

VOLUME II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

VICTOR D. SMITH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000549

APPENDIX

ADAM SINCLAIR RUFFIN
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

D. RUSSELL BARLOW
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED SEPT. 19-23, 2011	1
SENTENCING HEARING TRANSCRIPT DATED OCT. 6, 2011	802
<u>ANDERS</u> BRIEF OF APPELLANT	816
<u>STATE V. SMITH</u> , 2013-UP-423 (S.C. Ct. App. filed Nov. 20, 2013)	828
APPLICATION FOR POST-CONVICTION RELIEF	830
RETURN.....	835
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DEC. 11, 2015	842
ORDER OF DISMISSAL.....	943
MOTION PURSUANT TO RULE 59(e) SCRCP, TO AMEND.....	954
ORDER DENYING APPLICANT’S MOTION TO ALTER OR AMEND.....	957
INDICTMENT AND SENTENCE SHEET	958

State v. Victor Smith 9/19/11 - 9/23/11

501

1 Q I understand. Did y'all ever stay at the same dorm?

2 A No, sir, I was always at a different dorm.

3 Q When you met Victor, Victor was working at the Waffle
4 House; right?

5 A Yes, sir.

6 Q Then he started working at Beef O'Brady's?

7 A Later on, yes, sir.

8 Q Ernest Robinson had a job; is that right?

9 A Yes, sir.

10 Q Ernest worked at Beef O'Brady's?

11 A Yes, sir.

12 Q Jaz had a job; is that right?

13 A Yes, sir.

14 Q You know where she worked?

15 A Waffle House.

16 Q You didn't have a job did you?

17 A No, sir, not at that time.

18 Q You weren't working?

19 A No, sir.

20 Q Man didn't have a job?

21 A No, sir. That I know of.

22 Q He wasn't working?

23 A I guess not. I'm not sure.

24 Q So out of all the people in the apartment, the two
25 people that didn't work was you; right?

1 A Yes, sir.

2 Q And Jeremiah?

3 A To my knowledge, yes, sir.

4 Q Tell us how many times you were in that apartment
5 alone?

6 A Alone as far as completely by myself?

7 Q Without Victor being there?

8 A It was several occasions. I can't give you a number.

9 Q Several occasions when you were in that apartment and
10 Victor wasn't there?

11 A Yes, sir.

12 Q How many occasions were you in that apartment and
13 Victor and Jaz wasn't there?

14 A Twice.

15 Q Two times you were in that apartment and neither Victor
16 was there and neither Jaz was there?

17 A Correct.

18 Q Now, you were talking about your statement, and you
19 kind of skipped over it, but we want to spend a little bit
20 of time on the statements that you gave to the police?

21 A Okay.

22 Q Were you in handcuffs when the police questioned you?

23 A Yes, sir.

24 Q Describe the room for us that you were in?

25 A It's a very typical police officers office.

State v. Victor Smith 9/19/11 - 9/23/11

503

1 Q Large area room; did you have free run of the Sheriff's
2 Department?

3 A No, sir, I was in the back room.

4 Q How many officers were there questioning you?

5 A At the present time, I'm not sure. I can tell you two
6 I was talking to.

7 Q Two officers questioning you?

8 A Yes, sir.

9 Q Did they ever ask you your educational level?

10 A I don't remember.

11 Q You don't remember them asking you that?

12 A No, sir.

13 Q Now, you didn't tell the truth did you?

14 A No.

15 Q And you just mentioned that you didn't tell the truth
16 because you had pending charges?

17 A That's right.

18 Q You've still got pending charges, don't you?

19 A Yes, sir.

20 Q You also mentioned that you didn't tell the truth at
21 first because you were scared about what was going to
22 happen, right?

23 A Yes, sir.

24 Q You said that after this happened that you felt sick?

25 A Yes, sir.

- 1 Q Were those your words, you said you were sick?
- 2 A As far as what had just happened.
- 3 Q When this incident happened you felt sick?
- 4 A Right.
- 5 Q You say you threw up?
- 6 A That's right.
- 7 Q After you threw up did you call police?
- 8 A No, sir, I didn't have access to a phone at that time.
- 9 Q When you felt sick did you leave to go call the police?
- 10 A I couldn't call the police I didn't have access to a
- 11 phone.
- 12 Q When you felt sick did you leave the apartment?
- 13 A No, sir.
- 14 Q After you threw up did you leave the apartment?
- 15 A No, sir.
- 16 Q In fact, you spent the night there didn't you?
- 17 A Yes, sir.
- 18 Q Even though you felt sick?
- 19 A Yes, sir.
- 20 Q At no point in time did you voluntarily go to the
- 21 police --
- 22 A No, sir.
- 23 Q -- and tell this story, did you?
- 24 A No, sir.
- 25 Q They had to come pick you up?

State v. Victor Smith 9/19/11 - 9/23/11

505

1 A They came to question me, yes, sir.

2 Q They came to the detention center. On that first
3 statement they advised you about lying to them didn't they?

4 A Yes, sir.

5 Q They told you it was best to tell the truth in your
6 first statement?

7 A Correct.

8 Q Even after they warned you of lying you still did not
9 tell the truth?

10 A No, sir, I didn't.

11 Q You told the police that Slim and Franchise carried
12 E.J. out the back, right?

13 A Yes, sir.

14 Q You and Man participated in that didn't you?

15 A No, sir.

16 Q You didn't have anything to do with carrying E.J.?

17 A No, sir.

18 Q Do you remember that first statement that you gave, do
19 you ever remember officers asking you if there was anything
20 else you would like to add to your statement?

21 A Yes, sir.

22 Q Did you add anything to your first statement out there?

23 A No, sir.

24 Q You told them you didn't have anything to say?

25 A That's right.

1 Q So two days later they brought you back?

2 A Yes, sir.

3 Q To the Sheriff's Department?

4 A Yes, sir.

5 Q And they told you you lied to them?

6 A Yes, sir.

7 Q And you agreed with them?

8 A That's right.

9 Q And you gave a second statement?

10 A Correct.

11 Q So really it takes you more than one time to tell the
12 truth; is that right?

13 A Depending on the situation. I can't say that.

14 Q Just depends on the situation?

15 A Right. Like I said, I was nervous. I'd never been in
16 that predicament before so the first time, of course, I had
17 hesitation. It's my choice.

18 Q You'd never been in that predicament before?

19 A That's right.

20 Q Have you ever been in this predicament on the stand
21 testifying against Victor?

22 A No, sir.

23 Q This is your first time, isn't it?

24 A Yes, sir.

25 Q Do we need to bring you back again so you can tell the

State v. Victor Smith 9/19/11 - 9/23/11

507

1 truth?

2 A If you so choose, you're going to get the same answer.

3 Q One of the things you mentioned to police was that you
4 was taken some blows and you couldn't get out of there?

5 A I don't remember if I mentioned it.

6 Q You mentioned that you were taking blows and couldn't
7 get out of the way?

8 A I can't remember.

9 Q You say you can't remember telling that?

10 A That's correct.

11 Q Did I hear you correctly when you said you knew they
12 had dumped the body in the woods?

13 A I never said I knew they dumped the body in the woods.
14 I said that's what Victor instructed to dump the body at.

15 Q And when you spent the night and your birthday was
16 three days after you say this incident happened; is that
17 right?

18 A No. I didn't say my birthday was three days after, I
19 said my birthday was coming, following. Not exactly three
20 days.

21 Q How much further was your birthday after you said this
22 --

23 A Well, my birthday is [REDACTED], so between September 27
24 and up to [REDACTED] is more than three days.

25 Q How many days it is?

1 A Five.

2 Q Okay. Five days. Your birthday was five days later?

3 A Right.

4 Q And after you said you committed this crime you wanted
5 to celebrate your birthday?

6 A That's what I told my mother.

7 Q She got you a ticket?

8 A That's right.

9 Q To Charlotte?

10 A Yes, sir.

11 Q One-way ticket?

12 A Yes, sir.

13 Q Not a two-way ticket back to Columbia?

14 A No, sir.

15 Q You wanted to leave Columbia, didn't you?

16 A Yes, sir.

17 Q How many times have you met with Mr. Goldberg about
18 this case?

19 A The first time last week, actually, was the first time
20 I ever communicated with him personally.

21 Q And y'all talked about what you were going to testify
22 to?

23 A Actually, no, sir. He just asked me to tell the truth,
24 not the specifics of what to say.

25 Q And do you ever remember saying that you didn't want to

State v. Victor Smith . 9/19/11 - 9/23/11

509

1 testify?

2 A No, sir.

3 Q You never told him that you didn't want to testify?

4 A I never talked to him before.

5 Q You never told anybody you didn't want to testify?

6 A I never talked to nobody, no, sir.

7 Q You never talked to anybody?

8 A Not beside my case, my legal counsel.

9 Q How long have you been in jail?

10 A Twenty-eight months.

11 Q Twenty-eight months?

12 A Yes, sir.

13 Q Tell us about life in jail; you don't want to be there
14 do you?

15 A No, sir.

16 Q You don't get to choose what you eat do you?

17 A Same old thing, day in and day out, year after year.

18 Q You don't get to choose what time you go to sleep do
19 you?

20 A You choose what time to go to sleep, but you don't
21 choose the time to get locked down.

22 Q You get locked down at a certain time?

23 A Yes, sir.

24 Q And you're locked down until they release you from
25 being locked down?

1 A Yes, sir.

2 Q You don't get to choose when you get to take a shower,
3 do you?

4 A No, sir. Whatever you do that's the time slot they
5 give you is the time for it.

6 Q Somebody controls when you get to bathe.

7 A Yes, sir.

8 Q You don't like that do you?

9 A No, sir.

10 Q You want to change that, right?

11 A Yes, sir.

12 Q Smurf, Victor understands why you're testifying. He
13 knows you don't want --

14 MR. GOLDBERG: Objection.

15 THE COURT: Beg pardon. What was the statement?

16 MR. HART: I said, Victor understands why he doesn't
17 want --

18 THE COURT: No. That's editorializing. Mr. Hart,
19 please don't do that.

20 You may redirect.

21 MR. GOLDBERG: Thank Your Honor.

22 THE COURT: Y'all approach.

23 (Off the record bench conference with counsel and the
24 Court.)

25 ALLEN FULTEN - REDIRECT EXAMINATION

State v. Victor Smith 9/19/11 - 9/23/11

511

1 BY MR. GOLDBERG:

2 Q Mr. Hart asked you about what happened to E.J.'s
3 clothes; is that correct?

4 A Yes, sir.

5 Q Do you recall what happened to them?

6 A No, sir, all I know is they was bagged up.

7 Q I'm sorry?

8 A All I know is they was bagged up.

9 Q They were bagged up?

10 A Yes, sir.

11 Q He also asked you if you ever -- came -- excuse me. He
12 asked you about leaving Columbia to go to North Carolina on
13 your birthday; is that right?

14 A Yes, sir.

15 Q Did you ever, in fact, come back to Columbia?

16 A Yes, sir.

17 Q When was that?

18 A A couple of days after my birthday. Not too long
19 afterwards.

20 Q In fact, it would have been sometime after that when
21 you got charged with the burglary; correct?

22 A Yes, sir.

23 Q Okay. The front right bedroom where you described the
24 events that took place, can you describe for the jury how
25 that room was decorated at the time on September 27, 2008?

State v. Victor Smith 9/19/11 - 9/23/11

512

1 A To the best of my memory, I'll try.

2 Q Okay.

3 A All right. First walk in right by the door is a couch
4 and chairs. And next to the chairs is the snake cage
5 opposite side of the underside of the chair, not the door
6 side but the other side. And then under the window is
7 another couch and TV. That's basically it.

8 Q Were there any toys in the room?

9 A Toys?

10 Q Yes, sir.

11 A Not that I remember. No toys.

12 Q When you spoke to law enforcement and gave a statement
13 about this case were you promised anything for what you told
14 them?

15 A No, sir.

16 Q Did they coerce you in any way?

17 A No, sir.

18 Q Were you coerced into testifying today in anyway?

19 A No, sir.

20 Q Why are you doing it?

21 A Just to come clean. Like I said, you know, after a
22 while certain things just sits on your conscience, you know,
23 you come clean or go crazy.

24 Q Thank you.

25 THE COURT: Anything further.

State v. Victor Smith 9/19/11 - 9/23/11

513

1 MR. HART: I just have a few questions.

2 THE COURT: Mr. Hart.

3 ALLEN FULTEN - RECROSS EXAMINATION

4 BY MR. HART:

5 Q Smurf, about coming clean, you said the incident
6 happened on September 27, 2008; right?

7 A That's what they're saying, sir.

8 Q I'm sorry. That's what they're saying?

9 A Yes, sir. I didn't say that, but I guess that's the
10 date. Yes, sir.

11 Q You're not saying it happened on that date?

12 A I'm not saying anything.

13 Q Okay. About coming clean and stuff sits on your mind
14 --

15 A Right.

16 Q -- it took you to July 21 to talk to the police about
17 what you're saying today; is that right?

18 A I'm not sure what date it was.

19 Q You don't remember?

20 A The date, no, sir.

21 Q It was quite some time after you say this incident
22 happened; is that right?

23 A Apparently, yes, sir.

24 MR. HART: That's all I have.

25 THE COURT: Anything further of this witness?

State v. Victor Smith 9/19/11 - 9/23/11

514

1 MR. GOLDBERG: No, sir.

2 THE COURT: All right.

3 That's the last witness for today?

4 MR. GOLDBERG: Yes, sir.

5 THE COURT: Members of the jury, I'm going to send you
6 home. It's not too bad. It's not too late.

7 I need to remind you once again not to talk about this
8 case in any way, shape or form. I will hope that -- do we
9 have any Yankee fans on the jury -- no Yankee fans. Okay,
10 one. I've been trying to keep up with it. We play tonight.
11 Any Red Sox fans? Good.

12 Thank you for your patience. It's Wednesday, we're
13 seeing the light at the end of the tunnel. The main thing
14 now is not to talk about this case in any way, shape or
15 form. Get a good night's sleep and we'll see you in the
16 morning at 9:30.

17 Thank you all so very much for your patience.

18 (Jury out for the evening at 5:25 p.m.)

19 THE COURT: All right. You may step down.

20 Anything we need to take up? I know you mentioned, Mr.
21 Goldberg about --

22 MR. GOLDBERG: In the morning.

23 THE COURT: In the morning. Anything further Mr. Hart?

24 MR. HART: Nothing further, Your Honor.

25 THE COURT: All right. Can I see you all for just a

State v. Victor Smith 9/19/11 - 9/23/11

515

1 second.

2 (Off the record bench conference with counsel and the
3 Court.)

4 THE COURT: See y'all tomorrow. Get a good night's
5 sleep.

6 (Court in recess for the evening at 5:27 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State v. Victor Smith 9/19/11 - 9/23/11

516

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

September 22, 2011

(Court in session at 9:55 a.m.)

THE COURT: Keep your seats.

(State's Exhibit No. 178, photo,
was marked for ID.)

(State's Exhibit No. 179, photo,
was marked for ID.)

(State's Exhibit No. 180, certified
death certificate, was marked for ID.)

COURT REPORTER: State's 178, 179, and 180, for ID.

THE COURT: State's 178, 179, and 180.

Anything we need to take up before the jury comes in?

MR. GOLDBERG: Yes, sir. Couple of things.

First of all, and just out of an abundance of caution I
wanted to bring it up now, what's been marked as State's No.
180 for ID is the certified death certificate from the
Department of DHEC and it's our intent to offer this into
evidence as a self-authenticating document. I just wanted
to put it out there now, so if there was an objection we can
take it up out of the presence of the jury.

THE COURT: How about it, Mr. Hart?

MR. HART: Yes, Your Honor, there is an objection. We
do believe that this is a certified copy, but we don't

State v. Victor Smith 9/19/11 - 9/23/11

517

1 believe the information is true and accurate.

2 THE COURT: All right.

3 MR. HART: So based on that we're going to object to the

4 --

5 THE COURT: Your objection is overruled.

6 What else? You can still make your argument, but I'm
7 going to let it in. Go ahead.

8 MR. HART: Here's the reasons why we object to it, Your
9 Honor.

10 THE COURT: All right.

11 MR. HART: As we've heard from -- from the past three
12 days in the testimony there's been absolutely no testimony
13 that the remains that were found have been positively
14 identified as Ernest Robinson.

15 THE COURT: That's why we have circumstantial evidence.

16 MR. HART: Yes, sir, I understand. So what I believe is
17 that this document, which is going to be an official
18 document from the state is going to be used and this jury is
19 going to look at this document and think that, well, okay,
20 may it did happen because now we have an official document.

21 THE COURT: No, they're going to think the guy is dead
22 because we have a death certificate. Now, because somebody
23 is dead doesn't go to how he died.

24 MR. HART: Well, in the death certificate it talks about
25 that, Your Honor.

State v. Victor Smith 9/19/11 - 9/23/11

518

1 THE COURT: What does it say?

2 MR. HART: It says that the cause of death was a gunshot
3 wound to the head.

4 THE COURT: Well, -- go ahead.

5 MR. HART: In addition to that, Your Honor, it talks
6 about the date of the death.

7 THE COURT: All right.

8 MR. HART: Now, yesterday the last person to testify was
9 Allen Fulten. He said very specifically on recross, I never
10 said that was the date it happened.

11 THE COURT: Uh-huh. (Affirmative response.)

12 MR. HART: He said, I'm not saying that.

13 THE COURT: Uh-huh. (Affirmative response.)

14 MR. HART: Well, the information they used to get the
15 death certificate is what Allen Fulten told them in a
16 statement a year ago.

17 THE COURT: Okay.

18 MR. HART: That's why it's not true and accurate. We've
19 heard testimony where he said it didn't happen, I'm not
20 saying that. Now, we've got this information --

21 THE COURT: I think we've also heard testimony from one
22 witness on the date and time where they beat the guy, they
23 took his body -- I think there's testimony in the record
24 that the incident happened on the date and time alleged by
25 at least one or two of the state's witnesses. We're there,

State v. Victor Smith 9/19/11 - 9/23/11

519

1 we beat the guy, we hit him with a brick. Your guy shot him.
2 That was the date that it happened.

3 There's testimony -- go ahead, Solicitor?

4 MR. GOLDBERG: There was also testimony from Mark
5 Shipman about that date, the last time he saw him, how he
6 had regular contact with him, as well as, the owner of Beef
7 O'Brady's that that was the last day that he showed up for
8 work. So there is additional circumstantial evidence that
9 has been testified to.

10 THE COURT: I agree it's circumstantial, but I think
11 it's strong circumstantial evidence, and all I can do is
12 make a decision one way or the other.

13 MR. HART: Yes, sir.

14 THE COURT: I can keep it out, I can let it in. I think
15 the proper thing to do is let it in for reasons I've stated,
16 and all I can do is let you place your position on the
17 record, and I'll let you amplify it, but to me, it's a
18 simple matter. It's a public document. Everybody relies on
19 it. It's an exception to the hearsay rule. I can go on and
20 on.

21 MR. HART: And I agree, but this is my --

22 THE COURT: I know you're doing your job. Everybody is.
23 Go ahead.

24 MR. HART: This is my last statement about the
25 objection, Your Honor. You know, I agree that if we had

State v. Victor Smith 9/19/11 - 9/23/11

520

1 some concrete evidence that this document is accurate about
2 what it says, of course it would be accurate and true, but
3 as you said, it's circumstantial evidence. Nothing in this
4 document says that it's circumstantial evidence. It says
5 it's true and accurate.

6 THE COURT: I understand.

7 MR. HART: So based on that, Your Honor, we would object
8 to this document.

9 THE COURT: Mr. Hart, I don't blame you. I would do the
10 same thing, but my ruling is it comes in for the reasons
11 I've stated.

12 MR. HART: Yes, sir.

13 THE COURT: Anything further, Solicitor?

14 MR. GOLDBERG: Yes, sir. And also again, out of an
15 abundance of caution before it comes in before the jury, Mr.
16 Hart has made repeated references throughout the trial to
17 the date of October 21, 2008, and this is to remind the
18 Court the murder was alleged to have taken place in
19 September of '08. There have been repeated references to
20 October 21, 2008 and essentially the crux of these
21 references have been that the defendant left the apartment
22 on October 21, 2008 and never returned. And has never been
23 back since. There have been by my count seven references to
24 that date from opening statements to law enforcement
25 officers to property management, repeatedly referencing

State v. Victor Smith 9/19/11 - 9/23/11

521

1 that. Well, the fact of the matter is on October 21, 2008,
2 Mr. Smith was arrested along with Jazmine Bright, his lady
3 friend who lived there, and they were both charged with
4 simple possession of marijuana on that date. They were
5 taken down to the County jail and booked in. When they were
6 booked in at the County jail an NCIC check was done on the
7 defendant and it was discovered he was wanted out in
8 Mississippi on another matter. So he never came back to the
9 apartment because he was, in fact, extradited, which he
10 voluntarily waived extradition to Mississippi. Went to
11 Mississippi, was in the Mississippi Department of
12 Corrections, I believe on a probation violation, and
13 remained there until he was extradited back to South
14 Carolina on this murder charge in December of 2009.

15 So my position is if counsel is going to be allowed to
16 argue that perhaps the murder took place after that date and
17 Mr. Smith never was in the apartment after that date, we
18 have to be able to explain in some way, and provide the
19 information we have as why he was not in that apartment.

20 Now, I'm not suggesting that we have to go over every
21 detail about, you know, probation violation, what the
22 probation violation was for, but I do believe that he has --
23 and specifically he said in his opening that the police
24 responded on that date, that there was no evidence
25 connection with this crime, that Victor Smith left the

State v. Victor Smith 9/19/11 - 9/23/11

522

1 apartment and he never came back. He asked Sergeant --
2 excuse me -- Maj. Stan Smith the same questions, they came
3 to Sgt. Robinson whether he had any knowledge about the
4 police on that date. He asked Kim Hunt, the property
5 manager, if she remembered seeing Victor Smith after
6 December 22, 2009, and she said she did not. Then he asked
7 Bouknight and Richards the crime scene investigators if they
8 received any evidence from that date.

9 So I just believe there's been repeated references to
10 this and it's opened the door to the state being able to
11 explain why he wasn't there after that date.

12 THE COURT: Mr. Hart, your position?

13 MR. HART: He's absolutely right. We did ask that
14 several times about whether they had knowledge that Victor
15 Smith left the apartment on the 21 and never returned. That
16 was it. We haven't opened the door to anything about why he
17 was missing or why he wasn't there or where he went to. We
18 didn't say can you explain to us why, can you explain to us
19 where he was, how do you know where he went. We just said --

20 THE COURT: But you know where he went, where he was and
21 where he went, right. And you know why he didn't go back,
22 because he was in jail in Mississippi. Is that fair enough?

23 MR. HART: That is correct. That is correct.

24 THE COURT: All right. So what's your position on the
25 argument?

State v. Victor Smith 9/19/11 - 9/23/11

523

1 MR. HART: That we have not opened the door.

2 THE COURT: Do you intend to argue that nobody knows
3 where he was after October 29?

4 MR. HART: The only thing I intend to argue, Your Honor,
5 is that they've heard testimony that he left on October 21
6 and never returned. That's it. That's all I plan on saying
7 about that. Nothing else.

8 THE COURT: Well --

9 MR. HART: I don't plan on going into any details about
10 any of that.

11 THE COURT: Solicitor?

12 MR. GOLDBERG: Well, my position on that will be if
13 that's what's going to be argued, that's fine, but I would
14 suggest that that essentially closes the door for suggesting
15 to the jury that the murder took place after that date.
16 Because if there's going to be an argument that the murder
17 took place after that date, then I think we have an
18 obligation to explain why this man wasn't in his apartment.

19 THE COURT: Well, you know, the burden is still on the
20 state, but at the same time, truth be known, if there's
21 going to be a suggestion that based on the solicitor's
22 argument if you're going to go into that argument we're
23 either looking at this trial or something else.

24 I mean, the truth be known, he hasn't put his character
25 in evidence. I don't think he's going to take the stand. I

State v. Victor Smith 9/19/11 - 9/23/11

524

1 don't know what he's going to do, but I can't allow you to
2 suggest that he didn't go back after that time and not
3 explain that. If you're going to argue the lines that the
4 solicitor has suggested.

5 Let me help both of you out, it's a little premature. I
6 give both of you a chance to look up some law on this
7 particular issue. I don't think it's not necessarily novel,
8 but there's some law on it. And we can -- we can visit it
9 another time. I think it's a little premature. We're
10 talking about what might come up in a closing argument.
11 We've got plenty of time to do address this specific issue
12 between now and the time y'all have closing arguments.

13 MR. GOLDBERG: Well, the reason I bring it up now is
14 that, you know, if we were allowed to go into that at all,
15 obviously, it would come out --

16 THE COURT: You --

17 MR. GOLDBERG: -- Investigator Holdorf pretty much as
18 the lead investigator. You know, the fact that Holdorf and
19 Gallegos traveled to Mississippi where he was incarcerated
20 to take this statement from him. You know, if we're not able
21 to go into that, obviously, they wouldn't be able to say
22 they were in a prison in Mississippi when they took the
23 statement. I understand that. There's a portion of the
24 advice of rights that we would have to redact, but somewhat
25 connected to that is, if we cannot go into any of this then

State v. Victor Smith 9/19/11 - 9/23/11

525

1 you can't fully demonstrate the voluntariness of the
2 statement.

3 THE COURT: I don't --

4 MR. HART: Here's where we are, Your Honor --

5 THE COURT: -- before he closes his case he wants this
6 issue resolved?

7 MR. GOLDBERG: Yes, sir.

8 MR. HART: We're going to continue to ask investigators
9 if they have knowledge that Victor Smith left that apartment
10 on October 21 and never returned. I'm comfortable with the
11 solicitor asking the investigators, did you go to
12 Mississippi Corrections to visit Mr. Smith, but not get into
13 the details of why he's there.

14 THE COURT: Why -- The idea is, he didn't go back. Why
15 didn't he go back; because he was in Mississippi. It -- we
16 can twinkle with that a little bit. I think it's fair --
17 you can make that argument, there's nothing wrong with that
18 argument about that date, but an explanation is probably
19 necessary to be fair to everybody. The reason he didn't go
20 back was because he couldn't go back. He was in some place
21 else. He was in Mississippi.

22 MR. HART: Yes, sir.

23 THE COURT: But you don't want to get into -- I don't
24 mind declaring a mistrial. I told both of you. It doesn't
25 bother me at all.

State v. Victor Smith 9/19/11 - 9/23/11

526

1 MR. GOLDBERG: I don't want that.

2 THE COURT: That's why I'm saying -- it's kind of
3 protagonist -- to me, let's try it and go home. So I would
4 -- I would suggest to both of you, you're on a slippery
5 slope. I'm trying to narrow the focus of both of you now.
6 The burden is still on the state. He didn't go back after
7 that time. Well, where did he go? Was it Mississippi.
8 That's why he didn't go back. He couldn't go back.

9 Now, if y'all can come to some sort of agreement that
10 you both can live with, I'll go along with it. If not, then
11 I'll just make a decision. I don't care, but y'all need to
12 try to -- it's a very gray area, right now.

13 MR. GOLDBERG: Yes, sir.

14 THE COURT: And the solicitor makes a great, keen point,
15 and at the same time the burden is still on them. So --

16 MR. HART: And I'm comfortable with him asking any
17 investigator why didn't he go back. He was in Mississippi,
18 he couldn't go back, and that's it.

19 THE COURT: That's fine. He's agreed. If that's the
20 situation, y'all might have reached an understanding on how
21 to resolve this.

22 MR. GOLDBERG: The investigator said he was in
23 Mississippi and he couldn't go back. Is that what you're
24 saying?

25 MR. HART: Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

527

1 MR. GOLDBERG: Not take it any further.

2 MR. HART: Not to go into details he was in the
3 department of corrections, he was there for probation
4 violation and you visited him at the jail and to get into
5 all the details, I'm not comfortable.

6 MR. GOLDBERG: How about the fact that he was arrested
7 on that date for simple possession of marijuana. I mean,
8 Jazmine Bright is going to testify today that she got
9 arrested on that day.

10 THE COURT: That's putting his character in issue.

11 MR. GOLDBERG: Well, we brought the search into question.
12 He's brought up the issues of on that day the law
13 enforcement officers came in, essentially suggesting that
14 they searched the apartment and didn't find evidence at the
15 crime scene. So there needs to be some sort of explanation
16 of what was going on there, why they were searching the
17 place.

18 THE COURT: Well, why don't you tell us what you would
19 like to do?

20 MR. GOLDBERG: I would like for her to be able to
21 testify that on that date the police responded there. They
22 got a tip about narcotics in the house, they responded and
23 they found some narcotics, which is what she told me last
24 night. They found some narcotics in the front right bedroom
25 and -- a roach and things of that nature, and that he was

State v. Victor Smith 9/19/11 - 9/23/11

528

1 arrested and she was arrested and charged with simple
2 possession of marijuana and that they didn't even search the
3 entire house while they were there, as a result. Which is
4 what she tells me.

5 THE COURT: Well this has nothing directly to do with
6 that. Go ahead, Mr. Hart.

7 MR. HART: Well, Your Honor, even if he had a conviction
8 that wouldn't be admissible under the rules because it's 30
9 days. It wouldn't be admissible either way. So we
10 definitely don't want to go into he was arrested. I think
11 the jury -- and I did this with the peril of the jury
12 thinking why did he leave, and then wondering why he leaves.
13 I think she can say -- I think Mr. Goldberg can ask her --

14 THE COURT: You know when I hear all this about leaving
15 I -- my individual philosophy, he left because he killed the
16 guy. That's why he got out of town. It goes both ways. Both
17 of y'all are kind of in the same boat whether you realize it
18 or not. Suggesting he never went back there. If I were on
19 the jury my conclusion would be he didn't go back because he
20 killed the guy. That's why he left town. You can argue
21 that as much as you want. You're both are very close in the
22 same rowboat. Y'all have different paddles, y'all are
23 paddling in different directions in the same rowboat. In
24 fact, I can't put it any better way than.

25 But what we can do is we can move on, stop and revisit

State v. Victor Smith 9/19/11 - 9/23/11

529

1 this after a while. We'll get some more testimony in and
2 give you both a chance to think a little more clearly on
3 what you want to say and do.

4 Like I say, my impression is you're both in the same
5 rowboat, but you're paddling in different directions. So
6 you understand. What do you want to do?

7 MR. GOLDBERG: The only thing I would add is during the
8 testimony by the investigators about the statement they took
9 from him, they're obviously asked the question of was he
10 free to leave at any time, which is a standard question in a
11 advice of rights -- in a denno type situation obviously he
12 wasn't free to leave, he was in prison. I don't know that
13 it would be fair to ask that question and then not have
14 investigators able to explain it. See what I'm saying --
15 defense is going to ask Holdorf or Gallegos was Mr. Smith
16 free to leave at any time when he was speaking with you.

17 THE COURT: He was free to leave their presence, but not
18 free to leave the institution.

19 MR. HART: Your Honor, to try to resolve this matter I
20 know --

21 THE COURT: Okay.

22 MR. HART: -- to try to resolve this matter, I'm
23 comfortable with Mr. Goldberg asking the investigator or
24 Jazmine was he in the Mississippi Department of Corrections.
25 I'm comfortable with that. As long as he doesn't go into

State v. Victor Smith 9/19/11 - 9/23/11

530

1 any details, I'm comfortable with that, Your Honor.

2 THE COURT: Now, what are you comfortable with, Mr.
3 Goldberg? I want everybody to be comfy.

4 MR. GOLDBERG: I'm comfortable with that.

5 THE COURT: All right.

6 And you know this is a little give and take. If I have
7 to make a decision I'll be happy to do it, but if we can
8 kind of split the baby with both of you happy, that's the
9 way to do it. I don't have an interest one way or the
10 other. I don't care if all of it comes out or none of it
11 comes out. But you don't want a mistrial, you don't want a
12 remand -- he's either guilty or not guilty. Let's hope
13 that's the end of it one way or another.

14 So we're on the same page.

15 MR. HART: Yes, sir. The only question he's going to
16 ask is that he was in the Mississippi Department of
17 Corrections in Mississippi?

18 MR. GOLDBERG: Wait a minute. I got confused.

19 MR. HART: When you question the witness about --

20 THE COURT: Mr. O'Leary, are you having fun?

21 MR. HART: -- why he didn't return the only thing you're
22 going to say is he was in the Mississippi Department of
23 Corrections, he couldn't come back.

24 MR. GOLDBERG: And then when they start talking about
25 the statement they take from him, that it's taken at that

State v. Victor Smith 9/19/11 - 9/23/11

531

1 location. I mean, I won't go into any details about why
2 he's there, what the charges are.

3 THE COURT: You know what, it was circa 1855, Eighth
4 Circuit, Illinois. Everybody used to ride the circuit
5 together. The Judge, the prosecutor, the lawyers,
6 everybody. And they were somewhere and it was raining cats
7 and dogs and everybody was worried about how they were going
8 to cross the river the next morning. There was a bridge
9 washed out, we're going to have to forge the river. Finally
10 about 1:00 o'clock one of them said one thing about crossing
11 the river, you can't cross it until you get to it.

12 Let's take a short break and we'll come back and start
13 on something.

14 (Court in recess for short break at 10:23 a.m.)

15 (Court in session after short break at 10:33 a.m.)

16 THE COURT: We're all ready?

17 MR. GOLDBERG: Yes, sir.

18 MR. HART: Yes, sir.

19 THE COURT: Please invite the jury in.

20 (Jury in at 10:34 a.m.)

21 THE BAILIFF: All jurors are present, Your Honor.

22 THE COURT: Thank you.

23 Good morning, ladies and gentlemen of the jury. On
24 behalf of everybody involved, I thank you for your patience
25 and attention.

This case will resume with Mr. Goldberg calling the next witness on behalf of the state.

MR. GOLDBERG: Your Honor, at this time, state will offer State's Exhibit No. 180, a death certification of the decedent of Ernest Melvin Robinson, Jr., into evidence.

THE COURT: All right. Any objection for the record?

MR. HART: No, Your Honor.

THE COURT: All right. It's admitted, then.

(State's Exhibit No. 180, death certificate, was marked and entered.)

MR. GOLDBERG: At this time state calls Bill Stevens.

(WHEREUPON, Bill Stevens was sworn
to tell the truth.)

THE CLERK: Have a seat in the witness box, state your name for the record, please, and spell your last name.

MR. STEVENS: S-t e-v-e-n-s. William Stevens.

WILLIAM STEVENS - DIRECT EXAMINATION

BY MR. GOLDBERG:

Q Is it Investigator Stevens?

A Deputy Coroner Stevens.

Q Can you tell the jury a little bit about yourself, your background, training, and where you're employed and the like?

A Yes, sir. Bills Stevens, I'm employed at the Richland County Coroner's Office as a Deputy Coroner and a Forensic

State v. Victor Smith 9/19/11 - 9/23/11

533

1 Anthropologist. So I'm in charge of unidentified skeletal
2 remains and the identity of decomposed bodies.

3 Q How long have you been with the coroner's office?

4 A Twelve years.

5 Q And can you describe your education and training a
6 little bit for the jury?

7 A Yes. Currently a doctoral student at the University of
8 South Carolina where I teach Anthropology and gone part-time
9 in the coroner's office now.

10 Q And any degrees that you may have obtained over the
11 years?

12 A Okay. Got my bachelor's degree from the University of
13 Georgia. Master's from University of South Carolina, and
14 I've been involved, since 1997, in death investigation and
15 looking at skeletal remains.

16 Q Can you tell the jury a little bit about what
17 anthropology is?

18 A Anthropology is a very broad discipline that is the
19 study of humans, basically, human variation. Human
20 evolution. And forensic anthropology is a sub-field of
21 that, so a more specialized use of anthropology is studying
22 the human skeleton to identify missing and unidentified
23 people.

24 Q And what sorts of methods are used in order to make
25 those kinds of determinations?

1 A We use methods from skeletal biology and osteology,
2 which is the study of bone, and we kind of merge these
3 together in anthropology, and with methods from archeology,
4 also, to recover evidence at a crime scene and then the
5 osteology methods are used to determine the biological
6 profile of an individual from bones. So what they looked
7 like, age, race, sex, and how tall they were. That sort of
8 thing from the bones.

9 MR. GOLDBERG: At this time, I'd offer Deputy Coroner
10 Stevens as an expert in forensic anthropology.

11 MR. HART: No objections, Your Honor.

12 THE COURT: All right. Forensic Anthropologist without
13 objection.

14 BY MR. GOLDBERG:

15 Q Okay, Mr. Stevens, back on July 20, 2009, were you --
16 did you receive a call about some remains that had been
17 located?

18 A I did.

19 Q And can you describe for the jury the nature of that
20 call and what you did?

21 A On July 20, 2009, I was called out, I believe by
22 Investigator Dozier with our office that there were skeletal
23 remains found at [REDACTED] Elders Pond Circle, behind an apartment
24 building.

25 Q Okay. Can you describe the area in which -- or when

State v. Victor Smith 9/19/11 - 9/23/11

535

1 you arrived what you observed and what you did?

2 A When I arrived they had already sealed off the crime
3 scene with crime scene tape. I remember going between two
4 buildings and was led down to an embankment, which was
5 behind these apartment buildings to an area covered with
6 small pine trees, and there we found human skeletal remains
7 wrapped in some items of clothing and a shower curtain.

8 Q And can you describe the positioning of the body at
9 that time?

10 A It was on the slope within the pine trees, kind of hung
11 up on a tree and I believe the head was up the hill, the
12 feet were down the hill.

13 Q You said the body was skeletonized, and obviously we're
14 all familiar with the word, skeleton, but in the context of
15 your world, can you describe what that means?

16 A Okay. The body was in a state of advanced decay, so in
17 anthropology, we try to standardize to come up with a
18 standard way of talking about the degree of decomposition on
19 a body, and this one had some soft tissue, some skin
20 remained. it was partially mummified, and then there were
21 also cartilage and things that hold the bones together, like
22 the joints were still intact. So the skeleton was all still
23 together and there was some skin that was preserved, also.

24 Q And when you say mummified; what do you mean by that?

25 A Mummified is, as you know, probably from the learning

1 channel, bodies are -- can be prepared by being wrapped up
2 like the ancient Egyptians used to do, it preserved the skin
3 and the internal organs. This can happen intentionally when
4 someone tries to preserve a body, this can also happen
5 naturally when a body is exposed to very dry conditions
6 where a body is wrapped up in something very tightly that
7 prevents bugs from getting to it, and it prevents
8 decomposition from happening completely.

9 Q I believe you indicated when you observed the body that
10 it was, in fact, wrapped up?

11 A That's correct.

12 Q What did you observe about the sheet that the body was
13 in and did you generate a report as a result of your
14 involvement?

15 A I did.

16 Q Are you referring to your notes to refresh your memory?

17 A I am, yes, sir. I said that it was wrapped and mostly
18 contained within the sheet and a shower curtain. The sheet
19 was tied in a tight knot towards the back of the body. The
20 ankles were tied with a leather belt, which was tied to
21 another belt, which was partially broken on one end.

22 Q And additionally was there some clothing located along
23 with the remains?

24 A Yes. There were Fruit of the Loom boxer briefs on the
25 body and a large sized t-shirt, which we couldn't determine

State v. Victor Smith 9/19/11 - 9/23/11

537

1 the color of it because it had been stained by
2 decomposition.

3 Q When you observed the remains when you got there, did
4 you -- what exactly did you do with them. Did you poke
5 around a little bit or how exactly do you proceed in that
6 situation?

7 A In this case, since the body was all contained, most
8 part contained within this curtain and clothing we didn't
9 have to do a lot of the mapping out a crime scene, looking
10 at scattered pieces of evidence. So we photographed
11 thoroughly. We recognized on the scene that we were missing
12 a few smaller bones so we searched our best effort to try to
13 recover those, and you know, bones and teeth, fragments and
14 that sort of thing, we always want to get every piece of
15 evidence. So we tried as hard as we could, and we came up
16 with about 90 percent of that skeleton, and photographed the
17 crime scene thoroughly, the sheriff's department and myself,
18 and then we removed the body.

19 Q Where was it taken?

20 A It was taken to Richland County Morgue.

21 Q For purposes of autopsy?

22 A Right.

23 Q I see in your report that you have a section dealing
24 with the time of death and the environmental conditions.

25 What were your findings with regard to those?

1 A Okay. I estimated that the body was there under one
2 year, and that's based on the degree of soft tissue that was
3 still remaining and the cartilage on the bones. So the
4 bones were not completely skeletal and bleached by the sun.
5 I said there were parts of the skeleton that were exposed
6 within those pine trees to sunlight and they were bleached
7 by the sun. And this is the sort of thing -- we have a
8 convention in anthropology that if some soft tissue remains
9 it's typically under one year, if exposed out in the
10 environment. So I do believe it's consistent with the
11 higher end of that estimate, based on many factors that
12 would have slowed the decomposition and slowed the insects
13 from getting to that body, like the shower curtain.

14 Q And at that point were you able to develop a biological
15 profile of the remains?

16 A Yes, sir.

17 Q And generally what did you learn about the remains?

18 A Okay. As I said earlier, biological profile means the
19 sex, age, race, and height of a person, and I have
20 determined through using anthropological methods, I
21 estimated the age of the individual as in his 20s, so I
22 believe I said between 20 and 30 years old based on looking
23 at parts of his skeleton.

24 Do you want me to describe those methods more?

25 Q We'll come back to that in a minute.

State v. Victor Smith 9/19/11 - 9/23/11

539

1 A Okay.

2 Q How about his estimated height?

3 A Estimated height was five feet, ten and a-half inches.

4 Q Okay. And race?

5 A I estimated African-American, based on features of the
6 teeth and the skull, as well as hair that we recovered at
7 the scene.

8 Q Okay. I'll come back to that, as well.

9 A Okay.

10 Q In your examination of the remains, what, if any
11 injuries did you observe to the body?

12 A We look not only for injury that occurred, you know,
13 not only that caused death, but also injury that happened in
14 life. So we break down ante-mortem, peri mortem and post
15 mortem are the ways of referring to something that happened
16 to a person before death verses something that caused their
17 death verses something that happened afterward. I found no
18 evidence of ante-mortem injury. That's like a broken bone,
19 healed fracture. There was nothing that happened to him
20 that I could see while he was alive.

21 Peri mortem, those injuries that cause death or occur
22 during the period of death, I found a circular defect
23 consistent with a gunshot wound, an entrance wound on the
24 left side of the skull and then an exit wound on the right
25 side of the skull caused by a projectile. I measured those

State v. Victor Smith 9/19/11 - 9/23/11

540

1 and noted the fractures that came from those injuries, and I
2 also describe a blunt force trauma to the front of the
3 skull.

