules for testing the believability of witnesses and to decide what weight should be given to all or any part of such evidence.

Intent

Intent is an essential element of any crime and must be proved by the State beyond a reasonable doubt.

Intent may be shown in many ways, provided you, the jury, believe that it existed from the proven facts before you. It may be inferred from the proven circumstances or by acts and conduct, or it may be, in your discretion, inferred when it is the natural and necessary consequence of the act. Whether or not you draw such an inference is a matter solely within your discretion.

Criminal intent does not mean an intention to violate the law or to violate a penal statute but means simply the intention to commit the act that is prohibited by a statute.

No Presumption Of Criminal Intent

This defendant will not be presumed to have acted with criminal intent, but you may find such intention (or the absence of it) upon a consideration of words, conduct, demeanor, motive, and other circumstances connected with the act for which the accused is being prosecuted.

Evidence; Generally

Evidence is the means by which any fact that is put in issue is established or disproved. Evidence includes all of the testimony of the witnesses and the exhibits admitted during the trial. It also includes any stipulations, which are facts agreed to by the lawyers. It does not include the indictment, the plea of not guilty, opening statements or closing arguments by the lawyers, or the questions asked by the lawyers.

Direct And Circumstantial Evidence

Evidence may be either direct or circumstantial or both. Direct evidence is evidence that points immediately to the question at issue. Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. Circumstantial evidence is the proof of facts or circumstances, by direct evidence, from which you may infer other related or connected facts that are reasonable and justified in the light of your experience.

Witness, Impeached by

To impeach a witness is to prove that the witness is unworthy of belief. A witness may be impeached by (*charge only those that apply*):

- a) disproving the facts to which the witness testified,
- b) proof of general bad character,
- c) proof that the witness has been convicted of (a crime of moral turpitude. A crime of moral turpitude is defined as) (a felony) (an infamous crime) (an offense that is wrong in and of itself) (a crime disclosing a depraved mind and a complete disregard for the customary rules of right and duty between persons),
- d) proof of contradictory statements, previously made by the witness about matters relevant to the witness's testimony and to the case

(If it is sought to impeach a witness by "b," "c," or "d" above, proof of the general good character of the witness may be shown. The effect of the evidence is to be determined by the jury.)

If any attempt has been made in this case to impeach any witness by proof of contradictory statements previously made, you must determine from the evidence

- a) whether any such statements were made,
- b) whether such statements were contradictory to any statements the witness made on the witness stand, and
- c) whether such statements were relevant to the witness's testimony and to the case.

If you find that a witness has been successfully impeached by proof of previous, contradictory statements, you may disregard that testimony, unless it is supported by other creditable testimony. The credit to be given to the balance of the testimony of the witness would be for you to determine.

Impeachment (Witness)

It is for you to determine whether or not a witness has been impeached and to determine the credibility of such witness and the weight the witness's testimony shall receive in the consideration of the case.

Prior Consistent Statement; Substantive Evidence

Should you find that any witness has made any other statement on the witness stand consistent with another witness's testimony from the witness stand and that such prior consistent

statement is material to the case and the witness's testimony then you are authorized to consider that other statement as substantive evidence.

Malice Murder; Defined

A person commits murder when that person unlawfully and with malice aforethought, either express or implied, causes the death of another human being. Express malice is that deliberate intention unlawfully to take away the life of another human being, which is shown by external circumstances capable of proof. Malice may, but need not, be implied when no considerable provocation appears and when all of the circumstances of the killing show an abandoned and malignant heart. It is for the jury to decide whether or not the facts and circumstances of this case show malice.

To constitute murder, the homicide must have been committed with malice. Legal malice is not necessarily ill will or hatred, but it is the unlawful intention to kill without justification, excuse, or mitigation. If a killing is done with malice, no matter how short a time the malicious intent may have existed, such killing constitutes murder.

Georgia law does not require premeditation, and no particular length of time is required for malice to be generated in the mind of a person. It may be formed in a moment, and instantly a mortal wound may be inflicted. Yet, if malice is in the mind of the accused at the time of the doing of the act or killing and moves the accused to do it, such is sufficient to constitute the homicide as murder.

Voluntary Manslaughter; Statutory Definition

A person commits voluntary manslaughter when that person causes the death of another human being under circumstances that would otherwise be murder if that person acts solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person. (If there should have been an interval between the provocation and the killing sufficient for the voice of reason and humanity to be heard, which the jury in all cases shall decide, the killing may be attributed to revenge and be punished as for murder.)

In that connection, I charge you that the burden of proof is upon the State to prove beyond a reasonable doubt that the offense is not so mitigated.

Character of Defendant; Good

When evidence of the good character of the defendant is offered, the jury has the duty to take that testimony, with all other evidence in the case, in determining the guilt or innocence of the defendant. Good character is a positive, substantive fact and may be sufficient to produce in the minds of a jury a reasonable doubt about the guilt of the defendant. You have the duty to take any evidence of general good character with all of the other evidence in the case, and, if in doing so, you should entertain a reasonable doubt about the guilt of the defendant, it would be your

duty to acquit. However, if you should believe that the defendant is guilty beyond a reasonable doubt, you would be authorized to convict, despite the evidence about general good character.

