



State, The (Columbia, SC)

1995-10-26

Section: METRO/REGION

Edition: FINAL

Page: B1

## WITNESS: VICTIM WAS SHOT IN BACK DEFENSE GOES AFTER CONFLICTING ACCOUNTS

*Lisa Greene, Staff Writer*

Floyd Brown shot Earnest Dunlap in the back, a former Eau Claire High School student who saw the shooting testified Wednesday.

Missatee Dean's testimony came just a few hours after Brown's lawyer, **Jack Swerling**, towered over his slight client and told jurors that the teen shot Dunlap in self-defense. Brown's murder trial began Wednesday and could end today.

The shooting, which took place between classes in a school hallway in January 1994, shocked the city and ushered fear and hand-held metal detectors into Richland District 1 schools.

On cross-examination, **Swerling** brought out inconsistencies in Dean's story. She had told police earlier that Dunlap turned just before Brown fired and was shot in the chest.

Dean said she was walking toward her history class and had just exchanged greetings with Dunlap when she heard gunshots.

"When I heard the gunshots, I looked at Earnest, then I looked at Floyd," she said.

She was about six feet away, across the hall, frozen in fear. She said she heard Brown speak.

"Floyd said, 'You shouldn't have did it,' " she said.

Then, Dean said, Dunlap grabbed his back, called for help, and turned halfway around. She said Brown fired twice more, then walked away. Dunlap crumpled to the floor.

"He told me that it hurt," she said. She covered her face and began to cry.

Fifth Circuit Assistant Solicitor Knox McMahon had Dean direct him and a police investigator as they re-enacted Brown and Dunlap's movements and distance from each other for the jury.

**Swerling** followed McMahon, questioning Dean's original statement to the police.

In that statement, Dean said she saw Brown take out the gun -- something she said Wednesday she didn't see. She also described a different order of events: that she heard Brown call Dunlap's name. Then, she said, Dunlap turned, Brown fired, and Dunlap grabbed

his chest.

Another student and a teacher also gave less detailed descriptions of the shooting Wednesday. The other student said he spoke to Dunlap just before the shooting and saw him carrying a book. He said he heard two shots and saw Brown as he fired two more.

Jurors also heard from retired police officer Harold Chambers, who arrested Brown at his home after the shooting. Chambers said Brown immediately confessed.

"He made the statement, 'I don't know why I did it,'" Chambers said. "That's when I advised him of his rights."

During opening statements, **Swerling** said Dunlap's death was a tragedy. But, he said, "every single person in this courtroom is capable of taking a life" -- in war, to save a child, or in self-defense.

**Swerling** said Brown "acted reasonably" based on Dunlap's appearance, his fear of Dunlap and their "prior difficulties." He didn't detail what those were, but the two fought the day before the shooting, and Brown and others have said Dunlap pulled a gun.

As he spoke to the jury, **Swerling**, who stands well over 6 feet, walked over to his client, asked him to stand, and stood next to him, his height emphasizing Brown's 5 feet, 7 inches and slender build.

"Just like Earnest Dunlap had a right to go to school that day . . . this young man had a right to go to school that day and not worry about getting killed," he said.

In his opening statement, McMahon told jurors that Dunlap had no idea that he would be shot in the "protective and educational environment" of his school.

"Little did he know that when that class bell rang, it would be the last time he heard it," he said. "Two plus two equals four, but to Floyd Brown, it equaled a .22-caliber pistol."

Lisa Greene covers lawyers and the state judicial system. Contact her at 771-8659 or by fax at 771-8430.

Defense attorney **Jack Swerling**, left, asks his client, murder suspect Floyd Eugene Brown, to stand for the jury Wednesday during opening arguments. **Swerling** argued that the diminutive Brown was threatened by the deceased, Ernest Dunlap, and shot him in self-defense. PEGGY PEATTIE/THE STATE

**REAL Cities**

Visit other Real Cities sites

News | Business | Sports | Entertainment | Living | Shop Local | Classifieds | Jobs | Cars | Real Estate

About TheState.com | About the Real Cities Network | About the McClatchy Company  
Terms of Use | Privacy Policy | Copyright

**SUBSCRIBE TODAY**  
The State

Subscriber Services

**The State.com**  
SOUTH CAROLINA'S HOME PAGE

TheState.com | News | Business | Sports | Entertainment | Living | Classifieds | Jobs | Cars | Homes |

State, The (Columbia, SC)

1995-10-27

Section: FRONT

Edition: FINAL

Page: A1

## 'I TOLD HIM TO . . . LEAVE ME ALONE' SHOOTING SUSPECT: 'I WAS SCARED' THREATS SPURRED EAU CLAIRE GUNFIRE, BROWN TELLS COURT

*Lisa Greene, Staff Writer*

Floyd Brown never wanted to shoot Earnest Dunlap. Fear, he said, made him do it.