4 Q What is a blunt force trauma?

5 A Blunt force occurs from being -- produces fractures
6 from being hit with a blunt object, any blunt object.

7 Q That would be consistent with being struck with a
8 brick?

9 A Yes.

10 Q And you said you observed a fracture consistent with
11 blunt force trauma on the face?

12 A Right. To the front of the face, facial bones.

13 Q All right. I believe you put together a bit of a power
14 point presentation for the jury at this time?

15 A Yes, I did.

16 MR. GOLDBERG: May the witness step down at this time?

17 THE COURT: Sure.

18 MR. GOLDBERG: Okay.

19 BY MR. GOLDBERG:

20 Q Why don't you stand on the other side so she can hear
21 you.

22 A All right. Okay, this gives you a diagram of what the
23 portions of the skeleton we recovered from the crime scene.
24 So we were missing bones from the face, bones from the hand,
25 and bones from the left foot, and I don't speculate as to

State v. Victor Smith 9/19/11 - 9/23/11

541

1 how, but typically animals can remove bones from a crime
2 scene. Other possibilities are they were washed away by
3 drainage on this slope, which leads down to a pond.

4 Ninety percent is what I estimated the recover of this
5 body. Next.

6 And this is what I've already talked about; sex, age,
7 race. How we do it and describing methods here. So for sex
8 determining he was male was based on what his -- how his
9 skull was shaped. Male skulls are bigger than female
10 skulls. They have bigger areas for muscle attachment
11 because males have larger necks, brow ridge and the bones
12 that allow the neck muscles to attach to the back of the
13 head are called mastoid processes. The pelvis, I also
14 looked at. The shape of the male pelvis is narrower because
15 of reasons of reasons of childbirth. A female pelvis is more
16 broad. And the size of the femur head, the ball joint on
17 the femur is consistent with being a male. I estimated age
18 by looking at the pubic bones so where the two halves of the
19 pelvis come together they are a part of the skeleton that
20 changes as you get older. We compared these to casts of
21 people of known age to come up with an age estimate of an
22 unknown individual. So these -- this is the best method, one
23 of the best methods for estimating the age of a person, but
24 it still gives a range, a plus or minus, because people vary
25 a lot in how they age. I came up with 20 to 30 years old at

1 death, based on looking at those pubic bones. For race, we
2 recovered hair, this was tightly curled, black in color hair
3 consistent with African-American or African ancestry. The
4 molars are also a genetic feature. They are more common
5 among people of African descent. so it's the pattern of the
6 cusps on your teeth. The way to separate African from
7 European ancestry. I also looked at the shape of the skull
8 with another genetic trait, which is a depression on the top
9 of the head. So the shape of the skull. Let's see -- I
10 estimated stature from measuring the femur, and this is a
11 method that was developed in the 1950s and it's based on
12 skeletons from a long time ago. It's not the best, it's not
13 always that accurate when coming up with an estimate of
14 height, but it gives us a range plus or minus. I came up
15 with five-foot, ten, based on measuring his bones.

16 Q And again, in terms of age and height, those are
17 estimates?

18 A They're always estimates. Yes.

19 Q All right.

20 A Next. These are the molar patterns which are typical
21 of African ancestry. They are -- instead of four cusps or
22 five there's a lot of cusps on his second molar right there.

23 Next. This is a reconstruction that I did to the blunt
24 force injury to the extent of that to his face, and you can
25 see it's pretty much a direct strike to the front of his

State v. Victor Smith 9/19/11 - 9/23/11

543

1 face, the nasal area. The cheekbones and the nasal bones,
2 as well as, the part of the skull were damaged very
3 extensively. The tooth that's missing, we believe was
4 missing after death, but that is the trauma that happened
5 during the peri mortem period at the time of death.

6 Q When you say reconstruction, the shaded line, I guess,
7 on the front of the face?

8 A Sorry. That's missing bone that we did not recover. So
9 that bone either was washed away or was carried off by
10 animals. So the extent of the fracture is shown by the
11 shaded area and we did not find that bone.

12 That is the photograph of the skull that I depicted in
13 the reconstruction, showing the extent of the trauma to his
14 face.

15 Q And I'm going to show you State's Exhibit No. 179,
16 that's been marked for ID. Is that the same photograph?

17 A Same photograph.

18 Q Fairly and accurately depict the skull on the date that
19 you examined it?

20 A Yes.

21 MR. GOLDBERG: We'd offer State's No. 179 into evidence.

22 MR. HART: Same objection.

23 THE COURT: All right. It's in. Objection is noted.

24 MR. GOLDBERG: Thank you.

25 (State's Exhibit No. 179, photo,

1 was marked and entered.)

2 A Okay, this is another reconstruction I did from the
3 skull showing what is consistent with a gunshot entrance
4 wound to the left side of the skull. It is simply pretty
5 much a round hole with no -- with a fracture coming off.
6 This is a fracture caused by the energy of that projection,
7 that projectile. You can also see from the side view that
8 missing bone from the trauma to his face. That's a photo of
9 that reconstruction -- sorry -- the actual skull showing the
10 gunshot entrance wound, the fracture and the facial trauma.

11 Q Can you describe for the jury what the other lines
12 throughout the middle of the skull are evidence of?

13 A Okay. These are natural parts of your skull sutures
14 that come together, you know, like a baby has a soft spot on
15 his head. Those unite as you get older and they cause
16 sutures. They're natural parts of the skull. So that's a
17 fracture, these are natural lines, and these's also
18 fractures here from that frontal injury to the skull.

19 That's a close-up just to show the size of the gunshot
20 entrance wound.

21 This shows the right side of the skull depicting the
22 blunt force trauma and the exit wound caused by the
23 projectile, so pretty much left to right was the path of the
24 bullet. What I've done with these numbers here, I've show
25 you the sequence of the trauma that happened to him so when

State v. Victor Smith 9/19/11 - 9/23/11

545

1 we see fracture lines that hit other fracture lines, we can
2 determine the sequence of injuries. So which came first?
3 The blunt force trauma happened here, the gunshot follows,
4 so he was shot after the blunt force trauma happened. And
5 the fractures from the exit wound stop right at the fracture
6 produced by the blunt force injury. So he was hit first
7 with a blunt object and then he was shot.

8 That shows you the same thing I depicted in the
9 reconstruction with the exit wound and the blunt force
10 trauma.

11 Q And can you demonstrate on that the lines that you were
12 referring to that were consistent with blunt force trauma as
13 compared to the gunshot wound?

14 A Yeah. Also, the direction of the gunshot wound. This
15 is the exit wound. It's beveled out, you can see the lines.
16 When a bullet goes through bone it produces a cone effect.
17 That's how we determine the direction. It punches a hole
18 larger on the exit than the entrance.

19 This is the fracture line that I talked about which
20 stops at the blunt force trauma.

21 Q And where does the blunt force trauma begin?

22 A Well, it's from the front, and the fracture radiates
23 back towards this suture here. That's one of those natural
24 lines of the skull. The fracture produced by the exit wound
25 stops on that fracture produced by the blunt force trauma.

State v. Victor Smith 9/19/11 - 9/23/11

546

1 Q So it's your testimony today that the blunt force
2 trauma was definitely inflicted prior to the gunshot?

3 A Yes.

4 Q I want to show you State's No. 178 for ID. Is this the
5 same photograph you were referring to in the power point?

6 A Yes, it is.

7 Q Fairly and accurately depict that skull.

8 MR. GOLDBERG: At this time, I'll offer 178 offered into
9 evidence, Your Honor.

10 MR. HART: Same objection.

11 THE COURT: Objection overruled; 178 in.

12 (State's Exhibit No. 178, photo,
13 was marked and entered.)

14 MR. GOLDBERG: Thank you.

15 A Okay. In terms of how we positively identify bodies,
16 we talked about the biological profile coming up with sex,
17 age, and race of the body, but the other goal to take that
18 further is to positively ID a person by scientific means.
19 Usually, we do this through looking at x-rays, either dental
20 or body x-rays that were taken through life of the person we
21 think it is and we compare those to x-rays at autopsy or at
22 the anthropological analysis of the remains. So we would
23 try to get dental x-rays or hospital x-rays on any probable
24 missing person that we think it is.

25 BY MR. GOLDBERG:

State v. Victor Smith 9/19/11 - 9/23/11

547

1 Q Did you ever receive any dental x-rays in this case?

2 A In this case, we consulted with family and no one was
3 aware of any dentist he had ever seen. So he had no dental
4 x-rays available. Also, I don't believe -- the family also
5 said that he had never been x-rayed to their knowledge. We
6 were not able to obtain either of those.

7 What we did is I submitted DNA samples from the body,
8 tooth and bone, to the sheriff's department and then later
9 to State Law Enforcement Division in an attempt to
10 positively identify him.

11 Q And that effort was unsuccessful?

12 A It was unsuccessful.

13 Q When you have a situation like that where you go to x-
14 rays or DNA in terms of trying to make an identification and
15 it is unsuccessful, where do you go from there to try to
16 figure out who the body belongs to?

17 A Okay. In this case, we rely on a strong circumstances.
18 We had information from the Sheriff's Department about
19 testimony, statements that described how the body was
20 treated, wrapped up and packaged in the shower curtain.
21 Even described the mode of injury. This matched up exactly
22 to what we saw in the anthropology analysis and the
23 biological profile was consistent with being with Ernest
24 Robinson.

25 Q And is it uncommon to have to put together some sort of

1 circumstantial ID?

2 A It's uncommon, but it does happen. We felt that the
3 case was so strong, we were convinced it was him based on
4 circumstances and description and we wanted to allow the
5 family to bury him.

6 Q There've been a number of questions up to this point
7 about decomposition and considering your area of expertise
8 and considering that you actually did observe the body when
9 it was found, explain to the jury a little bit about
10 decomposition and how it works, and some of the factors that
11 go into that process?

12 A Decomposition, we break down into the early period,
13 early range, and then long range. So the anthropologist
14 specializes in middle to long range. So a long time since
15 death. In the short range you all are familiar with rigor
16 mortis and the changes that happen to the body. The
17 stiffening of the muscle groups and the changes in the color
18 of the body. There are factors both inside the body due to
19 bacteria in your body and bacteria outside your body that
20 cause the body to break down. So there's a pretty -- there's
21 a lot of variables involved, but it's a pretty regular
22 progression of stages that break down in decomposition. In
23 this one, I just said my estimate was under a year. Based
24 on that skin left over, but I put it towards the high end of
25 a year, so more than -- between six months and a year. And

State v. Victor Smith 9/19/11 - 9/23/11

549

1 he was in -- classified as being in the stage of advanced
2 decomposition. So the skeleton is all still together. It was
3 articulated, is the term we use.

4 In this case, the factors that are in effect that
5 determine how quickly a body decays are a bunch of them.
6 Temperature, the time of year, where they are deposited,
7 where that body is placed, depending on both the animals
8 present, insect activity, and type of plants, vegetation.
9 Everything effects how quickly they decompose. Humidity is
10 a big factor. Being exposed to the sun verses the shade,
11 being covered or wrapped up in clothing or other that slows
12 down decomposition. Animal activity, as I said, and insect
13 colonization, so a lot of different types from flies to
14 beetles that feed on a body. They are active at various
15 times of the year. So based on my estimate I put this
16 happened in the fall of the year, prior to him being found,
17 and that would have been a time of limited insect activity.
18 There still would have been flies and things active, so that
19 would have slowed the decomposition.

20 Size of a person also effects how quickly they
21 decompose and having trauma also effects that.

22 Next slide. As I said, I put it up -- upward closer to
23 the year line. It's consistent with being deposited at this
24 location. So I believe this body decomposed fully from
25 fresh to fully -- to advanced decay in this one spot. So I

1 believe it was placed there shortly after death and left
2 there this whole time.

3 Q And what leads you to reach that conclusion?

4 A Can you go to the next slide real fast. I'm basing it
5 off of -- this is consistent, this spot where the body lay
6 has all the stain caused by fats in the body as it
7 decomposes and that is the quantity consistent with the
8 quantity of staining of this as well as some insect activity
9 with that body fully decomposing in this one spot.

10 Q And is State's No. 51, the same photograph?

11 A Yes, it is.

12 MR. GOLDBERG: I'd offer State's No. 51 in to evidence.

13 MR. HART: Same objection.

14 THE COURT: What number?

15 MR. GOLDBERG: State's No. 51.

16 THE COURT: Okay. Objection is noted. No. 51 is in.

17 (State's Exhibit No. 51, photo, was
18 marked and entered.)

19 A Okay. Some of the variables that lead me to making
20 that estimate being under a year, but close to a year are
21 that he was wrapped up in a shower curtain, which cut off a
22 lot of the insect activity which would have been there.
23 Also, in the fall and winter, consistent with my estimate,
24 bodies decompose more slowly, thus leaving more soft tissue
25 at the end when he was discovered, and he is an individual

State v. Victor Smith 9/19/11 - 9/23/11

551

1 with low body mass. So a tall and skinny individual, he
2 would decompose more slowly than someone with a larger body
3 mass.

4 Next. In terms of how he was so close, under 100 feet
5 from the back of this apartment building, how he would not
6 have been discovered sooner with the odor of decomposition.
7 Number one, wrapped in a shower curtain contains odor. So
8 it's not unusual for bodies to decompose near a residential
9 area and not be found for some time. So also --

10 BY MR. GOLDBERG:

11 Q I'm sorry. In your experience, have you, in fact, seen
12 remains of bodies that were located even closer than this to
13 residences?

14 A Yes, I have. Right behind someone's backyard.

15 Q Without them noticing?

16 A Yes, that's correct.

17 Q Go ahead.

18 A Also the back of Building 16, right here, is on the
19 slope which leads down to a pond and a low lying area, and
20 so I looked into some of the literature on air currents and
21 -- show the next slide. Air currents coming upslopes and
22 off of ponds produce eddies and they produce swirling wind
23 currents, so it's likely that at certain times that odor
24 would not have even been carried up that slope toward those
25 buildings, based on my review of the literature on that.

1 Next. Okay. That's it.

2 Q When you examined the body, when you first approached
3 the body and looked at it, did you get a good look at the
4 skull at the site that he was found?

5 A Yes, I did.

6 Q Did you observe the gunshot wound at that time?

7 A Well, the part of the skull, when I got there was
8 exposed but not hidden by the shower curtain. I could see
9 the gunshot wound straight off the bat.

10 Q Did you observe any defects in the curtain or the cloth
11 around the skull area?

12 A I did not.

13 Q All right. And that was a lot to take in. I just want
14 to go back over a little bit of it.

15 You talked about the body being consistent with
16 decomposing at that site. Would there have been different
17 condition of the bones or the remains decomposed somewhere
18 else and then brought to that location, would it have
19 appeared differently, it's layout or anything of that
20 nature?

21 A Yes. When bodies decompose, you know, it depends on a
22 lot of variables and the time frame, but when bodies
23 decompose somewhere else and are moved typically the
24 articulations of the bones where they come together are
25 going to be disturbed, so a body may fall apart, may come

State v. Victor Smith 9/19/11 - 9/23/11

553

1 apart in movement, and just depending on the degree of
2 decomposition.

3 Q So this case is consistent with decomposing at that
4 site?

5 A Correct. Yes.

6 Q Okay. I want to talk to you about back bone.

7 A Okay.

8 Q Hypothetically, if someone were struck in the back with
9 a massive object, such as a weight and an individual claimed
10 that they heard a noise, a pop, what was that?

11 MR. HART: Calls for speculation, Your Honor.

12 THE COURT: He's an expert. He's allowed to offer an
13 opinion. Overruled.

14 BY MR. GOLDBERG:

15 Q What would that pop seem to suggest?

16 A A pop. You know the spine is very flexible and the
17 chiropractor makes you pop. It's intervertebral disks, they
18 contain fluid, they make noise just like when you do that.
19 (Demonstrates slap noise.) So --

20 Q And so there wasn't necessarily be evidence of
21 fractures in the spine would there if something like that?

22 A Well, there could be or couldn't be. I observed no
23 fracture in the spine.

24 Q Okay.

25 A All the injury was on the skull.

1 Q I guess what I'm asking you is there could be that kind
2 of a situation where someone was assaulted in that manner
3 without demonstrating an actual fracture to go with it?

4 A Absolutely.

5 Q Okay. All right. And you talked about circumstantial
6 identification. In this case, in your expert opinion, what
7 were the circumstances that led you to identify these
8 remains as belonging to Ernest Robinson, Jr.?

9 A Okay. The biological profile I developed being
10 consistent with his height, race, and age, the circumstances
11 provided to us, about how the body was treated, how he came
12 to meet his end, and how he was wrapped up and transported
13 were all consistent. The guy was missing and as I said, we
14 did all we could with the DNA but it wasn't successful. But
15 we retain DNA evidence per the law and -- so --

16 Q You mentioned earlier that eventually the remains were
17 released to the family. Is that something that you would
18 have done had you not been confident that that body belonged
19 to that family?

20 A No. We would not have released that body if we didn't
21 believe it was Ernest Robinson.

22 Q So in your expert opinion the remains found at [REDACTED]
23 Elders Pond Circle belonged to who?

24 A Ernest Melvin Robinson.

25 Q Thank you.

State v. Victor Smith 9/19/11 - 9/23/11

555

1 THE COURT: Mr. Hart.

2 MR. HART: Thank Your Honor.

3 WILLIAM STEVENS - CROSS EXAMINATION

4 BY MR. HART:

5 Q See if you can do me a favor and have your assistant to
6 pull your power point presentation back up?

7 A Okay. Do you want me to come back down there?

8 Q Not right now.

9 A Okay.

10 Q Let him get it set up.

11 A Okay.

12 THE COURT: Leave it down.

13 MR. HART: Yes, sir.

14 THE COURT: Do you want it up now?

15 MR. HART: No, sir. It's fine.

16 BY MR. HART:

17 Q Is it Dr. Stevens?

18 A Not yet. I'm a doctoral student.

19 Q Okay.

20 A So Mr. Stevens.

21 Q Mr. Stevens, one of the things that you just mentioned
22 was that there was no fracture of the spine on the remains
23 that you tested?

24 A Yes, sir.

25 Q Didn't show any signs of blunt force trauma on the

1 spinal area?

2 A No.

3 Q At all?

4 A No.

5 Q Did you notice in the leg area, did you notice any
6 fractures in the legs, femur, any blunt force trauma to the
7 femur?

8 A No, I did not.

9 Q In your expert opinion did it appear from the remains
10 that someone had taken the legs and bent them backwards.
11 Did you notice that at all?

12 A We can't determine that from the skeletal remains.

13 Q From what you observed did it appear that maybe
14 something that weights 45 pounds or more had been dropped
15 onto the spine of the remains?

16 A I have no evidence of spinal trauma.

17 Q One of the things you mentioned is that if a body is
18 moved after decomposition, the body starts to fall apart; is
19 that right?

20 A It can happen. That would depend on the stage of
21 decomposition.

22 Q And you would agree that you observed the remains, the
23 fingers, the phalanges, those were missing also, right?

24 A Yes, sir.

25 Q And there was a foot that was missing from those

State v. Victor Smith 9/19/11 - 9/23/11

557

1 remains; right?

2 A I attributed that to drainage or the possible animal
3 activity post mortem.

4 Q And that could have been done through movement of the
5 remains?

6 A I say it's more consistent with animal activity.

7 Q Also when you observed the body it was clothed in a
8 t-shirt; is that correct?

9 A Correct.

10 Q And it was clothed in underwear, boxers?

11 A Correct.

12 Q It wasn't stripped naked when you observed the body?

13 A Correct.

14 Q You also noted that there -- there remains had an odor
15 to it; is that correct?

16 A They did. Yes, sir.

17 Q You also mentioned from what you observed that the
18 death may have occurred under one year?

19 A My estimate is he was dead under one year.

20 Q Possibly in the fall before you discovered the remains?

21 A Putting it up towards the high end of that estimate
22 would make it in the fall.

23 Q You said the high end would make it in the fall?

24 A Of the year preceding discovery of the body.

25 Q Okay. And you submitted the left femur for test

1 results; is that correct?

2 A Right. For DNA testing.

3 Q And you never received any results back from the
4 testing that indicated Ernest Robinson; is that right?

5 A Right. They were not able to recover usable DNA.

6 Q Right, but what I'm asking is you didn't get any
7 results back saying this is Ernest Robinson?

8 A No, sir. I think I got results back saying negative
9 results. So --

10 Q You also indicated you submitted two molars, which are
11 teeth?

12 A Yes.

13 Q For testing?

14 A Right. They are also a source of DNA.

15 Q Right. And you never received any results back
16 indicating Ernest Robinson; is that correct?

17 A I did not receive DNA results. No.

18 Q I do want -- you can pull that up now.

19 A Okay.

20 Q The power point. I think they were one of the last few
21 scenes. If you could pull up where the body had already
22 been removed and there's a darker area?

23 A Yes.

24 Q Okay. If you'll step down for us?

25 A Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

559

1 Q Looking at State's Exhibit No. 51. You testified that
2 one of the ways you could tell the approximate time frame of
3 death is because of this darkened area here on State's
4 Exhibit No. 51; is that correct?

5 A Yes.

6 Q And one of the things you mentioned is that this
7 darkened area is the fats from the body?

8 A Yes. The fats that break down the body, the acids from
9 the body as it breaks down. That's a stain consistent with
10 the body decomposing from fresh to advanced decay in that
11 spot.

12 Q So in this particular spot here, did you ever receive
13 any pine straw or brush to test for the DNA to see if that
14 was Ernest Robinson?

15 A I did not. No, I don't think it would be tested.

16 Q But it does contain his body fluids, his fats and
17 acids?

18 A Yes. Highly degraded and broken down.

19 Q Let's go to -- right here. I'm not sure which exhibit
20 this is -- You testified on direct to this particular
21 picture, which we don't have listed as an exhibit, but you
22 indicated the body was found in this brush area here; is
23 that correct?

24 A In this brush area here.

25 Q Oh, the brush area here. But you said approximately

1 less than 100 feet to the closest apartment?

2 A Yeah. I didn't measure that. So I don't know what
3 under 100 feet from the back of that apartment is not my
4 estimate. The Sheriff's Department has that measurement, I
5 believe.

6 Q Okay, but you would agree with me that's very close to
7 the nearest apartment?

8 A Very close. Yes.

9 Q And when you observed the remains they were wrapped in
10 a very bright flowery show curtain?

11 A It was kind of dulled down, you know, being exposed to
12 a little bit of sunlight. It was flowery and it was also
13 stained. That area would be where a lot of rainwater and
14 soil was on it. So it was not that bright a color. It
15 probably had been initially.

16 Q Right. Also, looking at that this you can see that
17 there are apartment complexes in this particular area;
18 right?

19 A Right.

20 Q And there are also apartment complexes in this
21 particular area?

22 A Yes, sir.

23 Q And there are apartment complexes in this area?

24 A Yes, sir.

25 Q And here?

State v. Victor Smith 9/19/11 - 9/23/11

561

1 A Yes.

2 Q Did you get a chance to observe these apartment
3 complexes here?

4 A When I was on scene?

5 Q Yes, sir.

6 A Yes.

7 Q And you would agree that these are two story complexes
8 here?

9 A Correct. Well, as far as I remember they were
10 multi-story. I didn't ask.

11 Q All right. Thank you. There's some questions about the
12 decomposing body and the smell. In your expert opinion
13 you've smelled a decomposing body haven't you?

14 A Hundreds of them. Yes.

15 Q Could you explain that smell to us?

16 A It is a very foul odor. Lot of people say that it's
17 distinctive from a dead animal. It has it's own -- the human
18 odor of decomposition caused by the bacteria that produce
19 gas and it is very unpleasant.

20 Q You'd agree that it's a smell that once you smell it
21 you'll never forget it?

22 A Yes.

23 MR. HART: No further questions.

24 THE COURT: All right. Anything on redirect?

25 MR. GOLDBERG: Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

562

WILLIAM STEVENS - REDIRECT EXAMINATION

BY MR. GOLDBERG:

Q Mr. Hart asked you about if there was any evidence of spinal trauma?

A Yes.

Q You said, no, correct?

A Correct.

Q However, is it possible that it could have been there were an incident involving the back and there would have been no direct evidence of trauma; is that possible?

A Absolutely. It could be a soft tissue muscular injury. I don't speculate on it, but we can -- we can have clearly documented injuries and not see them show up on the skeleton because the back is flexible, as I said. The femur bone is very strong, so it doesn't always break. You can damage joints, joints are more likely to be damaged, and cartilage, than are bone. Depending on the force of the trauma.

Q I think you demonstrated earlier, but if my remains were found would there be any evidence of trauma from me doing that? (Demonstrates.)

A I hope not, because I do it a lot. But I don't think so. No.

Q You talked about or Mr. Hart questioned you a little bit about the area underneath where the remains were found on State's No. 51.

State v. Victor Smith 9/19/11 - 9/23/11

563

1 A Yes, sir.

2 Q And he asked you about possibility of DNA being found
3 in this area. Can you elaborate a little bit further on why
4 it would be difficult to get DNA from the area where the
5 body was laying?

6 A It's been exposed to the environment. DNA degrades.
7 It would contain acids and leftover -- by products of
8 decomposition which can be tested for certain things, but
9 after that time frame, not DNA.

10 Q And you also indicated this was on a slope; correct?

11 A Yes.

12 Q Is it safe to say that it may have rained during the
13 time frame this body was out there?

14 A Absolutely, yes.

15 Q And is it fair to say that some of that rain water may
16 have gone down that slope?

17 A Yes. Correct.

18 Q How would rain water going down the slope impact that
19 scene?

20 A Well, it would probably move, as we thought, evidence,
21 and even the stain itself being so intact despite being on a
22 drainage area further reinforces the idea that he
23 decomposed, that it was extensive and decomposed entirely
24 there, so it didn't wash away, but both the acids and the
25 staining, parts of the skeleton were all subject to being

1 washed down that slope.

2 Q In your opinion, is that scene where the body was found
3 consistent with that body being placed there in close time
4 -- close to the time of death?

5 A Yes, it is. And I forgot to say that some of those
6 bones were recovered and had washed down the slopes from
7 that body, some of that was not articulated as I
8 demonstrated on the skeleton.

9 Q That being said, it's pretty close to when the death
10 occurred that the body got placed at that spot?

11 A I believe so. Yes.

12 Q Thank you.

13 THE COURT: Anything further, Mr. Hart.

14 MR. HART: Yes.

15 WILLIAM STEVENS - RECROSS - EXAMINATION

16 BY MR. HART:

17 Q You were just asked about if there was trauma to the
18 spine, if it was possible that it would not show?

19 A Yes.

20 Q In your training and expertise, we're talking about
21 something that weighs 45 pounds or more. Wouldn't you agree
22 you expect some type of trauma to the spine?

23 A Possibly, yes, but it could be, as I said, been soft
24 tissue trauma, trauma to a disk in the back. Just
25 speculating, but it did not show up in the skeleton.

State v. Victor Smith 9/19/11 - 9/23/11

565

1 Q When you hear a pop, you agree that muscles don't
2 necessarily pop do they?

3 A No, the joints.

4 Q The joints pop?

5 A The fluid in the capsule of the joint. Depending on
6 the type of joint. They all have their various -- that's
7 what I think what causes that.

8 Q And also bones pop; is that correct?

9 A Um --

10 Q Or crack?

11 A Bone crack and it would be audible if it was a
12 fracture, but in this case being no fracture, we assume it's
13 a joint.

14 Q And as you heard Mr. Goldberg pop his fingers as he
15 walked up?

16 A Yes.

17 Q He didn't drop a 45 pound weight onto his knuckles did
18 he?

19 A No.

20 THE COURT: All right. Anything further for this
21 witness?

22 MR. GOLDBERG: No, sir.

23 THE COURT: You can step down, Mr. Stevens.

24 MR. STEVENS: Thank you.

25 MR. GOLDBERG: State calls Gilbert Gallegos.

State v. Victor Smith 9/19/11 - 9/23/11

566

1 THE COURT: Who?

2 MR. GOLDBERG: Gilbert Gallegos, Your Honor.

3 THE COURT: Gilbert Gallegos. Is that how you pronounce
4 it?

5 MR. GALLEGOS: Yes, sir.

6 (WHEREUPON, Gilbert Gallegos was
7 sworn to tell the truth.)

8 THE CLERK: Please have a seat in the witness box and
9 state your name for the record.

10 MR. GALLEGOS: Gilbert Gallegos.

11 GILBERT GALLEGOS - DIRECT EXAMINATION

12 BY MR. POTTS:

13 Q Mr. Gallegos, where are you currently employed?

14 A With the Richland County Sheriff's Department.

15 Q What do you do there?

16 A Currently with the investigations assigned to the
17 narcotics unit.

18 Q Were you working there back in July 2009?

19 A I was in investigation in major crime scene, handled
20 assaults.

21 Q Do you remember this case?

22 A Yes, sir.

23 Q When did you first encounter this case?

24 A At the time with investigation a few of us will be
25 assigned to the homicide team and there will be a primary,

State v. Victor Smith 9/19/11 - 9/23/11

567

1 someone will be a senior investigator and a secondary who
2 will assist and learn from the primary. At the time I was
3 the secondary and the primary was Investigator Holdorf.
4 That evening I was on call with Investigator Holdorf and got
5 a call from Sgt. Robinson that there was a body found, that
6 was on July 20, 2009.

7 Q Now, did you go to the crime scene that day?

8 A No, sir.

9 Q What did you do that day?

10 A Sgt. Robinson just let me know to prepare to make a
11 meeting the following morning whereas Investigator Holdorf
12 and higher ups in investigation.

13 Q So you went to the meeting the next morning?

14 A Yes, sir.

15 Q And that was the 21; what did you guys discuss?

16 A Sgt. Robinson and Investigator Holdorf went over the
17 case, what they had so far, and what was the next plan.

18 Q Did you talk about Investigator Cronise's missing
19 persons report?

20 A Yes, sir.

21 Q Based on that report, who were you first interested in
22 talking to?

23 A First interested in speaking with Victor Smith.

24 Q Okay. Did you go out looking for him?

25 A No, sir.

1 Q Okay. Where was he at the time?

2 A At the time he was in Mississippi.

3 Q Okay. Now, Mr. Smith is in Mississippi, where'd you go
4 from there?

5 A At the time we were doing a little bit more research on
6 Mr. Smith and also a possible address connected to Smith.
7 We located an Elders Pond. It was at [REDACTED] Elders Pond and
8 also Apartment [REDACTED], and from the information obtained from
9 who stayed there and who's connected, is Mr. Smith. So I
10 had to get a search warrant.

11 Q Did you get that search warrant?

12 A I went with Sgt. Robinson and Investigator Holdorf to
13 Judge Newsome and they presented the case and we obtained a
14 search warrant.

15 Q Okay. What did you do with that search warrant?

16 A Myself and the other investigators went to execute the
17 search warrant. There was nobody home at the time. Myself
18 and Capt. Smith, checked a last known employer for a Jazmine
19 Bright.

20 Q Now, why were you looking for Jazmine Bright?

21 A She was one of the ladies connected with Mr. Smith.

22 Q Did she live there, as well?

23 A Yes, sir.

24 Q Now, where did you look for her?

25 A At the Waffle House nearby at Clemson and Hardscrabble.

State v. Victor Smith 9/19/11 - 9/23/11

569

1 Q Is that where she was employed?

2 A Yes, sir.

3 Q Did you find her there?

4 A No, sir.

5 Q Where was she?

6 A She's in North Carolina.

7 Q Doing what?

8 A At the time -- if I can refer to my log notes.

9 Q Did you write a report on this?

10 A I did on follow up on --

11 Q And that would be in your report?

12 A Yes, sir. She was in North Carolina attending a
13 wedding.

14 Q Now, after you couldn't find Ms. Bright, did you
15 encounter anybody else regarding this case?

16 A We left a group of investigators at the apartment in a
17 -- notified Capt. Smith that Dietrick Williams had arrived
18 at the apartment.

19 Q Now, based on conversations with Dietrick Williams did
20 you start to look for anybody else?

21 A At the time, Mr. Williams, he was transported to our
22 headquarters and we went ahead and took a statement from Mr.
23 Williams to see if he knew the victim and also Mr. Smith.

24 Q Did he lead you towards anybody else to talk to?

25 A Yes. At the time, he let us know that one of the

State v. Victor Smith 9/19/11 - 9/23/11

570

1 friends of Victor's was Allen Fulten. At the time, Sgt.
2 Barnes was over the burglary unit and I made contact with
3 him about Mr. Fulten.

4 Q Where was Mr. Fulten?

5 A He was still at the Alvin S. Glenn Detention Center.

6 Q That's the jail here at the County?

7 A Yes.

8 Q Did you have an opportunity to speak with Mr. Fulten?

9 A Yes. We eventually, after making contact with Williams
10 we made contact with Fulten.

11 Q Now, I'm not asking anything you said, but based on
12 your conversations with Mr. Fulten, who did you focus your
13 investigation on at that time?

14 A At the time he identified Victor Smith. He knew him as
15 Slim. Franchise, who is Victor's brother, Darius Smith, and
16 also a gentleman known as Man, who is a Jeremiah Jones.

17 Q Now, after that conversation what did you do next?

18 A After that conversation I attempted to do research on
19 Mr. Jones. We were able to locate him.

20 Q Where did you locate him?

21 A It was on the 22 we made contact with him. He was on
22 foot near Parklane.

23 Q On Parklane Road here?

24 A Yes, sir. Right off of Two Notch Road.

25 Q Now, did you have an opportunity to talk with Mr.

State v. Victor Smith 9/19/11 - 9/23/11

571

1 Jones?

2 A Yes, sir.

3 Q Once again, not going into anything you said, based on
4 that conversation, did you get warrants?

5 A At the time, sir, did not get any warrants. It was the
6 following day on the 23 we were able to obtain murder
7 warrants for Allen Fulten, Darius Smith, Victor Smith, and
8 Mr. Jones was also charged with murder.

9 Q Okay. Now, at that point, what did you do?

10 A At that point, we were tasked with locating the
11 brother, Darius Smith, myself, Investigator Holdorf, Sgt.
12 Robinson and the line unit, the uniformed patrol deputy --

13 Q Uh-huh. (Affirmative response.)

14 A -- made contact with him at his residence on Jaybird.

15 Q You talked to him?

16 A Yes, he was transported back to our headquarters.

17 Q And based on your conversation with him, who were you
18 interested in?

19 A The same parties; Victor Smith, Jeremiah Jones. He
20 also implicated Allen Fulten.

21 Q Okay. Now after you finished talking to Darius --

22 A Yes.

23 Q -- is there anyone else you hadn't talked to?

24 A Victor Smith.

25 Q Did you go talk to Victor Smith?

State v. Victor Smith 9/19/11 - 9/23/11

572

1 A Yes, sir.

2 Q And where was he, again?

3 A He was in the Mississippi Department of Corrections.

4 Q And so you traveled to Mississippi to go see him?

5 A Yes, sir. Myself and Investigator Holdorf.

6 Q When you saw him did you have an opportunity to talk
7 with him?

8 A Yes.

9 Q Now, before you talked to him did you advise him of his
10 Miranda Rights?

11 A Yes, sir, written form.

12 Q Okay. Did you let him know he didn't have to talk to
13 you?

14 A Yes.

15 Q Did he want to talk to you?

16 A Yes.

17 Q At any time did he ask to speak to an attorney?

18 A No, sir.

19 Q At any time did he ask you to stop talking to him?

20 A No, sir.

21 Q Okay. Did you take a statement from him at that time?

22 A At that time, Investigator Holdorf was the primary. He
23 initialed or checked the Advice of Rights and signed. He
24 ended up writing a statement.

25 Q Okay. Now, did you come back to Columbia?

State v. Victor Smith 9/19/11 - 9/23/11

573

1 A Yes, sir.

2 Q Okay.

3 MR. POTTS: Beg the Court's indulgence?

4 THE COURT: Yes, sir.

5 BY MR. POTTS:

6 Q When you advised him of his Miranda Right, did he, in
7 fact, waive those rights?

8 A Yes, sir.

9 Q Okay. You say he chose to speak to you after knowing
10 what his rights were?

11 A Yes, sir.

12 Q Thank you. No further questions.

13 THE COURT: Mr. Hart.

14 MR. HART: Thank Your Honor.

15 THE COURT: Yes, sir.

16 GILBERT GALLEGOS - CROSS EXAMINATION

17 BY MR. HART:

18 Q Investigator, you've got your report. You said you
19 were contacted on July 20, 2009; is that right?

20 A Yes, sir, and Sgt. Robinson.

21 Q You just didn't respond to the scene?

22 A He said -- Investigator Holdorf was at a stopping point
23 in the investigation and planned to have a meeting the
24 following morning to advise the chain of command and what we
25 had so far.

1 Q Let's talk briefly about the type of neighborhood
2 Elder's Pond apartments are. You guys don't respond -- the
3 Sheriff's Department don't respond to a lot of gunshots in
4 that particular area, do you?

5 A It's been some time since I've been on uniform patrol.

6 Q Well --

7 A I don't have that knowledge.

8 Q -- you don't hear a lot of gunshots in that particular
9 area?

10 A The most recent case I've had is a shooting that took
11 place, it was an unrelated case.

12 Q But you would agree that in Columbia there are some
13 areas where there are a lot of gunshots going on.

14 A Just like anywhere else.

15 Q That's not one of them, right?

16 A I don't have that with me.

17 Q There is evidence in this case, well, there's been
18 testimony that a gunshot occurred in this particular case,
19 right?

20 A Yes, sir.

21 Q In Apartment [REDACTED]?

22 A Yes, sir.

23 Q When most people are at home, there's been evidence
24 that it happened late at night; is that right?

25 A Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

575

1 Q You didn't receive a report of anyone firing a gun on
2 that particular day, that particular night, did you?

3 A A report or a call in?

4 Q A call in?

5 A No, sir.

6 Q No one called the Sheriff's Department to say we heard
7 a gunshot?

8 A No, sir.

9 Q And you've been out to these apartments; is that
10 correct?

11 A Yes, sir.

12 Q I'm showing you what's been marked as State's Exhibit
13 No. 11. And you've been there, you've seen this, right?

14 A No, sir.

15 Q You have not seen this?

16 A No, sir.

17 Q Can you identify State's Exhibit No. 11 as the Elders
18 Pond apartments?

19 A Without seeing a prior -- it's -- no, sir.

20 Q Take your time and look over it.

21 A Without seeing a prior -- Elders Pond is a good size
22 apartment complex. Without seeing a prior, I couldn't
23 testify.

24 Q So that, State's Exhibit No. 11 doesn't mean anything
25 to you?

State v. Victor Smith 9/19/11 - 9/23/11

576

1 A No, sir, I haven't seen it before.

2 Q All right. I'm showing you what's been marked as
3 State's Exhibit No. 5. Do you recognize State's Exhibit No.
4 5?

5 A Yes. With the roads labeled Elders Pond, Elders Pond
6 Circle.

7 Q Did the solicitor ever go over this exhibit with you?

8 A No, sir.

9 Q Never talked to you about it?

10 A No, sir.

11 Q State's Exhibit No -- are you the lead investigator?

12 A No, sir.

13 Q Co-lead investigator?

14 A Secondary.

15 Q Secondary?

16 A Yes, sir.

17 Q You've been in this trial the whole time?

18 A No, sir.

19 Q Okay. Did he ever go over State's Exhibit No. 11 with
20 you?

21 A No, sir.

22 MR. GOLDBERG: Objection, Your Honor. Asked and
23 answered. He said he's unfamiliar with the exhibit.

24 THE COURT: Okay. He said he didn't know.

25 BY MR. HART:

State v. Victor Smith 9/19/11 - 9/23/11

577

1 Q You identified State's Exhibit No. 5 as Elders Pond by
2 reading the exhibit; is that correct?

3 A Yes.

4 Q Can you see how the apartments are grouped and located
5 to each other?

6 A Yes, sir.

7 Q Would you agree that each apartment is close in
8 location to each other?

9 A Yes, sir.

10 Q Specifically, looking at State's Exhibit No. 5,
11 Building No. 6?

12 A That's close to the other apartments or --

13 Q Yes. You can see other -- I haven't asked yet. You
14 can see Building No. 6; is that correct?

15 A Yes, sir.

16 Q You'd agree that to Building No. 6 to the left of
17 Building No. 6 is No. 7; right?

18 A Yes, sir.

19 Q And to the right of it is No. 5; that's correct?

20 A Yes, sir.

21 Q And you would agree that on top of apartment [REDACTED], there
22 are apartments located on top of [REDACTED]; is that correct?

23 A Yes, sir.

24 Q There are apartments located to the left of apartment
25 [REDACTED]?

State v. Victor Smith 9/19/11 - 9/23/11

578

1 A Yes, sir.

2 Q Did you ever receive any reports from any of those
3 apartments about a gunshot that happened back around the
4 incident date?

5 A As I said earlier about the call in?

6 Q Yes, sir.

7 A No, sir.

8 Q Okay. Are you familiar with any evidence that was
9 collected from the scene?

10 A No, sir.

11 Q Are you familiar with any items that were collected
12 from the apartment?

13 A We did the initial walk through. At that time, Capt.
14 Smith, myself and other investigators left at the apartment,
15 left some investigators there and also a lab unit. Do I have
16 in my report what they recovered; no, sir.

17 Q From your part in the investigation did you ever
18 receive any information that blood tested positive for
19 Ernest Robinson; for your part?

20 A No, sir.

21 Q Did you ever receive for your part any evidence or test
22 results that the blood tested positive for Victor Smith?

23 A At the conclusion of my part of the investigation I'm
24 unaware of any matches. I guess that's what you're asking.

25 Q You -- have you received any information in this

State v. Victor Smith 9/19/11 - 9/23/11

579

1 investigation that there was some concern over some missing
2 money?

3 A Yes, sir.

4 Q And you had a chance to talk to Victor Smith; right?

5 A Yes, sir.

6 Q You knew Victor Smith was employed?

7 A Yes, sir.

8 Q You knew that he was employed?

9 A Yes, sir.

10 Q At Beef O'Brady's?

11 A Yes, sir.

12 Q That he was receiving a pay check?

13 A Yes, sir.

14 Q In your investigation you learned that Ernest Robinson
15 was employed at Beef O'Brady's; right?

16 A Yes, sir.

17 Q That he was receiving a pay check; is that correct?

18 A Yes, sir.

19 Q Throughout your investigation did you learn that Smurf
20 was not employed?

21 A Smurf is?

22 Q I'm sorry -- Allen Smith --

23 A Yes.

24 Q -- Allen Fulten. I'm sorry Allen Fulten?

25 A Yes.

State v. Victor Smith 9/19/11 - 9/23/11

580

1 Q You learned that he was not employed?

2 A Yes, sir.

3 Q He was not receiving a pay check?

4 A Yes, sir.

5 Q Throughout your investigation you learned that Jeremiah
6 Jones was not employed; is that correct?

7 A Yes, sir.

8 Q That he was not receiving a pay check?

9 A Yes, sir.

10 Q So within that whole group the two people who were not
11 employed and not receiving a pay check was Allen Fulten and
12 Jeremiah Jones?