Justification; Generally

The fact that a person's conduct is justified is a defense to prosecution for any crime based on that conduct. The defense of justification can be claimed

- a) when the person's conduct is justified under O.C.G.A. §§16-3-21, 16-3-23, 16-3-24, 16-3-25, 16-3-26;
- b) when the person's conduct is in reasonable fulfillment of his/her duties as a government officer or employee;
- c) when the person's conduct is the reasonable discipline of a minor by his/her parent or a person in loco parentis;
- d) when the person's conduct is reasonable and is performed in the course of making a lawful arrest;
- e) when the person's conduct is justified for any other reason under the laws of this state; or
- f) in all other instances based on similar reason and justice as those enumerated in this article.

Justification: Use of Force in Defense of Self or Others

A person is justified in threatening or using force against another person when, and to the extent that, he/she reasonably believes that such threat or force is necessary to defend himself/herself or a third person against the other's imminent use of unlawful force. A person is justified in using force that is intended or likely to cause death or great bodily harm only if that person reasonably believes that such force is necessary to prevent death or great bodily injury to himself/herself or a third person or to prevent the commission of a forcible felony.

The State has the burden of proving beyond a reasonable doubt that the defendant was not justified.

A person is not justified in using force, if that person:

- a) initially provokes the use of force against himself/herself with the intent to use such force as an excuse to inflict bodily harm upon the assailant; or
- b) is attempting to commit, is committing, or is fleeing after the commission or attempted commission of a felony (*define arguable felony*);
- c) or was the aggressor or was engaged in a combat by agreement, unless the person withdraws from the encounter and effectively communicates his/her intent to withdraw to the other person, and the other person still continues or threatens to continue the use of unlawful force.

Forcible Felony, Definition

A forcible felony means any felony that involves the use or threat of physical force or violence against any person.

Reasonable Beliefs; Doctrine of

In applying the law of self-defense, a defendant is justified to kill (*use force against*) another person in defense of self or others. The standard is whether the circumstances were such that they would excite (*not merely the fears of the defendant but*) the fears of a reasonable person. For the killing (*use of force*) to be justified under the law, the accused must have really acted under the influence of these fears and not in a spirit of revenge.

What the facts are in this case is a matter solely for you, the jury, to determine under all of the facts and circumstances of this case.

Retreat (No Duty to Retreat to Be Justified)

One who is not the aggressor is not required to retreat before being justified in using such force as is necessary for personal defense or in using force that is likely to cause death or great bodily harm if one reasonably believes such force is necessary to prevent death or great bodily injury to himself/herself or a third person or to prevent the commission of a forcible felony.

Murder; Mutual Combat

If you find from the evidence that there was between the defendant and the deceased a mutual combat (that is, a mutual intent or mutual agreement to fight), then you will consider the rules of law concerning mutual combat and apply them to the evidence. But if you find from the evidence that there was no mutual combat, you will not consider this law.

Mutual combat occurs when there is combat between two persons as a result of a sudden quarrel or such circumstances as indicate a purpose, willingness, and intent on the part of both to engage mutually in a fight. (It is not essential to constitute mutual combat that blows be struck or shots be fired.) There must be a mutual intent to fight or engage in combat. The existence of intent to engage in mutual combat may be established by proof of acts and conduct, as well as by proof of an express agreement.

If you find that there was a mutual intention on the part of both the deceased and the defendant to enter into a fight or mutual combat and that under these circumstances the defendant killed the deceased, then ordinarily such killing would be voluntary manslaughter, regardless of which party (struck the first blow) (fired the first shot).

Under some circumstances, such killing may be murder, or it may be justifiable.

If you find that the killing was done with malice, express or implied, and with a felonious intent to take the life of the person killed, and the killing was accomplished as a result of mutual

combat, such killing would be murder.

The killing as a result of mutual combat may be justifiable, and you may find it to be so if it appears that the defendant reasonably believed at the time of the killing that the force the defendant used was necessary to prevent death or great bodily injury to the defendant (or a third person) or to prevent the commission of a forcible felony, and if it further appears that the deceased was the aggressor. If it appears that the deceased was not the aggressor but that the defendant was the aggressor, then in order for the killing to be justified, if such killing was the result of mutual combat, it must further appear that the defendant withdrew from the encounter and effectively communicated to the deceased the intent to do so, and the deceased, notwithstanding, continued or threatened to continue the use of unlawful force.

If you should believe from all of the evidence in this case that there was no mutual intent to fight or mutual combat between the defendant and the deceased, then you may determine whether or not the deceased used words, threats, menaces, or contemptuous gestures toward and against the defendant and, if so, whether or not they were sufficient to cause the defendant to reasonably believe that the force the defendant used, if any, was necessary to prevent death or great bodily injury to the defendant (or a third person) or to prevent the commission of a forcible felony. Such words, threats, menaces, or contemptuous gestures may or may not be sufficient to cause such reasonable belief on the part of the defendant, it being solely a question for you, the jury, to determine from a consideration of the evidence in this case.

Limiting Instruction

Sometimes evidence is admitted (for a limited purpose) or (against some parties and not others) or (for some counts and not others). Such evidence may be considered by the jury (for the sole issue or purpose) (against that/those party(ies)) (only for the counts) for which the evidence is limited and not for any other purpose.

Unanimous Verdict

Whatever your verdict is, it must be unanimous (that is, agreed by all). The verdict must be in writing and signed by one of you members as foreperson, dated, and returned to be published in open court.