Brown told a Richland County jury Thursday that Dunlap threatened to kill him the day before. Before he shot, he said, Dunlap was coming toward him in a "fast, aggressive" way, even after Brown pulled out a gun. "He was smiling, like, and he kept coming," Brown said. "He said, 'Oh, you're going to shoot me,' but he was still coming. . . . I was scared."

Brown gave a sharply different account of the January 1994 shooting at Eau Claire High School than a student did Wednesday. She testified that Brown shot Dunlap in the back.

But Brown never said that he saw Dunlap with a gun that morning. And on cross-examination, he told 5th Circuit Assistant Solicitor Knox McMahon that Dunlap was a few feet away when he began to shoot.

Jurors will begin debating whether Dunlap's killing was murder or self-defense after they hear closing arguments, scheduled for 1 p.m. today. It's also possible that Circuit Judge Joseph Wilson could instruct the jury to consider voluntary manslaughter, a lesser homicide charge.

On the stand, Brown described living in a world where guns and threats are commonplace. The slender teen said that he tried to stay out of trouble, but that he had been beaten up in the past, and got a gun for self-protection.

Brown brought it to school that day because he was afraid Dunlap would kill him, he said. The day before, Brown and other witnesses said, Dunlap pulled a gun and threatened to kill him. Dunlap made the threat after getting in a fight with one of Brown's friends.

Brown was in the hallway walking to his second class, he said, when he saw Dunlap coming toward him.

"I was scared he might shoot me or whatever," he said.

So he moved toward the wall. But, he said, Dunlap crossed the hall and "cut me off."

"I told him to go ahead, leave me alone," Brown said.

But when Dunlap kept coming, Brown got out his gun, but he said Dunlap didn't stop.

"I just felt scared," he said. "I just shot."

'I felt bad.' Brown was calm, but at times seemed almost dazed as he described the shooting. "I felt bad," he said, shaking his head. "I felt bad that that had happened."

When McMahon questioned Brown, he attacked his story. He asked Brown to re-enact what happened, making him hold the gun he shot Dunlap with as he did so.

McMahon asked Brown why he didn't return to the classroom he came from, several feet away, when he saw Dunlap.

Or, he asked, why not run? He also asked Brown why he didn't tell police all about his past relationship with Dunlap.

Brown said he knew Dunlap carried a gun sometimes -- he'd been kicked out of school for that a year earlier. And he and two other witnesses, both Brown's friends, testified that Dunlap pulled a gun on Brown the day before.

Brown and his friends said Dunlap slapped Brown in the face and threatened him with the gun after Dunlap and one of the friends got in a fight. They all said Brown wasn't involved in the fight, but that Dunlap got angry with him afterward.

At times Thursday, the truth was a moving target. In addition to Brown, others on the stand included:

Two prosecution witnesses who said that they saw the fight, and that Dunlap never had a gun. But Brown's lawyer, **Jack Swerling**, implied on cross-examination that one witness had told **Swerling's** investigator that she did see the gun.

And the other witness contradicted everyone else's testimony at key points, saying that he saw Brown attack Dunlap. Everyone else said Brown was not involved in the fight.

A pathologist said Dunlap was shot in the chest and the back, but there was no way to tell which shot was fired first.

However, he also said that Dunlap was shot in the right shoulder. Student Missatee Dean said Wednesday that Dunlap was shot in the back, then turned left toward Brown -- with his right shoulder away from Brown.

An assistant principal and a former police officer both said Dunlap had a bad reputation in the community.

That bolstered Brown's statement about seeing Dunlap arrested on New Year's Eve 1993 for disorderly conduct and interfering with police. Brown said he saw Dunlap approach a police officer.

"He said, 'Take your badge off so I can kick your butt,'" Brown said. "I felt like he just didn't have respect for authority or anybody."