13 A Yes.

14 Q You had a chance to go into that apartment; is that
15 correct?

16 A Yes, sir..

17 Q You had a chance to see the layout of that apartment?

18 A No, sir.

19 Q You didn't?

20 A Well, just the visual. I haven't seen a picture of it.

21 Q But you walked through the entire apartment?

22 A Yes, sir.

23 Q I'm going to show you what's been marked as State's
24 Exhibit No. 10. Does that fairly and accurately represent
25 the apartment that you walked through?

1 A Without seeing this prior -- with the other diagrams, I
2 haven't seen this. No, sir.

3 Q So -- I'm sorry, look at it, go ahead. So you're on
4 the stand today and the solicitor never went over this
5 diagram with you?

6 A No, sir.

7 Q You have no knowledge of this diagram?

8 A No, sir.

9 Q We talked about the blood that was collected. There
10 was evidence that was collected from that first bedroom,
11 particularly the area rug?

12 A Yes, sir.

13 Q For your part which you're here testifying did you ever
14 receive any evidence that there was DNA on that area rug for
15 Victor Smith?

16 A Towards the end of my part of the investigation I never
17 received word from Investigator Holdorf or the lab unit that
18 there was a match. I couldn't tell you if there was or not.

19 Q Before you testified today --

20 A Yes, sir.

21 Q -- did you ever receive any information from anybody in
22 your department that there was DNA on that rug from Ernest
23 Robinson?

24 A From today, no, sir.

25 Q There was carpet that was taken from that first

State v. Victor Smith 9/19/11 - 9/23/11

582

1 bedroom, from your part in the investigation, did you ever
2 receive any evidence that there was DNA belonging to Ernest
3 Robinson?

4 A I was never advised that DNA was collected that matched
5 Ernest Robinson.

6 Q Have you ever been advised that any DNA matched Victor
7 Smith on that carpet?

8 A No, sir.

9 Q During your investigation you learned that first
10 bedroom belonged to Allen Fulten, also known as Smurf;
11 right?

12 A As his residence or --

13 Q Where he lived?

14 A No, sir.

15 Q You never learned that?

16 A No, sir.

17 Q Did you ever learn that that first bedroom that
18 Jeremiah Jones lived in there?

19 A I did learn that they were both acquaintances of Mr.
20 Smith and also his brother.

21 Q Are you familiar with the bathroom that's connected to
22 that bedroom?

23 A Yes, sir.

24 Q Are you familiar with the items that were taken from
25 that bathroom?

State v. Victor Smith 9/19/11 - 9/23/11

583

1 A We had an itemized list of what was taken, but
2 off-hand, no, sir.

3 Q Okay. Shower curtain; are you familiar with the shower
4 curtain that was taken from that bath?

5 A Yes, sir.

6 Q Have you been advised of any DNA that matches Ernest
7 Robinson on that shower curtain?

8 A No, sir.

9 Q Have you been advised of any DNA that matches Victor
10 Smith on that shower curtain?

11 A No, sir.

12 Q There was a bath mat that was collected from that
13 bathroom. Have you been advised of an DNA that matches
14 Ernest Robinson on that bath mat?

15 A Since my part of the investigation I haven't been
16 advised of any DNA that was matched to the victim or Mr.
17 Smith.

18 Q You say you talked with Victor Smith and he gave you a
19 voluntary statement; right?

20 A Yes, sir.

21 Q The process at the Sheriff's Department for taking
22 statements as the investigator, you ask the questions,
23 right?

24 A Yes.

25 Q The suspect answers?

1 A Yes, sir.

2 Q The process is that you write the questions, right?

3 A Yes, sir.

4 Q And you write the answers?

5 A Yes.

6 Q The suspect never gets the chance to write their own
7 statement do they?

8 A No, sir. If I could go into further detail on that.

9 What -- it doesn't matter if you're a suspect or a victim.

10 If you're a victim in a robbery case we'll always type out
11 the statement or write the statement. A lot of times that's
12 due to the -- sometimes people, their handwriting skills

13 aren't the best and legibility. Also, any type of statement
14 that we type up or write or redact, the victim or suspect.

15 Q And you mentioned sometimes the handwriting skills is
16 not the best, it's not as legible?

17 A Yes.

18 Q But it would be in that person's own words; is that
19 correct?

20 A We'll write or type what they tell us and read back to
21 that person's who's given us that statement.

22 Q Did you get a chance to take a statement from Allen
23 Fulten?

24 A Yes.

25 Q In that first statement Allen didn't -- he didn't tell

State v. Victor Smith 9/19/11 - 9/23/11

585

1 you the truth, did he?

2 A At the time we interviewed him, no, sir.

3 Q And you're familiar that right after this incident
4 Allen Fulten bought a one-way ticket to Charlotte?

5 A Yes, sir.

6 Q At no point in time during your investigation did Allen
7 Fulten voluntarily come down to the sheriff's Department and
8 say, let me tell you what happened. He never did that did
9 he?

10 A No, sir.

11 Q You had to go pick him up, correct?

12 A Yes, sir.

13 Q Did you get a chance to take a statement from Jeremiah
14 Jones?

15 A Yes, sir.

16 Q In that first statement of Jeremiah Jones, he didn't
17 tell the truth did he?

18 A If I can refer to my notes?

19 Q Sure.

20 A Mr. Jones statement, only one statement was taken. He
21 told the truth in his own words.

22 Q So he told the truth in his own words?

23 A Yes.

24 Q And Jeremiah Jones, he didn't give a statement the
25 night of the incident did he?

1 A No, sir.

2 Q Did he give a statement a month later?

3 A No. He gave a voluntary statement or come down to the
4 headquarters.

5 Q He never walked in or rode in a car down to the
6 Sheriff's Department and said, let me tell you what I think
7 about what happened. He never did that did he?

8 A No, sir.

9 Q He gave a statement after you picked him up; is that
10 right?

11 A Yes, sir.

12 Q Do you remember talking to Jazmine Bright?

13 A No, sir.

14 Q You never talked to Jazmine Bright?

15 A No, sir.

16 Q Do you remember talking to Darius Smith?

17 A Yes, sir.

18 Q Darius Smith didn't give a statement the night of the
19 incident did he?

20 A No, sir.

21 Q Didn't come in a month later did he?

22 A No, sir.

23 Q He never volunteered to come down to the Sheriff's
24 Department and said, let me tell you my side of the story;
25 he never did that?

State v. Victor Smith 9/19/11 - 9/23/11

587

1 A No, sir.

2 Q It wasn't until after you picked him up that he decided
3 to give you a statement?

4 A Yes, sir.

5 Q Throughout your investigation you never recovered a
6 weapon did you?

7 A No, sir.

8 Q Never recovered any bullets?

9 A No, sir.

10 Q Throughout your investigation you never were advised of
11 any gunshot residue test that tested positive did you?

12 A No, sir.

13 Q Now, when you were present during the statement that
14 Victor Smith gave; is that right?

15 A Yes, sir.

16 Q And he voluntarily gave you the statement?

17 A Yes, sir.

18 Q In fact, he signed the forms saying that he wanted to
19 talk to you; is that right?

20 A Yes, sir.

21 Q He didn't have to talk to you did he?

22 A No, sir, he was free to go on his own free will.

23 Q But he decided to talk to you?

24 A Yes, sir.

25 Q Now, there are times when you ask a person to take

1 their statement and they tell you no?

2 A Yes, sir.

3 Q They don't want to cooperate?

4 A Yes, sir.

5 Q Nothing you can do to make them cooperate?

6 A Correct.

7 Q On the form that -- do you have the statement that you
8 took from Victor Smith?

9 A No, sir.

10 Q You didn't bring it with you?

11 A I have my file in front of me.

12 Q You took a statement from Victor, but you didn't bring
13 it with you?

14 A I was there while Investigator Holdorf wrote down the
15 statement.

16 Q Now, when this statement was taken did you sign as a
17 witness?

18 A Yes, sir.

19 Q And the solicitor just asked you about the statement,
20 right?

21 A If I took the statement or signed it as a witness?

22 Q Or where you were present?

23 A Yes, sir.

24 Q You didn't bring it with you?

25 A No, sir.

State v. Victor Smith 9/19/11 - 9/23/11

589

1 Q Let me ask you about the conversation that you had with
2 Victor. You told Victor that anything he said could be used
3 against him in this trial; is that correct?

4 A Yes, sir.

5 Q You made sure that he understood that carefully; is
6 that right?

7 A Yes, sir.

8 Q Even after you told him that, he still talked to you,
9 didn't he?

10 A Yes, sir.

11 Q You asked him did he have any problems with E.J.; is
12 that right?

13 A Yes, sir.

14 Q He told you, no?

15 A If I could refer to my notes? The first statement is
16 when he had no issues with E.J. and in the second one there
17 was an issue about money.

18 Q He told you that him and Ernest got along; did he not
19 tell you that?

20 A Yes, sir.

21 Q Now, do you remember asking Victor did he assault
22 Ernest?

23 A Yes.

24 Q Do you remember asking him that?

25 A Yes.

1 Q He told you, no; is that right?

2 A That's correct.

3 Q You asked him, did you assault Ernest and Victor told
4 you no; is that correct?

5 A That's correct.

6 Q You asked Victor did he have knowledge of Ernest being
7 assaulted; is that right?

8 A Yes.

9 Q And Victor told you no; right?

10 A Yes, sir.

11 Q You asked Victor what does he think happened to Ernest;
12 right?

13 A Yes, sir.

14 Q Victor told you, I don't think anything; correct?

15 A Correct.

16 Q You asked Victor did he and Ernest talk about the
17 missing rent money; correct?

18 A Yes, sir.

19 Q And he told you yes; is that right?

20 A Yes.

21 Q Now, when you asked Victor did he ask Ernest about some
22 missing rent money, he could have told you no, right?

23 A Yes, sir.

24 Q Could have said, I don't know what you're talking
25 about. He didn't do that?

State v. Victor Smith 9/19/11 - 9/23/11

591

1 A No, sir.

2 Q He told you the truth?

3 A Yes, sir.

4 Q You asked Victor why would Allen Fulten blame him for
5 killing Ernest; is that right?

6 A Yes, sir.

7 Q Victor says because he asks Allen about the rent money;
8 is that right?

9 A Yes, sir.

10 Q And Allen didn't have a job does he?

11 A Correct.

12 Q After you tell Victor that Allen has accused him of
13 killing Ernest Victor doesn't turn around and accuse Allen
14 does he?

15 A No, sir.

16 Q He didn't turn around and accuse Jeremiah did he?

17 A No, sir.

18 Q He didn't turn around and accuse Darius did he?

19 A His brother; no.

20 Q He didn't do that, did he?

21 A No, sir.

22 Q You asked Victor was he missing a shower curtain;
23 right?

24 A Yes, sir.

25 Q He told you no. That shower curtain was taken from the

1 bathroom of where Allen lived, right, the room that he
2 stayed in; right?

3 A The apartment -- the shower inside the apartment; yes,
4 sir.

5 Q And the room that Jeremiah stayed in; is that right?

6 A Nobody had any information -- Allen or Jones staying
7 there.

8 Q Now, you also asked Victor why would Jeremiah Jones
9 accuse you of killing Ernest; you asked him that question,
10 right?

11 A Yes, sir.

12 Q And Victor says he didn't know why Jeremiah would do
13 that; is that what he said?

14 A Yes.

15 Q Also, do you remember a letter that Victor wrote?

16 A A note?

17 Q A note.

18 A Yes, sir.

19 Q Now, he wrote that in his own handwriting; right?

20 A Yes, sir.

21 Q And you allowed him to write that in his own
22 handwriting; right?

23 A Yes, sir.

24 Q But you didn't allow him to write his statement in his
25 own handwriting?

State v. Victor Smith 9/19/11 - 9/23/11

593

1 A That's correct.

2 Q That note that he wrote, you asked Victor if he wanted
3 to write a statement to Ernest's mother?

4 A If there was anything he'd like to tell the victim's
5 mother; yes.

6 Q And he agreed to write that statement didn't he?

7 A Yes.

8 Q Victor wrote a statement saying Ernest was a good
9 friend of his?

10 A Yes, sir.

11 Q Victor wrote a statement expressing his sympathy;
12 correct?

13 A Correct. He didn't deserve this. Sorry about what
14 happened.

15 Q He never wrote a statement saying I killed Ernest; did
16 he?

17 A No, sir, he never confessed.

18 Q You're familiar that Richland County Sheriff's
19 Department responded to this apartment on October 21, 2008;
20 right?

21 A Yes, sir.

22 Q You're aware that they searched that apartment?

23 A I was advised in the past couple days.

24 Q And you're aware that the Sheriff's Department searched
25 that apartment on December 22, 2008, also; right?

1 A I'm not aware of the December 22 case.

2 Q You don't have knowledge of that?

3 A No, sir.

4 Q When you talked to Victor, you asked him would he be
5 willing to give up his DNA?

6 A Yes, sir.

7 Q What did Victor tell you?

8 A Yes.

9 Q Specifically, you advised Victor, I'm aware that any
10 evidence obtained as a result of this search can be used
11 against me in court?

12 A Yes, sir.

13 Q You told him that?

14 A Yes, sir.

15 Q You made sure he understood that?

16 A Yes, sir.

17 Q What did he do after that?

18 A Provided his DNA.

19 Q Even though it could be used against him?

20 A Yes, sir.

21 MR. HART: Nothing further, Your Honor.

22 THE COURT: All right. Redirect?

23 MR. GOLDBERG: No, Your Honor.

24 THE COURT: All right. You may step down, sir.

25 Can I see y'all for a second.

State v. Victor Smith 9/19/11 - 9/23/11

595

1 (Off the record bench conference with counsel and the
2 Court.)

3 THE COURT: Ladies and gentlemen, I'm going to give you
4 a break. I think you need one. I need one. Don't talk
5 about the case. If you need coffee or refreshments the
6 Bailiffs will accommodate your request.

7 Thank you very much.

8 (Jury out for break at 12:01 p.m.)

9 THE COURT: All right, let's try to figure out how many
10 more hours of testimony we're going to have. Could it be
11 three, as much as three?

12 MR. GOLDBERG: We've got three for sure. Two of which
13 will probably be a little bit lengthy, and then about one
14 additional.

15 THE COURT: All right. That's fine.

16 I was hoping we'd finish everything before we broke for
17 lunch. We might not. If we don't it's no big deal. I'd
18 like to go as long as we can. I don't think we should push
19 it beyond 1:30 before lunch. We'll try to go to 1:30. If we
20 finish, fine. If not, we'll stop then and just come back
21 later on this afternoon some time. I've kind of explained
22 to them what I've got to do. I don't think it's that big of
23 a deal, but we all need to know. So let's try to go to 1:30
24 and see. If we haven't finished, we haven't finished, but
25 we'll see. We'll probably need to take about two hours for

State v. Victor Smith 9/19/11 - 9/23/11

596

1 lunch and come back later on this afternoon.

2 That's the best I can surmise about what's going to
3 happen.

4 Let's take a break and refresh yourselves.

5 (Court in recess for break at 12:02 p.m.)

6 (Court in session after break at 12:20 p.m.)

7 THE COURT: Well, let's get established, we won't finish
8 by 1:30. Okay.

9 Actually, I told the jury that. We'll probably have to
10 take about a two hour break and come back and finish this
11 afternoon.

12 MR. HART: Yes, sir.

13 THE COURT: For the record, too, I generally always
14 check with the jury. It's just one of the personal habits I
15 have. What do y'all need, this is about how much longer
16 we're going to go. Stuff like that. I'm just telling y'all
17 that, because I think it's important that they feel a part
18 of the process, and part of that process is letting them
19 know what's going on and I've always done that. But I just
20 tell y'all that because I was on a jury 20 years ago, and
21 the most important thing to them is to know what's going on.
22 To sit back there and not know what's going on is unnerving.
23 That's why I do it. I've done it a couple times with this
24 case. I just wanted to bring it y'all's attention. I think
25 I've mentioned it parenthetically a couple of times, but I

State v. Victor Smith 9/19/11 - 9/23/11

597

1 wanted to bring it to your attention.

2 All right. Bring them in.

3 (Jury in at 12:22 p.m.)

4 THE BAILIFF: Jurors are all present, Your Honor.

5 THE COURT: All right. Welcome back, members of the
6 jury.

7 Solicitor, you may call your next witness.

8 MR. GOLDBERG: Thank you, Your Honor. State calls Lt.
9 Scott McDonald.

10 (WHEREUPON, Scott McDonald was
11 sworn to tell the truth.)

12 THE CLERK: Have a seat in the witness box, state your
13 name for the record, please.

14 MR. MCDONALD: Scott McDonald.

15 SCOTT MCDONALD - DIRECT EXAMINATION

16 BY MR. GOLDBERG:

17 Q Lieutenant, where are you employed?

18 A At the Richland County Sheriff's Department.

19 Q How long have you been employed there?

20 A 23 years.

21 Q And what are your duties currently with the department?

22 A I'm a lieutenant with the Major Crimes Section. We
23 investigate all assaults, robberies at all levels.
24 Homicides, suspicious deaths.

25 Q Can you describe a little bit of the nature of the work

State v. Victor Smith 9/19/11 - 9/23/11

598

1 you've done over those 23 years?

2 A A little bit of everything. I started out in burglary
3 where I spent a good bit of my time in investigations.
4 Later moved over to armed robbery, moved up to sergeant in
5 that unit. Would eventually become lieutenant over the
6 major crimes unit where I've been for the last three or four
7 years.

8 Q Did you become involved in an investigation in July of
9 2009, in regards to a skeleton that had been found in the
10 Elders Pond area?

11 A Yes, I did.

12 Q Were you the primary investigator on that case?

13 A No, I wasn't.

14 Q Could you describe a little bit what your role was in
15 the investigation?

16 A I was advised that afternoon, I believe by Sgt.
17 Robinson, who is the evening shift investigator, they'd been
18 notified in reference to a body that had been located near a
19 retention pond. He was heading to the scene. Investigator
20 Holdorf had been assigned as the primary homicide
21 investigator that week, and Investigator Gallegos as his
22 secondary investigator. The way we have our units set up,
23 each week a sergeant is on evening shift whose primary
24 responsibility in addition to answering other calls is if
25 there was a homicide he was to help supervise that homicide

State v. Victor Smith 9/19/11 - 9/23/11

599

1 with the primary investigator, who was Investigator Holdorf
2 and a secondary investigator who was Investigator Gallegos.
3 They are all in consultation with myself and, at the time,
4 Capt. Smith, w who is now, Maj. Smith when we have a
5 homicide as to progress status of it and that sort of thing.

6 Q And you intended the briefing on this case on July 21;
7 is that right?

8 A I did. The following morning, once we'd gathered a
9 little more information on this case, we had a meeting,
10 which we always do, so everyone's on the same page, everyone
11 understands what's happening in the case, and we did the
12 upduties. Things we need to get done to try to help the
13 case along.

14 Q Based upon that briefing, was there a particular
15 apartment that you were interested in gathering some more
16 information about?

17 A Yes. Apartment [REDACTED] at [REDACTED] Elders Pond, which is the
18 Northstone Apartments.

19 Q So in connection with that apartment what did you
20 proceed to do to try and gather this information?

21 A I went out to the actual complex, myself, spoke with
22 the management out there, Ms. Hunt, who shared some
23 information with me about the occupants being a Jazmine
24 Bright and Victor Smith. I also inquired if there had been
25 any repair request, maintenance requests at the apartment in

1 the last year, because we believed the victim in this case
2 had disappeared sometime previously and there may have been
3 some kind of damage to the apartment, carpet clean up or
4 anything like that. She would indicate there were only a
5 couple of maintenance request. One for an air conditioning
6 request and one for a -- I believe a light or something was
7 out. No major repairs or anything.

8 Q Was there also some reference to a burglary report that
9 had been filed December of '08?

10 A There was. She did indicate that they had a burglary
11 there in '08.

12 Q And at that time, were you fully informed that you
13 could try and reach out and locate Jazmine Bright?

14 A No. She was -- when we went to the search warrant we
15 were provided a key in case we didn't get an answer at the
16 door and needed to make entry. We went there that
17 afternoon. We did not make contact with anyone by knocking
18 on the door, so we made entry with the key. There was no
19 one in the apartment. We cleared the apartment for our
20 safety and then began to do a search looking for any
21 potential evidence. I believe a gentleman stopped by who was
22 checking on the apartment that we interviewed that helped
23 further the case at that point.

24 Q When that search took place your function at that time
25 was really not to be an active participant in the search was

State v. Victor Smith 9/19/11 - 9/23/11

601

1 it?

2 A Well, yes and no. I was there to help search for any
3 obvious signs of, you know, possible murder, ammunition, a
4 fire arm. If there was blunt trauma, maybe a blood bat or
5 something like that. You know, anything with blood, you
6 know, anything that might help the case.

7 Q In terms of blood, swab collecting and things of that
8 nature, photographs, that would all have been left to the
9 crime scene unit; is that right?

10 A That's correct, and they were called to the scene.

11 Q Tell the jury when was the first time you had any
12 contact with Jazmine Bright?

13 A I believe it was later that afternoon as word or mouth
14 of things started happening. I had received a call back
15 from Ms. Hunt after I returned from the office from the
16 management office and also from Jazmine Bright. And I
17 returned the call to Ms. Bright first and got her voice
18 mail.

19 Q She called you?

20 A Yes. She called my office saying she had further
21 information for us. I would call her back, get her voice
22 mail. Leave her a message to please call me back. I would
23 then call Ms. Hunt back, who was the management at the
24 apartment complex. She had also left me a message stating
25 she had further information, and while I was talking to Ms.

State v. Victor Smith 9/19/11 - 9/23/11

602

1 Hunt, I was told Ms. Bright had contacted her and then Ms.
2 Bright was calling in as I was speaking and I excused myself
3 to talk to Ms. Bright.

4 Q You spoke to her on the telephone?

5 A Yes, I did.

6 Q Now, you're not allowed to testify as to what she told
7 you in that conversation but can you describe her demeanor
8 throughout that conversation?

9 A Kind of surprised and what we were talking about and
10 the investigation that was going on.

11 Q Specifically, did you question her about whether or not
12 the incident, the alleged homicide could have taken place in
13 Apartment [REDACTED]?

14 A I did.

15 Q And what was her demeanor or reaction when you asked
16 her that question?

17 A She was very surprised. I was telling her we had
18 evidence to believe that it may have occurred in the
19 apartment, and she was most surprised by this. Couldn't
20 believe this would have happened there.

21 Q So after speaking with her did you eventually make
22 contact with her in person?

23 A Yes, I did.

24 Q When was that?

25 A The very next morning, myself and Sgt. Eisenhower drove

State v. Victor Smith 9/19/11 - 9/23/11

603

1 to Warsaw in North Carolina. She was at a family function
2 there and didn't have transportation back, wasn't due to
3 come back for several days. Due to the importance of this
4 case we drove there and she was willing to come back and
5 talk with us further about this incident.

6 Q Did you take a statement from her at that time?

7 A I did. I took a hand-written -- a 15 page statement
8 from her on the way back.

9 Q Okay. What happened with her on completion of taking
10 that statement?

11 A If I recall correctly, after we completed the statement
12 and all, I think we may have put her up in a hotel for a day
13 or two until further arrangements could be made in the
14 finishing of the processing was done in her apartment.

15 Q Did you have an opportunity to actually show her some
16 evidence in the case?

17 A Yes, I did.

18 Q When was that?

19 A Upon returning to headquarters, the crime scene, when
20 they originally discovered the body had recovered a floral
21 shower curtain and some other items around the body. I took
22 Ms. Bright into the forensic garage. We have a drying
23 facility in there where wet items can be dried in a cabinet,
24 and she was able to fully view this shower curtain, and
25 there was also a cotton cloth type hamper and a rope belt

State v. Victor Smith 9/19/11 - 9/23/11

604

1 that she positively identified that as being her shower
2 curtain she previously had and the rope belt as being one
3 that belonged to Mr. Victor Smith.

4 MR. HART: Objection, Your Honor. He's testifying as to
5 what she identified and what she talked about. Under
6 hearsay, this is not allowed. I thought the solicitor was
7 going to --

8 THE COURT: Y'all approach.
9 (Off the record bench conference with counsel and the
10 Court.)

11 THE COURT: Yes, sir.

12 BY MR. GOLDBERG:

13 Q Turning your attention to July 23, 2009, did you come
14 in contact with an Allen Fulten?

15 A I did.

16 Q What was that nature of the contact with him?

17 A Myself and Capt. Smith prepared to re-interview him as
18 the investigation had continued and we gathered further
19 information from other defendants, we realized that possibly
20 Mr. Fulten wasn't giving us a full truthful statement and he
21 may have had a little more involvement than initially
22 provided.

23 Q At that point he had already previously given a
24 statement; is that right?

25 A Yes, he had.

State v. Victor Smith 9/19/11 - 9/23/11

605

1 Q And were you involved in the taking of the first
2 statement?

3 A No, I wasn't.

4 Q So on the second statement on the 23, was he advised of
5 his rights on that occasion?

6 A Yes, he was. Capt. Smith advised him of his rights
7 about 8:34 a.m., we picked him at the Alvin Glenn Detention
8 Center and brought him back up to headquarters for a further
9 interview, and I was present for the duration of that
10 interview and the statement that was taken.

11 Q As well as the advisement of his right?

12 A Yes.

13 Q And he waived those rights?

14 A Yes, he did.

15 Q Now, on a standard waiver of rights form, Miranda
16 Rights form, is there a part that talks about any pressure
17 or coercion has been applied to a witness?

18 A There is.

19 Q And can you tell the jury a little bit about what that
20 means and how the process works with a suspect?

21 A Well, we were going through the Miranda Rights, of
22 course, everybody is fairly familiar with the Miranda Rights
23 by we can't ask you questions, you have the right to refuse,
24 you don't have to -- and we get down to the bottom, it's
25 called a Wavier of Rights. We read a statement to them and

1 make sure they understand it and they are willing to talk
2 and answer questions. You want me to read the --

3 Q Sure.

4 A Okay. It says Wavier of Rights. I have read this
5 statement of my rights and understand what my rights are.
6 I'm willing to talk and answer questions. I understand and
7 know what I am doing. No promises have been made to me and
8 no pressure or coercion of any kind has been used against
9 me. We usually stop at the word coercion and not everyone
10 knows what that means. We make sure everyone understands
11 and if not, we explain it to them. Coercion is force,
12 intimidation. No one is putting a gun to your head to make
13 you say this. You're telling us because it's true. What do
14 you want to do.

15 Q Did Mr. Fulten appear to understand that?

16 A He did.

17 Q And did he waive those right?

18 A He did.

19 Q And at that point, did you all proceed to take a
20 statement from him?

21 A Yes, we did.

22 Q And what manner was that statement taken?

23 A Basically, a question and answer type format. Where now
24 that we had further information about Mr. Fulten being a
25 little more involved than he originally said he was, to

State v. Victor Smith 9/19/11 - 9/23/11

607

1 being in the actual room when the assault occurred. We
2 started questioning about that and he would ultimately
3 confess to that and to his involvement in this incident.

4 Q And he signed off on that statement?

5 A Yes, he did.

6 Q After reviewing it?

7 A Yes. It was read back to him. He had a chance to look
8 it over, any corrections, once he was satisfied it was his
9 truthful statement he signed all the papers, yes; and we
10 witnessed it.

11 Q Did you have any further involvement in the
12 investigation after that?

13 A I believe we moved on to some other matters at the
14 conclusion of this statement. The next day I was involved in
15 some other things.

16 Q There were other investigators that continued to work
17 that; is that correct?

18 A That's correct.

19 Q So you were never advised of any DNA testing or
20 anything of that nature in regards to this case; is that
21 right?

22 A No.

23 Q In fact, were you aware of any DNA in this case that
24 was connected to a positive identification of Ernest
25 Robinson?

State v. Victor Smith 9/19/11 - 9/23/11

608

1 A None that I'm aware of, no.

2 Q Or Victor Smith?

3 A No.

4 Q All right. Thank you.

5 THE COURT: Mr. Hart.

6 SCOTT MCDONALD - CROSS EXAMINATION

7 BY MR. HART:

8 Q Lt. McDonald, you said when you were executing the
9 search warrant and Dietrick Williams showed up to the
10 apartment?

11 A Dietrick Williams showed up. Yes.

12 Q And --

13 A I believe I said a gentleman showed up that had more
14 information, but it was Dietrick Williams.

15 Q And Jaz, she was out of town at the time?

16 A She was out of town.

17 Q And he showed up to check on the apartment?

18 A That's what he indicated to us. He was asked to come
19 by and check on the apartment --

20 Q Jaz -- I'm sorry, sir. Go ahead.

21 A He was asked to come by and check on the apartment
22 while she was out of town, is what he told us.

23 Q He had access to that particular apartment?

24 A Correct.

25 Q Fulten's statement, Allen Fulten's statement. You also

State v. Victor Smith 9/19/11 - 9/23/11

609

1 know him as Smurf?

2 A Yes.

3 Q And you got involved in the second statement, right?

4 A That's correct.

5 Q And the reason for you to getting involved in the
6 second statement is that he didn't tell the truth in that
7 first statement, did he?

8 A It appeared he minimized his involvement in that.

9 Q He wasn't forthcoming was he?

10 A He was forthcoming, but he didn't fully implicate
11 himself as to his actions.

12 Q So he asked you to come and take another statement from
13 him; is that right?

14 A Capt. Smith had approached me about sitting in on the
15 second interview. Yes.

16 Q Also, while you were executing the search warrant you
17 said there was a call from Jazmine Bright; right?

18 A After I had returned back to headquarters. I think the
19 lab was continuing to process. We had searched, done our
20 search for any obvious signs of trauma or ammunition or any
21 other weapons or anything like that. Some of us would --
22 went ahead and left. I believe myself and the Captain left.
23 I believe Holdorf and Gallegos were talking to Dietrick and
24 the lab was left there to continue processing the scene,
25 which took some time. Upon returning to headquarters is

State v. Victor Smith 9/19/11 - 9/23/11

610

1 when I learned I had some voice mails waiting on me and one
2 of them was Jazmine Bright. Yes.

3 Q I guess to simplify this, the call from Jazmine Bright
4 came the day, I guess, the search warrant was executed?

5 A Yes, that's correct.

6 Q You never received any calls from Jaz when this
7 supposedly took place did you?

8 A No.

9 Q You didn't receive any calls from Jaz the day after
10 that?

11 A The day after?

12 Q After it supposedly this incident happen?

13 A No.

14 Q You didn't receive any calls a month after this
15 supposedly happened?

16 A No.

17 Q You say you went to North Carolina to pick her up; is
18 that correct?

19 A That is correct.

20 Q And at no time in your investigation did she
21 voluntarily come into the Sheriff's Department to give her
22 version of what happened?

23 A We took a written -- I took a written statement from
24 her in route back from North Carolina. Sgt. Eisenhower
25 drove my vehicle and I sat there and we talked, took a

State v. Victor Smith 9/19/11 - 9/23/11

611

1 written statement from her on the long trip back. Seemed
2 like it was about two and a-half, three hour trip.

3 Q And as I understand you went to pick her up?

4 A That's correct.

5 Q And she gave a statement?

6 A That's correct.

7 Q But at what point did she come in by herself to tell
8 you what happened?

9 A She voluntarily agreed to accompany us back to Columbia
10 to the Sheriff's Department. At that point, she was willing
11 and voluntarily accompanied us. She didn't have
12 transportation back to Columbia. She was expecting to be in
13 North Carolina for a little more extended time, and due to
14 the case involved her, we obviously wanted to talk to her
15 right away. We didn't know her full involvement at the
16 time, either. So that's why we asked her to come back to
17 Columbia.

18 Q And I don't want to make this too complication. Here's
19 what I'm asking you. At what point in time did Jazmine
20 Bright come in by herself --

21 MR. GOLDBERG: Objection. I think --

22 THE COURT: I think the question has been asked and
23 answered. And the answer is no.

24 BY MR. HART:

25 Q When you give statements, you write the statement; is

1 that correct?

2 A Right.

3 Q You write the answers?

4 A Yes.

5 Q The suspect, they don't get to write the questions?

6 A No.

7 Q They don't get to write the answers?

8 A No.

9 Q They don't get to write anything in their own
10 handwriting, do they?

11 A No.

12 Q Did you ever receive information that your department
13 searched this particular apartment on October 21, 2008?

14 A No, I did not.

15 Q Did you ever receive information that Victor Smith left
16 that apartment on October 21, 2008 and never returned?

17 A No.

18 Q Did you ever receive any information that your
19 department searched this apartment on December 22, 2008?

20 A No.

21 MR. HART: Nothing further.

22 THE COURT: Anything further, Solicitor?

23 MR. GOLDBERG: Yes, sir.

24 THE COURT: All right.

25 SCOTT MCDONALD - REDIRECT EXAMINATION

State v. Victor Smith 9/19/11 - 9/23/11

613

1 BY MR. GOLDBERG:

2 Q Mr. Hart asked you about the statement that you took
3 from Mr. Fulten?

4 A Yes, sir.

5 Q That second statement. And I believe you indicated on
6 the first statement he had minimized his involvement; is
7 that correct?

8 A That's correct.

9 Q Can you tell the jury a little bit about what that
10 means, generally?

11 A A self-serving statement. Not really implicating
12 himself at the matter at hand. I believe he stated he was
13 outside the room when this occurred. Wasn't involved in the
14 assault at all. We later learned he was much more involved
15 that that, and that's why we brought him back for the second
16 interview.

17 Q In your experience as an investigator, is it that
18 uncommon to have two statements of varying degrees like
19 that?

20 A Not at all. It's very common when we bring someone in
21 they minimize their involvement, and through investigation
22 we often have to re-interview people.

23 Q And you indicated he was actually forthcoming; is that
24 right?

25 A Yes, he was.

State v. Victor Smith 9/19/11 - 9/23/11

614

1 Q He left out some key details, of course?

2 A Yes, he did. Once we confronted him with the details
3 from some of the other statements he readily fessed up to
4 his role in this incident.

5 Q And as far as Ms. Bright is concerned, she called you;
6 is that right?

7 A That's right.

8 Q And she also called Ms. Hunt the property manager; is
9 that right?

10 A Yes. She was asking to -- she was asking who the
11 investigators on this case were, she wanted to talk to them.

12 Q And her transportation situation at that time was what?

13 A She did not have a ride back at that time. She was
14 depending on family to get to North Carolina and to return
15 to Columbia and she was there for some type of family
16 function. I can't remember if it was a wedding or a funeral
17 and she was not due to come back for several more days. So
18 we offered to go bring her back and, you know, talk with
19 her, and she agreed to that.

20 Q She wasn't handcuffed in any way, was she?

21 A No, she wasn't.

22 Q She didn't have to come with you?

23 A No.

24 Q Thank you.

25 THE COURT: Anything further, Mr. Hart?

State v. Victor Smith 9/19/11 - 9/23/11

615

1 MR. HART: Yes, Your Honor, briefly.

2 SCOTT MCDONALD - RECROSS EXAMINATION

3 BY MR. HART:

4 Q When you picked Jaz up from North Carolina and you
5 brought her back to Columbia?

6 A Yes.

7 Q You put her in a hotel?

8 A I believe we put her -- because her apartment was still
9 being processed possibly at that time.

10 Q And those expenses were paid by who?

11 A That would be our victim's advocates, I believe.

12 Q Are you talking about the Sheriff's Department?

13 A Yes. State funds, I believe funds it.

14 MR. HART: Nothing further.

15 THE COURT: Anything further for Captain -- Lt.

16 McDonald?

17 MR. GOLDBERG: No, Your Honor.

18 THE COURT: You may step down.

19 MR. MCDONALD: I appreciate that, promotion.

20 THE COURT: You're welcome. I hope your pay check
21 reflects that.

22 You may call your next witness.

23 MR. GOLDBERG: State calls Jazmine Bright:

24 (WHEREUPON, Jazmine Bright was
25 sworn to tell the truth.)

1 THE CLERK: Have a seat in the witness box, state your
2 name for the record, please.

3 MS. BRIGHT: My name is Jazmine Chantell Bright.

4 JAZMINE BRIGHT - DIRECT EXAMINATION

5 BY MR. GOLDBERG:

6 Q Jazmine, good afternoon. Make sure you try and keep
7 your voice up so everybody can hear you, okay?

8 A Yes, sir.

9 Q First of all, tell the jury a little bit about
10 yourself; where you're from, where you grew up?

11 A I'm from Warsaw, North Carolina, basically, born and
12 raised. I graduated and moved away.

13 Q How'd you end up here in Columbia?

14 A My sister married someone here and we got a close bond
15 so I kind of go to where she's at. And matter of fact I was
16 working at Waffle House on my spring breaks, summer breaks
17 for college. So I can go to college.

18 Q And did you go to college for a little while?

19 A I did. I went to Elizabeth City State University for
20 two years.

21 Q Okay. And that's in North Carolina, right?

22 A Yes, sir.

23 Q So when did you end up in Columbia?

24 A Permanently in '06.

25 Q But you had been visiting numerous times?

State v. Victor Smith 9/19/11 - 9/23/11

617

1 A Yes, sir.

2 Q Is that a older or younger sister?

3 A Huh?

4 Q Older or younger sister?

5 A Older.

6 Q How old are you?

7 A I'm 25.

8 Q Tell us a little bit about how when you first met
9 Victor Smith?

10 A I met Victor working at Waffle House on Hardscrabble.

11 Q Okay, what were you doing there at the time?

12 A Waitress.

13 Q And what was he doing there?

14 A He was a cook.

15 Q And at some point did y'all begin a relationship
16 together?

17 A We did. Started as friends, like most cases, and we
18 had a relationship afterwards.

19 Q And what did that relationship turn into?

20 A A relationship and me being pregnant.

21 Q When did you become pregnant?

22 A January of '07.

23 Q And it was Victor's child.

24 A (Nods head in the affirmative.)

25 Q Did the two of you end up moving in together, at some

1 point?

2 A We did.

3 Q When was that?

4 A I want to say around May.

5 Q Of '07?

6 A Yes, sir.

7 Q Where did you move in to?

8 A Northstone Apartments.

9 Q What's the address there?

10 A ■ Elders Pond Circle.

11 Q Eventually, did you give birth to a baby boy?

12 A I did, in August. He was premature, but he was fine.

13 Q What's his name?

14 A Dominic Marquis Smith.

15 Q After you gave birth, did you end up going back to work
16 at the Waffle House?

17 A I did. Around October. Took a couple months off.

18 Q Okay, how about Victor?

19 A He stayed working the whole time. I was on bed rest
20 about four months at the end to save my child. So he worked
21 most of the time.

22 Q Okay. And did he eventually change jobs from the
23 Waffle House?

24 A He did.

25 Q Where did he end up?

State v. Victor Smith 9/19/11 - 9/23/11

619

1 A Like a -- he worked what is it called now, Northeast
2 Convenience Store. He worked there at the same time as
3 Waffle House, but then he eventually start working at Beef
4 O'Brady's.

5 Q Do you recall when he started working at Beef
6 O'Brady's?

7 A I can't recall exactly. I just know it was that year.

8 Q 2008?

9 A No. 2008, when he started working there.

10 Q Okay. When did you first meet Ernest Robinson?

11 A Around the time he started working at Beef O'Brady's.
12 I didn't see him too many times, but I knew he was a
13 co-worker.

14 Q Did he go by E.J.?

15 A Yes, sir.

16 Q And did he ever come over to [REDACTED] to the apartment?

17 A A couple times. I didn't see him often.

18 Q Did Victor have a lot of friends at this time?

19 A He did.

20 Q Lot of people that he hung out with?

21 A He did.

22 Q And where did they usually hang out?

23 A In our apartment.

24 Q Where specifically in your apartment?

25 A The first bedroom. It was basically a second living

1 room.

2 Q I'm showing you State's No. 10. Does this look like a
3 layout of your apartment?

4 A Yes, sir.

5 Q Is that the front door there?

6 A Yes, sir.

7 Q And which bedroom was it that he would hang out in?

8 A This one, by the door.

9 Q The first bedroom on the right?

10 A Yes, sir.

11 Q Can you describe a little bit how that room was
12 decorated at the time?

13 A Could you clarify that?

14 Q What kinds of items were in the room furniture wise?

15 A It was basically a second living room. We was given
16 another one, instead of throwing it away we put it in the
17 room, because our son, at that time, outgrew everything.

18 Q I'm sorry?

19 A Our son outgrew everything. It was an empty room. So
20 instead of throwing it all away we just made basically a den
21 in the apartment.

22 Q So couches. Were there couches in there?

23 A (Nods head in the affirmative.)

24 Q Was your son living there at the time?

25 A No.

State v. Victor Smith 9/19/11 - 9/23/11

621

1 Q So when Victor and his friends would hang out on that
2 room on the right, did you ever hang out with them?

3 A A couple times, yeah.

4 Q Were they drinking in there?

5 A We all was.

6 Q You were drinking a little bit?

7 A Yeah.

8 Q They smoking some weed in there?

9 A Yeah.

10 Q And you were, as well?

11 A Yeah. Not all the time with them, but yeah. I did.

12 Q What shifts at Beef O'Brady's did Ernest and Victor
13 work?

14 A The evening shift.

15 Q When?

16 A From what I remember they were going in in the
17 afternoon and close around 11:00.

18 Q They work together often?

19 A Yes, sir, that I knew of.

20 Q Okay. Are you familiar with an individual named Smurf?

21 A Yes, sir.

22 Q Who do you know that to be?

23 A Allen.

24 Q How about an individual named Man?

25 A Man.

1 Q And Smurf and Man, did they hang out at the apartment,
2 also?

3 A Yeah.

4 Q How often were they there?

5 A Like all the time.

6 Q And, in fact, did they actually stay at the apartment
7 from time to time?

8 A Yes, sir.

9 Q What was your work schedule like at the time?

10 A I worked in the mornings. I would get up around 5:00.
11 For the most part, I would be the 6:00 o'clock person. My
12 shift started at 7:00. I always went in at 6:00, so third
13 shift can, you know, go into first shift and get everything
14 cleaned up. I'd get off around 2:00, 2:30 and 3:00. It
15 ended at 2:00, but depending on my clean up depended on when
16 I came home.

17 Q And when Victor and his boys were hanging out in that
18 front right bedroom, how late were they hanging out there
19 each night?

20 A Sometimes I'd go to sleep on them.

21 Q I'm sorry?

22 A I said, a lot of times I'd go to sleep on them. I had
23 to go to work.

24 Q You'd go to bed and they'd still be hanging out?

25 A Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

623

1 Q Did Victor always come and sleep with you in your
2 bedroom?

3 A No, not all the time.

4 Q Which bedroom did you sleep in?

5 A The master bedroom by the patio door.

6 Q In the back. So if he wasn't sleeping in your bedroom
7 where was he sleeping at nights?

8 A In the other room.

9 Q In the front room?

10 A Yeah.

11 Q You said that you knew E.J., but he didn't come over as
12 often; right?

13 A Right.

14 Q Did you have any interactions with him?

15 A With?

16 Q With E.J.?

17 A We played Spades once or twice. Yeah.

18 Q And you said Man and Smurf when they'd stay there, when
19 they'd sleep over they'd sleep in that front room on the
20 right?

21 A Yes, sir.

22 Q How about Victor's brother, Darius?

23 A He didn't stay there all the time. He didn't stay there
24 all the time, but he did stay there. He was back and forth
25 between there and his mother house.

1 Q And this would have been in summer, 2008; is that
2 right?

3 A Yes, sir.

4 Q I want you to tell me a little bit about an incident
5 involving some missing rent money. At that time, how much
6 was your rent?

7 A I want to say like \$685.

8 Q Okay. Where did you keep the rent money?

9 A In our master bedroom.

10 Q Did you keep it in the same place there all the time?

11 A Not all the time.

12 Q Where were some of the places you'd keep it?

13 A We had a safe with a little key. Put it in the drawer
14 with clothes or in the closet. Nowhere in particular.

15 Q Okay. And at some point, -- and I want to ask you who
16 was contributing the money towards paying the rent?

17 A At that time, it was me and Victor.

18 Q You both were working then?

19 A At that time, yes.

20 Q And about what time of the year when some of that rent
21 money came up missing?

22 A It was summer. It was late summer. I can't tell you
23 what day or week. It was late summer.

24 Q Late summer. Could it possibly have been August?

25 A I could have possibly been.

State v. Victor Smith 9/19/11 - 9/23/11

625

1 Q Possibly September?

2 A Possibly.

3 Q Tell me what happened when you discovered some of the
4 money was missing; how did you find out?

5 A We had been gone all day, came back. Victor was
6 cooking. I went in the room. I had just counted the money
7 and that's when I discovered it was gone, was missing.

8 Q So there was some money there; right?

9 A There was some there.

10 Q And some was missing?

11 A Yeah.

12 Q What did you do when you discovered some was missing?

13 A I asked Victor did he use it. He told me no. He went
14 and verified that it was gone.

15 Q What was his reaction when you asked him about the
16 missing money?

17 A He was made, of course. It was a rough time, so of
18 course he was mad.

19 Q What did he do; did he do anything?

20 A Besides snatching the drawers and stuff out trying to
21 see if it was there.

22 Q Were there other people in the apartment at that time?

23 A I recall Smurf -- I don't recall Smurf being there. I
24 recall Man being there and possibly his brother at that
25 time.

1 Q What did Victor do; did he say anything to them?

2 A He went to -- I was sitting on the couch mad.

3 Q You were mad?

4 A Of course, we were mad. I remember him holding the
5 front door and telling them there was money missing and
6 clean version, if they couldn't tell him where the money
7 was, they needed to get out. And when he closed the door I
8 saw people getting their things.

9 Q Did anybody leave?

10 A No.

11 Q Did you ask him about the conversation about the money
12 he had with his boys?

13 A I asked him what happened, he told me it was basically
14 they going to handle it. So --

15 Q Said they were going to handle it?

16 A As women we know to stay out of a man's business and
17 stuff, so I let him be the man, let him handle it.

18 Q All right. Did the rent end up getting paid that month?

19 A It did with us working, putting the money back in.

20 Q At some point did Victor stop working at Beef
21 O'Brady's?

22 A He did.

23 Q Do you recall when that was?

24 A Not exactly.

25 Q Do you recall when that was in relation to when the

State v. Victor Smith 9/19/11 - 9/23/11

627

1 rent money went missing?

2 A It was after the money got missing. I can't exactly say
3 it was a day or two after or a week. I can't remember.

4 It's been a couple years now. I know it was shortly after.

5 Q Shortly after. And you said at that point -- so Victor
6 didn't have a job at that point; isn't that right?

7 A No.

8 Q Did he end up getting another job?

9 A Around October.

10 Q Did the police come to your apartment on October 21,
11 2008?

12 A Yes.

13 Q And you were home at the time?

14 A I was home.

15 Q And when the police came in what did they tell you they
16 were looking for?

17 A They said they had a call for suspicion of selling
18 marijuana in the apartment.

19 Q Okay. Did they find any marijuana in the apartment?

20 A Not any marijuana exactly. They found butts from it
21 being smoked in the first room. The butts from the smoking,
22 us smoking.

23 Q And which bedroom was that, now?

24 A The front bedroom.

25 Q How many offices came in; do you recall?

1 A Two, maybe three. I remember two.

2 Q All right. At that time, can you describe how that
3 front room was decorated at that time?

4 A It was still the same couch.

5 Q Couch?

6 A Full couch, a love-seat couch and it had like a ottoman
7 that matched the couch that sat in the middle.

8 Q At any point was there a snake cage in that room?

9 A There was.

10 Q Did the officers that responded that day; did they
11 search your entire apartment?

12 A No. They really didn't.

13 Q How do you know that?

14 A Well, there was like marijuana left in the master
15 bedroom that was like out in the open. They didn't see it.
16 When I came home it was still sitting there.

17 Q All right. That was October 21, 2008; correct?

18 A Yes, sir.

19 Q Do you recall what happened the night before that?

20 A Yeah.

21 Q Were you with Victor that night?

22 A I was.

23 Q And tell us what you were doing with Victor that night?

24 A It was conversation, it was supposed to be more, but it
25 went the other way.

State v. Victor Smith 9/19/11 - 9/23/11

629

1 Q Tell us first where you were in the apartment?

2 A In our master bedroom.

3 Q Did you have a bed in there at that time?

4 A No.

5 Q Did you have sheet?

6 A Yeah, we had sheets?

7 Q Well, were y'all going to sleep?

8 A Well, at that time, we were going to be intimate but it
9 switched and it ended up being a conversation.

10 Q When you say it switched, what happened?

11 A Just an awkward feeling like need to talk.

12 Q Who said you need to talk?

13 A No, it's just a feeling.

14 Q Oh, a feeling?

15 A Yeah.

16 Q Okay. So who initiated the conversation?

17 A Victor.

18 Q And what was his demeanor like at the time?

19 A I could tell something was going on. I could tell
20 something wasn't right. I didn't know exactly what.

21 Q Tell us about the conversation. Did he get upset?

22 A He did.

23 Q How did he get upset?

24 A Emotionally upset. Talking about our situation that we
25 was in.

1 Q Did he start crying?

2 A He did.

3 Q All right.

4 A He start saying how he wanted everything to be back the
5 way it was.

6 Q What did you do when he started saying that?

7 A I was consoling him. I situation at that time was
8 really rough. I was consoling him and let him know it was
9 going to know it was going to be okay, just hang in there.

10 Q What did he say to you?

11 A He was crying. I was trying to console him and he was
12 crying. And I remember him making a comment and I know he
13 repeated it. It was like, I'm a devil and I don't want to
14 bring an angel down. He repeated that. I kept asking what
15 are you talking about, what are you talking about, what are
16 you talking about, because I wanted to understand it. He
17 was like -- I knew he wasn't happy with our situation. I
18 knew he was dealing with some things. I knew he probably
19 felt bad at some point, but I didn't know exactly what he
20 was talking about.

21 Q What did he say next?

22 A He told me that he had something to tell me, and if I
23 couldn't be with him afterwards, he understood. I thought
24 it was about our situation, that it was something that I
25 didn't know that he was going to tell me.

State v. Victor Smith 9/19/11 - 9/23/11

631

1 Q Did it turn out to be something different?

2 A Something completely off the wall different.

3 Q What did he say?

4 A He told me that he killed E.J.

5 Q What were his words exactly?

6 A I killed E.J. His words exactly.

7 Q What did you say?

8 A I start crying. I started getting angry.

9 Q I'm sorry?

10 A I started getting angry, crying. Like he's shushing me
11 because I was getting ready to be hysterical. He tried to
12 touch me, and I said, please don't touch me.

13 Q Did you become ill?

14 A I did.

15 Q You threw up?

16 A Yes, sir.

17 Q Did you talk to him any more about it, at that point?

18 A He talked to me about it. I mean, I didn't -- I was
19 like, what are you talking about. At that point, I was
20 confused. That came completely off the wall. Completely
21 off the wall.

22 Q When this conversation took place, I think i asked you
23 about the next day, the police were there. You said -- well,
24 let me just ask you. What was the time period between when
25 the rent money went missing and when you had this

1 conversation; do you recall?

2 A It was months.

3 Q So you said he continued to talk to you; what did he
4 tell you?

5 A He told me, when I was asking what happened, what is he
6 talking about. He told me that he killed E.J. He said that
7 -- you remember that rent money that came up missing. At
8 that point, I still didn't know what happened with the rent
9 money. I didn't know what had happened. I didn't know what
10 the result of it. I didn't know anything. I was out in the
11 cold on that. At that point, I was like, okay, it's lost
12 money. We're not getting it back, so I didn't ask anything
13 else about it. And he told me that my rent money that came
14 up missing. I was like, yeah. He was like, well, E.J. took
15 it.

16 Q Well, let me this. Had you seen E.J. since the rent
17 money went missing?

18 A I -- it was a while since I'd seen him. It was a while.

19 Q All right. Go ahead. He started talking about the rent
20 money. He said E.J. took it?

21 A Uh-huh. (Affirmative response.) We had obligations
22 throughout the week, every week, so one of the days we was
23 going through that, he sat talking with the guys. He said,
24 Smurf and E.J. had came to the apartment. Smurf went in the
25 front bedroom to change. He said Smurf came out, E.J. said

State v. Victor Smith 9/19/11 - 9/23/11

633

1 something about he needed to use the phone or had his phone
2 or used the phone or something like that, and E.J. said they
3 had to go. And when they left, from what I was told, Man
4 said he saw the phone on the couch. The story he told me,
5 he told me that they was walking to the Piggly Wiggly one
6 day --

7 Q All right. Now, Victor told you this?

8 A Yes.

9 Q Now, when you they were walking; who was walking?

10 A I know Man and Smurf for sure.

11 Q Man and Smurf for sure, and Victor?

12 A Uh-huh. (Affirmative response.)

13 Q Okay.

14 A I was told they was walking behind this pond, tall
15 grass. There was a short cut to the Piggly Wiggly because
16 it was right by -- you have all these hills and stuff. And
17 I remember him saying they had jumped him when they got back
18 there.

19 Q Jumped who?

20 A Jumped E.J.

21 Q When you say jumped what do you mean?

22 A Like just beat him up. And so he confessed that he was
23 the one that stole the money. From what I was told they
24 agreed that he would give Victor pay check and some more
25 money and kind of quash everything until further notice. I

1 was told that once they got off of work E.J. asked Victor to
2 go to Blythewood.

3 Q Now, Victor is telling this, right?

4 A Uh-huh. (Affirmative response.)

5 Q So he's telling you that Victor, Man and Smurf beat up
6 E.J. and that E.J. agreed to give him the rent money back;
7 is that right?

8 A Right.

9 Q And you started talking about when they got off work.
10 Was that the same day that he told you --

11 A This is the story he told me. I don't know what the
12 time frame was.

13 Q Okay.

14 A This is the story that he told me that night. I don't
15 know what the time frame is of any of this.

16 Q Okay. So he started talking about a night when he,
17 Victor and E.J. got off work?

18 A He didn't tell me when, but he did tell me that.

19 Q All right. Go ahead and tell us what he said?

20 A He said they got off work about 11:00. I was expecting
21 him home between 11:00 and 11:30. He said that E.J. asked
22 him to go to Blythewood to pick up some marijuana. So at
23 this point everything supposed to be squashed because they
24 talked about it already. From what he told me. From what I
25 was told. He said that someone had took them partial way to

State v. Victor Smith 9/19/11 - 9/23/11

635

1 Blythewood, because they had to walk down a path and once
2 they got there that whoever they were getting it from was
3 bringing them back.

4 Q So they got a ride to this area?

5 A Right.

6 Q E.J. and Victor did?

7 A From what I was told.

8 Q All right. Go ahead.

9 A He told me at the path they had to walk down, he said,
10 E.J. was walking in front of him. He started thinking about
11 it, and started getting more mad and thought about it, and
12 before he knew it he shot him.

13 Q Victor told you that he shot E.J.?

14 A Uh-huh. (Affirmative response.)

15 Q Did he tell you what he did after he shot him?

16 A I said, so this happened in Blythewood? He said, yeah.

17 Q Is that the end of the conversation?

18 A Yeah.

19 Q And the next day police came to your apartment?

20 A Uh-huh. (Affirmative response.)

21 Q And did Victor ever return to your apartment after
22 that?

23 A No.

24 Q He didn't tell you when this happened?

25 A No.

1 Q Back around the time that the money went missing do you
2 recall hearing something strange in the night?

3 A I don't know the exact time frame. I remember hearing
4 something.

5 Q And what was that. What --

6 A I was asleep. I thought it was a gunshot.

7 Q Could you tell anything about where it came from?

8 A It sounded like it came from the next apartment?

9 Q Did you get up out of the bed or anything?

10 A No. We didn't have a bed. I was on the floor. And
11 when you hear something like that you wake up. It's kind of
12 like you open your eyes and then you go back to sleep.

13 Q The morning after you heard that did you have a
14 conversation with Victor about that noise?

15 A I don't if it was that next morning or a day or two
16 later. I remember him asking me did I hear something like a
17 gunshot.

18 Q He asked you that?

19 A Yeah, he did. I said, it sounded like it came from the
20 next apartment. And he was like, yeah, he heard it, too.
21 And that was the end of that.

22 Q Okay. Back in 2008, when you went to that apartment,
23 there were how many bathrooms in that apartment?

24 A Two.

25 Q Which one did you frequently use?

State v. Victor Smith 9/19/11 - 9/23/11

637

1 A The one in the master bedroom.

2 Q Was there one connected to that front bedroom on the
3 right?

4 A There was. There was two entrances to it.

5 Q Two entrances to it?

6 A Uh-huh. (Affirmative response.)

7 Q Was there a shower in that bathroom?

8 A Yeah. We didn't have a half bathroom, so it was two
9 full bathrooms.

10 Q Okay. Do you recall what the shower curtain in that
11 bathroom looked like?

12 A Uh-huh. (Affirmative response.) I bought it for
13 college.

14 Q What did it look like?

15 A Whole lots of flowers, girlie, with a matching bath
16 rug, bath mat.

17 Q With a matching bath mat. I'll show you what's been
18 marked already as State's No. 172. It's all ready in
19 evidence. Do you recognize this?

20 A Yes, sir.

21 Q What do you recognize that to be?

22 A My shower curtain.

23 Q At some point did that shower curtain go missing?

24 A Yeah.

25 Q Did you throw it away?

1 A No.

2 Q Did you know what happened to it?

3 A I can remember everything, but I can't remember that
4 shower curtain.

5 Q You can't remember taking it out?

6 A No. I remember what I do with everything.

7 Q That front right bedroom, at some point, did you come
8 home one day and see some cleaning going on in it?

9 A Yes, sir.

10 Q Can you describe what that was like?

11 A I came home. I go in there and I was watching people
12 play the game. Hey how you doing, give them a kiss.
13 Everybody is cleaning. I'm like, what's going on. He was
14 like well, you know how you complain about how the guys
15 never clean up behind theirself. So they're trying to take
16 some initiative. So I was like, nice version, well, it's
17 about time.

18 Q What kind of products were they using; do you recall?

19 A It was real bleachy.

20 Q Prior to the cleaning can you describe a little bit of
21 what the carpet and the walls were like in that room?

22 A Dirty, because we all drank in there, we all smoked in
23 there. That was the hangout room. We didn't do it no where
24 else in the apartment. Lot of marks on the wall, lot of
25 cool aid and drinks spilled all over the carpet.

State v. Victor Smith 9/19/11 - 9/23/11

639

1 Q Fair to say the walls were kind of dingy?

2 A Yeah. We talked about a paint job.

3 Q Did you notice any painting that had happened in that
4 room?

5 A They was painting that day.

6 Q What kind of paint?

7 A It was spot paint, and I asked, I was like what's going
8 on with this. Oh, we're spot painting. We're covering up the
9 deep marks then we're going to level it off. I said well,
10 y'all level it off, it looks tacky. Which we did talk about
11 painting so it wasn't -- I thought they was getting ready to
12 do it.

13 Q During your relationship with Victor, did he ever
14 display a temper?

15 A He did.

16 Q Was it frequent, often?

17 A For our situation. Yeah.

18 Q Did you ever notice any workout equipment in that front
19 bedroom?

20 A Oh, they had a pair of steel weights.

21 Q Weights. They stayed in that room?

22 A They was in that front room, but once they all started
23 hanging in there, but I remember they were using them in the
24 the living room and the dining room. But I remember them
25 being in there.

1 Q Do you recall throwing those weights away?

2 A I don't remember seeing them.

3 Q Do you remember how they left the apartment?

4 A Uh?

5 Q Do you have any knowledge of how those weights were
6 removed from the apartment?

7 A No.

8 Q Whose names were on the lease back then?

9 A Mine and Victor's.

10 Q When Victor told you that he killed E.J. did you go to
11 the police at that time?

12 A I didn't.

13 Q Why not?

14 A Scared. Didn't know exactly what happened or what
15 would happen to me.

16 Q Were you aware at that time that he told you of a body
17 being found?

18 A Excuse me?

19 Q When he told you that he killed E.J., at that point,
20 had you heard anything about a body being found?

21 A No.

22 Q Did Victor ever bring it up again?

23 A He told me that night. Next day, he was gone. Q When
24 you say you were scared, what were you scared of?

25 A What would happen to me.

State v. Victor Smith 9/19/11 - 9/23/11

641

1 Q What did you think might happen to you?

2 A Somebody might hurt me or kill me. Everybody knew
3 where we stayed at. After everything that happened with our
4 situation our apartment was not discrete any more.
5 Everybody stayed there. If they had wanted to get me they
6 would have got me.

7 Q When you were in North Carolina in 2009, summer 2009,
8 what were you doing there?

9 A My father had just got remarried. And --

10 Q Go ahead.

11 A -- He had got remarried the 18 or 19 of July. The
12 whole time I've been down here, I didn't take a vacation.
13 So I finally took a vacation and went back home.

14 Q Let me back up a little bit. After Victor left in
15 October of '08, did you eventually redecorate that front
16 right bedroom a little bit?

17 A I did, about February or March of '09.

18 Q February, March of '09. What did you do to the room
19 and why did you do it?

20 A I took it out because I was getting ready to get things
21 together right for my son. So I was changing it back to his
22 room.

23 Q Okay. Had it been your son's room previously?

24 A It was when we was first there.

25 Q Before --

1 A From August through, like December.

2 Q Before it was a hangout room?

3 A Right.

4 Q So you were trying to make it a little more kid
5 friendly, I guess?

6 A Because have him come through and inspect anything. I
7 had to make sure it was right or they wouldn't allow
8 anything --

9 Q So what kind of things did you put in the room?

10 A I bought a toddler's bed, a car theme. Everything cars
11 and toys and matching rug to go with it. Trying to cover up
12 some of the spots.

13 Q Cars, you said?

14 A Yeah. He like cars at that time.

15 Q How long did you continue to live in that particular
16 apartment?

17 A A month after they found the body. And I got evicted
18 for it.

19 Q And how did you find out about a body being located?

20 A My manager. We was actually close at the time.

21 Q Was she a friend of yours?

22 A Yeah, at that time, yeah. She called and told me that
23 they found a body in that area.

24 Q So when you got that information what did you do?

25 A I was trying to move. I was on my own. I was kind of

State v. Victor Smith 9/19/11 - 9/23/11

643

1 stuck there. I didn't want to be there because of all the
2 memories. So I just told her, that's why I'm trying to move
3 because that area is starting to get bad.

4 Q Actually, when you found out about that from your
5 friend, were you in Columbia?

6 A Well, I found out?

7 Q Yeah.

8 A No. I was in North Carolina.

9 Q At that wedding?

10 A Yes. Went to Greensboro, North Carolina.

11 Q All right. So once you got that information who did
12 you contact?

13 A I didn't contact anyone at that point. That was like
14 on a Monday. The day previous to the search warrant. She
15 called me back the next day --

16 Q Who did?

17 A My manager.

18 Q So ahead.

19 A She contacted me back and told me that officers had
20 came to my job, wasn't discrete about anything, needed to
21 get in contact with me. And I called Ms. Carol, which is
22 the manager at Northstone Apartments and she told me they
23 had a search warrant and left a number with her. They left
24 a number with her. They left a number with my manager and
25 left a number with the person I had watch my house while I

1 was gone. I told you, there were so many things going on
2 around there, I didn't trust my apartment not being watched.
3 So me and my brother-in-law contacted these numbers, all
4 day. It took me a while to actually call, because I didn't
5 know what to do. But that same day we spent most of the day
6 calling back to back. Leaving messages until someone
7 contacted us.

8 Q Lt. McDonald was the one that contacted you?

9 A Scott McDonald is the one that finally contacted us
10 back.

11 Q Did you talk to him?

12 A I did talk to him.

13 Q Did you tell him what you knew?

14 A Not right away. I wanted to make sure that I was safe.
15 I really -- I didn't know too much, but I knew I knew
16 enough.

17 Q So eventually did he come up to North Carolina to see
18 you?

19 A Uh-huh. (Affirmative response.) No, they didn't come
20 see me. They went to North Carolina and got me and brought
21 me back to Columbia.

22 Q Okay. Did you go with them voluntarily?

23 A I went with them voluntarily.

24 Q And you gave them a statement about what you knew?

25 A Yes, sir. I told them briefly on the phone what I

State v. Victor Smith 9/19/11 - 9/23/11

645

1 knew. He contacted the next day and told me what I told him
2 and what they found out was two different things, and I
3 needed to come back to Columbia.

4 Q When he told you that there was some indication that
5 this might have taken place in your apartment what was your
6 reaction?

7 A He said that a couple of times before I realized it
8 happened in my apartment. I was stuck that it happened in
9 Blythewood. So when he kept mentioned the front bedroom,
10 after a while I was like, wait a minute, you're telling me
11 it didn't happen in Blythewood? He was like, no, it
12 happened in your apartment, in the first bedroom, and I had
13 a heart attack on the phone. I was like, it the front
14 bedroom, my son's room where he sleep and we play on the
15 floor. He was rolling around in a blood bath. He said,
16 yes, ma'am, I failed to tell you that, but that's correct,
17 and we need to come get you.

18 Q You said after you went back to the apartment and gave
19 that statement, back in Columbia and gave that statement,
20 did you continue to live in the apartment for a period of
21 time?

22 A I had to until I found a place to move and had the
23 money to move. Looking at bedroom one and bedroom two for
24 the next month.

25 Q You said one of the reasons you had not come forward

1 previously was that you were scared. Did you ever receive
2 any threats?

3 A After they found the body, yes.

4 Q What kind of threats?

5 A Gasoline jugs sitting on my front door. People calling
6 my job at night. People calling me all kind of Bs and
7 telling me they was going to kill me. I've had to move
8 twice because of this.

9 Q How long did you stay in Columbia?

10 A Until early spring of last year.

11 Q 2010? When you left then you went back to North
12 Carolina.

13 A I was trying to leave. I had prior obligations. My
14 grandmother who raised me got sick and she passed last
15 October. So I went home and as a family took care of her
16 until she passed by.

17 Q Was there a break-in at your place in December, 2008?

18 A There was.

19 Q Police come?

20 A Yes.

21 Q They walked through your apartment?

22 A They walked through.

23 Q Do you recall if there was any sort of crime scene unit
24 that responded there?

25 A No. I've had so many people in my apartment, I don't

State v. Victor Smith 9/19/11 - 9/23/11

647

1 know if it was crime scene. I remember them walking
2 through, giving me a card. A letter coming through the
3 mail. That's all I heard from them.

4 Q Was your apartment, after the police came in December,
5 2008, when they left, was your apartment -- the condition of
6 it, how did it compare to when the police left after
7 executing that search warrant?

8 A Everything was in the room. I couldn't tell the
9 bathroom from the kitchen from the closet. Nothing --
10 everything was thrown in the front room. Tables turned
11 over. Things everywhere. Like a tornado went through there.

12 Q It wasn't like that when they came --

13 A It was clean. All I had was pictures scattered in the
14 front bedroom -- the master bedroom.

15 Q At any point, did you find any bullets in your
16 apartment?

17 A Once I started moving stuff. Once I started making it
18 my son's room again. I found a couple singles.

19 Q In which room?

20 A That front bedroom. That's something the guys had --
21 so --

22 Q I've just got a couple more questions. At some point,
23 Victor stopped working. He got fired from Beef O'Brady's
24 right. What did he tell you about that incident?

25 A He told me the reason he got fired from Beef O'Brady's

1 was the same reason he got fired from the Waffle House.

2 Q Why was that?

3 A He couldn't show up on a day that we had obligations.

4 Q What day of the week were those obligations?

5 A Like Tuesday and Wednesday.

6 Q Okay. When he told you that, what did you do?

7 A I got mad all over again, because everything falling
8 back over on me.

9 Q Did you call anybody or tried to call anybody?

10 A I tried to call him, the manager at Beef O'Brady's,
11 because he knew the obligations prior to him getting hired,
12 and said it wouldn't be a problem.

13 Q And when you tried to call the manager at Beef's what
14 was Victor's reaction?

15 A On the back patio with a friend, a girl friend that
16 used to live with me, and I was trying to call, back to
17 back. It was a busy night, football season, orders to go,
18 people loud, watching TV, drinking. I tried calling a
19 couple of times and they kept saying he was busy or he was
20 that or he's coming, and when he came out and took the
21 phone, he started -- he blew me out for trying to contact
22 Beef O'Brady's and I told him my reasons behind that was to
23 see what was going on, because this is not right to fall
24 back on me. Yeah, I'm sure he don't care if he's the
25 manager. It's not his life, but he knew his obligations.

State v. Victor Smith 9/19/11 - 9/23/11

649

1 Q I'm sorry to interrupt, but you said Victor blew you
2 out. What does that mean?

3 A Argue with me, fuss me out. How -- stuff with my
4 values, how a man have to do what a man have to do and
5 there's certain things that a female can't do for them,
6 basically. They have to do for themselves.

7 Q Did you ever notice that Victor had a rope or braided
8 belt?

9 A Yes.

10 Q I'm going to show you State's 173, that's in evidence.
11 Do you recognize this?

12 A Yes, sir.

13 Q And what do you recognize it to be?

14 A His belt.

15 Q Which one -- I'm sorry, I said rope belt. Which one is
16 his belt?

17 A I've seen him with both.

18 Q When you cleaned the apartment or cleaned up, did you
19 ever notice that belt in the apartment after he was gone?

20 A No.

21 Q Just a couple more things. The night that you heard
22 the noise that sounded like a gunshot, who was in the your
23 bedroom with you that night?

24 A Nobody.

25 Q The day that you came home and saw that there was

State v. Victor Smith 9/19/11 - 9/23/11

650

1 cleaning and painting going on in that front right bedroom,
2 who was in that room doing that work?

3 A I only seen Smurf and Man. Of course, Vic, his
4 brother, I'm not sure. That's a blur.

5 Q Victor Smith, does he have a nickname?

6 A Uh-huh. (Affirmative response.)

7 Q What was it?

8 A Slim.

9 Q The man that you had a relationship with, a child with,
10 and told you that he killed Ernest Robinson, do you see him
11 in the courtroom today?

12 A Yes.

13 Q Point him out?

14 A Right there.

15 Q Describe the shirt he's wearing?

16 A Blue and white stripe. Collar.

17 Q Thank you.

18 THE COURT: Could I see y'all for a second.

19 (Off the record bench conference with counsel and the
20 Court.)

21 THE COURT: Members of the jury, I suggested we stop
22 about 1:30. It's 1:30, and of course that's what our
23 discussion involved when to stop and when to start back. So
24 we're going to stop now. You need to sort of dissect the
25 witnesses testimony. This is a good stopping point. So

State v. Victor Smith 9/19/11 - 9/23/11

651

1 we'll do so now.

2 I need to remind you not to discuss this case.

3 I would say be back at 3:00 o'clock. Let's say 2:45.

4 That might be cutting it a little bit close, but let's say

5 y'all be back in the jury room at 2:45. That should give

6 y'all enough time to eat and everything else, and hopefully

7 I'll be back then at 2:00. It might be 3:00, but let's

8 shoot for 2:45.

9 Is that good enough for everybody?

10 Once again, don't talk about this case. I hope you all

11 have a good lunch. We'll see you all back at 2:45.

12 (Jury out for lunch t 1:34 p.m.)

13 THE COURT: Ms. Bright, you may step down. But in the
14 meantime, in the interim you're not supposed to talk to the
15 prosecutors about anything. Do you understand?

16 MS. BRIGHT: Yes, sir.

17 THE COURT: Yes, sir.

18 MR. HART: Your Honor, there is a matter that before I
19 do the cross-examination I'd like to take up with the
20 solicitor.

21 He asked her. She kept mentioning that they had some
22 obligations and they had to make sure the place was clean
23 because of those obligations. I want to question her --
24 here's what it is, Victor was charged with unlawful neglect
25 towards a child. Those charges have been dismissed. I do

1 want to question her about the obligations and that was --
2 but I don't want her to go into the details about their son,
3 because she did mention about the class --

4 MR. GOLDBERG: I think those charges are still pending.

5 THE COURT: I don't know why you ever need to bring that
6 up.

7 MR. HART: Here's why we need to bring that up.

8 THE COURT: Yes?

9 MR. HART: What happened was DSS would come to the house
10 and they had to clean the house because of DSS. They could
11 come and do checks. So they would clean the house.

12 THE COURT: Okay.

13 MR. HART: And I want to be able to question her why
14 they were cleaning, because of DSS, but I don't want to get
15 too much into about the son and the charges and --

16 THE COURT: Well, it's a slippery slope. I don't see
17 how it's going to amount to a hill of beans why they had to
18 clean the house considering this is a murder case, but I
19 don't want to stop you from doing your job, if you have a
20 feeling you should pursue it, but --

21 MR. GOLDBERG: In my opinion, if he's allowed to pursue
22 it, if he's allowed to go there about DSS and cleaning that
23 that clearly opens the door to why DSS is there, is because
24 of his client was charged with hurting this child. The
25 whole reason why he isn't going to be there.

State v. Victor Smith 9/19/11 - 9/23/11

653

1 THE COURT: Go ahead.

2 MR. HART: She mentioned that they had obligations.

3 THE COURT: I thought they were financial obligations,
4 but -- I'm not being funny. I'm listening to this thing and
5 when she mentioned obligation my feelings would be I thought
6 she was talking about some financial obligation. Now, I
7 don't know what the jury concluded but those obligations
8 don't transfer into some sort of state's right to come in
9 and inspect the place. I think -- you know, I'm not trying
10 to tell you what to do or suggest, but I mean, if I listen
11 to this -- I thought it was monetary. Just listening to
12 them. I had no clue as to what they specifically were.
13 See, I don't know as much about the case as you or Mr.
14 Goldberg, but just listening to the testimony it seemed
15 rather innocuous to me, and quite frankly, I'm thinking
16 those obligations had something to do with financial
17 concerns.

18 MR. HART: Well, part of the state's case is that there
19 was a lot of cleaning going on in this apartment. Well,
20 there was cleaning going on and part of the reason cleaning
21 was going on was --

22 THE COURT: I'll put it this way, let me help you out.
23 I'm not going to stop you from doing your job, but your job
24 involves intentionally or unintentionally opening a door
25 then he can go into what your client was charged with.

State v. Victor Smith 9/19/11 - 9/23/11

654

1 That's a balancing -- that's a balancing decision you have
2 to make, but as far as I'm concerned, just sitting here
3 listening, the obligations I thought had to do with
4 financial stuff. I don't know. I don't think there's any
5 testimony that the state has some right to come in and
6 inspect the cleaning of the place. Maybe I missed
7 something, Mr. Hart.

8 Let me tell you what, think about it over the course of
9 lunch. We'll take it back up when we come back. We'll make
10 sure we take that up.

11 I'm shooting for 2:45. I might be a little late. This
12 shouldn't take long, but you never know.

13 All right. I'll see y'all later.

14 (Court in recess for lunch break at 1:37 p.m.)

15 MR. GOLDBERG: It's been brought to my attention that
16 Darius Smith, Victor Smith's brother is likely to invoke his
17 Fifth Amendment right against self-incrimination. It's
18 obvious we cannot call him in front of a jury simply for him
19 to invoke that right, however, I would like to proffer In
20 Camera for a moment to see if that is, in fact, what he's
21 going to do. If it is, then obviously, it is what it is.

22 MR. HART: No objections, Your Honor.

23 THE COURT: Well, bring him in.

24 MR. GOLDBERG: Yes, sir. He's right here.

25 THE COURT: Come around here, sir.

State v. Victor Smith 9/19/11 - 9/23/11

655

IN CAMERA HEARING FOR PROFFER OF DARIUS SMITH:

(WHEREUPON, Darius Smith was sworn to tell the truth.)

THE CLERK: Have a seat in the witness box and state your name for the record, please.

MR. SMITH: Darius Smith.

DARIUS SMITH - DIRECT EXAMINATION

BY MR. GOLDBERG:

Q Mr. Smith, is Victor Smith, the defendant, your brother?

A I want to assert my right to the Fifth Amendment.

Q All right. Should I assume that's going to be your answer to all my questions?

A I want to assert my right to the Fifth Amendment.

MR. GOLDBERG: Judge, those are all my questions for the defendant, at this time.

THE COURT: All right. Do you have any questions for him, Mr. Hart.

THE COURT: You may step down, sir.

MR. GOLDBERG: In my review of the case law, it appears that it is stated that we are not permitted to put a witness on the stand to simply do what he just did, despite our desire to do so.

THE COURT: I understand.

MR. GOLDBERG: In light of that fact, I would ask that

State v. Victor Smith 9/19/11 - 9/23/11

656

1 Mr. Hart not be allowed to make any comments to the jury
2 about the state's failure to call Mr. Smith to the stand as
3 a witness in this case. Considering the fact that we
4 actually cannot call him, at this point, and have attempted
5 to do so.

6 MR. HART: Of course, Your Honor, I would disagree with
7 that. That's Mr. Smith's right to invoke his --

8 THE COURT: Stop.
9 I've heard both of you out. We called him In Camera to
10 invoke his Fifth Amendment right not to say anything.
11 That's his right. That's what he did.

12 I mean, that's --

13 MR. GOLDBERG: However you want to handle it.

14 THE COURT: Any objection?

15 MR. HART: Your Honor, I'm not sure. You didn't give me
16 a chance to say anything.

17 THE COURT: Go ahead. I'll give you a chance now.

18 MR. HART: I don't know what the ruling was.

19 THE COURT: The ruling was he's not going to call him
20 because he invoked his Fifth Amendment right to remain
21 silent, not to incriminate himself. That's his right. He
22 exercised his constitutional right not to say anything,
23 basically.

24 MR. HART: Yes, sir. And -- and he's a part of the
25 evidence in this case --

State v. Victor Smith 9/19/11 - 9/23/11

657

1 THE COURT: No. The solicitor has a right to call him
2 or not call him. You can call him if you want to. I think
3 it's immaterial, but the bottom line is this, in the old
4 days when you'd call somebody and they say, I'll take the
5 Fifth, you let them go. Now, we can say that he was called
6 to see whether or not he wanted to testify and he invoked
7 his Fifth Amendment right not to say anything regarding any
8 issues in this case. I'll be happy to tell the jury that.

9 MR. HART: We won't --

10 THE COURT: All right. All I can do is a balancing act
11 and I don't blame him. I wouldn't want to say anything that
12 might incriminate me or my brother. You know, that's
13 understandable. But I think the jury is probably entitled
14 to know if something comes up, what happened to him and I'm
15 prepared to give them an instruction regarding this
16 incident, and we can talk about it later on, but the idea is
17 -- well, why didn't he call his brother. That's about the
18 best I can do.

19 MR. GOLDBERG: Yes, sir.

20 THE COURT: And we can revisit it later if anybody is so
21 inclined.

22 MR. GOLDBERG: Thank you.

23 (Court in session after lunch break at 3:25 p.m.)

24 THE COURT: Anything further before the jury comes out?

25 MR. GOLDBERG: Nothing other than Ms. Bright can go

1 ahead and take the stand.

2 THE COURT: Yes. Come around, Ms. Bright.

3 Wouldn't you know if, it took longer than I thought and
4 when I get back somebody's in my parking space.

5 All right. Bring them in.

6 (Jury in at 3:26 p.m.)

7 THE CLERK: The jury is present, Your Honor.

8 THE COURT: All right. All right, welcome back Madam
9 Forelady and members of the jury. Obviously, things didn't
10 go as neatly and nice as I thought, otherwise we would have
11 started before now, but at least I think I suggest to you
12 that we could run into some matters and I has nothing to do
13 with this case. And it all has to do with what I told you
14 earlier. An event I had to go to took longer than I thought
15 and so here we are now. We will resume this case with Mr.
16 Hart's cross examine of Ms. Bright.

17 Mr. Hart, you may proceed, sir.

18 MR. HART: Thank Your Honor.

19 JAZMINE BRIGHT - CROSS-EXAMINATION

20 BY MR. HART:

21 Q Ms. Bright, were you in North Carolina before you got
22 here today?

23 A Yes.

24 Q How did you get here?

25 A The solicitor office.

State v. Victor Smith 9/19/11 - 9/23/11

659

1 Q The solicitor's office picked you up?

2 A The investigators.

3 Q They drove you here?

4 A Yeah.

5 Q Are they paying for your accommodations?

6 A They are.

7 Q Let's go to -- I'll show you what's been marked as
8 State's Exhibit No. 10. You can take it. I want you to look
9 over that as carefully as you can. State's Exhibit No. 10;
10 does that look similar to the apartment that you lived in?

11 A Yes, sir.

12 Q That's the layout of the apartment; what's the size of
13 that apartment?

14 A Long.

15 Q Long? Is it a big apartment?

16 A It's a nice size. Not too big, not too small, but it
17 was long.

18 Q Long. Okay. Say about 1,000 square feet?

19 A I don't know the feet, so I'm not going to say,
20 exactly. I just know it was long.

21 Q Okay. That first bedroom. Did Smurf stay in that
22 first bedroom sometimes?

23 A Uh-huh. (Affirmative response.)

24 Q Jeremiah stayed in that first bedroom?

25 A Yes.

1 Q That bathroom, that's the bathroom that Smurf used?

2 A Yes.

3 Q That's the bathroom that Jeremiah used?

4 A Yes.

5 Q The shower curtain. You say you bought that shower
6 curtain for college?

7 A Before college.

8 Q I'll show you what's been marked as State's Exhibit No.
9 172. You say that's the shower curtain that you bought
10 before college?

11 A Uh-huh. (Affirmative response.)

12 Q What did you say in earlier testimony about that shower
13 curtain, whether you noticed that it was there?

14 A Clarify the question for me?

15 Q What did you tell the solicitor this morning about the
16 shower curtain when you testified?

17 A What -- I remember throwing everything away except for
18 the shower curtain.

19 Q You remember throwing everything away except for that
20 shower curtain?

21 A Yeah.

22 Q And you didn't know if it was missing or not?

23 A No. Last time I saw it I remember being in the
24 apartment before they left -- gosh, I don't remember the
25 last time I saw it, but the next time I did see it I was

State v. Victor Smith 9/19/11 - 9/23/11

661

1 looking at it in the evidence lab.

2 Q And in that first bedroom, you actually put another
3 shower curtain in that first bedroom, right?

4 A In the master bedroom.

5 Q In that bathroom; correct?

6 A Yes.

7 Q What time did you go to bed.

8 A It varied. It really varied.

9 Q Well, let's talk about --

10 A Sometimes I would go to sleep before them, sometimes I
11 went to sleep around 12:00. It varied.

12 Q Well, let's talk about that particular night.

13 A What particular night?

14 Q That this incident happened?

15 A What incident; the actual --

16 Q The incident that we're here --

17 A I don't know exactly what night that was.

18 Q You don't know what night that was?

19 A No. I know it was about that time frame. I didn't know
20 anything about this, about the apartment.

21 Q Let me ask you, around this time frame --

22 A Okay.

23 Q -- while you were sleep --

24 A Okay.

25 Q -- did you ever hear any screaming in the next bedroom?

1 A No.

2 Q Did you ever hear any yelling in the next bedroom?

3 A They were always yelling, so --

4 Q Did you ever hear that someone was fighting in the next
5 bedroom?

6 A They used to argue, too -- so --

7 Q Did it ever appear to you that someone was wrestle in
8 that next bedroom?

9 A We used to wrestle.

10 Q You said we used to wrestle?

11 A Yeah, like everybody used to wrestle. So --

12 Q Okay. During this time frame while you were sleep?

13 A Well, I tell you stuff like this happened every day.
14 People laughing, joking, arguing, telling somebody about
15 theirself. Wrestling, playing. That happened like every
16 day. So around that time frame I could have heard all of
17 that.

18 Q Well, let's talk about, did you hear it or did you not
19 hear it?

20 A When? That's what I'm asking.

21 Q Around this time frame.

22 A Yeah, I heard it in my sleep. Yeah, I have.

23 Q You've heard it?

24 A Yeah.

25 Q Around this time frame while you were sleep did you

State v. Victor Smith 9/19/11 - 9/23/11

663

1 hear gunshot in the next bedroom?

2 A It sounded like it came from the next apartment, but I
3 did hear a gunshot.

4 Q You didn't call the police.

5 A It was one of those things where I went back to sleep.
6 I didn't realize that it was actual gunshot.

7 Q It appeared to you as a gunshot?

8 A Yeah, in my sleep. Yeah.

9 Q And you didn't get up to check out and see what was
10 going on?

11 A You live the lifestyle that we lived in, like you hear
12 something and it's police upstairs outside the door. It's
13 nothing for you to hear something out there or another
14 apartment.