Brown also said two people told him after the fight that Dunlap planned to kill him.

Both sides left some questions unanswered when they concluded Thursday. Neither Tyrone Dunlap, Earnest's brother, nor his former girlfriend ever testified, although several witnesses said they saw the fight. Brown and a friend testified that the girlfriend brought Dunlap the gun.

And Dean was the only person who testified she saw the whole shooting.

Lisa Greene covers lawyers and the state judicial system. Contact her at 771-8659 or by fax at 771-8430.

1. Murder defendant Floyd Brown, left, takes a moment to reflect before his trial resumed Thursday.

2. Floyd Brown demonstrates in court Thursday how he shot Earnest Dunlap in a hallway of Eau Claire High School.

## BOYZELL HOSEY / THE STATE



Visit other Real Cities sites

[News](#) | [Business](#) | [Sports](#) | [Entertainment](#) | [Living](#) | [Shop Local](#) | [Classifieds](#) | [Jobs](#) | [Cars](#) | [Real Estate](#)

[About TheState.com](#) | [About the Real Cities Network](#) | [About the McClatchy Company](#)  
[Terms of Use](#) | [Privacy Policy](#) | [Copyright](#)



TheState.com | News | Business | Sports | Entertainment | Living | Classifieds | Jobs | Cars | Homes |

State, The (Columbia, SC)

1995-10-28

Section: FRONT

Edition: FINAL

Page: A1

## TEEN NOT GUILTY IN KILLING RICHLAND COUNTY JURY ACCEPTS DEFENSE'S STANCE THAT FEAR LED TO SHOOTING

*Lisa Greene, Staff Writer*

Floyd Brown sat quietly Friday night, reading his Bible as he waited for a Richland County jury to decide his fate.

After two hours, his prayers were answered. The jury found Brown, 19, not guilty of murder for killing Earnest Dunlap in January 1994 -- even though he shot an unarmed teen four times in a crowded hallway at Eau Claire High School.

Jurors accepted the defense's picture of Brown as a vulnerable young man threatened by a deadly bully, rejecting prosecutors' portrait of a cold-blooded teen bent on using bullets to repair his injured pride.

Prosecutors were shocked. The jury could have convicted Brown of murder or a lesser homicide charge, voluntary manslaughter.

"I'm pretty surprised," 5th Circuit Assistant Solicitor Knox McMahon said. "Obviously the jury saw the case much differently than we did in law enforcement."

McMahon said he "would be concerned" about what message the verdict would send. But Brown's father, also named Floyd, said his son's acquittal does not lessen the problem of teens turning school yards into battlegrounds.

"My heart and our prayers go out to the family because they took a loss that none of us can replace," he said.

Defense lawyer **Jack Swerling** said he doubts teen-agers will look at the verdict and decide it's OK to be armed.

"People who have guns out there can find themselves dead," he said.

**Swerling** said he hopes the trial may influence adults to spend more time working against teen violence. But, he said, social change wasn't the jury's job.

"What the jury needed to do was not send a message, but look at the facts of the case," he said.

The elder Brown said he did not condone his son's decision to take a gun to school. But, he said, as he listened to testimony, he began to understand his son's fear.

"It scared my son to death," he said. "I just realized this week just how scared he was."

The younger Brown testified, as did two of his friends, that Dunlap pulled a gun on him the day before the shooting and threatened to kill him. In the hall that day, he said, Dunlap crossed the hall toward him in an aggressive way. Brown said Dunlap didn't stop even after he pulled the gun.

But Brown also said he began firing when Dunlap was a few feet away, and never said Dunlap moved to strike him, or that he saw a gun.

In the end, McMahon said, it may have been Dunlap's reputation that hurt the case. Dunlap had been expelled for bringing a gun to school the year before, and an assistant principal and a former police officer were among those who said he was a violent troublemaker.

"That's a great defense -- 'I killed him because he deserved it,'" McMahon said. "Regardless of what you think about Earnest Dunlap, he's not here to defend himself. He certainly didn't get the due process rights that we gave Mr. Brown."

During closing arguments Friday, **Swerling** told jurors that Brown was a good kid, a student who chatted with teachers about his future hopes and was known for walking away from fights.

"We don't have to walk in the shoes of any of the 16-, 17-, 18-year-olds with everybody walking around with guns," **Swerling** said. "We don't have to walk in fear, like they do."