15 Q Well, let's talk about the apartment complex that you
16 lived in.

17 A Okay.

18 Q Was it common for you to hear gunshots in that
19 apartment?

20 A We have heard gunshots out there. We have.

21 Q That's a common occurrence?

22 A It's not common but we have heard it.

23 Q It's not common but you have heard it?

24 A Yes.

25 Q Is it common to hear a lot of noise in that particular

1 apartment complex?

2 A You're talking about the area?

3 Q Correct?

4 A Not so much. No.

5 Q Now, when you woke up the next morning, do you remember
6 talking to the police?

7 A Excuse me?

8 Q Do you remember talking to the police about this
9 incident?

10 A Uh-huh. (Affirmative response.)

11 Q Do you remember telling the police that you were sleep?

12 A Uh-huh. (Affirmative response.)

13 Q Do you remember telling police that you had to wake up
14 the next morning to go to Waffle House to go to work?

15 A I do remember that.

16 Q You remember that.

17 A Yeah.

18 Q The next morning you woke up to go go Waffle House, did
19 you see anyone?

20 A I didn't go in that room. I went from my room straight
21 out the door. So I don't know what took place in that room.

22 Q Did you see any blood in the hallway?

23 A It's always dark. I don't turn on the lights to go
24 out, I just go straight out the door. I don't turn anything
25 on. It's pitch black. It's a hallway there.

State v. Victor Smith 9/19/11 - 9/23/11

665

1 Q When you leave in the morning you don't turn the lights
2 on to leave?

3 A No. I get myself together in my room or go in the
4 living room to get stuff together and I go to work.

5 Q That next morning when you left for Waffle House --

6 A Uh-huh. (Affirmative response.)

7 Q -- did you smell any bleach?

8 A You're talking about when I left that morning?

9 Q Yes, ma'am.

10 A No, I didn't.

11 Q You didn't?

12 A No.

13 Q Did you smell any cleaning products the next morning?

14 A No. I can't say anything out the ordinary when I got
15 up that morning. No.

16 Q Did you smell anything that smelled like Lysol?

17 A I always did spray Lysol, so --

18 Q That --

19 A I could have smelled it. I don't remember everything.
20 That's been two years ago.

21 Q Did you introduce Victor to Smurf?

22 A No.

23 Q Y'all didn't go to a party for Smurf's girlfriend when
24 y'all were working at the Waffle House together?

25 A I don't remember going to no party and meeting him.

1 Q And meeting Smurf?

2 A No.

3 Q Well, while Smurf was living in that apartment, Smurf
4 wasn't working was he?

5 A No, he wasn't.

6 Q And Man wasn't working was he?

7 A No.

8 Q You were working, right?

9 A Uh-huh. (Affirmative response.)

10 Q Victor was working, right?

11 A Yes.

12 Q So the only two people not working was Man and Smurf?

13 A Yes.

14 Q You knew Ernest was working?

15 A I knew him as Vic co-worker. Yes.

16 Q And you mentioned there were a lot of people in and out
17 of this apartment, right?

18 A Oh, that's right.

19 Q All the time?

20 A All the time. We used to argue about it all the time.

21 Q One of the things that you talked about this morning
22 before we took our break was what Victor told you?

23 A Uh-huh. (Affirmative response.)

24 Q Is that right?

25 A Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

667

1 Q You said Victor told you he killed E.J.?

2 A Uh-huh. (Affirmative response.)

3 Q That was the night before the police responded on
4 October 21?

5 A Yes, sir.

6 Q When the police got there you didn't tell them that did
7 you?

8 A I was scared. Everything was happening so fast. I'd
9 never been involved with the law. Never been involved with
10 the law, so my mind was everywhere.

11 Q Let's go to what you mentioned this morning --

12 A Okay.

13 Q You said you became ill, right?

14 A Right.

15 Q You said you threw up, right?

16 A Yes, sir.

17 Q You said you were confused, right?

18 A Yes, sir.

19 Q None of that led you to tell the police the next day
20 what Victor told you?

21 A I thought about a lot of things, now that I'm here. I
22 thought about a lot of things in that little bit of time
23 before the officers came to our house that day. I was
24 scared.

25 Q Sure. That's not the only time that officers responded

1 to your apartment --

2 A Yeah.

3 Q -- but let's stick here to October 21. When the
4 officers came to say they were searching for marijuana,
5 right?

6 A Right.

7 Q And they didn't get all of the marijuana did they?

8 A No.

9 Q There was some marijuana still left in the apartment?

10 A Uh-huh. (Affirmative response.)

11 Q Did you call and tell them they missed some marijuana,
12 they didn't get it all?

13 A Someone in his apartment, I'm not going to say the
14 name, took it.

15 Q But you didn't call the police and tell them that?

16 A No, just like I -- Just like I admit that everybody was
17 smoking in there, too.

18 Q But that's not the only time police responded to your
19 apartment is it?

20 A (No response.)

21 Q Your house was broken into on December 22?

22 A December -- that was '08, after -- when they came in
23 that time that was the first time. It got broken in after he
24 got -- went away.

25 Q Okay. Well, October 21, Victor left?

State v. Victor Smith 9/19/11 - 9/23/11

669

1 A Right.

2 Q And he hadn't been back since then?

3 A Right.

4 Q December someone broke into your apartment?

5 A Right.

6 Q You didn't call the police did you?

7 A Yeah. The police came. Yes. The police were called,
8 because I had to leave work and all my co-workers were there
9 with me.

10 Q Are you sure the property manager -- did you call the
11 property manager first?

12 A Well, I was -- his brother went by the house -- I was
13 on the job and he needed something out the apartment. He
14 the one discovered that the back door was open. So by the
15 time I left and went there, before I know it the police was
16 there. I don't know how they got there. So they already
17 had called.

18 Q You didn't call?

19 A No, I'm not the one that discovered it.

20 Q Did you talk to the police that day?

21 A Yes, I did.

22 Q How long were they there?

23 A Not long. They asked what was missing, gave me their
24 card.

25 Q Did you have the opportunity to tell them what you say

1 Victor told you?

2 A Yeah, I'm sure I did. But that time I wasn't thinking
3 -- not saying this is not serious, but the situation I'm in
4 is very serious. Which I'm not allowed to discuss.

5 Q You didn't tell them did you?

6 A No, I didn't. I heard other things. I heard other
7 things as far as him being on the scene.

8 Q You heard --

9 A Yes. I'm not from this area, so I went by what I was
10 told.

11 Q You --

12 A I heard it from more than a couple people that he was
13 seen.

14 Q That who was seen?

15 A That E.J. was seen.

16 MR. GOLDBERG: Objection. Hearsay.

17 A Yes.

18 THE COURT: All right. Don't say what somebody else told
19 you.

20 A Got you.

21 BY MR. HART:

22 Q These are the details of your statement from what you
23 said this morning. You said Victor told you he was walking
24 to the Piggly Wiggly, right?

25 A Right.

State v. Victor Smith 9/19/11 - 9/23/11

671

1 Q You said he jumped E.J. in the woods, right?

2 A Correct.

3 Q You said E.J. said, let's go to Blythewood?

4 A Yes.

5 Q You said Victor told you he shot E.J.?

6 A Yes.

7 Q In the woods in Blythewood?

8 A Yes.

9 Q Your apartment is not in Blythewood, is it?

10 A No, it's not.

11 Q You talked to the police back in July?

12 A Yes.

13 Q You remember that?

14 A Yes.

15 Q You never voluntarily went to the police to tell them
16 what you said Victor told you?

17 A Once they discovered the body.

18 Q In fact, you called the police the day they were doing
19 the search of your apartment, right?

20 A Yes.

21 Q I want to show you what's been marked as State's
22 Exhibit No. 14. Tell me if you recognize that picture?

23 A I do. That's my son's room.

24 Q That's your son's room?

25 A Yes.

1 Q Now, you were in this apartment from September of '08
2 until July 2009, right?

3 A Right.

4 Q Between that time, between September of '08 and July of
5 '09, did you ever notice that stain on the carpet?

6 A No, because like I told you, everybody being a drunk,
7 high, spilling everything. Every color in the sun on that
8 floor, mostly red. Yes, sir.

9 Q After October 21, did you ever notice that stain on the
10 carpet?

11 A No. New stains were there, but not as emerging stain,
12 no.

13 Q So you knew the stains were there, right?

14 A Stains were always there. We always made a mess in
15 there.

16 Q I'm going to show you what's been marked as State's
17 Exhibit No. 16. Do you recognize that?

18 A Yes, sir.

19 Q From September 2008 until July 2009, did you ever
20 notice those stains on the carpet?

21 A Yeah. Like the first time. Yes.

22 Q You noticed those stains. I'll show you what's been
23 marked as State's Exhibit No. 34. Tell me if you recognize
24 that?

25 A Bathroom.

State v. Victor Smith 9/19/11 - 9/23/11

673

1 Q That's the bathroom?

2 A Uh-huh. (Affirmative response.)

3 Q From September '08 to July, 2009, did you ever notice
4 stains on the wall in the bathroom?

5 A There were stains in there, too. So --

6 Q Did you ever call the police to tell them that you
7 noticed some stains on the walls?

8 A We've always had stains. People use to vomit. People
9 used to do some of everything in there. So there were a lot
10 of stains. That part of the house wasn't the cleanest part
11 of the house.

12 Q So it's not unusual for you to have stains in your
13 apartment?

14 A No, it's really not.

15 Q It's not unusual for you to have blood stains in your
16 apartment?

17 A There were no blood stains.

18 Q State's Exhibit No. 35. I'll show you that. Do you
19 recognize that?

20 A Uh-huh. (Affirmative response.) Part of the bathroom,
21 still.

22 Q Recognize that as part of the bathroom?

23 A Uh-huh. (Affirmative response.)

24 Q From September of '08 to July of '09, did you recognize
25 those stains in that bathroom?

1 A No, sir. Again, I used the master bathroom and guests
2 used that.

3 Q You never went in this bathroom in your apartment?

4 A Yeah, I'd go in there, but not to inspect the walls,
5 no.

6 Q And you never called the police about those stains?

7 A Those stains had been there two years.

8 Q I'm going to show you what's been marked as State's
9 Exhibit No. 36. I want you to look at that and tell me if
10 you recognize it?

11 A It's the same bathroom.

12 Q Same bathroom. Did you ever call police about the
13 stains on those walls in this picture?

14 A Again, those stains had been there two years. People
15 used to vomit in there all the time.

16 Q I want to show you what's been marked as State's
17 Exhibit No. 40. Do you recognize that as your wall?

18 A I assume it is. I can't tell exactly.

19 Q While you were living in this apartment do you remember
20 seeing that stain?

21 A I remember seeing a lot of stains. I don't remember
22 seeing one in particular.

23 Q Does that appear to be a blood stain to you?

24 MR. GOLDBERG: Objection. She not qualified to answer
25 that question.

State v. Victor Smith 9/19/11 - 9/23/11

675

1 THE COURT: I think the witness has answered that she
2 doesn't remember the stains.

3 BY MR. HART:

4 Q I'll show you what's been marked as Exhibit No. 41.

5 Did you ever call the police about that?

6 A It's another stain, sir.

7 Q So you did call the police or you didn't?

8 A I didn't, but again, it's a stain and another stain I
9 didn't realize.

10 Q State's Exhibit No. 42. Did you ever recognize that?

11 A No, sir.

12 Q I want to show you what's now marked as State's Exhibit
13 No. 69. Is that --

14 A That's the back of my apartment.

15 Q That's the back of your apartment?

16 A That's the bottom.

17 Q And that's the fence that's connected to your door?

18 A Yes, sir. That's all around out the back patio.

19 Q So to get out that back door you've got to cross over
20 that fence?

21 A Yes.

22 Q I'll show you what's been marked as State's Exhibit No.
23 93.

24 A Okay.

25 Q Do you recognize some baby powder in that picture?

1 A Yes, sir.

2 Q Last Exhibit is State's Exhibit No. 102. Do you agree
3 that that's leading out to that back patio where that fence
4 is; right?

5 A Uh-huh. (Affirmative response.)

6 Q We talked about the bedroom. Do you remember seeing
7 the stains in that living room leading to the back patio?

8 A I remember stains. Like I said, we've always spilled
9 stuff. Somebody would walk right in with mud shoes on so --
10 we were always having deep stains in those carpets.

11 Q I think you also mentioned you remembered telling
12 police that you redecorated that front room?

13 A Yes, sir.

14 Q Do you remember telling them you painted the whole
15 entire room yourself to make it look better?

16 A No.

17 Q You don't remember telling them that?

18 A No. Not paint the whole room. No.

19 (Defendant's Exhibit No. 7,
20 statement, was marked for ID.)

21 COURT REPORTER: Defendant's No. 7 for ID.

22 BY MR. HART:

23 Q I'm going to show you what's been marked as Defendant's
24 Exhibit No.7 for ID. I want you to take a look at that.

25 A Which one?

State v. Victor Smith 9/19/11 - 9/23/11

677

1 Q Do you recognize that as a statement you gave to
2 police, and don't read the statement out loud. Just look
3 over it.

4 A Yes, sir.

5 Q You recognize that?

6 A Yes.

7 Q I want you to go to Page 10.

8 A Okay. Okay, I'm there.

9 Q I want you to read over that, especially that
10 highlighted area. Don't read it aloud, just read it.

11 A I read it.

12 Q Do you remember telling the police that you painted the
13 entire room, that you painted that room over?

14 A I don't remember, but if it's in my statement, I said
15 it.

16 Q You also mentioned that you cleaned up the apartment
17 and found some bullets; is that right?

18 A Yes, sir.

19 Q Did you call the police about the bullets you found?

20 A No, because I was scared. They used to have stuff.
21 Either have it or somebody come through and have it. So it
22 wasn't uncommon for me to see a bullet.

23 Q Thank you.

24 A No, problem. Thank you.

25 THE COURT: Redirect.

State v. Victor Smith 9/19/11 - 9/23/11

678

1 I'm sorry, you need to tell me something?

2 UNIDENTIFIED SPEAKER: I have to use the restroom
3 really badly.

4 THE COURT: Okay, fine. We'll stop and take a break.
5 Go. In fact, all y'all go. Go to the jury room just don't
6 talk about the case.

7 (Jury out for break at 3:54 p.m.)

8 THE COURT: We'll be at ease.

9 (Court in recess for break at 3:54 p.m.)

10 (Court in session after break at 3:58 p.m.)

11 THE COURT: Everybody ready.

12 Bring them back in.

13 (Jury in at 3:58 p.m.)

14 THE BAILIFF: They're all present, Your Honor.

15 THE COURT: Mr. Goldberg.

16 MR. GOLDBERG: Thank Your Honor.

17 JAZMINE BRIGHT - REDIRECT EXAMINATION

18 BY MR. GOLDBERG:

19 Q Ms. Bright, were you promised anything in exchange for
20 your testimony here today?

21 A No, sir.

22 Q Mr. Hart asked you about the statement that you gave to
23 law-enforcement, in fact, he showed it to you; is that
24 right?

25 A Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

679

1 Q Written statement.

2 MR. GOLDBERG: Is it still up there?

3 THE COURT: Yes, sir. No. 7, Defense for ID.

4 MR. GOLDBERG: No. 7, Defense ID.

5 BY MR. GOLDBERG:

6 Q I think he asked you some questions about the
7 information that Victor gave you about how the assault on
8 E.J. took place; is that right?

9 A Yes, sir.

10 Q If I showed you Page 6 of your statement and you
11 reviewed it, would that refresh your memory as to what he
12 told you a little bit?

13 A Yes, sir.

14 Q Is that the statement; that's your statement, right?

15 A Yes, sir.

16 Q I'll just ask that you look over it a little bit to
17 yourself, that page.

18 A Okay.

19 Q In the middle paragraph there, he -- you told law
20 enforcement about what Victor told you about the beating of
21 E.J.; is that right?

22 A Right.

23 Q And can you describe what he told you, once again,
24 about the beating part?

25 A Oh, he said they was walking to the Piggly Wiggly

1 behind the pond where the tall grass is at, there's a
2 pathway through, shortcut to go to the Piggly Wiggly, and he
3 said that he jumped him and so he confessed, basically he's
4 the one that took the money.

5 Q And who did he say was involved in beating E.J.?

6 A I know he and Smurf was.

7 Q All right. And where did he say that that took place?

8 A Behind the apartment by the pond.

9 Q Okay. Now, he also indicated to you about when he shot
10 E.J.; is that right?

11 A Yes, sir.

12 Q Can you describe that in your statement; is that
13 correct?

14 A Yes, sir.

15 Q Was that on the same page?

16 A Yes, sir.

17 Q It starts at the bottom of that page; is that right?

18 A Yes, sir.

19 Q When did he say that that shooting took place, when he
20 told you?

21 A He doesn't say.

22 Q If you review your statement, do you comment at all in
23 your statement about that, about what he said?

24 A Yes. Well, all this is what he said.

25 Q Okay.

State v. Victor Smith 9/19/11 - 9/23/11

681

1 A After the beating.

2 Q Right. And what did he tell you that he said?

3 A What part?

4 Q The bottom of the page?

5 A Oh. Talking about going to Blythewood?

6 Q Right.

7 A Oh, he was telling me that he got off work, that E.J.
8 asked him to go to Blythewood so he could pick up some
9 marijuana, and they'll come back --

10 Q I guess what I'm clumsily trying to ask you is what was
11 your understanding of the time period; was it the same day,
12 was it a different days that the beating and the shooting
13 took place?

14 A I don't know. It was sometime shortly -- I just know
15 it was after from what he told me.

16 Q You're saying --

17 A He didn't say it was right in there, he didn't say it
18 was far away. I don't know what the time frame was. I just
19 know that that happened after the beating, of course.

20 Q The shooting happened after the beating from what you
21 understood?

22 A Right.

23 Q Okay. That's what I was getting at. But that's just
24 what he told you?

25 A Yes, sir.

1 Q Mr. Hart also asked you about the painting of the front
2 right bedroom?

3 A Right.

4 Q He asked you about the fact that you would eventually
5 paint the entire room; correct?

6 A Right.

7 Q Well, that was your plan, correct?

8 A Well, I planned to paint the whole apartment, actually.
9 Never got around to it.

10 Q Never got to do that. So the first time that you saw
11 any painting going on in the front right bedroom, who was
12 doing that?

13 A I know me and Smurf was present.

14 Q Was Victor there?

15 A He was there. He was sitting down when I came in.

16 Q You didn't go on to paint that room at that point did
17 you?

18 A No.

19 Q Did you ever get to do it?

20 A No. Well, I mean, like I said, that happened two years
21 ago. I remember writing in my statement, but I also don't
22 remember the paint just sitting there, even, so like I said
23 that was two years ago, and there's a lot of obligation at
24 that time.

25 Q I understand. Mr. Hart asked you about some bullets

State v. Victor Smith 9/19/11 - 9/23/11

683

1 that you said you found in that room; is that right?

2 A Yes, sir.

3 Q And he asked you if you ever called the police about
4 that?

5 A Right.

6 Q Clearly you said you had not. Why?

7 A Before when I said I was scared. I wasn't scared when
8 I saw the bullets. People shoot guns in the air. I'd had
9 bullets in there. People had come by with things on them
10 and I know -- it didn't surprise me that it was in there.

11 Q Turning to your relationship with Victor Smith, had you
12 ever seen him with a gun?

13 A Yes, sir. Don't know the time frame, but I did.

14 Q Thank you.

15 THE COURT: Anything further, Mr. Hart?

16 MR. HART: Nothing further.

17 THE COURT: All right. You may step down, Ms. Bright.

18 MS. BRIGHT: Thank you.

19 THE COURT: Call your next witness.

20 MR. GOLDBERG: State calls Investigator Travis Holdorf.

21 (WHEREUPON, Travis Holdorf was
22 sworn to tell the truth.)

23 THE CLERK: Have a seat in the witness box, state your
24 name for the record, please.

25 MR. HOLDORF: Travis Holdorf.

1 TRAVIS HOLDORF - DIRECT EXAMINATION

2 BY MR. GOLDBERG:

3 Q Investigator Holdorf, you're employed with the Richland
4 County Sheriff's Department; is that correct?

5 A Yes, sir.

6 Q Can you tell the jury a little bit about the nature of
7 your employment there, how long you've been there, and your
8 duties and the like.

9 A I was hired on at the Richland County Sheriff's
10 Department in 1994, after I got out of the Air Force after
11 doing four years. I started out on the road. Was a
12 training officer for a brief time. They opened up a testing
13 to go to investigations. I did well on the test. If you
14 did well on the test you can go in front of a board. I did
15 well in front of the board, and in summer of '97, I became
16 an investigator with the Richland County Sheriff's
17 Department. Since that time I've worked burglaries, I've
18 worked major crimes. Currently, I'm employed in the
19 capacity of a sex crimes investigator and a special unit
20 investigator, which is going to be your child abuse cases.
21 Every seven weeks we have a team that goes on call, and I'm
22 a primary homicide investigator on that group.

23 Q And were you, in fact, the on call primary homicide
24 investigator back in July 2009?

25 A Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

685

1 Q And did you receive a call about a potential homicide
2 out in the Elders Pond area of Richland County?

3 A Yes, sir.

4 Q What was the nature of the call you received?

5 A They had found some remains, skeletonized bones that
6 had been wrapped. Found a gunshot wound to the head. This
7 was the location it was felt where the body had been dumped
8 or placed.

9 Q Was there, in fact, a missing person's report conducted
10 by Investigator Cronise around that same area?

11 A Yes, sir.

12 Q And were you made aware of that investigation?

13 A Yes, sir. Once we realized we had a homicide, found a
14 body, you want to start looking -- that's the first place
15 you're going to start checking. Missing persons. Try to do
16 a background, as far as what else you've had going on as
17 suspicious, trying to put the pieces of this puzzle
18 together. Dottie Cronise has done a fantastic job. Most
19 cases are not so easy to put together once -- if you find
20 someone who is skeletonized. To where we could basically
21 just pick up Dottie's report and just follow the pieces.

22 Q So what was the first piece that you looked into from
23 her report?

24 A As far as Dottie's case had gone, all indicators
25 pointed towards Victor Smith. There's been some facts in

1 Mississippi and statements made that put Victor with the
2 victim last. They both worked together at Beef O'Brady's.
3 So we wanted to go and try to further dig into the
4 connections with Beef O'Brady's and also find out where
5 Victor Smith was.

6 Q Did you, in fact, make contact with numerous employees
7 of Beef O'Brady's?

8 A Yes, sir, we did.

9 Q Including the owner of Beef O'Brady's, Mark Wickham?

10 A Yes, sir.

11 Q And based upon that what pertinent information did you
12 obtain?

13 A When we started the investigation, you're going to have
14 a number of people that you're going to talk to unless it's
15 something that comes up to where it's someone who knows
16 something specific, saw something specific. Nine times out
17 of 10 you're just going to talk to them. You're going to
18 summarize what they said in your notes and you're going to
19 move on to the next person. So you can move along quickly
20 until you can find a lead, basically, is what you're looking
21 for. In talking to Mr. Wickham, both Victor and E.J. worked
22 at the Beef O'Brady's. That Ernest, excuse me, and Victor
23 both worked at the Beef O'Brady's. That Ernest was last
24 seen on the 27 after he got off a shift, and on the 28,
25 Victor was supposed to work, worked a couple of hours and

State v. Victor Smith 9/19/11 - 9/23/11

687

1 left and did not come back. I also learned that -- also, a
2 lot of this is also in Dottie's notes -- Ernest had a pay
3 check there he never picked it up, gives us a pretty good
4 reference point, as far as when we're looking at the time
5 frame.

6 Q Did you also learn about an issue with some potential
7 rent money that may have been missing from Victor Smith?

8 A. Yes, sir. In talking to a number of people, it was
9 mentioned that there had been some missing rent money.
10 Again, these weren't people that we sat down and took
11 statements from at the time, but kind of summarizing what
12 they had. There was the potential rent money, that the two
13 were known to hang out, suspected drug use. There was
14 definitely a relationship there in several points that could
15 become volatile in any type of case.

16 Q All this was done on July 20, 2009; is that right?

17 A Yes, sir.

18 Q So beginning on the morning of the 21, where did the
19 investigation take you?

20 A The 21, we have a meeting with our crime scene people
21 and our higher-ups, pretty much come up with what we have at
22 the time, and where we're going on this case. It's also an
23 opportunity for other people who might know something or
24 have an opinion to share it. We decided the best course of
25 action was to get a search warrant for Victor Smith's

1 apartment. We'd been able to verify where that was, which
2 was ■ Elders Pond, Apartment ■ And wanted to check
3 that spot for possible crime scene, since we did not feel
4 that where the body was located at was where he was killed.

5 Q And that search warrant, as we already know, was
6 executed; correct?

7 A Yes, sir.

8 Q And eventually you were provided information that lead
9 you to a subject named Allen Fulten; is that right?

10 A Yes, sir.

11 Q And tell me a little bit about the nature of your
12 involvement with Mr. Fulten?

13 A My initial involvement with Mr. Fulten was limited. On
14 a homicide there's a lot of information coming in at one
15 time. People collecting background information, people
16 looking at other relative or relations with certain people.
17 So there's really just a landfall of information coming in
18 at one time. It would have been Capt. Smith, McDonald and
19 Robinson that dealt more with Allen. Throughout the whole
20 case I'm constantly getting updates and trying to keep track
21 of who said what, who did what, as best I can.

22 Q And at that point, Mr. Fulten was incarcerated at the
23 county jail on an unrelated burglary; is that right?

24 A Yes, sir.

25 Q I think it was Capt. Smith who took his initial

State v. Victor Smith 9/19/11 - 9/23/11

689

1 statement from him; correct?

2 A Yes, sir.

3 Q And based upon that there were some other subjects that
4 you wanted to see and speak to; correct?

5 A Yes, sir.

6 Q Who?

7 A The second person of interest that we wanted to talk to
8 was going to be Jeremiah Jones and also Darius Smith.

9 Q All right.

10 A And also Victor Smith, but by that time, we'd figured
11 out where Victor was so he wasn't in a place where we could
12 talk to him right then and there.

13 Q So tell me about the efforts that were made to try and
14 locate Jeremiah Jones and speaking to him about what he
15 knew?

16 A With Jeremiah it was a little bit harder to get him
17 identified. You start out with nicknames, you start running
18 different data bases trying to find out who they know. It's
19 a lot of just going and talking to people. Where they hang
20 out, who they know. We searched a number -- or looked at a
21 number of spots looking for Mr. Jones. It would have been
22 on the 22 that we actually located Mr. Jones. Again, that's
23 after going to a number of spots, finding out where he hangs
24 out, trying to get -- you know, you start talking to people
25 and everyone's a little gun shy to talk to police. No one

1 really wants to get involved. No one really wants to say
2 anything. So sometimes it takes a little bit for them to
3 understand if you tell me where he's at I'm not saying who
4 told me. I'm just trying to talk to this person. At the
5 time, we did not know that Jeremiah Jones was going to be
6 involved to the point that he was. So that's the truth. We
7 were looking at, he's a witness.

8 Q And if I'm not mistaken, at that point when you were
9 looking for Jones, Lt. McDonald had received some
10 information from Jazmine Bright; is that correct?

11 A Yes, sir.

12 Q And that information led you to believe who was
13 involved in this actual incident?

14 A Lieutenant had gone and talked to Jazmine who just
15 testified, and she said Victor had confessed to doing the
16 murder.

17 Q And she also indicated that Man or Jeremiah was
18 involved at least in some way; correct?

19 A Correct.

20 Q So once you finally found Man, Jeremiah, did you talk
21 to him?

22 A We did.

23 Q Did you advise him of his rights?

24 A He was. We -- Jeremiah Jones, he was -- Obviously, he
25 hadn't had a lot of positive contact with the Sheriff's

State v. Victor Smith 9/19/11 - 9/23/11

691

1 Department or the police department. We explained to him
2 that we were investigating a murder. That he was not in
3 trouble, that we had information that he had information
4 about this homicide. That we wanted to talk to him and get
5 his side of things. Asked him, this is on the side of the
6 street behind some apartment complexes, and asked him if he
7 would mind coming with us to the Sheriff's Department so we
8 could sit down and talk. He agreed to do so. We went to
9 the Sheriff's Department, which is 5623 Two Notch Road. We
10 used Capt. Smith's office -- or Maj. Smith, now, and started
11 talking to Mr. Jeremiah Jones.

12 Q Did you advise him of his rights?

13 A Yes, sir.

14 Q Did he waive those rights?

15 A Yes, sir.

16 Q Can you talk a little bit about the interview procedure
17 when you're taking a statement from somebody like Mr. Jones,
18 at that point in time, the protocol?

19 A You've heard some people say in law enforcement there's
20 no such thing as never. You don't -- you have a normal way
21 that you do things. Our typical procedure when I take a
22 statement from someone is we're going to sit down and we're
23 going to talk first. One, so they know what we're talking
24 about. Often times when you start talking to people they're
25 going to change their statement. They're going to change the

1 things -- it could be they just don't want to tell you the
2 truth, but often times when you start out talking to someone
3 and then once you get to the point where you're putting it
4 in writing you've developed a lot more information. Once
5 you get to the point where you feel like you've got the
6 truth or most of the truth or you're just not going to get
7 anything different from them, that's when you put it in
8 writing. You explain that this is your statement. I'm not
9 here to put words in your mouth or anything else. You take
10 your time so that everyone understands what's going on.

11 Q Initially, when you spoke to Mr. Jones, verbally did he
12 give you a version of the events?

13 A He did. His first version was that Allen had shot
14 Ernest right where they dumped the body; that it happened
15 there. So that was pretty easy to refute. And after
16 refuting or confronting him that that just doesn't match up
17 with the facts, he admitted that he lied. He did not want
18 to implicate Victor, that Victor was like a brother to him.
19 He was emotional. I think it was very real what he was
20 saying, because, again, it was emotional. There are just
21 some things you get a feeling they're not faking. He didn't
22 want to tell, but he didn't have a choice. He even
23 implicates himself in the murder. When he started doing
24 that, that was actually very surprising to us. I had no --
25 I didn't believe he was, at the time. So when he starts

State v. Victor Smith 9/19/11 - 9/23/11

693

1 giving his statement where he admits hitting Ernest with the
2 brick twice. And he's giving us details we wouldn't know.
3 When we get to the apartment there's no snake cage, there's
4 no brick. You just don't have that information unless it
5 comes from someone, and it came from Jeremiah Jones. That's
6 how we developed the rest of the case.

7 Q Was he coerced into giving you that statement in any
8 way whatsoever?

9 A No. And part of talking with Jeremiah Jones, the only
10 part of his statement that's underlined is the bottom part
11 under the waiver, and that's about pressure, coercion. If I
12 underlined that, and that's your statement, that means you
13 don't know what it is. He said he could read and he could
14 write. He was not very proficient at it, so when we were
15 reading his statement back to him, he's got a copy in front
16 of him and I'm reading it off the computer screen and I'm
17 taking my time. There's no rush, there's no hurry. I don't
18 want to miss information. It does no one any good to miss
19 -- to get something wrong in a statement. That hurts your
20 investigation.

21 Q Based upon the information he gave you in that
22 statement did you feel like you needed to talk to Allen
23 Fulten again?

24 A Yes, sir.

25 Q Okay. So tell us about that?

1 A It was decided -- and again, you have several different
2 groups going in different directions -- it was Lt. McDonald
3 and Capt. Smith who pulled Allen Fulten back out of the
4 detention center, the Alvin Glenn Detention Center, and re-
5 interviewed him and confronted him with what we now thought
6 was the truth. Not telling them what to say, but pointing
7 out that he didn't tell us the truth.

8 Q At some point, did it become necessarily, in your
9 opinion as a lead investigator, to speak to Darius Smith?

10 A We did. After Jeremiah Jones and re-conferring with
11 Allen Fulten, there was enough probable cause established to
12 arrest all four of them; Allen Fulton, Jeremiah Jones,
13 Darius Smith and Victor Smith for the crime of murder, and
14 that's what we did.

15 Q You weren't able to place Mr. Victor Smith under arrest
16 for the crime of murder at that time; correct?

17 A No, sir. He was in Mississippi.

18 Q Okay. Did you, in fact, travel to Mississippi to talk
19 to Victor Smith?

20 A We did.

21 Q Where did you go talk to him?

22 A The department of corrections.

23 Q All right. I'll show you what's been marked as 1, 2,
24 181, 3 and 4. I'll just have you take a look at those, now.
25 Tell me what you recognize those items to be?

State v. Victor Smith 9/19/11 - 9/23/11

695

1 A It is the Advice of Rights form for Mr. Victor Smith,
2 the first and second statement for Victor Smith, consent to
3 search for DNA evidence for Victor Smith and a handwritten
4 note that Victor Smith wrote for Ernest's mom.

5 Q Tell the jury a little bit about how this process
6 worked when you encountered Victor Smith to conduct an
7 interview with him?

8 A We were flying out to Mississippi.

9 Q I'm sorry, you said, we -- who is we?

10 A I'm sorry. Investigator Gallegos flew out with me. We
11 decided our best course of action -- and Victor had been
12 talked to before about the missing person case. We had him
13 moved at the Mississippi Department of Corrections so he
14 wouldn't get information that we'd recovered a body. We
15 wanted to use that as an element of surprise. When we first
16 started talking to Victor Smith we approached him with the
17 angle that we were just investigating a missing person case.
18 I did not let on that we had recovered his body, did not let
19 on that we'd found the crime scene at his house, did not let
20 on that two co-defendants -- this co-defendant had
21 implicated him in this crime.

22 Victor Smith was read his rights. He did waive his
23 rights. This is signed by myself and Investigator Gallegos.

24 Q Can you demonstrate for the jury exactly how you went
25 through that Advice of Rights?

State v. Victor Smith 9/19/11 - 9/23/11

696

1 A We put his name up at the top. Officers and myself,
2 the other officer I was with, Investigator Gallegos, the
3 place was Mississippi Department of Corrections. I'm not
4 from Mississippi. I didn't know exactly where I was. The
5 date and the time we start this interview, when we start
6 talking to him where we're going to introduce it into
7 writing.

8 Q What was the date and time?

9 A It was July 24, 2009. The advice of rights was written
10 at 2:25.

11 Q Okay.

12 A And it's before we ask him any questions: You must
13 understand your rights. You have the right to remain silent.
14 Anything you say can be used against you in Court. You have
15 the right to talk to a lawyer for advice before I ask you
16 any questions and to have an attorney with you during any
17 questions. If you cannot afford an attorney, one will be
18 appointed to you before any questioning if you wish. If you
19 decide to answer questions now, without a lawyer present,
20 you still have the right to stop answering questions at any
21 time. You also have the right to stop answering questions
22 at any time until you talk to a lawyer.

23 Then we go into the Waiver. And it's the same thing
24 you see on TV.

25 Q Did he understand each one of those rights you just

State v. Victor Smith 9/19/11 - 9/23/11

697

1 read?

2 A Yes, sir.

3 Q Did you denote that on that form in some fashion?

4 A When I signed it that's my noting that he fully
5 understood it.

6 Q All right. And you were about to say about the waiver?

7 A The Waiver of Rights, it reads: I've the statement of
8 my rights and I understand what my rights are. I'm willing
9 to talk and answer questions. I understand and know what I
10 am doing. No promises have been made to me and no pressure
11 or coercion of any kind has been used against me.

12 Q Was there any question about the word coercion in this
13 case?

14 A No, sir. And he was specifically asked. On every
15 statement I take where I advise of your rights, that's a
16 question I ask.

17 Q And did Mr. Smith, in fact, sign that form and waive
18 those rights?

19 A Yes, sir. He signed it in two spots. The first spot
20 is where he understands his rights. The second spot is
21 where he waived his rights.

22 Q All right.

23 MR. GOLDBERG: At this time we'd offer State's No. 1
24 into evidence.

25 MR. HART: Same objection. No, I think that's the

State v. Victor Smith 9/19/11 - 9/23/11

698

1 statement. We didn't have any objections to that.

2 THE COURT: Mr. Hart it's been a long trial. That's

3 State's No. --

4 MR. GOLDBERG: State's No. 1.

5 THE COURT: All right. State's No. 1.

6 (State's Exhibit No. 1, advice and
7 waiver of rights, was marked and entered.)

8 BY MR. GOLDBERG:

9 Q In your estimation did Mr. Smith understand the rights
10 he was given?

11 A Yes, sir.

12 Q Did you make any promises to him?

13 A No, sir.

14 Q Any offers of leniency?

15 A No, sir.

16 Q Any threats of any kind?

17 A No, sir.

18 Q Was he denied any comforts he requested such as water
19 or bathroom break or anything of that nature?

20 A No, sir.

21 Q Did he, in fact, give you an additional statement about
22 this incident?

23 A Yes, sir.

24 Q Can you describe -- was it reduced to writing?

25 A Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

699

1 Q Can you describe that?

2 A We have a written -- basically, we have two methods you
3 can take a statement. One is on the computer where you use
4 a template. The other one is a handwritten version.

5 Handwritten is a little bit harder to take -- there's no
6 spell check on it, and you have to write it by hand, which
7 -- I'm pretty decent at typing. So it's much quicker, the
8 typed version.

9 Q All right.. So in this case, you had to take it by hand?

10 A Yes, sir.

11 Q Did you talk to Mr. Victor Smith before you reduced the
12 statement to writing?

13 A Yes, sir.

14 Q And as a result of that conversation did you reduce it
15 to writing?

16 A Yes, sir.

17 Q What did he tell you?

18 A Basically, when I take statement, I explain this to
19 everyone I take a statement from whether you're a suspect or
20 a victim, is that I want this statement to represent to
21 anyone who doesn't know anything about this case can look at
22 this statement and they will understand your point of view.
23 This is not my statement, this is your statement. You know,
24 if I ask you to hold up or repeat a question it's not there
25 to slip you up or hold you up, it's to make sure that I

1 understand it.

2 First question is: How do you know Ernest Robinson.
3 His response was: We worked together at Beef O'Brady's on
4 Hardscrabble Road.

5 Question: When did you last see Ernest Robinson? The
6 response was: The last day we worked together. He was
7 supposed to work the next day but he never showed up. After
8 we got off -- after they closed we went to my mom's house,
9 Dorothy Quattlebaum, on [REDACTED] Jaybird Lane. We both walked
10 there where we got some clothes. We went back to our
11 neighborhood. I went back to my house, which is [REDACTED] Elders
12 Pond Circle, Apartment [REDACTED] Ernest went to his brother's
13 house on Elders Pond Drive. I don't remember the address.

14 And here there is a line through it and my initials.
15 That's just a note that that was a mistake. Obviously, you
16 can't just backspace and you don't want to white out. You
17 want to leave it where there's a mistake. You just draw a
18 line through it and initial it.

19 It goes on to the second page. Did you and Ernest have
20 any problems? The response was: No, Ernest did not have any
21 problems with people. He got along with everyone.

22 I asked the question: Do you know anything about
23 Ernest being assaulted? The response was: No. Question:
24 Did you and Ernest play video games that night? And the
25 response was: No. Question: What did you think happened to

State v. Victor Smith 9/19/11 - 9/23/11

701

1 Ernest? The response was: I did not think anything when he
2 did not show up for work the next day. I did not think much
3 of it. I was shocked when Marshall told me that no one had
4 seen him.

5 Q Was that the end of his first statement?

6 A That is.

7 Q Is there a time denoted on that second page of that
8 statement?

9 A There is.

10 Q What time is that?

11 A It is 2:47, and that would have been the time we
12 started the second page.

13 Q Okay. Now, I see that the bottom of each page of the
14 statement there's some additional language that's typed on
15 the form and some signatures. Can you explain to the jury
16 what that is?

17 A Yes, sir. Reads: I have made the foregoing statement
18 freely and voluntarily without fear, threat, promise or
19 reward or hope of reward of any kind. There's a witness
20 signature, a sign signature and then there's another spot
21 where it says: This is to certify that I have read or had
22 read to me the foregoing statement consisting of, and then
23 it's filled in, two pages, and a true copy has been given to
24 me this 24 day of July, 2009. And we drew through a true
25 copy has been given to me because we're handwritten. Where

1 we were was not our office, did not have access to a copy
2 machine.

3 Q And did Mr. Smith sign that page indicating that he had
4 read the statement?

5 A Yes, sir.

6 Q And he actually signed it twice; is that right?

7 A In both spots; the top one and the bottom one.

8 Q Okay. And if I can take you back to the first page of
9 the statement, is there also some language similar to that
10 at the bottom of the first page?

11 A Yes, sir.

12 Q What does that say?

13 A The exact same -- the statement was made in the
14 presence of T. Holdorf, Investigator Gallegos of the
15 Richland County Sheriff's Department, and I make this
16 statement of my own free will and accord without reward or
17 intimidation. I do swear and affirm that the above
18 statements are the truth, the whole truth, and nothing but
19 the truth.

20 MR. GOLDBERG: At this time, we'd offer State's No. 2
21 into evidence.

22 MR. HART: No objection.

23 THE COURT: All right. No. 2?

24 MR. GOLDBERG: Yes, sir.

25 (State's Exhibit No. 2, statement,

State v. Victor Smith 9/19/11 - 9/23/11

703

1 was marked and entered.)

2 BY MR. GOLDBERG:

3 Q Once you completed taking that statement from Mr.
4 Smith, what did you next discuss with him -- and let me ask
5 you -- strike that. At any point during this first
6 statement did he say that he did not want to talk to you?

7 A He did not.

8 Q Did he ask for a lawyer to be present?

9 A He did not.

10 Q Okay. So once you took this first statement, describe
11 for us the dialogue that took place between you and
12 Investigator Gallegos and the defendant?

13 A We're still trying to get information. We asked him if
14 he would sign a consent to search -- to obtain a buccal swab
15 from him, which is a sterile cotton swab. You basically just
16 have them rub the inside of their mouth. You use two
17 Q-tips, basically. That's put in a sterilized container and
18 sealed and turned into our evidence room where our DNA lab
19 will look at it. And he signed that, as did myself and
20 Investigator Gallegos.

21 Q And do you have that original form there in front of
22 you?

23 A I do.

24 Q Okay.

25 MR. GOLDBERG: State's No. 181.

1 MR. HART: No objection.

2 THE COURT: All right. 181 without objection.

3 (State's Exhibit No. 181, form, was
4 marked and entered.)

5 BY MR. GOLDBERG:

6 Q All right. You said you obtained the Buccal swab from
7 him at that time?

8 A We did.

9 Q Was that the end of your discussions with Mr. Smith?

10 A It was not.

11 Q What did you talk to him next about?

12 A Then we showed him, told him that we'd actually found
13 Ernest. Explained to him that we'd found the crime scene in
14 his apartment. Wanted to give him a little bit of
15 information so he understands that we're not bluffing him.
16 And that his co-defendants had given statements implicating
17 him in this crime and wanted to get his version of what
18 happened.

19 Q You indicated earlier that the time on the second page
20 of his first statement was 2:47 p.m.; correct?

21 A Yes, sir.

22 Q What time is on the first page of the second statement,
23 second written statement?

24 A 3:39.

25 Q All right. So that is -- 52 minutes. What happened in

State v. Victor Smith 9/19/11 - 9/23/11

705

1 that 52 minutes?

2 A You finished the second page of the statement and
3 collected the Buccal swab. We explained to him that we found
4 Ernest. We explained that we had talked to his
5 co-defendants and that we found the crime scene in his
6 apartment.

7 Q And after that did you then take a second statement
8 from him?

9 A Yes, sir.

10 Q Can you explain to the jury what that conversation was?

11 A I asked the question: Did you and Ernest Robinson have
12 any conversations about any missing money before Ernest
13 Robinson ended up missing? The response was: Yes. Smurf
14 told me that he let E.J. in the house. Smurf went to get
15 dressed. He said he came out and E.J. was going out the
16 front door. He said they went somewhere and smoked and that
17 must be where the money is. I asked him about it as we were
18 walking to my mom's. I told him I was missing about \$200
19 and that Smurf told me that he was there. E.J. said that he
20 was sorry and that he would get my money back. He said that
21 he did not have the money on him. I asked the question:
22 Did E.J. go to your apartment? His response was: No. And
23 then the bottom of the statement is -- it's made in the
24 presence of Investigator Holdorf and Investigator Gallegos
25 of the Richland County Sheriff's Department, and it's the

State v. Victor Smith 9/19/11 - 9/23/11

706

1 same wording at the bottom. I make this statement of my own
2 free will and accord without reward or intimidation. I do
3 swear and affirm the above statements are the truth, the
4 whole truth and nothing but the truth. It's signed by
5 Victor Smith, myself and Investigator Gallegos.

6 Q All right.

7 A You start on Page 2, which starts at 3:45. First
8 question: Is there any reason E.J.'s blood would be in your
9 apartment? His response was: Something must have happened.
10 Asked the question: Did you do anything to E.J. Response
11 was: No. Asked the question: When you got home who was
12 there. His response: Smurf, Man, my son and Jazmine. Jaz
13 and my son were asleep in our room. I went in there and
14 changed clothes. I went out and had a shot of Gin. I took
15 the dog Coco out and we went to bed. I asked the question:
16 Were you missing a shower curtain about that time? His
17 response was: No, not to my knowledge. My question: Did
18 you get your carpets cleaned around this time -- and due to
19 running out of space -- the response is on the third page.
20 But it ends with -- I've made the foregoing statement freely
21 and voluntarily without fear, threats, promise or hope of
22 reward of any kind, and then the part about the foregoing
23 statement you've read or had read to you. It's signed by
24 all parties. Signed by Victor Smith twice. 3:50 the
25 statement continues on the third page. His response to the

State v. Victor Smith 9/19/11 - 9/23/11

707

1 question was: Yes. Question was did you get your carpets
2 cleaned about that time. We got them cleaned the month
3 before. That month and the month after. The first time was
4 with a yellow van. That month I don't remember who came
5 out. That month they were supposed to come out September,
6 November and Jan -- short for January. I asked the
7 question: Did you paint the front room around the time E.J.
8 went missing. The response was: Yes, we painted the living
9 room, the bathroom, and the dining room. Asked the
10 question: Did you paint the front bedroom on the right?
11 Response was: No. Asked a question: Why would Man say you
12 had something to do with E.J.'s death? Response was: I
13 don't know. Again, it was signed that this is a voluntary
14 truthful statement by Mr. Victor Smith and then down here
15 that he's read or had read to him the statement. On the
16 next page the question was asked: Why would Smurf say that
17 you had something to do with E.J.'s death? Response:
18 Because I confronted Smurf about the missing money and we
19 were about to fight. Asked the question: Did you see Smurf
20 assault E.J.? He said: No. Asked the question: Did you
21 have any blood cleaned up out of the first bedroom on the
22 right. The response was: No. Asked a question: Is there
23 anything you would like to add or change about your
24 statement? And he said, No. That statement ends at 4:02
25 p.m. And again, it's signed at the top and the bottom by Mr.

1 Victor Smith.

2 MR. GOLDBERG: State's No. 3, offered into evidence.

3 MR. HART: No objection, Judge.

4 THE COURT: No objection?

5 MR. HART: No objection.

6 (State's Exhibit No. 3, statement,
7 was marked and entered.)

8 BY MR. GOLDBERG:

9 Q Was that the end of your conversation with him?

10 A It was not. Basically, when I'm talking to someone,
11 I'm trying to get the truth out of them, and things would
12 keep changing. Victor was getting antsy. By that I mean he
13 wasn't saying I want my attorney or anything else, but he
14 was by his body language he's backing up, he's getting more
15 irritated. You do these long enough you realize that you're
16 getting close to where your conversation or your time frame
17 where you have a conversation or can have a conversation is
18 about to come to a close, if you push too hard. If they say
19 I don't want to talk to you any more or I want my attorney,
20 we're done. And so -- which is why we pushed that statement
21 there so we can put something in writing so it wasn't a he
22 said she said. Try to get it in writing. So then I said,
23 is there something you'd like to say to Ernest's mom. Is
24 there anything you'd like to tell her. He said he would. I
25 gave him a piece of paper and he wrote a note to her.

State v. Victor Smith 9/19/11 - 9/23/11

709

1 Q Now, there's been -- you've been here for the entire
2 trial?

3 A Yes, sir.

4 Q You've heard some questions about statement procedures
5 and who writes the statements, correct?

6 A Yes, sir.

7 Q The statements that were just submitted into evidence
8 who actually wrote those statements?

9 A I wrote those statements.

10 Q And I believe you described the reasons for that
11 earlier; is that right?

12 A If people write their own statements they're going to
13 leave details out. It gives us the ability to ask questions
14 and direct where the statement is going. Something that
15 someone may not think is an important detail may be a very
16 important detail, and cover a certain aspect of the law,
17 cover something that corroborates something another
18 co-defendants. So I like to ask the questions and it's our
19 policy -- there are other ways of doing it -- but most of
20 the time at the Sheriff's Department it's the investigator
21 that writes out the statement or writes the statement down.
22 You have victim impact where the victim can write out their
23 own statements, but as far as being an investigator, if
24 you're a victim of mine, I'm taking a statement from you, 99
25 percent of the time I will write the statement for you much

State v. Victor Smith 9/19/11 - 9/23/11

710

1 like I did with Mr. Victor Smith.

2 Q So that being said, when Victor Smith indicated that he
3 wanted to say something to Ernest's mother, why did you
4 allow him to write it instead of you?

5 A I'm trying to get more information. Oftentimes they'll
6 give you more, they'll say more. They don't feel like
7 they're talking to police. I'm not a psychologist, I can't
8 speculate why it works sometimes, but it does.

9 Q In this particular instance, did he actually write
10 something down?

11 A He did. If I may?

12 Q Yes.

13 A Ms. Robinson, I had no idea things would be this way.
14 Your son was a good friend --

15 THE COURT: You didn't tell us the exhibit?

16 MR. GOLDBERG: Sorry.

17 A Exhibit No. -- State's Exhibit ID No. 4.

18 THE COURT: All right.

19 MR. GOLDBERG: We'd offer it into evidence at this time.

20 THE COURT: You don't have any objection do you?

21 MR. HART: No objection.

22 THE COURT: All right. Without objection, No. 4, letter
23 to victim's mother.

24 MR. GOLDBERG: Yes, sir.

25 (State's Exhibit No. 4, note, was

State v. Victor Smith 9/19/11 - 9/23/11

711

1 marked and entered.)

2 A It states: Ms. Robinson, I had no idea things would be
3 this way. Your son was a good friend and did not deserve
4 this. I am sorry what happened to him. And it's not signed
5 by Victor Smith, but that is the note he wrote in front of
6 myself and Investigator Gallegos and that was to be to Mr.
7 Ernest Robinson's mom.

8 BY MR. GOLDBERG:

9 Q You took that while you were in Mississippi?

10 A We did.

11 Q After he wrote that note, was there further
12 conversation?

13 A There was. It didn't last much longer. We were trying
14 to confront him more, trying to get more information, and
15 that's why he said he didn't want to talk to us any more.
16 We gave him our cards, and explained to him if he did change
17 his mind that he can contact us at any time.

18 Q And then you left him?

19 A Yes, sir.

20 Q Is that the last time you spoke to him?

21 A Yes, sir.

22 Q Now, there's been testimony, so far, about multiple
23 people in this case charged with murder?

24 A Yes, sir.

25 Q Who have all given multiple versions of events?

1 A Yes, sir.

2 Q In regards to the same event; is that right?

3 A Yes, sir.

4 Q Is that uncommon?

5 A That's very normal. I think we could all watch a movie
6 and had to write questions and answers we'd have different
7 perspectives. You add an event where someone was killed and
8 I think that becomes even more so. It's a very significant
9 event. Either they don't tell you the whole entire truth
10 for self-preservation, which is very normal or it's just
11 their perception. Sometimes it's a little bit of both. Very
12 rarely do you get someone that comes in and -- hey, this is
13 the whole story, this is exactly what happened.

14 Q Is it uncommon in those statements for the suspects to
15 minimize their involvement?

16 A Most of the time. People who have done a crime will
17 try to rationalize, minimize what they've done, and that's
18 in any crime.

19 Q Is it uncommon for a defendant to want to talk to you
20 and get their story out?

21 A No. You might think it would be. Surprisingly quiet a
22 few people end up talking with us. If you start out talking
23 to someone and I'm being hard, I'm be oppressive and I'm not
24 showing that I'm willing to listen, I'm being judgmental,
25 they're not going to talk to you. So you want to -- I'm

State v. Victor Smith 9/19/11 - 9/23/11

713

1 here to get your side; what happened. I wasn't there. I
2 don't know your side. Your side is important to me. What
3 happened.

4 Q Generally speaking -- and I think you said you'd been
5 in Sheriff's Department since 1994; is that right?

6 A Yes, sir.

7 Q And since that time can you guess how many statements
8 like this you've taken?

9 A Hundreds. Many hundreds.

10 Q And out of those hundred, if you had to guess, how many
11 were 100 percent truthful and accurate?

12 A Maybe one to two handfuls. You do your best, but I
13 can't tell you what to say. I can confront you with the
14 evidence. I can confront you with what common sense says,
15 but I can't make you say something. It's up to that person.

16 Q We've heard a lot about DNA in this case. You're the
17 lead investigator in this case.

18 A I am.

19 Q Were there any DNA test results that came back positive
20 for Ernest Robinson in any way?

21 A There were not, and I can consulted with the best
22 sources that we have. Dr. Graham Amick is by far more
23 knowledgeable in that area than I could ever dream of being.
24 Bill Stevens, my supervisors, other personnel in the lab.
25 Sgt. Richards. To see if there was anything else that we

State v. Victor Smith 9/19/11 - 9/23/11

714

1 could do to further establish a DNA link as far as being
2 Ernest Robinson. That was tried. We could not get a
3 standard. Therefore, the items that were tested and came
4 back as being the same, our lab cannot say that that was
5 Ernest Robinson. They can say it was the same swab number,
6 41 or whatever that number was, all come back as being the
7 same. We can't say that it was Ernest Robinson because
8 there was no standard to say this is Ernest Robinson, even
9 thought I can use my common sense and all these statements
10 to say, hey, this is Ernest Robinson, that's not something
11 our lab can do.

12 Q Is it fair to say that your investigation attempts to
13 get some sort of DNA match with some fashion with Ernest
14 Robinson was a priority?

15 A Very much so. The only other case that would have a
16 high priority was an active homicide. Homicide had first
17 priority as far as DNA being run. So yes, sir.

18 Q Conversely, was it priority in your investigation to
19 obtain a DNA match to Victor Smith at that time?

20 A No. Victor Smith lived there. I mean there was no
21 question that Victor Smith lived there. You have people who
22 came up here and testified he lives there. The apartment
23 was in his name. He may not have been there at the time
24 because he was at the Department of Corrections in
25 Mississippi, but this was his apartment. We were looking

State v. Victor Smith 9/19/11 - 9/23/11

715

1 for Victor Smith's DNA would have been a different type of
2 search. I'm looking for the crime scene that we felt had
3 been cleaned up and when we get there with the search
4 warrant there had been an attempt to clean up. It had been
5 cleaned up.

6 Q Was there ever a gun or murder weapon, so to speak,
7 found in this case?

8 A No, and realistically, unless I have the surprise of
9 knowing this crime was committed, and this was the person
10 who did it and that somehow all this can come together
11 without them realizing that we know all this and can do a
12 search warrant to surprise them, I don't expect to find a
13 gun. We looked. We looked through furniture, through
14 everything we could -- through the house and everywhere else
15 to try to find the gun, but in many cases you do not find
16 the weapon. Even when people come in and confess and give
17 statements.

18 Q From the time that the murder took place and the time
19 that ■ was searched was approximately how long?

20 A September -- almost a year, 10 months, some weeks.

21 Q Is it uncommon to even be able to find a weapon in a
22 matter of days, let alone 10 months?

23 A It's very easy to make a weapon disappear whether you
24 throw it in some woods, throw it in the lake. There are any
25 number of possibilities to get rid of a gun to where we're

1 not going to find it, and it wasn't for lack of trying.

2 There's just only so much you can work with.

3 Q Let's talk about police reports for a minute.

4 Neighborhoods such as this one, in the City of Columbia,

5 County of Richland, can you describe for the jury the

6 frequency with which your department receives calls and

7 complaints about gunshots, noise, assaults, anything of that

8 nature?

9 A Richland County Sheriff's Department, and that's only
10 the parts of Richland County that are not incorporated by
11 the city, Ft. Jackson, Forest Acres, is a 600 man department
12 and everyone screaming for more people. We're a very busy
13 department. We have a lot of crime. There are a lot of
14 times people are just unaware of what goes on around them.
15 When I married my wife was dumfounded by all the stuff that
16 goes on in everyday places, or so she thought. And it's not
17 just any type of class or segment of society, it's all over.
18 I mean, cars are constantly broken into in apartment
19 complexes. Apartment complexes are just great for noise.
20 There's gunshots heard all over the place. And if a deputy
21 is called out to a gunshot, unless they find something
22 they're not going to do a report. So that wasn't even
23 something that we would look at. I hear something that could
24 be fireworks, could be any number of things.

25 Q In your experience as an investigator is it unusual to

State v. Victor Smith 9/19/11 - 9/23/11

717

1 find out at some point in your investigation that somebody
2 did, in fact, hear or see something and never came forward?

3 A Many times someone could have done something sooner.
4 Saw something that was important. Just that fear to come
5 forward, that disbelief that something happened just right
6 now, right in front of you, there's no way. That
7 sleepiness, you know, was that a window breaking? What was
8 that? That's very, very common. I mean, it hurts us, but
9 it part of the human factor.

10 Q Thank you. That's all I have.

11 A Thank you.

12 THE COURT: Mr. Hart.

13 MR. HART: Thank you, Your Honor.

14 I'll let the Court know I'm conscious of the time.

15 THE COURT: Oh, it's good. Take your time.

16 TRAVIS HOLDORF - CROSS EXAMINATION

17 BY MR. HART:

18 Q Investigator Holdorf, one thing you mentioned about
19 Victor's DNA, you said you didn't focus on his DNA right?

20 A He lived there. No, sir.

21 Q And you agree the testimony we've heard that whatever
22 took place it was a violent act?

23 A Yes, sir.

24 Q It was blood splatter?

25 A Yes, sir.

1 Q It was punching?

2 A Yes, sir.

3 Q It was kicking?

4 A Yes, sir.

5 Q And if Victor took part it's possible his blood could
6 have come out during that incident if he had been involved?

7 A Anything is a possibility if you're talking to all the
8 parties involved, based upon the information we had at the
9 time we did not feel that was -- no one noted anything like
10 that. Yes, sir, it's possible that Victor Smith's DNA could
11 be in there. I don't know.

12 Q In fact, there was some blood splatter that was
13 collected from that bedroom; is that correct?

14 A Yes, sir.

15 Q And you're saying it's not important to test the DNA
16 you got from Victor to see if this blood matches what you
17 got from the room; that's not important?

18 A No, sir. I never said that's not important. What I'm
19 saying is Victor Smith lives there. As far as the blood
20 once they ran a certain standard where they're saying what
21 we've run so far is consistently coming back as the same
22 person, the next focus is concentrated on let's get a
23 standard so we can say who this person is. For lab speak,
24 not from my investigative point of view. That was not able
25 to be done. You heard Bill Stevens and Dr. Gray Amick talk

State v. Victor Smith 9/19/11 - 9/23/11

719

1 about how they couldn't get DNA extraction from the molar
2 and that's -- you know, why would you test a molar, you find
3 out that that's their best source of DNA or most likely spot
4 to find DNA. Once they couldn't do that there was no reason
5 to keep going.

6 Q I understand you're talking about the molars from
7 Ernest Robinson, but we're talking about Victor Smith. Now,
8 I understand you said that's his apartment, but in your
9 experience you don't expect to walk into a person's
10 apartment and just find blood on the walls do you?

11 A No, sir.

12 Q You also mentioned about apartment complexes in
13 Columbia?

14 A Yes, sir.

15 Q All apartment complexes don't have these problems do
16 they?

17 A I've lived in several apartment complexes. I lived in
18 one, I had to have what I call a noise maker, air filter
19 purifier going so I could get some sleep. I lived in some
20 decent ones and I lived in some mediocre ones. You can't
21 have that many people living in one spot and not have some
22 level of noise that going to be higher than your average
23 neighborhood.

24 Q Well, I'm with you on the noise, but you have to agree
25 that there are places in Columbia that don't have gunshots

1 frequently; you can go with me on that, right?

2 A I can go with you on that; yes, sir.

3 Q During your investigation you talked with the
4 co-defendants and one of them was Jeremiah Jones; is that
5 right?

6 A Yes, sir.

7 Q And you learned that Jeremiah Jones was unemployed?

8 A Yes, sir.

9 Q You learned that Smurf was unemployed?

10 A Yes, sir.

11 Q You learned that Victor was employed, right?

12 A At that time that we talked to him, he was not, but at
13 the time of this incident takes place, he was.

14 Q Right. And you learned that Ernest was employed?

15 A Yes, sir.

16 Q Also you took a statement from Jeremiah; is that right?

17 A I did.

18 Q And you remember Jeremiah telling you that he striped
19 the body of all the clothing?

20 A I don't remember exactly what he said, but he did say
21 they took off the clothing. While he didn't have pants or
22 shoes.

23 Q And the body, the remains that were found in that woods
24 had underwear on, right?

25 A Yes, sir.

State v. Victor Smith 9/19/11, - 9/23/11

721

1 Q Had t-shirt on, right?

2 A Yes, sir.

3 Q Had clothing?

4 A Those two items. Yes, sir.

5 Q Did you have a chance to look at the layout of that
6 apartment and the size of that apartment; correct?

7 A Yes, sir.

8 Q State's Exhibit No. 10, you've been able to see that,
9 right?

10 A Yes, sir.

11 Q About 1,000 square feet?

12 A Give or take. Yes, sir.

13 Q The written statements that you too, did you
14 participate in the statement from Jeremiah Jones?

15 A I typed it. Yes, sir.

16 Q You typed it?

17 A Yes, sir.

18 Q Were you there when he was giving it?

19 A Yes, sir. That's -- Jeremiah Jones was interviewed,
20 questioned and the statement was obtained in Capt. Smith's
21 office. It's a larger office and we have small cubes,
22 approximately four foot by four foot. It's impossible to do
23 much of anything in there other than one person. On cases
24 like this we'll often grab a supervisor's office, use their
25 computer. You have a door where you can shut the door. It's

1 quieter. It allows you to get into a more intimate -- I
2 think any time you're trying to get someone to admit their
3 involvement in a killing, that's going to be pretty
4 intimate.

5 Q At the time you took the statement did you know
6 Jeremiah's educational level?

7 A I don't think it's any secret Jeremiah's not very
8 smart. He could write, he says he could read, he just could
9 not read well, which is why when we printed it off I read it
10 off the screen, he had a copy of the statement in his hand
11 and was sitting next to Investigator Gallegos. And we read
12 it off to him so he could read it with us so if there was
13 anything that needed to be added or changed, he could do so.

14 Q And Mr. Goldberg asked you about the environment when
15 you're taking these statements. Let's be honest it's not
16 like you're down at Wild Wing's having a beer with a suspect
17 while you're take a statement. It's not that type of
18 environment is it?

19 A It's be nicer sometimes. No, sir.

20 Q It's confrontational at times, right?

21 A Sometimes, yes, sir.

22 Q In fact, you confronted Jeremiah with some information;
23 is that right?

24 A We did.

25 Q And you confronted Allen Fulten, Smurf?

State v. Victor Smith 9/19/11 - 9/23/11

723

1 A I did not. Capt. Smith and Lt. McDonald, did. Yes,
2 sir.

3 Q But you're aware that Allen didn't tell the truth in
4 his first statement?

5 A Oh, yes, sir.

6 Q He had to be brought back again?

7 A Yes, sir.

8 Q You had to talk to Allen twice?

9 A He was talked to twice. Yes, sir. I didn't talk to
10 Allen.

11 Q Allen bought a one-way ticket to Charlotte?

12 A Yes, sir, and came back.

13 Q None of these co-defendants walked into the Sheriff's
14 Department by themselves and said, let me tell you what
15 happened?

16 A Nobody came to the Sheriff's Department, not even your
17 client. We're reachable by phone, we get mail all the time
18 from prisons to say, hey, this is what's going on. But
19 nobody contacted the Sheriff's Department. We contacted
20 them.

21 Q All of them had to be picked up?

22 A Yes, sir.

23 Q Including Jazmine?

24 A Yes.

25 Q And Jazmine called the day her house was being

1 searched?

2 A Yes, sir.

3 Q She didn't give that information on October 21?

4 A Again, sir, nobody gave that information on October 21
5 of 2008.

6 Q And he asked you about some folks that where you take a
7 statement and nobody tells the truth. There are multiple
8 inconsistencies in Allen Fulten's statement isn't it?

9 A You're going to have inconsistencies in all statements.
10 That's because I'm not telling you what to say. I might
11 confront you with, well, was he hit with anything else, what
12 did this look like, what happened next. But you're going to
13 have that. I mean, that's on every case. And that to me
14 speaks for itself.

15 Q No gun found?

16 A No, sir.

17 Q No bullets found?

18 A Ms. Jazmine testified she found some bullets. I did
19 not.

20 Q Well, let's talk about you and your department.

21 A No, sir, we did not find bullets at the scene.

22 Q No gunshot residue found?

23 A And that was testified to based on the clean up or
24 abrasion. You're not expected to. We did try. We did not
25 find it.

State v. Victor Smith 9/19/11 - 9/23/11

725

1 Q I just have a few more questions here. I don't have
2 much.

3 A Yes, sir.

4 Q This has been a long trial. I think we've pretty much
5 covered everything. I just have a few more questions,
6 because it's important.

7 I'm showing you what's been marked as --

8 A Which exhibit is that?

9 Q -- 181, State's Exhibit 181. That is the consent to
10 search for DNA right?

11 A Yes, sir. Any time I obtain someone's DNA this is the
12 form that we have filled out and it explains to them what
13 we're doing and what we're looking for. That explains to
14 everybody.

15 Q Now, there was some people in this case that you talked
16 to and asked them for their DNA; is that right?

17 A Yes, sir.

18 Q And they did not agree to give it to you; is that
19 correct?

20 A That is correct.

21 Q When you went to Victor and asked him for his DNA what
22 did he do?

23 A He agreed to. That is, again, before we told him,
24 showed basically our whole hand about what we knew. I felt
25 that had we come in there saying, well, we found Ernest and

1 we know the crime happened in your apartment, your friends
2 are telling on you. I don't think I'd have gotten much of
3 anything from him. But yes there were other co-defendants
4 who did not consent to their DNA.

5 Q One of the things that you explained to Victor is you
6 said, I'm aware that any evidence obtained as a results of
7 this search can be used against me in a court of law; you
8 explained that to him, right?

9 A Yes, sir.

10 Q And you asked him did he understand that?

11 A Yes, sir.

12 Q He replied yes?

13 A On this one, I would have read the whole form to him.
14 It's not a -- on the advice of rights you have several
15 blocks that are checked. This is -- I would have just read
16 the whole form to him, asked him if he understood and sign
17 if he agreed to do so.

18 Q Well, at any he told you he didn't understand you would
19 have -- stopped and make sure he understood?

20 A Yes, sir.

21 Q After you made sure that he understood what did he do?

22 A He cooperated and gave us a sample of Buccal swab.

23 Q I'm showing you what's been marked as State's Exhibit
24 No. 4, State's Exhibit No. 3. State's Exhibit No. 3 is in
25 your handwriting; right?

State v. Victor Smith 9/19/11 - 9/23/11

727

1 A Yes, sir.

2 Q State's Exhibit No. 4 is in Victor's handwriting;
3 right?

4 A Yes, sir. It is.

5 Q You could have allowed Victor to write his statement in
6 his own handwriting; correct?

7 A And again it goes back -- If I may explain. Typically,
8 and you have different departments do it different ways and
9 that can be kind of surprising. SLED does it one way, we do
10 it a different way. Basically, it's a standard of the
11 department that we write our own statements. I mean, it's
12 nothing that says the person can't, but that's our normal
13 practice. That's not exclusive. There's not -- there are
14 other ways of doing it, but normally I will write it out,
15 the questions and your response. And then this was the
16 letter, this was another attempt to try to get more
17 information from Victor Smith. Which is why I, hey, you
18 want to write Ernest's mom a letter, maybe explaining to her
19 what happened or that you're remorseful for what happen.

20 Q On State's Exhibit No. 4, there is nothing that kept
21 you from writing this is it?

22 A That was to be more personalized to be from Victor
23 Smith.

24 Q You could have put it on the statement, right?

25 A Yes, sir.

1 Q I just have a few more questions, we're going to wrap
2 it up here. I'm showing you State's Exhibit No. 3, which is
3 Page 2. That first question you asked Victor: Is there any
4 reason E.J.'s blood would be in your apartment. Is that
5 correct?

6 A Respectfully, I would disagree that yes, sir, we did
7 find E.J.'s blood. That the same standard that comes back
8 consistent throughout that apartment what was tested, that's
9 E.J.'s blood. That's what our co-defendants were telling
10 us. This was a massive bloodletting event. This isn't just
11 a paper cut. This was something -- a tragic event and his
12 response is something must have happened. I mean, serious.
13 Yeah, I think something must have happened.

14 Q You say that's E.J.'s blood. Can you step down for us
15 just a second?

16 A Yes, sir.

17 Q Take your time and all of the evidence and show us some
18 results, positive test results, that indicate E.J.'s blood.
19 Take your time.

20 A Baring the test results you have to go off the
21 testimony of the co-defendants who came in here and
22 explained what their part was in this and what happened.

23 MR. HART: No further questions, Your Honor.

24 THE COURT: Anything further, solicitor?

25 MR. GOLDBERG: No, sir.

State v. Victor Smith 9/19/11 - 9/23/11

729

1 THE COURT: You don't need to get back on the stand.

2 MR. HOLDORF: Thank you, Your Honor.

3 THE COURT: Anything further from the state?

4 MR. GOLDBERG: Not at this point today, Your Honor.

5 THE COURT: Can I talk to y'all.

6 (Off the record bench conference with counsel and the
7 Court.)

8 THE COURT: Members of the jury, I'm going to sent you
9 home for the day. Now, I can't say at this point in time if
10 you'll hear anymore evidence. It's possible that you could.
11 I'm not going to say for sure. I'll ask you to be back
12 tomorrow morning at 10:00 o'clock in the morning.

13 I anticipate -- I'll hear some arguments from the
14 attorneys involved in this case. I can't tell you 100
15 percent sure you may not -- you won't hear anymore
16 testimony. It's possible that you will and it's possible
17 that you won't. I really don't know. That's why I'm
18 telling you this. But I'm asking you to come back at 10:00
19 o'clock in the morning.

20 I believe right now that you'll probably hear the
21 arguments and my charge to you on the law. There's always
22 the possibility something could develop overnight, there
23 could always be some additional testimony we need to take.
24 I anticipate it's not, but I'm being as straightforward with
25 you as I possibly can.

State v. Victor Smith 9/19/11 - 9/23/11

730

1 So don't discuss this case in any way shape or form.
2 Try to get a good nights sleep. I know you all are tired.
3 I'm tired. Be back at 10:00 o'clock, okay.

4 We'll see y'all then.
5 (Jury out for evening at 5:12 p.m.)

6 THE COURT: I guess there's not a real delicate way to
7 say that. It may be, may not be. Probably not. The state
8 has rested technically.

9 MR. GOLDBERG: Well --

10 THE COURT: You think you have?

11 MR. GOLDBERG: -- baring something --

12 THE COURT: Unforeseen.

13 MR. GOLDBERG: -- then yes, we'll --

14 THE COURT: Well, let's just assume that you have, and
15 if you haven't you can open it up tomorrow morning.

16 You want to do your motions?

17 MR. HART: Thank you, Your Honor.

18 We believe that the prosecution has closed their case
19 at this time we move for a directed verdict on behalf of Mr.
20 Victor Smith. We understand the standard for directed
21 verdict is not the weight of the evidence but the existence
22 of it. We don't believe at this time that there's any
23 evidence to prove or to show that he was involved in the
24 crime that he has been accused of.

25 So at this time, we're going to respectfully ask the

State v. Victor Smith 9/19/11 - 9/23/11

731

1 Court to direct a verdict on behalf of Mr. Victor Smith at
2 this time.

3 THE COURT: All right. Two witnesses have testified they
4 participated in this event with your client. We have his
5 girlfriend, the mother of his child, said that he told her
6 he did it. That's sufficient to get by -- and I don't any
7 argument from the state on that because it's in the
8 evidence, but you had to make your motion. I understand
9 that.

10 It is respectfully denied.

11 The other thing is, I need to question your client as
12 to whether or not he is going to take the stand.

13 MR. HART: And I'm not sure. I need to, just out of an
14 abundance of caution since they close. We want to make sure
15 to renew our motion to -- objections for the record.

16 THE COURT: Okay. All objections previously made, noted
17 again, same ruling applies. Think about it overnight if you
18 need to add any more details.

19 MR. HART: Yes, sir.

20 THE COURT: All right. And I'm assuming at this point
21 that Mr. Smith intends not to take the stand?

22 MR. SMITH: That's correct, sir.

23 THE COURT: Okay, raise your right hand.

24 (WHEREUPON, Victor Smith was sworn
25 to tell the truth.)

State v. Victor Smith 9/19/11 - 9/23/11

732

1 THE COURT: I want to read something to you and you need
2 to listen carefully and answer the questions honestly and
3 truthfully. All right.

4 You are Victor Smith?

5 MR. SMITH: Yes, sir.

6 THE COURT: Now, Mr. Smith, at this time I'm going to
7 explain to you certain of your rights. If you do not
8 understand anything I say please let me know. If you want
9 me to explain anything in more detail, please let me know.

10 Do you understand?

11 MR. SMITH: Yes, sir.

12 THE COURT: All right. We have now reached the stage in
13 this trial where you may present your defense. You have a
14 right to claim the protections given to you by the Fifth
15 Amendment to the Constitution of the United States. This
16 amendment states in part; no person shall be compelled in
17 any criminal case to be a witness against themselves. This
18 means that you cannot be required to testify in this case.
19 You have a right to testify on your own behalf, however, Mr.
20 Smith, no one can make you testify. This is a personal right
21 and no one can waive this right except you.

22 Do you understand?

23 MR. SMITH: Yes, sir.

24 THE COURT: If you decide to testify you will be subject
25 to the same rules that govern other witnesses and you may be

State v. Victor Smith 9/19/11 - 9/23/11

733

1 examined and cross-examined on any relevant issue in this
2 case. In addition, if you have any convictions involving
3 dishonesty or false statement or crimes punishable by
4 imprisonment for more than one year, and this Court
5 determines that the probative value of admitting this
6 evidence outweighs the prejudicial effect to you, the
7 solicitor will be able to introduce your record to attack
8 your credibility.

9 Do you understand that?

10 MR. SMITH: Yes, sir.

11 THE COURT: All right. If you decide to testify the
12 decision on your part must be freely, voluntarily and
13 intelligently made with knowledge of the protections given
14 to you by the Fifth Amendment and the consequences of your
15 decision to testify.

16 If you decide not to testify I will instruct the jurors
17 that they cannot give the fact that you did not testify any
18 consideration whatsoever, and that there is to be absolutely
19 no prejudice to you because you did not testify. It is left
20 entirely up to you whether or not to testify. You may talk
21 with your attorney, your family and friends or anyone else
22 but the final decision will be left entirely up to you.

23 Do you understand what I have explained to you, Mr.
24 Smith?

25 MR. SMITH: Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

734

1 THE COURT: All right. Do you have any questions about
2 what I have explained to you?

3 MR. SMITH: No, sir.

4 THE COURT: All right. Have you discussed with your
5 lawyer whether you should or should not testify?

6 MR. SMITH: I decided not to.

7 THE COURT: Okay. So you talked to your lawyer about
8 that?

9 MR. SMITH: Yes, sir.

10 THE COURT: Do you wish to talk to your lawyer any more
11 at this time?

12 MR. SMITH: No, sir.

13 THE COURT: All right.

14 Do you wish to testify?

15 MR. SMITH: No, sir.

16 THE COURT: All right. Now, that's on the record, Mr.
17 Smith. If you change your mind overnight or something, let
18 me know, but otherwise this will stand as it is. I need to
19 inform you of your right of the consequences of testify or
20 not testifying and I'm sure your lawyer's been through that
21 with you.

22 Anything further this afternoon?

23 MR. GOLDBERG: Nothing from the state.

24 MR. HART: Nothing from the defendant.

25 THE COURT: All right. Will y'all come back to Chambers.

State v. Victor Smith 9/19/11 - 9/23/11

735

1 I think the charge is pretty much straight up. We'll think
2 about it overnight. We'll put something on the record about
3 it first thing in the morning. This charge conference
4 shouldn't take very long.

5 Come on back. We'll do it informally. It shouldn't
6 take long. If anything arises out of this we'll have time
7 to put it on the record in the morning. I told the jury
8 10:00, we'll be here at 9:00, 9:30.

9 (Court at recess for the evening at 5:18 p.m.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

September 23, 2011

(Court in session at 10:26 a.m.)

THE COURT: Thank you very much. Please be seated.

Are you ready?

MR. GOLDBERG: Yes, sir.

THE COURT: Any matters we need to take up before we get started?

MR. HART: None from the defense.

THE COURT: You think you made all your motions yesterday, Mr. Hart?

MR. HART: Yes, sir.

MR. GOLDBERG: I just have to rest in front of the jury.

THE COURT: Say that again?

MR. GOLDBERG: I have not yet rested my case on the record in front of the jury.

THE COURT: Okay. You will have an opportunity to do that, Mr. Goldberg.

And let's see, if I remember correctly you presented no evidence at all. You get the last argument?

MR. HART: That's correct, Your Honor.

THE COURT: You're going to open and close?

MR. GOLDBERG: Yes.

(Jury in at 10:29 a.m.)

State v. Victor Smith 9/19/11 - 9/23/11

737

1 THE BAILIFF: All jurors are present, Your Honor.

2 THE COURT: Thank you.

3 Welcome back, once again, Madam Forelady and members of
4 the jury.

5 We're at the point in this trial when you would hear
6 closing and final arguments on behalf of the state, as well
7 as, on behalf of Mr. Smith, but first Mr. .

8 Go ahead, Mr. Goldberg.

9 MR. GOLDBERG: Your Honor, at this time, State rests.

10 THE COURT: State rests.

11 And Mr. Smith, the defendant exercised his
12 constitutional right not to present any evidence. I'll talk
13 about that a little bit later on in my charge to you
14 regarding the law. You cannot take that into account. You
15 cannot hold that against him. That's his Fifth Amendment
16 right. I'll give you some details all along regarding his
17 decision not to take the stand, and not present any
18 evidence.

19 Now, I would presume, as I suggested to you yesterday
20 that your argument will go about an hour or so, probably
21 both sides. At some point in time, I -- just sort of give
22 me a signal, but once Mr. Goldberg finishes for the state,
23 if you need to take a break I'll be happy to give it to you.
24 And once Mr. Hart finishes on behalf of Mr. Smith, the
25 defendant, I'll be happy to give you a short break if you so

1 desire.

2 I'm going to take about 20 to 25 minutes to tell you
3 what the law is in this case. So with that in mind I'll
4 invite your keen and close attention to the final arguments.

5 First you'll hear from Mr. Goldberg on behalf of the
6 State of South Carolina, followed by Mr. Hart on behalf of
7 Victor Smith.

8 Mr. Goldberg, you may proceed.

9 MR. GOLDBERG: Thank Your Honor.

10 May it please the Court?

11 THE COURT: Yes, sir.

12 MR. GOLDBERG: 24 year old Ernest Melvin Robinson, Jr.,
13 did not deserve this. He was a son, a brother, an uncle, a
14 friend, a co-worker, loyal and dependable employee. He did
15 not deserve this.

16 Despite being all those things, he was punched, kicked,
17 bent, beaten, fractured, until he was at death's door. He
18 was shot in the head and wrapped up in cellophane. Dumped
19 in the woods like a piece of garbage. He did not deserve
20 that.

21 Mr. Hart told you, in his opening statement, that the
22 government wants you to piece the puzzle together. I
23 couldn't agree more. That's exactly what I want you to do.
24 You all are the judges of the facts in this case. Take all
25 those little pieces, all those little facts, and put them

State v. Victor Smith 9/19/11 - 9/23/11

739

1 together. Use your common sense and get the entire picture
2 of what happened, September 22, 2008.

3 This case is about being held responsible for your
4 actions. Victor Smith must be held responsible for his
5 actions, and they were his actions. His choices. He chose
6 to plan an assault on Ernest Robinson. He chose to assault
7 Ernest Robinson. He chose to get his friends, Smurf and Man
8 to help him, to make them help him. He chose to shoot him
9 in the head, wrap him in a curtain. He chose to literally
10 leave him to rot in the woods.

11 Do not let yourselves get distracted from the facts of
12 this case. Victor Smith must be held responsible for his
13 actions.

14 This case isn't about different types of odors coming
15 from decomposing bodies. It's not about Allen Fulten or
16 Jeremiah Jones employment history or work status. It's not
17 about Victor Smith's DNA. It's not about October 21, 2008,
18 and certainly not about who put Jazmine Bright up in a hotel
19 room for a night.

20 This case is about holding Victor Smith responsible for
21 the action that he committed on September 27, 2008, when he
22 murdered Ernest Robinson.

23 I want to talk to you briefly about the laws of the
24 State of South Carolina. Judge Manning is going to charge
25 you on what the law of this state is. I want to give you a

State v. Victor Smith 9/19/11 - 9/23/11

740

1 little bit of a preview of it. I'm not going to go into
2 tremendous detail. I know you're pay attention to what he
3 tells you after we're done.

4 As you know, Mr. Smith is charged with murder. Perhaps
5 the simplest definition of a criminal offense in our state.
6 The killing of any person with malice aforethought, either
7 express or inferred.

8 The question is what is malice? Malice, ill will
9 towards another person signifying a malignant recklessness
10 of the lives and safety of others or a condition of mind
11 that shows a heart regardless of social duty, fatally bent
12 on mischief. That's a lot of legal terms.

13 Malice is evil. It's evil towards another person, and
14 you can infer under the law in this state, that assaulting
15 someone with a firearm, shooting them in the head, that that
16 kind of action is malicious. If the injuries sustained by
17 Ernest Robinson in this case weren't at the hands of a
18 malicious act, I don't know what is.

19 The Judge is going to tell you about a principle know
20 as the hand of one is the hand of all. It is our position,
21 unquestionably, beyond a reasonable doubt, Victor Smith shot
22 and killed Ernest Robinson. However, if for some reason you
23 were under the belief that someone else there present with
24 Victor actually shot him; Allen Fulten, Jeremiah Jones,
25 Darius Smith, anyone else. It matters not. The law in this

State v. Victor Smith 9/19/11 - 9/23/11

741

1 state says that if a crime is committed by two or more
2 people acting together in the commission of an offense, such
3 as assaulting a man after confronting him about his rent
4 money. The act of one is the act of both or all. Example
5 was given that two people can be guilty of killing another
6 when only one of them had the pistol and there was only one
7 bullet. They're both together, they're acting together,
8 they're assisting each other. The act of one is the act of
9 all. Sometimes said as the act of one is the act of all.
10 You're going to hear the Judge tell you that.

11 Judge is also going to tell you about different types
12 of evidence that have been presented in this case. Two
13 types, mainly, direct and circumstantial. Direct evidence,
14 such as evidence in the form of testimony by an eye-witness;
15 what they saw, what they heard, what they smelled, what they
16 touched. Circumstantial, something that can be inferred
17 from the circumstances. Those are the puzzle pieces, ladies
18 and gentlemen. And under the law in this state these two
19 things are equal. They are treated the same.

20 Just to give you a little bit more information about
21 circumstantial evidence. Circumstantial evidence is proof
22 of a chain of facts and circumstances indicating the
23 existence of a fact. The law makes absolutely no
24 distinction between weight or value to be given to either
25 direct or circumstantial evidence. No difference. Those

1 puzzle pieces count just the same.

2 When you take all that evidence and you look at it, and
3 we're going to talk about it in detail, you have to remember
4 that the burden of proof is on the State of South Carolina
5 to prove to you beyond a reasonable doubt that Victor Smith
6 did this offense. Proof beyond a reasonable doubt. That's
7 the standard. That's our burden. What does that mean? What
8 is reasonable doubt? Proof that leaves you firmly convinced
9 of the defendant's guilt.

10 The law says that there are very few thing in this
11 world that we know with absolute certainty. In criminal
12 cases the law doesn't require proof beyond every possible
13 doubt. Based upon consideration of the evidence if you are
14 firmly convinced the defendant is guilty of this crime then
15 you have to find him guilty. End of story. On the other
16 hand, if you think there's a real possibility that he's not
17 guilty, then you give him the benefit of the doubt and find
18 him not guilty.

19 You have been paying very close attention for four
20 days. You have seen the testimony and you've heard it and
21 you've seen all the evidence. You're going to get to take it
22 back to the jury room with you and look at it. Touch it if
23 you want to.