But McMahon painted Brown as a cool killer, one who prepared to shoot Dunlap by test-firing his gun the night before. One whose story of fright just didn't make sense -- especially in the middle of a crowded school hallway.

The lawyers reviewed the events leading up to the shooting, each pointing to different incidents.

The day before the shooting, Dunlap fought with Brown's friends, according to testimony. After the fight, Dunlap blamed it on Brown and slapped him in the face. Brown and his friends say Dunlap pulled a gun on Brown as well; two prosecution witnesses say there was no gun.

**Swerling** said that if Brown wanted to kill Dunlap he would have done it then, not during school in front of dozens of witnesses. And he emphasized that Brown took no part in the fight.

"Who was the aggressor, ladies and gentlemen?" he said. "Who was the provoker, looking for the fight?"

But McMahon noted that it was Dunlap who was hit on the head with a beer bottle by one of Brown's friends. He said that if Brown had really been scared, he wouldn't have ridden back by Dunlap's apartment complex. Also, he said, Brown went to get his gun that night and even test-fired it to make sure it worked.

The day of the shooting, McMahon stressed, Brown took the gun to school. Part of the legal

test for self-defense is not contributing to the situation, McMahon told jurors.

“How can someone not be at fault in bringing a loaded gun to high school?” he said.

Both lawyers discussed the testimony of Missatee Dean, the only student who says she saw the shooting. She says she saw Brown shoot Dunlap in the back. Then, she said, Dunlap turned around to the left and Brown shot him in the chest.

**Swerling** said her story didn't add up. First, he said, Dean told police the day of the shooting that Brown shot Dunlap in the chest. And her testimony didn't make sense because one bullet hit Dunlap in the right shoulder -- the shoulder Dean says Dunlap was turning away from Brown.

But McMahon noted that Dean said Dunlap grabbed his back when the first shots were fired. That's when he turned his shoulder, McMahon said, and the bullet struck.

McMahon stressed that even if Brown's version were true, it would not justify the killing. He mentioned the class bell that rang just before the shooting, and quoted John Donne.

“That bell is still ringing, but it's ringing for justice,” he told jurors. “Ring the bell for justice. Hold him accountable for his conduct.”

It was the second time in a few weeks that a Richland County jury has acquitted a defendant in a high-profile case. Last month, a jury acquitted the man accused of shooting a Columbia police officer.

But McMahon said he didn't see a link between the two cases. The defendant in that case denied shooting the officer.

Brown will not be released from prison immediately because he is serving time for violating a federal gun law. But that law has been overturned, and **Swerling** said he hopes for a swift decision on Brown's appeal.

1. Defendant Floyd Brown, who had been charged in the death of a fellow Eau Claire teen, prays with his sister Makesha before the verdict is announced Friday.
2. Floyd Brown Sr. hugs defense attorney **Jack Swerling** as wife Annette looks on after the not-guilty verdict Friday.
3. Floyd Brown reads a Bible and prays before the announcement of Friday's verdict. Brown was found not guilty in the death of a fellow Eau Claire teen.

## BOYZELL HOSEY/THE STATE



News | Business | Sports | Entertainment | Living | Shop Local | Classifieds | Jobs | Cars | Real Estate  
 About TheState.com | About the Real Cities Network | About the McClatchy Company  
 Terms of Use | Privacy Policy | Copyright





State, The (Columbia, SC)

1995-11-01

Section: FRONT

Edition: FINAL

Page: A1

## BURDEN OF PROOF IS GETTING HEAVIER CHORUS OF 'NOT GUILTY' VERDICTS RINGING OUT IN S.C. COURTROOMS

*Lisa Greene, Staff Writer*

When a Richland County jury acquitted Floyd Brown of murder charges, it wasn't the first time in recent weeks prosecutors have been surprised by a not-guilty verdict.

From the Eau Claire High School shooting to robbery cases in Charleston, South Carolina prosecutors have seen several supposedly strong cases turn into acquittals -- all since the waning days of the O.J. Simpson trial. Some speculate that there's a connection -- that jurors now expect DNA testimony, fiber experts, scores of witnesses on every case.

"They're expecting more than you may ever have," said David Schwacke, 9th Circuit solicitor in Charleston. "What is it you need to convince jurors beyond a reasonable doubt? I don't know what that means anymore."