24 Proof beyond a reasonable doubt is clearly been
25 established in this case. That burden is something that we

State v. Victor Smith 9/19/11 - 9/23/11

743

1 welcome, that we want, and that we have proved in this case,
2 that Ernest Robinson -- that Victor Smith committed the
3 offense of murder.

4 The last one I want to tell you about is credibility.
5 You all are the judges of the facts in this case. Judge
6 Manning is the judge of the law, but you are the judges of
7 the facts. One of the roles in being the judges of the facts
8 is to determine the credibility of the witnesses or the
9 believability of the witnesses. I submit to you that you do
10 this every day of your life, whether you know it or not.
11 When you're walking down the street and you encounter an old
12 friend, you're at the water cooler in your office, and
13 you're to somebody, and they're talking to you, somewhere
14 inside of you, you're asking yourself, do I believe what
15 this person is telling me. Are they credible. Are they
16 believable. Couple of things that you can think about when
17 you're looking back on the testimony, some of the witnesses
18 in this case, the law enforcement officers, Allen Fulten,
19 Jeremiah Jones, Jazmine Bright. What was their demeanor on
20 the stand. Were they forthright with what they had to say
21 or were they kind of hesitant about it. Was their testimony
22 consistent. Was it corroborated by others, and did they have
23 a reason to be bias or prejudiced.

24 Take these little tools and you apply to the testimony
25 that you heard and you make the decision. That's your job as

1 the judges of the facts.

2 So let's talk about the facts a little bit. Four days.
3 This is our fifth day. You've heard a lot, and I'm no going
4 to go back through every single detail with you. You heard
5 it for yourself, and if I state it to you now, and it's
6 different from how you remember it, you go with what you
7 remember. It's your job to determine what happened.

8 Victor Smith's rent money was missing. No question
9 about that. Even he admitted that in his statement to
10 Investigator Holdorf. Somebody took his rent money. He was
11 upset about that. Jazmine Bright told you that he was mad
12 that the money was missing and that he confronted everyone
13 in the apartment at the time. Smurf was there. Man might
14 have been there, and I believe Jazmine said there were some
15 other random guys there, and he asked all of them about it.
16 Told them all to leave, he was so mad. These guys were in
17 his apartment all the time. You heard that. They were
18 always people hanging out, and he told them all to leave.
19 That's how upset he was.

20 He confronted Ernest Robinson about it. You've heard
21 that from Allen Fulten, you've heard that from Jeremiah
22 Jones. He told that to Jazmine Bright, and he admitted it
23 himself when he gave a written statement to Investigator
24 Holdorf. He didn't say that the first time he was asked
25 about Ernest Robinson. Once a few more facts came out, once

State v. Victor Smith 9/19/11 - 9/23/11

745

1 he learned that Ernest had been found near his apartment,
2 that there was a crime scene in the room that he used to
3 hang out in. Then he remembered, yeah, I asked him about
4 it, and he said he'd pay it.

5 The last day that Ernest Robinson ever went to work at
6 Beef O'Brady's, September 27. Victor Smith admits to being
7 with him that night. Again, in his statement to law
8 enforcement he said, yeah, we were together the night after
9 I last saw him at work, and I never saw him again.

10 Mark Wickham at Beef O'Brady's told you that was the
11 last day he saw E.J. E.J. never came back, never picked up
12 his pay check, and that was highly unusual not just for
13 E.J., but just about any employee that he had. If you
14 recall, Victor Smith went back and got his pay check.

15 Wendy Clifton told you that she never saw him after
16 that night when she closed with him. And again, Allen
17 Fulten and Jeremiah Jones, they also told you that when E.J.
18 showed up at the apartment that night he was coming from
19 work. He actually had some food with him and he was eating
20 it. Turned out to be his last meal.

21 Victor Smith admits to confronting E.J. about the
22 money. He admitted what everyone says, E.J. hasn't been
23 seen since. No one seen him since.

24 The crime scene investigators got on the stand and
25 testified. Sgt. Stan Richards was up here for quite a while

1 and he told you a violent dynamic blood letting event took
2 place in the front right bedroom of that apartment. The
3 room where he and his friends spent the most time. He said
4 that what happened in that room was consistent with someone
5 being shot in the head. There was blood in that apartment.
6 The blood was from the same male individual. We don't know
7 who the male individual was, but we know it was all from the
8 same person, and it was found in that front right bedroom,
9 and it was found in the bathroom and it was found in the
10 hallway.

11 I'm going to talk a little bit more in a minute about
12 why we didn't know who it belonged to.

13 The same room that the defect, I believe they called
14 it, or a hole in the carpet, which you have, and you can
15 take with you and examine. That hole is consistent with
16 being from a gunshot, in that same room, in the same area
17 where that blood was, where those brown reddish stains were.

18 Stains, by the way, that didn't just stay on the
19 carpet, they soaked through, went to the padding, went
20 through the padding to the cement. You've got the
21 photographs. You'll see them. The cement is stained with
22 blood.

23 There was testimony about the clean up. Mr. Smith
24 admits that there was some cleaning going on there.
25 Admitted it in his statement. You heard from Allen Fulten

State v. Victor Smith 9/19/11 - 9/23/11

747

1 and Jeremiah Jones, they told you about it, too. Even
2 Jazmine mentioned it, how strange it was for her to come
3 home one day and find the three of them, Smurf, Man, and
4 Slim spot painting. Smelled like bleach in a room that had
5 never been cleaned for as long as she could remember them
6 hanging out there. And then of course, when Sgt. Richards
7 searched the apartment and found those cleaning products and
8 the paint, as well.

9 You heard about how E.J.'s skeleton was found just a
10 stone's throw away from this man's apartment, and it was his
11 apartment. He name was on the lease.

12 So let's talk for a second about E.J. and the skeleton.
13 Is there really any doubt that that skeleton was Ernest
14 Robinson.

15 You heard from Investigator Cronise and the missing
16 person's investigation that she conducted. She looked
17 everywhere. She went to every hospital in town, she checked
18 the jails and the prisons. She checked bank account records
19 that had been dormant. The checked the My Space page of the
20 victim that had not been accessed. She talked to friends
21 that hadn't seen him. She talked to family members,
22 co-workers. Flyers were sent to Myrtle Beach.

23 Marvin Shipman. I know y'all remember Marvin. Marvin
24 was a friend of his and as he told you, he was not saint.
25 He's got issues, but he was a friend of E.J.'s and he told

State v. Victor Smith 9/19/11 - 9/23/11

748

1 you the truth. He told you that he used to hear from E.J.
2 on a regular basis and if they weren't hanging out, they
3 hadn't seen each other in a couple of weeks, he's always
4 hear from him after three or four weeks at the most, even
5 when E.J. was living in Myrtle Beach. Hadn't heard from him
6 since the last day he saw him, which was the last day
7 anybody saw him.

8 Mark Wickham, again, as I mentioned, told you he never
9 picked up his check.

10 All of this corroborated by statement taken from Allen
11 Fulten, Jeremiah Jones and Jazmine Bright, and the
12 information that Victor Smith told her.

13 Bill Stevens told you about E.J.'s body. He went into
14 great detail, had the little power point presentation for
15 you. Told you that the body was of a black male between 20
16 and 30 years old, which, by the way, I believe E.J. was 24
17 years old. Approximately, five foot-ten in statute.
18 Testimony was that he was about six feet tall. He told you
19 about how he got all this figured.

20 You will also have in the jury room with you, Death
21 Certification State of South Carolina with the decedent's
22 name, Ernest Melvin Robinson, Jr., presumed -- actual or
23 presumed date of death September 28, 2008. Manner of death
24 homicide. Cause of death, gunshot wound to the head. Place
25 of injury. ■ Elders Pond Circle, Apartment ■. Location

State v. Victor Smith 9/19/11 - 9/23/11

749

1 of injury. [REDACTED] How injury occurred. Beaten and shot by
2 someone.

3 Official state document says that Ernest Robinson is
4 dead, and that he died on the day in question by the manner
5 in which these witnesses testified. You'll have that back
6 in the jury room with you.

7 There is no question that that body belonged to Ernest
8 Robinson.

9 That body, Ernest Robinson's body was wrapped up in a
10 shower curtain and you heard testimony about that shower
11 curtain. This shower curtain. It came from Victor Smith's
12 apartment. Jazmine Bright told you she bought it when she
13 went to college. There was a matching bath mat found in the
14 apartment, Victor Smith's apartment. Belt. The body was
15 wrapped up in a shower curtain and secured by two belts, one
16 of which belonged to Victor Smith. Jazmine Bright told you
17 that she recognized that belt. Jeremiah Jones told you that
18 he recognized the other one.

19 Skeleton had been out there for about a year. He'd
20 been missing for about a year. The fractures to E.J.'s face,
21 the side of his face, were consistent with blunt force
22 trauma such as being struck with a brick multiple times, and
23 then, of course, there was a gunshot wound to the head. Dr.
24 Nichols and Bill Stevens told you about that and the
25 fractures definitely occurred prior to the gunshot wound,

1 which is consistent and corroborated by the testimony of
2 Fulten and Jones and Jazmine Bright, for that matter,
3 because if you recall, Victor kind of told her the truth
4 about that. He told her they beat him first, and then he
5 killed him later. Now, he had his timing a little bit off
6 in his version of the events with Jazmine. But he, at least
7 conceded that.

8 Let's talk about Fulten and Jones a little bit. They
9 told you that Victor Smith planned this event and then he
10 got them involved. And that they participated. They
11 admitted to you, they each participated in this event.
12 Allen Fulten told you that he threw the first punch at
13 Victor Smith's urging. He said he really didn't want to do
14 it the first time. Victor stayed on him about it, called
15 him names prior to and then when they were there, he was
16 staring him down until he did it. Fulten did, he punched
17 him, he participated in the beating. Did he tell that story
18 the first time when he talked to police? No. You heard
19 from Investigator Holdorf, that's not uncommon. That often
20 times multiple statements are needed from suspects to get
21 the full story out. It's natural to want to minimize your
22 involvement. He did that the first time. He put himself
23 outside the room. The second time he told the truth, and it
24 was consistent with what he told you on this witness stand,
25 and you saw him demeanor, you just his credibility. You

State v. Victor Smith 9/19/11 - 9/23/11

751

1 decide if you believe him or not. They told you that they
2 watched Victor Smith shoot Ernest Robinson in the head. And
3 then they told you that he ordered them and directed them to
4 clean it up and get rid of him. The interesting thing
5 about Jeremiah Jones and the statement that he gave when
6 police talked to him, he didn't know what kind of injuries
7 or trauma that the body had sustained. You recalled what
8 Holdorf said, they were shocked that the details that Jones
9 had. Jones told them about the weight being used to strike
10 him in the back. But he also told them about the brick. He
11 told them that Victor told him, told Man, told Man to strike
12 E.J. with the brick, and then he told him to do it again.
13 And he did it. And he admitted that. Jones didn't know the
14 body that they had found had a fracture to the side of the
15 face. He didn't know that when he gave them those details.
16 That lends some sort of credibility to his story, and it was
17 corroborated. It was corroborated by the physical evidence
18 on the body. It was corroborated Fulten's statement and his
19 testimony where he said, yeah, Jeremiah Jones hit him with
20 the brick and Victor told him to hit him again and he did
21 it.

22 Now, the first time he talked to law enforcement he
23 didn't say that Victor Smith shot Ernest Robinson and he
24 told you why not. Victor had been a friend of his. Man
25 obviously hadn't had a great life and Victor helped him out

State v. Victor Smith 9/19/11 - 9/23/11

752

1 sometimes. He let him stay there. They hung out. They
2 smoked weed together, they drank. He thought that they were
3 friends, and he didn't want to get him in trouble and he
4 didn't want to involve himself, he didn't want to implicate
5 himself, and who would, at that point. But he told you that
6 it got to him and he had to get the truth out. You heard him
7 on the stand and he told the truth.

8 You heard from crime scene investigators who have spent
9 three days in this apartment looking for everything they
10 could find. You heard all about kinds of tests;
11 phenolphthalein, fingerprints, cotton swabs, photographs,
12 pulling up entire carpet out of the room. If that wasn't a
13 thorough search for evidence, I haven't seen one.

14 Stan Richards told you about how when there's a call
15 for a burglary, and I think this was corroborated by the
16 other investigators, a burglary or narcotics violation, they
17 don't send the crime scene unit in there. There were a lot
18 of questions about what happened when the police went in
19 that apartment in October and December. They don't send
20 that kind of search to an apartment on calls like that.

21 Jazmine told you when the police responded in October,
22 they didn't even see marijuana sitting out in the open. If
23 they didn't see that, how were they going to see trace
24 evidence and blood?

25 Victor Smith told one person that he cared about the

State v. Victor Smith 9/19/11 - 9/23/11

753

1 most what he did and how he did it. He told Jazmine Bright
2 that he killed E.J. and that he shot him in the head. He
3 said to her, -- she said she'd never forget it -- I'm a
4 devil and I don't want to bring an angel down. That's not
5 all he said.

6 She got physically ill when he said those words. Could
7 not believe what he had just told her. Now, he didn't tell
8 her when it happened, exactly, and he didn't tell her where.
9 But an interesting thing he did tell her about where. He
10 did tell her the beating took place near the retention pond
11 near their apartment. The beating took place near the
12 retention pond near their apartment. There's their
13 apartment, there's the retention pond.

14 What do you think made him think about location when he
15 was talking about it? Perhaps the fact that E.J. was
16 sitting there right at that moment, wrapped up in his shower
17 curtain and his belt. He was trying to get it out, he was
18 trying to get it all out and to tell her what he had done,
19 and he just couldn't tell her all the details. He couldn't
20 tell her that he killed that man in his own apartment in the
21 very room that his child had once slept and may sleep again.
22 He told her that, he'd loose her forever. So instead he
23 told her that he shot him in Blythewood. Even then under
24 that scenario he still left him there to rot.

25 Mr. Hart told you in his opening statement that the

State v. Victor Smith 9/19/11 - 9/23/11

754

1 three most important things in this trial, he told you
2 number one, the remains are not E.J. I'm pretty sure we
3 don't have to spend a lot more time talking about that
4 issue. You heard from Amick, Dr. Amick. You heard from
5 Lindsay Thompson about the testing that they did to try and
6 get a usable DNA standard to match to E.J.'s paternal uncle.
7 And they couldn't get anything, and that he didn't have any
8 dental records and that they exhausted all of their methods
9 to try and make a scientific determination that it was him
10 and they couldn't do it. They did everything they could,
11 but as I stated earlier, Bill Stevens, co-defendant
12 corroboration, location of the body, the shower curtain, the
13 issue of whether the remains are E.J. or not, are not an
14 issue.

15 Number two that Mr. Hart told you was one of the most
16 important things in this trial. No physical evidence
17 connecting Victor Smith to the crime. No physical evidence
18 connecting Victor Smith to the crime. Someone was shot in
19 his apartment, his apartment. Not anybody else's. In the
20 room that he used to hang out in. There was blood all over
21 the room. There was a bullet hole. I'd say that was some
22 pretty strong physical evidence. The victim, the body was
23 found 100 yards from that apartment from that scene wrapped
24 in his shower curtain. That's pretty strong physical
25 evidence, if you ask me.

State v. Victor Smith 9/19/11 - 9/23/11

755

1 One other thing I want to mention about the remains.
2 Think back to when Investigator Holdorf was on the stand.
3 Mr. Hart was questioning him about the DNA and whether or
4 not there were any positive results linking any of the DNA
5 to Ernest Robinson. At that point in the trial there had
6 been so much proof beyond a reasonable doubt that the body
7 belonged to Ernest Robinson, Mr. Hart even referred to the
8 molars as the molars from Ernest Robinson. His words. Even
9 he was convinced by this time that that body belonged to
10 Ernest Robinson.

11 More physical evidence. Wrapped in the shower curtain,
12 wrapped in the belt. The cleaning supplies found in the
13 apartment. The smell of bleach, the paint. There's paint on
14 the couch, there was spot painting on the walls. The third
15 thing that Mr. Hart told you that was one of the most
16 important things in this trial. He said on October 21, 2008,
17 Victor Smith left on that date and never returned. So what.
18 The murder happened before then. The evidence in the case
19 has been shown to have happened the night of September 27
20 into the morning of the 28. Victor Smith never came back.
21 Well, by the time the police caught up to him to question
22 him about it he was in the Department of Corrections in
23 Mississippi.

24 Other theories that have been alluded to by the defense
25 in this case. They have made a great deal of references to

1 decomposition and odors, alleging or inferring that how come
2 no body had smelled the body. Well, there was plenty of
3 testimony about the environment. This body was down an
4 embankment, down a hill. Stevens talked to you about the
5 wind, how the wind direction could have blown the smell in
6 other directions, but more important that that was Stevens
7 and Dr. Nichols told you wrapping a body -- well, Stevens
8 told you the body was partially mummified -- would conceal
9 the smell, wouldn't conceal all of it, but wrapping a body
10 in a shower curtain would conceal the smell.

11 The defense has made numerous references to the
12 credibility of Allen Fulten, Jeremiah Jones, and Jazmine
13 Bright. They all gave their own versions of the truth.
14 Well, they did. They all told it as they remembered it.
15 They didn't get together for each one of them to tell
16 individually. The inconsistencies in their statements and
17 the information that they gave makes the credible. Think
18 about it. If they all wanted to get together and conspire
19 to set this man up to frame him for a murder he didn't
20 commit in his own apartment, don't you think they would have
21 told the exact same story? Wouldn't that have made a little
22 more sense? I mean, Fulten and Jones described the assault
23 about the same but from their -- there were differences
24 about who took what piece of clothing off, who wrapped him
25 up, who dumped him, what happened earlier in the day. Does

State v. Victor Smith 9/19/11 - 9/23/11

757

1 that make any sense if they were going to concoct a story
2 that they wouldn't get their story straight. And along
3 those lines, Jazmine's story that she said was so different
4 than anything that Jones or Fulten said, it had to have come
5 from him, where else would she have gotten it from? How
6 else would she have gotten that information?

7 There were repeated questions about the area where the
8 body was located, the colorful shower curtain with the
9 flowers on the shower curtain. Y'all have the pictures.
10 Look at what that scene looks like, at the brush, how thick
11 it was. Does it really seem reasonable to think that
12 somebody would have seen that, seen that body down that
13 embankment. No. It took a stroke of luck for a survey crew,
14 Nolan Martin, a man just out there doing his job making some
15 measurements and they just happened to stumble upon.
16 Otherwise, we may not even be here today.

17 Mr. Hart might tell you that the reason that Allen
18 Fulten and Jeremiah Jones came in here and implicated Victor
19 Smith, the reason that they implicated him in their
20 statements was that they were coerced by law enforcement,
21 that they were pressured by Investigator Holdorf, Maj:
22 Smith, Sgt. Robinson, Lt. McDonald, Investigator Gallegos
23 throughout all those statements. Those people testified
24 about the nature in which they take statements, the
25 procedure they follow. It's their policy that they write the

State v. Victor Smith 9/19/11 - 9/23/11

758

1 questions, they write the answers. They give the statements
2 back to these men and they let them review them until they
3 agree that that is, in fact, their statement.

4 It's interesting that Victor Smith went through the
5 same process as Allen Fulten and Jeremiah Jones. Holdorf
6 and Gallegos went down to the Mississippi Department of
7 Corrections. They advised Victor Smith of his rights. He
8 freely and voluntarily waived them, gave all his rights up
9 to talk to them. And he gave a statement. In his first
10 statement he didn't know anything about anything, really,
11 other than he had been with E.J. that night. Once he was
12 presented with some additional details; a body was found,
13 the crime scene was in his apartment, the shower curtain.
14 Then he had to get his story right. He had to get his story
15 right at that time. So he talked about the missing rent
16 money. He said he confronted him about that, he admitted
17 that. He said that E.J. just said he's pay him back, and
18 that was the end of it. He didn't know anything else about
19 it.

20 So let's compare what we have. If the investigators
21 were going to coerce Fulten and Jones into planting this
22 story about what Victor Smith may have done, why didn't they
23 do the same thing to Victor Smith. Why would they have taken
24 a statement from Fulten and Jones with that much detail
25 about Victor Smith and then not gotten a statement from

State v. Victor Smith 9/19/11 - 9/23/11

759

1 Victor Smith saying the same thing. Because the truth is
2 the truth. It's not their job to tell people what to say.
3 It's their job to get the information out of them. They got
4 that information out of Fulten and Jones, and Fulten and
5 Jones told it themselves. Same thing with Jazmine Bright.
6 Jazmine Bright called the police the first time on the day
7 the search warrant was executed at her apartment. That's
8 when she got a phone call that a body was found. She
9 voluntarily came back to Columbia, gave a statement and
10 eventually testified in this very room. You want to talk
11 about credibility. You all saw what I saw. The emotion, the
12 pain, the reality. I'm a devil and I don't want to bring an
13 angel down. You decide what you thought of her testimony.
14 As to why she didn't come forward sooner, she was scared.
15 She was scared of him. She was scared of his friends. She
16 got threats at home. She got threatening phone calls at
17 work. What was she supposed to do at that point. The body
18 hadn't been found and she's getting threats. How did she
19 know that something wouldn't happen and her body wouldn't be
20 found. When she had the chance, the opportunity was
21 presented she told the truth.

22 Fulten and Jones, they both told you that right after
23 Victor Smith shot E.J. in the head, what did he do with the
24 gun? He pointed it at them. He pointed it at them and he
25 told them that if they said anything he would kill them.

State v. Victor Smith 9/19/11 - 9/23/11

760

1 You know, there was somebody else there, too. Darius Smith
2 was there, his brother, the defendant's brother. He didn't
3 point the gun at him. Remember what Allen Fulten told you.
4 He said I know I don't have to worry about you talking
5 because you're my brother.

6 By the time that Fulten and Jones did, in fact, tell
7 what they knew Victor was in Mississippi.

8 There was testimony from Investigator Holdorf about
9 reporting gunshots and crimes to the police. There was a lot
10 of questions about that. Almost every investigator that got
11 on the stand, Mr. Hart asked them about taking reports of
12 gunshots in that area. You remember what he said. It's not
13 uncommon. People don't want to get involved. People hear
14 noises, apartment complexes are loud. Neighbors get scared
15 when they hear things. Glass breaks, see cars get broken
16 into. They don't call the police all the time. That's not
17 unusual.

18 Mr. Hart told you in his opening. Something happened,
19 but Victor Smith was not responsible. You know, it's funny
20 when Holdorf interviewed Victor Smith. When he asked him
21 how he could explain how blood, E.J.'s blood being in his
22 apartment Victor Smith said, something must have happened.

23 The evidence in this case has clearly shown beyond a
24 reasonable doubt that what happened was Victor Smith
25 shooting Ernest Robinson in the head.

State v. Victor Smith 9/19/11 - 9/23/11

761

1 Once you put all the pieces together, all the evidence,
2 you will have no choice but to find Victor Smith guilty of
3 the murder of Ernest Robinson. He planned it, he carried it
4 out, he covered it up. Literally. But he couldn't keep it
5 inside. He had to let it out some how. He could not keep
6 the devil inside any longer. He had to let it out.

7 Victor Smith summed it up when he wrote with his own
8 hand, perhaps with the same hand he used to take Ernest
9 Robinson's life, he wrote that E.J. did not deserve this.
10 E.J. did not deserve this.

11 Hold Victor Smith accountable by finding him guilty of
12 murder.

13 Thank you.

14 THE COURT: Members of the jury, that wasn't as long as
15 I thought.

16 You are ready to proceed Mr. Hart -- Mr. Hart, you may
17 proceed.

18 MR. HART: Your Honor, there's a matter we need to take
19 up outside --

20 THE COURT: All right. Members of the jury, go to your
21 room. Don't talk about this case. I'll bring you back out,
22 shortly.

23 (Jury out at 11:09 a.m.)

24 THE COURT: Yes, sir, Mr. Hart.

25 MR. HART: Your Honor, yesterday I thought we had come

1 to an agreement not to comment on Darius Smith, and I think
2 Mr. Goldberg just mentioned how Victor did not point the gun
3 at Darius. I think something like because you're my
4 brother, don't talk about that. If he had the opportunity
5 to talk about Darius' involvement, I'd would like also to
6 have the opportunity about why Darius is not here.

7 THE COURT: Look, I told y'all yesterday, and I'm not
8 going to go back over it. Y'all proceed at your own risk.
9 At the risk of getting a mistrial. If you get up and talk
10 about why Darius left his brother and did not testify, then
11 I'm going to inform the jury that he invoked his Fifth
12 Amendment right that hadn't been mentioned. I'm not sure
13 what comment Mr. Goldberg made that upset you. Help me
14 understand that. And Mr. Hart -- it doesn't matter to me
15 one way or the other, but specifically tell me what he said
16 that was objectionable?

17 MR. HART: Specifically, he said, he pointed the gun at
18 Allen Fulten --

19 THE COURT: Uh-huh. (Affirmative response.)

20 MR. HART: -- Jeremiah Jones, but he didn't point the
21 gun at his brother, Darius Smith.

22 THE COURT: Okay. Now, how does that --
23 stop, let me finish, Mr. Goldberg.

24 How does that violate anything that was said yesterday?

25 MR. HART: Because I thought Darius Smith, we would not

State v. Victor Smith 9/19/11 - 9/23/11

763

1 talk about Darius Smith involvement in the arguments. That
2 was my understanding.

3 THE COURT: No. My understanding was this, we weren't
4 going to say why Darius Smith was not going to take the
5 stand. That's what I clearly understood. I mean, if you
6 want to talk about Darius Smith, that's your business. But
7 the thing we talked about staying away from is why they
8 didn't call him as a witness and that was because he invoked
9 his Fifth Amendment right to remain silent.

10 I'm not upset with anybody, but that's my clear
11 understanding of it. And you can talk about Darius Smith
12 all you want to. But you can't imply that the state didn't
13 call him or didn't try to call him or in some way was trying
14 to hide something by not calling him. That was my
15 understanding.

16 MR. HART: Yes, sir.

17 THE COURT: I'm not upset. We all should be on the same
18 page. Now, it might not be any close but I don't think he
19 crossed the line in any way, based on my understanding. We
20 can go back and read the record -- the thing was, the
21 solicitor brought this up. He didn't want you to argue why
22 Darius Smith wasn't called. I don't think he went there.
23 But the fact that Darius Smith is his brother. We all know
24 that. To me, it's no big deal. That's my ruling on it.
25 And that's my understanding on that.

State v. Victor Smith 9/19/11 - 9/23/11

764

1 MR. HART: Yes, sir.

2 THE COURT: You have done great. Get ready to do this
3 argument. We'll be at ease for about 10 minutes.

4 And Mr. Hart, I may be wrong. You can take exception
5 and everything else, but

6 MR. HART: And just for the record, we will take
7 exception. Just for the record.

8 THE COURT: Okay. That's fine.

9 Go take your break. We'll give them 10 minutes.

10 (Court in recess for short break at 11:23 a.m.)

11 (Court in session after short break at 10:33 a.m.)

12 THE COURT: All right, are y'all ready?

13 MR. GOLDBERG: Yes, sir.

14 THE COURT: Mr. Hart?

15 MR. HART: Yes, sir.

16 THE COURT: Bring the jury in.

17 (Jury in at 11:33 a.m.)

18 THE BAILIFF: All the jurors are present.

19 THE COURT: Welcome back, Madam Forelady and members of
20 the jury. We took a short break to clear up a small matter.
21 We cleared that up. As I told you at the very beginning,
22 somebody objections, y'all have to go out and that has no
23 bearing on the case. That's a short break that you got.

24 With that in mind I invite you attention to the closing
25 argument of Mr. Smith by Mr. Hart.

State v. Victor Smith 9/19/11 - 9/23/11

765

1 MR. HART: Thank Your Honor.

2 Good morning, ladies and gentlemen, it's been a long --
3 we've spent a lot of time together, and if you listen to the
4 prosecution and their version, we might as well just go home
5 now. No need to go through this. But fortunately there's
6 two side to every story. There's two sides to every coin
7 and that's why we're here.

8 When we talked and we met in the very beginning one of
9 the things we talked about is that the wrong person is on
10 trial. Now, we believe that the evidence has shown that,
11 that the wrong person is on trial.

12 If you look at all this evidence, here, ladies and
13 gentlemen, all of that looks good. It looks good. You know
14 what it sort of reminds me of? You know, coming up next
15 month the State Fair is going to be here. You know when
16 you're walking down the midway and you see those nice big
17 plump bags of cotton candy. And they look good and they
18 look juicy and they look plump. All of that's air. You
19 stand in line, you buy your cotton candy, you open your bag,
20 you put your cotton candy in your mouth and what happens, it
21 fizzles. There's nothing there. There's nothing there,
22 ladies and gentlemen. All of this evidence here they
23 brought before you for three days straight we've talked
24 about this. Three days straight.

25 What did each investigator say. Nothing here

1 identifies Ernest Robinson as those remains in the woods.
2 Nothing here identifies Victor Smith's blood in that room.
3 Nothing in this big bag of cotton candy here identifies
4 Ernest Robinson's blood in that room. So what happens, it
5 fizzles down to the wrong person is on trial. Here's the
6 real issue, ladies and gentlemen, they didn't prove to you
7 beyond a reasonable doubt that Victor Smith shot and killed
8 Ernest Robinson. Did they prove that to you beyond a
9 reasonable doubt. Based on the evidence, ladies and
10 gentlemen, we ask you to return a verdict of not guilty
11 because they didn't prove that to you beyond a reasonable
12 doubt.

13 They didn't prove to you that this crime happened on
14 September 27, 2008. Do you remember one of the last things
15 Smurf said after the solicitor finished questioning him and
16 I asked him, I said, we'll can you say -- he said well, I'm
17 not saying it happened on September 27. I said what do you
18 mean. He said well, I'm not saying anything. You remember
19 him saying that, and supposedly he was there, he
20 participated in the crime.

21 Here's why, ladies and gentlemen, I'm going to ask you
22 to return a verdict of not guilty, and this is why this is
23 so important. We'll going to talk a little further about
24 that when we get to it. We're going to talk about the DNA.
25 They want to sweep that under the rug. They want to say

State v. Victor Smith 9/19/11 - 9/23/11

767

1 that's not really important. That really doesn't mean a
2 whole lot that we went through this whole thorough
3 scientific process that we use to solve crimes, we didn't
4 get it this time. We didn't find it. So it really didn't
5 mean that much to us. Really not that important right now.
6 We're going to come back to that.

7 See there. There's physical evidence that connects
8 Victor Smith to this crime. Came out of his apartment, also
9 came out of Jaz's apartment, also. This is it. This is all
10 of it right here. What does it say? What does it say about
11 Victor -- It doesn't say anything about Victor Smith. There
12 was blood found. It didn't come back to Victor Smith. There
13 was blood found, it didn't come back to Ernest Robinson. So
14 that's not important. We're going to come back to that
15 about why they think it's not important.

16 Let's talk about the witnesses, because they're
17 important. Kim Hunt, she was the property manager. She
18 didn't have a stake in this. She really didn't even know
19 what was going on, barely. What did she say? She said,
20 since I started working there, I walked that property at
21 least once a week. That means something and they want to
22 minimize the fact that there was no smell of a decomposing
23 body. She said she walked that property once a week since
24 she got hired. Somebody got to see something in that
25 apartment complex for that body to be so closely located to

1 those apartments. Somebody's got to smell something.

2 Marvin Shipman. Marvin was an interesting character.
3 He really was, but Marvin was a liar if you paid close
4 attention to him. Here's what Marvin said. Remember this
5 whole case is about missing rent money. Here's what Marvin
6 said about E.J. and about Smurf. He said, me and E.J. been
7 knowing each other since 9th grade. I trusted him. I leave
8 my money, my personal belongings, anything around him. E.J.
9 never had a problem stealing anything at all. Second thing
10 he said was E.J. and Smurf went half on the weed. Smurf had
11 money, E.J. had money. Smurf -- E.J. had a job. Smurf
12 didn't have a job. E.J. wouldn't steal anything. We know
13 who stole that money. We know it wasn't E.J. We know the
14 two people in this whole group who was unemployed. We know
15 who stole that money. We know who had money to buy weed with
16 E.J. We know who took that money.

17 Jaz. What did Jaz have to say. Out of all the people
18 who came in here to testify her story was so out of the way,
19 out of the blue, it didn't match up to anything at all. I
20 don't know where she got her story from. Walking to Piggly
21 Wiggly, jumped E.J. in the woods. Let's stop right here,
22 because this is important. Says they jumped E.J. in the
23 woods, beat him up by the retention pond before the shooting
24 happened. Think about this closely. If E.J. really got beat
25 up by that retention pond why would he go back to the

State v. Victor Smith 9/19/11 - 9/23/11

769

1 apartment. He just got beat up by these guys. Why would he
2 go back to the apartment when he'd just gotten beat up by
3 these guys. That makes absolutely no sense at all. So
4 let's say it happened days before the shooting. If he got
5 beat up in the woods by those guys why would he go to that
6 apartment days later to hang out with them, to chill with
7 them, to smoke -- you're going to smoke weed and chill and
8 drink with somebody you just got beat up by. That makes
9 absolutely -- her story makes absolutely no sense,
10 whatsoever. E.J. said let's go to Blythewood. Shot E.J. in
11 the woods in Blythewood. None of that makes any sense
12 whatsoever, but that's the story that Jaz walked down that
13 aisle, took that stand, and told you. It didn't match
14 anything of what we heard at all, nothing.

15 What did she say. She says she got sick. She had an
16 anxiety attack when she says what Victor told her. She
17 couldn't have been too sick. She didn't have too many
18 anxiety attacks because the police showed up the next day,
19 according to her, when Victor told her this, according to
20 Jaz. She wasn't panicked then. She wasn't sick when the
21 police showed up on October 21. She couldn't have been too
22 concerned to say, hey, you know, I got to tell you what my
23 boyfriend just told me. I'm sick, I couldn't sleep last
24 night, having anxiety attacks, I've got to tell you what
25 happened. She didn't say that. Not on October 21 or

1 December 2008. She never mentioned anything like that. She
2 said, I may have -- here's what she said. She's sleep the
3 night this is supposed to have happened. And remember we
4 kept going over what was the size of the apartment, what was
5 the layout of the apartment. Ladies and gentlemen, you'll
6 see the diagram of the apartment, you'll be able to see how
7 big the apartment is in relation to the other apartments.
8 Her room -- and this supposedly this took place in that
9 front bedroom, you can see that, and you mean to tell me you
10 sleep so hard you can't -- and this was supposed to be a
11 dynamically violent assault and beating that took place, and
12 you're in the other room just across the hallway, and you
13 didn't hear nothing. You didn't hear a gunshot. Well,
14 maybe I heard a gunshot. You didn't hear anything. She
15 gets up the next morning, so I say, well, Jaz what time do
16 you go to work. Well, I got to work different times. When
17 you got up to go to Waffle House the next morning, did you
18 see any blood, did you see any stains in the carpet? You
19 heard what she said. I don't turn the lights on when I go
20 out in the morning, when I walk down the hallway. What kind
21 of sense does that make? None whatsoever.

22 She also mentioned about all the people that were in
23 and out of this apartment. All kinds of stuff going on in
24 this apartment. Could have been anything going on in this
25 apartment. She also mentioned that she was shocked and

State v. Victor Smith 9/19/11 - 9/23/11

771

1 surprised to learn it took place in her apartment, because
2 when she found out they found the body, they were searching
3 her apartment she better act surprised. She better act
4 shocked, because if she doesn't she's sitting at that table,
5 she's charged with murder. So she called -- oh, really, it
6 happened in my apartment. She better be shocked because
7 they were going to charge her, too.

8 What's most important about Jaz is she says, I
9 redecorated that whole entire building back in
10 February/March of 2009.

11 Now, you remember yesterday when I held up several
12 photos and I did it repeatedly over and over and over again.
13 And I know sometimes it sounded like I was repeating the
14 same thing over and over, but it was important. How'd she
15 not see these stains. What was the excuse she gave us? Oh,
16 we've got lots of stains in our apartment. Stains in our
17 apartment aren't unusual. I'll tell you what is unusual in
18 an apartment, blood stains. That's unusual.

19 Jaz has more involvement in this than she's telling us.
20 Think about it. She lived in that apartment from September,
21 when it supposedly happened, '08 until July '09 with this on
22 the floor and she didn't know. She has more involvement
23 than she's telling us.

24 One thing she did remember vividly. Just as soon as
25 the solicitor pulled it out, she didn't hesitate. Whose belt

1 is that; oh, that's Victor's belt. No hesitation
2 whatsoever. No hesitation. She remembers the belt, but
3 didn't remember the blood stains in her own apartment? It
4 just doesn't add up at all. It doesn't make any sense
5 whatsoever, and if my memory serves me correctly you guys
6 are the judges of the facts. I thought Jeremiah said this
7 was his belt. Did he not say that. Did Man not say this
8 belt belongs to him.

9 Let's talk about Victor. The police -- and let's just
10 make the record clear here. Victor left that apartment on
11 October 21, it's no secret, he didn't leave voluntarily. He
12 left and he never returned. He didn't leave on his own.
13 There's no secret in that. They went to go visit him in
14 Mississippi. That's where he was.

15 This is Victor's statement. As Investigator Holdorf
16 mentioned and Investigator Gallegos, the first thing we do
17 is advise them of their rights. You have the right to
18 remain silent. You don't have to talk to us. Anything you
19 say can be used to put you in this trial. Victor talked to
20 them. Did you assault Ernest? No. Do you have any
21 knowledge of the assault? No. What do you think happened?
22 I don't think anything happened. I don't know. I don't
23 know what happened. At any point in time, Victor could have
24 said I don't want to talk to you. I don't have nothing to
25 say. There's nothing to talk about, but what's more

State v. Victor Smith 9/19/11 - 9/23/11

773

1 important than this is they asked Victor for his DNA, and
2 Victor didn't hesitate even after advising him that when you
3 give us this DNA, if it matches anything, we're going to use
4 it against you. What did Victor do? He gave them his DNA.
5 No problems at all.

6 But Investigator Holdorf said something that was so
7 important yesterday that I've been pondering over. When I
8 asked him about, well, did you find any of Victor's blood on
9 this carpet, and I remember him saying well, Victor, trying
10 to match his DNA really wasn't a priority. Then why ask him
11 for his DNA.

12 Let me say this. I guarantee you had they found
13 Victor's DNA anywhere in this we'd be talking about it. We
14 wouldn't have spent the first three days talking about how
15 it wasn't there, we'd have spent the first three days
16 talking about how it was there. If they would have found
17 his DNA we wouldn't be talking about, oh, this is not TV,
18 this is reality. That's CSI stuff. We wouldn't be talking
19 about that. We would have talked about in depth, in detail
20 about Victor's DNA on this evidence, but they didn't have it
21 so now it's minimized, it's really not that important.
22 Didn't mean a whole lot.

23 You'll get a chance to see Victor's statement. It's
24 been entered into evidence. But ladies and gentlemen, when
25 you get back to the jury room, there's two sides to every

1 story. Everybody gave a statement; Jaz, Man, and Smurf.
2 They all gave statements. Guess who's statement you won't
3 see back there?

4 MR. GOLDBERG: Objection, Your Honor. It's a
5 misstatement of the law to go down this road. May we
6 approach?

7 THE COURT: Yes.

8 (Off the record bench conference with counsel and the
9 Court.)

10 THE COURT: Members of the jury, there's an objection
11 about whether or not certain statements have been entered
12 into evidence. We have what we call the best evidence rule.
13 For a person who is here to testify their statement does not
14 go in. That has nothing to do with matters of the case, but
15 that is the partial and curative instruction I need to tell
16 you based on that argument.

17 You may proceed, Mr. Hart.

18 MR. HART: Thank you, Your Honor

19 Jeremiah Jones. What did Jeremiah say? Jeremiah said,
20 I never hit E.J. Says, I didn't assault him. He says, we
21 striped the body of all the clothing. You've heard evidence
22 that the remains had a t-shirt and underwear. Jeremiah says
23 -- I said, did you strip it naked? Yes, it was naked.
24 Maybe the they did, but the body that was found had
25 underwear and a t-shirt on. What did Jeremiah say, I don't

State v. Victor Smith 9/19/11 - 9/23/11

775

1 think he -- he just couldn't get it together. He couldn't
2 get it together here. You know he couldn't get it together
3 when he was talking to police. He said, they did something
4 to my statement. I didn't tell them all that they put in
5 there. They put that stuff in there. I didn't authorize
6 it. Jeremiah says, and bless his heart, I don't want to
7 embarrass him, but we had to ask him those questions and he
8 said, I need help reading over stuff. I can write but I
9 need help reading over stuff. That's so important. Very
10 important when you're giving a statement to the police.
11 Then he says, I was scared of Victor. He said, Smurf said,
12 Jaz said. Look at Victor. Is he some big bad wolf. How
13 does he control all these people. How does Victor control
14 all these people, everybody is scared of him.

15 What does Smurf say. Smurf says, he called me names,
16 and I'm not going to repeat the profanity of that. He
17 called me those names and I just couldn't take it no more.
18 I said, well, Smurf, did you have the opportunity to leave.
19 He said, yes, I had the opportunity to leave. Victor wasn't
20 holding him hostage. He didn't have a gun to his head, and
21 this was supposed to be when it happened. Why didn't Smurf
22 just leave? Is that man, is he that controlling. Does he
23 control all those people like that? None of these people,
24 when this incident supposedly took place, when to the
25 police. Nobody walked into the police station and said, you

State v. Victor Smith 9/19/11 - 9/23/11

776

1 know what, I'm sick, I'm having anxiety attacks. Smurf
2 said, I was sick. I threw up. Threw up. I felt so bad
3 about my conscious, let me just walk into this police
4 station and tell them, let me just clear my conscious. Not
5 one of them did that. When did they talk to police. When
6 they got picked up. Yeah, that's probably the best time to
7 talk to them when they got picked up and arrested. Yeah,
8 they're probably going to talk to them then.

9 He says I felt sick and I threw up. I said, well,
10 Smurf, did you spend the night there. Well, think about
11 this, how do you kill somebody in such a dynamic event and
12 you get so sick you throw up and then you spend the night in
13 the same place that you killed the person. He wasn't that
14 sick. He couldn't have been that sick that he didn't leave.
15 According to him, Victor told him to go get some cleaning
16 supplies. He went to go get the cleaning supplies he didn't
17 have to come back. He could have kept going. But oh, he
18 did that, because as you heard he got a one-way bus ticket
19 to Charlotte. But what was disturbing about Smurf was Smurf
20 said I wanted to celebrate my birthday, which was five days
21 after they say this happened. That's disturbing.