Others speculate that jurors are looking at police and prosecutors with a more skeptical eye.

"I don't doubt for one minute that we're under more intense scrutiny," said 5th Circuit Solicitor Barney Giese. "I think that's O.J.-related."

That's not to say that jurors in two of the state's largest counties are letting all, or even most, defendants walk.

Richland County juries have convicted several people during recent weeks, as have those in Charleston County. A Richland County man recently was convicted of raping a woman after-hours at a law office; Charleston County juries returned guilty verdicts in all three trials conducted there last week. And 11th Circuit Solicitor Donnie Myers said he has seen no change since the Simpson trial.

But other results, either just before or in the weeks after the Simpson verdict, have puzzled prosecutors -- although defense lawyers say defendants were acquitted simply because they were not guilty.

Among them:

The Brown case, in which Brown was acquitted of shooting another student at Eau Claire High School. Jurors contacted in that case have refused to discuss their verdict, but Brown said he shot Earnest Dunlap in self-defense after Dunlap threatened to kill him the day before.

A Richland County rape case in which prosecutors used DNA evidence to link the defendant to the assault at the victim's home. The defendant's lawyer said that the DNA evidence was flawed, and that the victim lied about the rape.

Earl Williams was acquitted of shooting former Columbia Police officer Myron Chambliss. Chambliss and another witness identified Williams as the shooter, but Williams said he was mistaken for another man.

In Charleston, recent not-guilty verdicts include:

A murder case in which the defendant claimed self-defense after fighting with the victim. Prosecutors admit the victim threw the first punch, but the defendant admitted bringing out a knife. Prosecutors also said blood evidence at the scene didn't match the defendant's version of events.

A robbery case in which two witnesses identified the suspect immediately after a police chase.

A jury deadlocked over a drug case after hearing two police officers testify they saw the defendant drop drugs.

Mixed signals. Schwacke said some jurors have given mixed signals about what evidence they believe. Some want DNA, while others dismiss it; some want witnesses, while others question them.

"I think juries now want to see DNA, fingerprints, audio tape," said Amie L. Clifford, an assistant solicitor in Charleston. "They don't have a real idea of reasonable doubt anymore. And juries aren't confined to the evidence. Now there's jury nullification."

Giese said he considered all three Richland cases to be strong ones -- although lawyers **Jack Swerling**, who represented Brown, and Bill Nettles, who represented Williams and the rape defendant, disagreed. Giese said he couldn't say that the Simpson case specifically affected those cases -- but he has to wonder.

"Just the fact that you have that much publicity and focus on our judicial system, it's going to have some effect on our community," he said.

**Swerling** said he doesn't see a link between his case and the Simpson trial. He pointed out that the facts were very different -- after all, Brown admitted to shooting Dunlap.

"We thought that the reaction to O.J. was going to be for jurors to be tougher on defendants," he said.

**Swerling** also noted that, although public opinion of the Simpson verdict split along racial lines, Brown was acquitted by a jury that was majority-white.

Nettles said Simpson hasn't made defense lawyers' job any easier. "But I think because of O.J., people realize the importance of good police work," he said.

It's too soon to say whether trial-conviction rates overall have gone down since the Simpson trial. But some lawyers believe it's part of a more permanent shift.

“Twenty years ago, a police officer saying, ‘The defendant said X to me,’ that was enough,” said former 5th Circuit Solicitor Dick Harpootlian. “Now you’ve got to corroborate it with DNA or other evidence, and even that’s subject to some skepticism.”

Myers said he thinks jurors have been less willing to convict for the past few years, ever since jury selection switched from registered voters to licensed drivers.

Harpootlian said people should look on the positive side. “Remember, our system is based on the belief that it’s better that 100 guilty people go free than that one innocent person be convicted.”

He paused. “I’d say so far this year, we’re meeting our quota.”

Lisa Greene covers lawyers and the state judicial system. Contact her at 771-8659 or by fax at 771-8430.



Visit other Real Cities sites

[News](#) | [Business](#) | [Sports](#) | [Entertainment](#) | [Living](#) | [Shop Local](#) | [Classifieds](#) | [Jobs](#) | [Cars](#) | [Real Estate](#)

[About TheState.com](#) | [About the Real Cities Network](#) | [About the McClatchy Company](#)  
[Terms of Use](#) | [Privacy Policy](#) | [Copyright](#)