22 But what's more important is, I did like Mr. Stevens
23 from the coroner's office. He was the one with the power
24 point, came in with the power point -- here's what he said.
25 He said, from his expertise and his training, that he

State v. Victor Smith 9/19/11 - 9/23/11

777

1 estimated that those remains had been out there
2 approximately one year, probably on the top end of a year.
3 He said, I want to make sure I'm correct, this was so
4 important here, because that's why that October date comes
5 in. When is fall in South Carolina, October, November,
6 December. Based on his training and expertise he said that
7 he believed the body had been out there since the fall.
8 What's more important about Mr. Stevens testimony? He said
9 there was no damage to his spine. In your expertise and
10 your training wouldn't you expect some damage to the spine
11 if someone dropped a 45 pound weight on the body? He said,
12 well I expect that's possible.

13 You remember when Jeremiah testified he said Victor got
14 on his back and he bent his legs back like in a wrestling
15 move. I asked Mr. Stevens did you notice any damage to the
16 legs of the remains that you found? And what did he say?
17 No. I didn't notice any.

18 The police responded in December '08. Oh, well, when
19 other units respond they don't bring the crime scene, they
20 don't bring the crime lab with them. What is he saying
21 about the Sheriff's Department? Oh, they left an open bag
22 of marijuana. What is that saying about their training and
23 their capability. What is that saying? Ladies and
24 gentlemen, you don't need any training, you don't need a
25 crime lab to see that. That's obvious. And if a mat was

1 covering it whatever that was transferred onto the mat. You
2 don't need a crime scene, you don't need to bring a crime
3 lab to the incident place to see blood on the walls. What
4 does that say about the Sheriff's Department, they don't
5 know what they're doing? To see an obvious blood spot on
6 the walls. Is that what he said. Twice they went to that
7 apartment.

8 Very shortly, ladies and gentlemen, I won't be much
9 longer, you're going to hear from Judge Manning.

10 MR. GOLDBERG: Objection. May we approach?

11 THE COURT: Yes.

12 (Off the record bench conference with counsel and the
13 Court.)

14 MR. HART: Shortly, ladies and gentlemen, you're going
15 to hear from Judge Manning. He's going to instruct you on
16 the law, and this is the law that each one of you took an
17 oath to uphold at the very beginning. One of the things
18 he's going to instruct you is reasonable doubt. Reasonable
19 doubt that the solicitor prosecution must cross over so you
20 can return a verdict of guilty.

21 Now, as we discussed at the very beginning, reasonable
22 doubt is that doubt which causes you to hesitate to act.
23 This is that doubt that makes you say something's not right
24 about this case. It's the doubt that makes you say
25 something's missing here. Something's just not right about

State v. Victor Smith 9/19/11 - 9/23/11

779

1 this case. Ladies and gentlemen, if you have that doubt it
2 requires you to resolve that doubt in favor of Victor Smith,
3 because what that means is that they have not met their
4 burden of proving guilt beyond a reasonable doubt.

5 Now, what is reasonable doubt in this case? Solicitor
6 showed you the death certificate. Said, this is an official
7 state document that certifies Ernest Robinson. And what did
8 it certify? They had the same information you have. It is
9 presumed. Just a presumption. He said this is an official
10 state document as if to say because it's an official state
11 document it means it's true. They got this information from
12 the same people we got the information from, the very same
13 folks. No positive ID to get this official state document.
14 None.

15 We did talk a lot about a decomposing body and the
16 smell and the odor of that decomposing body. Everybody that
17 testified to it says it's something distinctive. It's a
18 smell, it's a sent you will never forget. You will never
19 forget that smell. Think about this, how you react to our
20 sense of smell. Think about when you're traveling on the
21 interstate, maybe going out of town, traveling 65, 70 miles
22 an hour and you pass an area, and you're like, wow, what's
23 that smell, what was that. And it's a quick second, but you
24 smell it. Think about when you're at work and someone wears
25 too much cologne, too much perfume. Before you even walk

1 into the room you smell it. That's our sense of smell. And
2 that's small ladies and gentlemen. This about this, think
3 about when you cook something, some food. You've got some
4 left-overs and you throw it in the trash can. You leave it
5 in the trash can for a couple days. You leave, you go to
6 work, you go out and you forget it's there and you come home
7 and as soon as you hit the door you smell it. You're like,
8 wow, I need to take the trash out. That's small ladies and
9 gentlemen. That's very small sense of smell. Here we're
10 talking about a decomposing body that is so close to this
11 apartment complex. They're like, of course, you're not
12 going to smell it. You know why, because it doesn't work
13 for them. That's why it's not a big deal.

14 If any one of those apartment residents had called to
15 say I have a foul smell behind my apartment we wouldn't be
16 talking about it. And then it would be the reverse, and
17 they would be saying, well, tell us about the decomposing
18 body. Tell us about how it smells, tell us about that
19 distinctive smell, but because they don't have it it's not
20 that important.

21 One of the most important questions that we have to
22 ask, and they didn't prove this to you beyond a reasonable
23 doubt, did this crime happen before or after October 21?
24 Did they prove that to you beyond a reasonable doubt? Did
25 they firmly prove that to you?

State v. Victor Smith 9/19/11 - 9/23/11

781

1 You see, I keep going back to this picture because it's
2 so distinctive. We've got -- where's that carpet, they cut
3 it out. They have it in evidence. Where is it? It's not
4 here. We don't get to see it. We don't get to observe it.
5 They didn't bother to bring it in evidence. Not here.

6 You want to talk about reasonable doubt in this case.
7 This case is full of reasonable doubt. According to the
8 time line it happened in 2000-and -- here's what's
9 reasonable doubt. How does someone live in this house, one,
10 two, three, four, five, six, seven, eight, nine, 10 months
11 and don't notice any of that that they got out of that
12 apartment. Jaz knows more than she's telling us.

13 I'll take my seat in a few minutes, but before I sit
14 down one thing that's so important is thank you for your
15 service as jurors. Jury service is not easy. It's hard.
16 We've been here all week. I know you would like to be
17 somewhere with your friends, with your family, doing
18 whatever you like to do, but here. Jury service is one of
19 the most important parts of public service that you can do,
20 and the reason is because you now will pass judgment on a
21 fellow citizen. You will make a judgment on Victor Smith.
22 You will decide whether he's guilty or innocent of these
23 charges.

24 I will go on to try many other cases, solicitor, he
25 will go on to prosecute many other cases. Judge Manning, he

State v. Victor Smith 9/19/11 - 9/23/11

782

1 will preside over many other cases in this state, but Victor
2 Smith -- this is his only day in court. This is not a dress
3 rehearsal for him. He doesn't get to come back and say
4 let's do this over again. He doesn't get to come back and
5 say, we need another chance. The president, the governor,
6 the city council, the county council person. Nobody can do
7 anything to help Victor Smith. Today, ladies and gentlemen,
8 Victor belongs to you. You get to decide whether he's
9 guilty or he's innocent. Therefore, ladies and gentlemen, we
10 ask you to make a decision that is based on evidence and
11 make them prove this case to you beyond a reasonable doubt.

12 As yourself, when you get to the jury room and you're
13 able to deliberate, ask yourselves and ask one another, what
14 did they prove to you beyond a reasonable doubt. That they
15 can bring three people in here that have their own version
16 of the truth. That's what they can prove beyond a
17 reasonable doubt.

18 You remember in the beginning when we first met, I came
19 before you, one of the things I said, is I'm going to come
20 back before you, and I'm going to ask you, based on the
21 evidence and also based on the lack of evidence. Each one
22 of you as individual vote. Ladies and gentlemen, I'm asking
23 you to vote not guilty.

24 Thank you.

25 THE COURT: Madam Forelady, members of the jury; y'all

State v. Victor Smith 9/19/11 - 9/23/11

783

1 don't need a break do you? Y'all need a break? Good.

2 Now, Madam Forelady, members of the jury, the State of
3 South Carolina charges the defendant, Victor Smith with the
4 crime of murder. Now, the indictment has been read to you.
5 I will not repeat the allegations contained therein.

6 Ladies and gentlemen, to this indictment the defendant
7 has entered a plea of not guilty, which places upon the
8 state the burden of proving the defendant guilty. A person
9 charged with committing a criminal offense in South Carolina
10 is never required to prove himself innocent. I charge you
11 that is a vital and important rule of law, important rule of
12 law of evidence that the defendant in any criminal trial, no
13 matter how great or serious may be the offense with which he
14 is charged, must always be presumed innocent until his guilt
15 has been proven beyond the reasonable doubt. This
16 presumption of innocence remains with the defendant at all
17 times from the moment of his appearance in this court, at
18 the trial, and until the jury has, upon the testimony and
19 evidence reached a verdict of guilty beyond a reasonable
20 doubt. For it is the solemn duty of the jury, if not
21 clearly convinced of his guilt beyond a reasonable doubt, to
22 acquit the defendant. So the burden of proof is upon the
23 state to establish by evidence to your satisfaction the
24 guilt beyond a reasonable doubt of this defendant here on
25 trial for the crime of murder.

1 Now, what is reasonable doubt, ladies and gentlemen? A
2 reasonable doubt is the kind of doubt that would cause a
3 reasonable person to hesitate to act. If you have such a
4 doubt as to the guilt of the defendant then he would be
5 entitled to the verdict of not guilty. Reasonable doubt may
6 arise from evidence which is in the case or from the absence
7 or lack of evidence in this case. You along must make a
8 determination whether or not reasonable doubt exists as to
9 the guilt or innocence of the defendant.

10 The state has the burden of proving the defendant
11 guilty beyond a reasonable doubt. Some of you may have
12 served as jurors in civil cases where you were told that it
13 is only necessary to prove that a fact is only more likely
14 than not true. In criminal cases, the state's proof must be
15 more powerful than that. It must be beyond a reasonable
16 doubt. Proof beyond a reasonable doubt is proof that leaves
17 you firmly convinced of the defendant's guilt.

18 There are very few things in this world that we know
19 with absolute certainty and in criminal cases the law does
20 not require proof that overcomes every possible doubt. If
21 based on the consideration of the evidence you are firmly
22 convinced the defendant is guilty of the crime charged, you
23 must find him guilty.

24 If, on the other hand, you think that there is a real
25 possibility that he is not guilty, then you must find him

State v. Victor Smith 9/19/11 - 9/23/11

785

1 not guilty.

2 A criminal defendant is presumed to be innocent until
3 his guilt is proved beyond a reasonable doubt.

4 A verdict of guilty can be based on circumstantial
5 evidence as safely as upon direct evidence providing the
6 circumstantial evidence relied upon to prove guilt measures
7 up to these requirements of the law that I just stated to
8 you.

9 There are two types of evidence which are generally
10 presented during a trial. Direct evidence and
11 circumstantial evidence. Direct evidence is the testimony
12 of a person who asserts or claims to have actual knowledge
13 of a fact, such as an eye-witness. Circumstantial evidence
14 is proof of a chain of facts as circumstances indicating the
15 existence of a fact. The law makes absolutely distinction
16 between the weight or the value to be given to either direct
17 or circumstantial evidence, nor is a greater degree of
18 certainty required of circumstantial evidence than of direct
19 evidence.

20 You should weigh all the evidence in a case. After
21 weighing all the evidence if you are not convinced the guilt
22 of the defendant beyond a reasonable doubt you must find the
23 defendant not guilty.

24 Now, Madam Forelady and members of the jury, under the
25 constitution of laws of South Carolina you are the finders

1 of the facts in this case. I do not have the right to pass
2 upon the facts or even to express any opinion I might have
3 as to them, nor may I intimate in any way what I may think
4 about the guilt or innocence of the defendant.

5 You are also the judges, the sole judges of the
6 credibility, the believability of the witnesses who have
7 testified in this case, and passing upon their credibility
8 you may take into consideration many things, such as number
9 one, the demeanor or manner of testifying. Two, whether the
10 witness has a reason to be biased or prejudiced. Three,
11 whether a witnesses testimony was contradicted on the one
12 hand or supported and corroborated on the other hand. You
13 certainty to not determine the credibility or believability
14 by counting the number of witnesses for either side. You
15 may believe a small portion of a witnesses testimony and
16 disregard the larger or vice versa. You may believe one
17 witness against many or many against one.

18 Now, members of the jury you have heard testimony of a
19 witness you has special knowledge, skill, training or
20 education on a particular occupation or profession who has
21 given his opinion as an expert in matters to which he is
22 skilled or she is skilled. In determining the weight to be
23 given to such opinion you should consider the qualifications
24 and the credibility of the expert and the reasons given for
25 his opinion. You are not bound by such opinion. Give it

State v. Victor Smith 9/19/11 - 9/23/11

787

1 the weight if any you deem it is entitled. Those are the
2 experts that we mentioned. That's the law on how you
3 evaluate or consider expert testimony.

4 All these things you are to consider bearing in mind
5 that you are to give the defendant the benefit of every
6 reasonable doubt.

7 Now, I instruct you and emphasize that the defendant
8 did not testify is not a factor to be considered by you in
9 any way in your deliberations and in your considerations on
10 the question on the guilt or the innocence of the defendant.
11 It must not be considered by you in any way whatsoever. The
12 defendant has the constitutional right to remain silent and
13 the assertion of this right must not be considered by you in
14 your deliberations. I repeat, under your oath you are to
15 draw no conclusions whatsoever from the fact that this
16 defendant did not testify should not be even -- should not
17 even be discussed in the jury room. The burden of proof as
18 I have stated to you is on the state. The defendant is not
19 required to prove his innocence. The burden of proof
20 remains on the state to prove guilt beyond a reasonable
21 doubt.

22 Now, by the same constitutional law which makes you the
23 finder of the facts of the evidence as I have just discussed
24 with you, I, as the judge am the sole and only instructor of
25 the law. You must accept as correct the law as I charge

1 you, and apply it to the evidence as you find it and reach
2 your verdict, and finally that you should not be concerned
3 about what the law ought to be, but rather what I charge you
4 the law to be.

5 Now, the defendant in this case is charged with murder.
6 What is murder, members of the jury. Murder is defined as
7 the willful, felonious killing of a human being by a human
8 being with malice aforethought. That malice being expressed
9 malice or implied malice. Section 16-3-10 of the South
10 Carolina Code of Laws provides murder is the killing of any
11 person with malice aforethought, either expressed or
12 implied. The state must prove beyond a reasonable doubt
13 that the defendant killed another person with malice
14 aforethought. The presence of malice is a required element
15 of murder. Malice is defined as being hatred or ill will.
16 Malice in it's legal sense does not necessarily import ill
17 will toward the individual injured, but signifies, rather a
18 general malignant recklessness of the lives or safety of
19 others or a condition of the mind that shows a heart
20 regardless of social duty and fatally bent on mischief.
21 Malice is the wrongful intent to injury another person. It
22 indicates a wicked or depraved spirit intent on doing wrong.
23 Malice is a wicked term implying wickedness and excluding a
24 just cause or excuse. It is the doing of a wrongful act
25 intentionally and without just cause or excuse. The term

State v. Victor Smith 9/19/11 - 9/23/11

789

1 malice indicates a formed purpose and desire to do a
2 wrongful act under the circumstances that exclude any legal
3 right to do it.

4 Malice may be either expressed or implied. The words
5 expressed or implied have nothing to do with the meaning of
6 the word malice. They do not imply different kinds of
7 malice, but merely the manner in which the only kind known
8 to the law may be shown to exist, that is either by positive
9 evidence or by inference.

10 Expressed malice is when deliberate intention to
11 unlawfully take the life of another and implied malice is
12 when circumstances demonstrating a wanton or the reckless
13 disregard for human life or a reasonably prudent man would
14 have known that according to common experience there was a
15 plain and strong likelihood that death would follow the
16 contemplated act.

17 The law says that if one intentionally kills another
18 with a deadly weapon the implication of malice may arise. If
19 facts are proven beyond a reasonable doubt sufficient to
20 raise an inference of malice to your satisfaction this
21 inference would be simply an evidentiary fact to be taken
22 into consideration by you, the jury, along with other
23 evidence in the case, and you may give it such weight as you
24 determine it should receive.

25 A deadly weapon is an article, instrument, or substance

1 which is likely to cause death or great bodily harm whether
2 an instrument or an object has been used as a deadly weapon
3 depends on the facts and circumstances of each case.

4 Although malice must be aforethought there is no requirement
5 that it must exist for any appreciable length of time before
6 the commission of the act. It may be conceived at the very
7 moment the act occurs. There must be a combination of evil
8 intent and the act producing the result.

9 I further charge you, members of the jury, that
10 voluntary intoxication is never an excuse or a defense to a
11 crime. A person who voluntarily renders himself intoxicated
12 is no less responsible for his acts in such condition. A
13 person who voluntarily drinks intoxicating liquors or takes
14 drugs and becomes intoxicated and if while in that condition
15 commits an act which would be a crime if it had been
16 committed by a sober person the fact of drunkenness or
17 intoxication would not relieve the intoxicated person from
18 responsibility.

19 Now, members of the jury, if a crime is committed by
20 two or more persons who are acting together in the
21 commission of an offense the act of one is the act of both
22 or all. By way of illustration, two people can be guilty of
23 killing another or murder when only one of the two have a
24 pistol and only one bullet. If both are together, acting
25 together, assisting each other in the commission of the

State v. Victor Smith 9/19/11 - 9/23/11

791

1 offense the law says that under those circumstances the act
2 of one is the act of all, and, as is sometimes said, the
3 hand of one is the hand of them all.

4 Now, members of the jury, I further instruct you that a
5 verdict in this case cannot be based upon sympathy, passion,
6 emotion or anything not found in the evidence.

7 Madam Forelady, members of the jury, whatever your
8 verdict in this case, it must be unanimous, that means all
9 12 of you must agree. I've prepared what we refer to as a
10 verdict form. I'll read it to you. It says: State of
11 South Carolina, County of Richland, Court of General
12 Sessions. Has the docket number for this case. It says:
13 The State verses Victor Dewaine Smith, indicted for murder.
14 And I have list -- there's two choices in this case. I have
15 to list one before the other. So pay no special attention.
16 I assure you it doesn't matter which comes first and which
17 comes second. But this is how this form reads: We the jury,
18 by unanimous consent find the defendant guilty or not
19 guilty. And there's a line that says foreperson. Madam
20 Forelady you sign above that line. You put the date above
21 date, and that should conclude your work in this particular
22 case.

23 Now, once again, I've got to ask you to go to the jury
24 room. Don't discuss this case at this time. There's a
25 matter I need to take up with Mr. Hart and Mr. Goldberg and

State v. Victor Smith 9/19/11 - 9/23/11

792

1 I have to do that in your absence. So don't begin your
2 deliberations until you receive the signal to do so. The
3 signal will be when the bailiff knocks on the door and we'll
4 gather all the evidence that's been introduced in this case,
5 he will hand it to you along with this verdict form. That
6 will be your signal to begin your deliberations. Until
7 then, once again, I have to ask you, please don't talk about
8 this case.

9 Thank you all very much. Please go to the jury room.
10 (Jury out at 12:35 p.m.)

11 THE COURT: All right. Any exceptions or additions from
12 the state?

13 MR. GOLDBERG: No, sir.

14 THE COURT: Mr. Hart?

15 MR. HART: No, sir.

16 THE COURT: Examine all the evidence. Make sure what's
17 in should be in and there might be some question. What's
18 marked for ID doesn't go in. Once y'all agree on everything
19 we'll give it to them.

20 Mr. Goldberg has done a wonderful job for the state,
21 and I'd like to congratulate Mr. Hart for doing a wonderful
22 job. This is an appointed case. He didn't try to run away,
23 didn't try to get out of it. Did a wonderful job. We'll
24 just see what happens.

25 And the alternate, as I usually do bring him out and --

State v. Victor Smith 9/19/11 - 9/23/11

793

1 let him stay there until we get all the evidence.

2 COURT REPORTER: All the evidence is ready.

3 MR. GOLDBERG: All the evidence is accounted for.

4 THE BAILIFF: We need a truck to get all this evidence
5 back there.

6 THE COURT: All right. Take your time. Take it to them
7 and bring -- what's his name?

8 THE BAILIFF: Mr. Hall. We got him out.

9 THE COURT: All right.

10 (Evidence to the jury at 12:36 p.m.)

11 (Alternate released.)

12 (Court in recess awaiting verdict from jury.)

13 (Court in session for verdict at 2:12 p.m.)

14 THE COURT: Thank you very much, ladies and gentlemen.

15 Are we all ready?

16 MR. HART: Yes, sir.

17 THE COURT: All right. I understand we have a verdict in
18 this case. I have no idea what it is. Whatever it is we
19 all have to accept it. I would suggest that there be no
20 outburst from anyone from either side.

21 All right, bring the jury in.

22 (Jury in at 2:13 p.m.)

23 THE BAILIFF: All jurors are present, sir.

24 THE COURT: Welcome back, Madam Forelady and members of
25 the jury.

State v. Victor Smith 9/19/11 - 9/23/11

794

1 THE CLERK: Madam Forelady, if the jury has reached a
2 verdict will you hand it to me, please.

3 (Verdict form handed to the clerk.)

4 THE CLERK: Thank you.

5 (Verdict form handed to the Court.)

6 THE COURT: All right. You may publish it.

7 THE CLERK: Yes, sir.

8 State of South Carolina, County of Richland, in the
9 Court of General Sessions. Indictment number
10 2010-GS-40-12999, indictment for murder. State of South
11 Carolina verses Victor Dewaine Smith. The verdict is: We
12 the jury by unanimous consent find the defendant guilty as
13 charged.

14 Signed by the foreperson on this 23 day of September,
15 2011.

16 Madam Forelady, is this your verdict and the verdict of
17 the entire jury?

18 MADAM FORELADY: It is.

19 THE CLERK: Thank you very much.

20 THE COURT: Anything further for this jury on behalf of
21 the state?

22 MR. GOLDBERG: No, sir.

23 THE COURT: Mr. Hart?

24 MR. HART: Poll the jury.

25 THE COURT: All right. Poll the jurors.

State v. Victor Smith 9/19/11 - 9/23/11

795

1 THE CLERK: Yes, Your Honor.

2 Ladies and gentlemen of the jury I now have two
3 questions to ask you. The questions will be was this your
4 verdict and is it still your verdict. When I call out your
5 juror number please answer yes or no.

6 Juror No. 19, please answer yes or no. No. 19, was
7 this your verdict?

8 JUROR NO. 19: Yes.

9 THE CLERK: Is it still your verdict?

10 JUROR NO. 19: Yes.

11 THE CLERK: No. 15, was this your verdict?

12 JUROR NO. 15: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR NO. 15: Yes.

15 THE CLERK: No. 193, was this your verdict?

16 JUROR NO. 193: Yes.

17 THE CLERK: Is this still your verdict?

18 JUROR NO. 193: Yes.

19 THE CLERK: No. 66, was this your verdict?

20 JUROR NO. 66: Yes.

21 THE CLERK: Is it still your verdict?

22 JUROR NO. 66: Yes.

23 THE CLERK: No. 254, was this your verdict?

24 JUROR NO. 254: Yes.

25 THE CLERK: Is this still your verdict?

1 JUROR NO. 254: Yes.

2 THE CLERK: No. 77, was this still your verdict?

3 JUROR NO. 77: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR NO. 77: Yes.

6 THE CLERK: No. 298, was this your verdict?

7 JUROR NO. 298: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR NO. 298: Yes.

10 THE CLERK: No. 153, was this your verdict?

11 JUROR NO. 153: Yes.

12 THE CLERK: Is this still your verdict?

13 JUROR NO. 153: Yes.

14 THE CLERK: No. 216, was this your verdict?

15 JUROR NO. 216: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR NO. 216: Yes.

18 THE CLERK: No. 245, was this your verdict?

19 JUROR NO. 245: Yes.

20 THE CLERK: Is this still your verdict?

21 JUROR NO. 245: Yes.

22 THE CLERK: No. 43, was this your verdict?

23 JUROR NO. 43: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NO. 43: Yes.

State v. Victor Smith 9/19/11 - 9/23/11

797

1 THE CLERK: No. 106, was this your verdict?

2 JUROR NO. 106: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR NO. 106: Yes.

5 THE CLERK: Thank you.

6 Jury has been polled, Your Honor.

7 THE COURT: Anything further for this jury from anyone?

8 Madam Forelady, and members of the jury, I take this
9 opportunity to thank you all on behalf of everyone involved
10 in this case. It is difficult to sit in judgment of your
11 fellow citizens, but I've observed you the whole week. Y'all
12 paid close attention to the evidence, y'all listened to law
13 obviously and no one can complain about the verdict that
14 you've reached. Verdict means to speak the truth.

15 So thank you and congratulate you on your patriotic
16 efforts and your duty as jurors in this case.

17 Now, I'm going to ask that you go back into the jury
18 room. Mr. Truett has some information, some documents, I
19 guess, that he has to give you. It verifies that you were
20 here this week, that sort of thing.

21 I thank you all on behalf of everybody, once again for
22 your patriotic service.

23 Just go to the jury room relax for a few moments, and
24 we'll get this information to you.

25 (Jury out at 2:17 p.m.)

1 (Off the record bench conference with counsel and the
2 Court.)

3 THE COURT: Now, to the remaining members, the remaining
4 people in the audience the post-trial motions that I need to
5 entertain I've decided not to do so at this time. I will
6 probably reconvene and listen to mitigation. With a
7 conviction for murder it's 30 years to life. So the
8 question is do I give him 30 years or do I give him life,
9 and I'm going to give Mr. Hart the opportunity to convince
10 me to give him the 30 years. I'm going to give them a
11 little time for post-trial motions. So that's my decision.
12 It was reached without any input from the solicitor or Mr.
13 Hart. It's what I concluded to do. Obviously, it's a very
14 sad and tragic thing. My duty as the judge is now to decide
15 whether I give Mr. Smith 30 years, which is the minimum,
16 that's day for day or do I give him a life sentence.

17 That's something I want to think about and contemplate
18 and I want to give Mr. Hart an opportunity to persuade me
19 not to give him life. Likewise I'll give the solicitor
20 every opportunity to persuade me to give him life.

21 I'd rather not do it today. That's my decision. It
22 has nothing to do with any request from the solicitor or Mr.
23 Hart. It's what I've concluded on my own. I think it's
24 probably the right thing to do considering the emotions of a
25 trial like this. So that's my decision. We'll probably

State v. Victor Smith 9/19/11 - 9/23/11

799

1 reconvene the week of October 23, if that meets with
2 everybody's schedule and I'll pronounce sentence at that
3 time.

4 All your post-trial motions are preserved until that
5 time. You did a wonderful job on a very difficult set of
6 facts. I congratulate you on working so hard on an
7 appointed case. I can't say enough about the job you did.
8 And likewise, Mr. Goldberg, I can't say enough about the job
9 you did. It was a very difficult case. Mr. Potts, I give
10 you kudos for how hard you worked on this trial.

11 Thank you all. We'll reconvene probably the week of
12 October 23 if that suits everybody's schedule.

13 This proceeding is concluded for today.

14 Thank you all.

15 (This proceeding was concluded.)
16
17
18
19
20
21
22
23
24
25

State v. Victor Smith 9/19/11 - 9/23/11

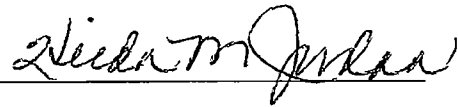
800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, 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 THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 19 THROUGH THE 23 OF SEPTEMBER, 2011.

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



Hilda M. Jordan, CVR-M

APRIL 10, 2012

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Victor Smith,)
)
 Defendant.)
)
 _____)

October 6, 2011
Columbia, South Carolina

The Honorable L. Casey Manning, Judge, and a jury.

Daniel R. Goldberg, Esquire, Assistant Solicitor
Carter R. Potts, Esquire, Assistant Solicitor
Attorneys for the State

Christopher Hart, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR
Circuit Court Reporter

I N D E X

<u>Description</u>	<u>Page No.</u>
Sentence of the Court	11
Certificate Page	14

(FULL TRIAL PROVIDED UNDER SEPARATE COVER.)

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>

NO EXHIBITS INTRODUCED.

1 MR. GOLDBERG: State calls Victor Smith.

2 THE COURT: Is everybody ready?

3 MR. GOLDBERG: Yes, sir.

4 THE COURT: Solicitor, you may proceed, sir.

5 MR. GOLDBERG: Thank you, Your Honor. If it pleases
6 the court? We are back on the record in the matter of the
7 *State vs. Victor Smith* for purposes of post-trial motions
8 and sentencing after a jury trial that was completed the
9 week of September 19, 2011, which the jury convicted the
10 defendant of murder. I believe post-trial, Mr. Hart has
11 some post-trial motions.

12 THE COURT: That's right, Mr. Hart. I delayed the
13 post-trial motions to give you a little breather, but I'll
14 be happy to entertain them now.

15 I think you preserved most of them for the record, if
16 I'm not mistaken. I think there might have been one point,
17 and you both can help me, between maybe -- I'm trying to
18 think, between arguments and my charge, but it would only
19 take effect after my charge, I think. So, that's the point
20 we're at pretty much, and you may proceed.

21 I don't think -- I think everything that should have
22 been preserved in your case is preserved. If I'm missing
23 something, remind me and I'll make sure I do include that,
24 Mr. Hart. All right, go ahead, sir.

25 MR. HART: Thank you. If it please the court? As you

1 know, we were in a week-long murder trial, and I do renew
2 those motions all over again. We do believe that there was
3 evidence that was admitted that should not have been
4 admitted. And we -- based off of that, Your Honor, I think
5 that the jury weighed that evidence. A lot of it was
6 prejudicial, and we made some motions and objections under
7 44(b), and also based off the search warrant, Your Honor.

8 THE COURT: Then it goes back primarily to the search
9 warrant. That was the basis, I think, for everything, the
10 search warrant into the apartment he once occupied. Is
11 that ---

12 MR. HART: That, that is correct, Your Honor. Also in
13 addition to the photos, we made objections under 44(b) that
14 they were highly prejudicial.

15 THE COURT: More prejudicial than probative. That was
16 to each and every one of the 173 photos.

17 MR. HART: That is, that is ---

18 THE COURT: Was it 173 similar?

19 MR. GOLDBERG: Ball park, yes, sir.

20 THE COURT: Yeah. Okay. Fine.

21 MR. HART: That is correct, Your Honor.

22 THE COURT: Yes, sir.

23 MR. HART: In addition to that, Your Honor, we made an
24 objection to the death certificate because we believe that
25 the information to get a certified state document was based

1 off of the information from the co-defendants, which not --
2 which was not legitimate information.

3 THE COURT: Well, it may or may not have been, but
4 that's one of those typical documents that -- exception to
5 the hearsay I think was my ruling at the time, so it still
6 applies.

7 Of course, any further motions, I will let Mr.
8 Goldberg put something on the record if you'd like.

9 MR. GOLDBERG: Your Honor, we'd just stand by your --
10 and rely on your previous rulings as to those matters and
11 ask the motion be denied.

12 THE COURT: You think you're fully covered, Mr. Hart,
13 now?

14 MR. HART: I do, Your Honor, and based off of that,
15 we'll respectfully ask the court to order a new trial for
16 Mr. Victor Smith.

17 THE COURT: All right, all rulings made previously
18 remain the same. That is the motions were denied, and the
19 request for a new trial is denied. I think the evidence
20 indicates, would allow twelve people from this community to
21 reach the decision that they made. Thank you so very
22 kindly, Mr. Hart.

23 MR. HART: Thank you, Your Honor.

24 THE COURT: Now we shall proceed to sentencing
25 considerations, and we know he was convicted of murder.

1 That means the minimum of thirty years day for day or life.
2 And the reason I postponed it was, as I told you both, you
3 need a chance to breathe a little bit and make your best
4 presentation you can.

5 So, Solicitor, I think it's your job to go first.

6 MR. GOLDBERG: Yes, sir. Thank you, but if I could
7 have one second?

8 THE COURT: Yes, sir.

9 (A PAUSE.)

10 MR. GOLDBERG: Judge, obviously it was a week-long
11 case and as you know, there were number a number of family
12 members that were present throughout the week. Some
13 letters, I believe, were submitted to you earlier in the
14 week, and copies were made for Mr. Hart that came ---

15 THE COURT: And for the record, I've read each and
16 every one of those.

17 MR. GOLDBERG: Yes, sir. Thank you, from the victim
18 Ernest Robinson's mother and cousins, aunts, and uncles.
19 At this time his aunt, Renee Grate, and his cousin, Latoya
20 Grate, who are here today would like to address the court.

21 THE COURT: All right, you need to come down and stand
22 in front of the microphone.

23 MS. L. GRATE: Your Honor, I'm here today to represent
24 the cousins ---

25 THE COURT: You need to tell me your name first for

1 the record, please.

2 MS. L. GRATE: Latoya Grate, and I'm here today to
3 speak on behalf of E.J., as we call him, Ernest Robinson,
4 but to represent his siblings and cousins, the younger
5 generation.

6 I know you were presented letters, but I'd just like
7 to reemphasize that E.J. was murdered in a brutal fashion.
8 Victor Smith on that day served as investigator because he
9 believe someone stole his money. He served as investigator
10 to show in his mind and to others that E.J. did it. He
11 served as jury. He convicted him guilty, and he also
12 served as executioner on September 27th, on the early
13 morning of September 28th.

14 I don't stand here today in anger or in vengeance
15 because I forgave him a long time ago. I stand here to
16 seek justice for E.J. And for justice, I'm asking for the
17 maximum sentence: life without the possibility of parole.

18 THE COURT: Thank you, ma'am. Ms. Latoya Grate, is
19 that correct?

20 MS. L. GRATE: Yes, Your Honor.

21 THE COURT: Yes, ma'am, your name, please.

22 MS. R. GRATE: I'm Renee Grate.

23 THE COURT: Yes, ma'am.

24 MS. R. GRATE: And I'm E.J.'s aunt. I represent his
25 mother, Deborah Ashe, and her siblings as well.

1 Today is about E.J. It's about holding someone
2 accountable for his brutal and senseless murder. It's
3 about -- a mother should not have to bury her own child.
4 That's just not the natural law. And we ask that Victor
5 Smith is sentenced to life in prison without the
6 possibility of parole.

7 THE COURT: All right. Thank you, Ms. Grate.

8 MR. GOLDBERG: Your Honor, there are an additional
9 number of family members that are present. Cousins, aunts,
10 uncles, they're here on behalf of the family. Investigator
11 Holdorf, Investigator Cronise, and I believe Investigator
12 Gallegos also from sheriff's department are all here
13 present. I don't believe they wish to address the court.

14 I'm not going to go back through the detailed facts of
15 the case. Your Honor presided over the entire trial.
16 Obviously paid close attention and heard the facts as they
17 were detailed throughout the testimony.

18 This is not the first murder case to come through this
19 courtroom, and it won't be the last. But I think one thing
20 that stands out about this one, as the victims have noted,
21 was the brutal nature of the killing over, at best, a
22 couple of hundred dollars or the allegation of a couple of
23 hundred dollars.

24 There was a beating at the hands -- by hands, by feet.
25 Most significantly by the breaking of a brick and the

1 40-pound dumbbell that was used to assault Mr. Robinson
2 before he was actually shot in the head. And not just the
3 brutality of the incident itself, but the cold nature in
4 which it was dealt with afterwards: wrapping him up and
5 dumping him out in the woods while people were looking for
6 him, trying to find him, not knowing what happened to him,
7 and wondering for all those months where he was.

8 If you, if you look at all that, I do believe it
9 separates this case from many others. And it would be for
10 those reasons that the state would respectfully ask that
11 you sentence the defendant to the maximum sentence
12 possible.

13 THE COURT: All right, thank you, Mr. Goldberg.

14 MR. GOLDBERG: Thank you.

15 THE COURT: Mr. Hart.

16 MR. HART: Thank you, Your Honor. If it would please
17 the court?

18 MR. GOLDBERG: I'm sorry. I apologize I left out his
19 prior record. I apologize.

20 THE COURT: I recall from the trial; I remember what
21 his prior record was. That's not necessary.

22 MR. GOLDBERG: Thank you.

23 THE COURT: Go ahead, Mr. Hart.

24 MR. HART: Thank you. Thank you, Your Honor. If it
25 pleases the court? Mr. Smith is twenty-seven years old.

1 He sat through the trial just like we all did. I think one
2 thing that was telling throughout the trial was when
3 Investigator Holdorf came to visit him in Mississippi, he
4 did something that no other co-defendant in this trial or
5 case has done. He expressed his sympathy ---

6 THE COURT: His sympathies to the family.

7 MR. HART: Yes, sir. He accept his sympathy -- he
8 expressed his sympathy and his remorse. And he's also
9 expressed that to me, Your Honor.

10 With that, Your Honor, we -- the facts are the facts,
11 and we cannot change those facts. Based off of that, Your
12 Honor, I've talked to his family. Talked to his mother.
13 That's all the family he has.

14 He's twenty-seven. If you were to sentence him to
15 thirty years, Your Honor, thirty years is a long time. By
16 my calculation, Your Honor, he'll be almost sixty years old
17 when he gets out of jail. That's a long time; that's a
18 very long time. I won't tell my age, but I'll be a lot
19 older in thirty years, Your Honor. Based off of that, Your
20 Honor, we would respectfully ask that you do sentence him
21 to thirty years, the minimum.

22 THE COURT: All right.

23 MR. HART: I've expressed and I've talked to him in
24 detail about the consequences. That should he be convicted
25 of murder, we can't ask any less than thirty, and he

1 understands that, too.

2 THE COURT: All right. Thank you, Mr. Hart.

3 Anything further from anyone?

4 MR. GOLDBERG: No, sir.

5 SENTENCE OF THE COURT:

6 THE COURT: Before I pronounce sentence, let me say
7 once again, and I repeated it throughout the course of the
8 trial. I've said it privately and publicly. Mr. Hart, you
9 did what I thought was a fantastic job in representing Mr.
10 Smith. So much so sometimes that you made the prosecution
11 a little uneasy. But that's the way trials should be
12 conducted. You're both advocates. You were a zealous
13 advocate. You did the best you could with everything you
14 had, and I complimented you throughout the course of trial,
15 and I do so once again.

16 This was an appointed case, and forget your ties to
17 the legislature. But to take time to do all the work that
18 you did, you need to be commended for that, and I do so
19 now.

20 But your fine work has something to do but not
21 everything to do with my decision here today. But I want
22 you and the public to know that it, it meant a lot to me as
23 a trial judge to see somebody work so hard on behalf of a
24 defendant. And regardless of what he's charged with,
25 regardless of what the obstacles are, you did a wonderful

1 job, and I congratulate you on that.

2 And also, Mr. Goldberg, you and Mr. Potts, I reiterate
3 what I've already said. That y'all have worked very hard.
4 It was a difficult case, and y'all did not have an easy
5 job. But you, along with the police and the investigators
6 and everybody else involved, I think you presented an
7 honest, truthful, simple case that was complicated by the
8 fact that Mr. Robinson had gone missing, now there was no
9 DNA.

10 But the bottom line, I think, in this whole entire
11 case was probably the testimony of the mother of his child,
12 as well as the two co-defendants. And nobody blames his
13 brother for not wanting to testify. It's hard to testify
14 against your brother. So, I compliment both sides for the
15 wonderful job you did in the context of a very difficult
16 case.

17 Now, whether it should be thirty years or life, you
18 know, it probably is not going to make a significant
19 difference to most of the people here. I'll long be dead
20 by the time either sentence has been served, and if not,
21 I'll be such an old man I won't hardly remember anything
22 anyway. And that probably goes for most of the people
23 here.

24 But considering the totality of the circumstances, I
25 think the only fair sentence to render in this case on

1 indictment 2010-12999, the *State vs. Victor Smith*, it's
2 indictment for murder, sentence of the court that you,
3 Victor Smith, be sentenced to the Department of Corrections
4 for a period of life. Good luck to you, Mr. Smith.

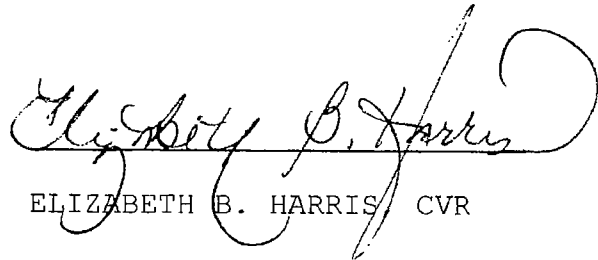
5 This matter is concluded. Thank you all so very much
6 for your participation.

7 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM 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 ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 6TH DAY OF OCTOBER, 2011.

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



ELIZABETH B. HARRIS CVR

COLUMBIA, SOUTH CAROLINA

DECEMBER 31ST, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VICTOR SMITH,

APPELLANT

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUE ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT 5

CONCLUSION 7

PETITION TO BE RELIEVED AS COUNSEL 8

TABLE OF AUTHORITIES**Cases**

<u>Franks v. Delaware</u> , 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).....	5, 6
<u>State v. Davis</u> , 371 S.C. 412, 639 S.E.2d 457 (Ct.App. 2006)	6

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to suppress evidence found pursuant to a search warrant when the affidavit in support of the search warrant contained a false statement indicating that the decedent was last seen with the appellant and the remainder of the affidavit lacked sufficient probable cause to support issuance of the search warrant?

STATEMENT OF THE CASE

In February of 2010, the Richland County Grand Jury indicted Smith for murder, indictment #2010-GS-40-12999. On September 19, 2011, Smith proceeded to jury trial before the Honorable Casey Manning. On September 23, 2011, the jury returned with a verdict of guilty. The sentencing hearing was deferred to October 6, 2011. At that time, Judge Manning imposed a life sentence. A timely notice of intent to appeal was filed on October 11, 2011. This appeal follows.

ARGUMENT

The trial judge erred in refusing to suppress evidence found pursuant to a search warrant when the affidavit in support of the search warrant contained a false statement indicating that the decedent was last seen with the appellant and the remainder of the affidavit lacked sufficient probable cause to support issuance of the search warrant.

Prior to trial Appellant moved to suppress evidence found pursuant to a search warrant because the affidavit in support of the search warrant contained a false statement. (R. p. 56-59). The judge conducted a hearing pursuant to Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). (R. pp. 68 – 100). During the hearing, Investigator Holdorf with the Richland County Sheriff's Department confirmed that the affidavit in support of the search warrant contained a statement that on the night of his disappearance the decedent, Ernest "E.J." Robinson was seen leaving Beef O'Brady's, the restaurant where both Robinson and appellant worked, with the appellant. (R. p. 76, lines 15-19). The investigator admitted that the statement was inconsistent with a later statement he took from employees at Beef O'Brady's. (R. p. 76, lines 20 – p. 77, lines 1-5). The investigator stated that this was simply a mistake and not done intentionally. (R. p. 77, lines 2-5).

Appellant moved to suppress approximately 103 items seized pursuant to a search warrant based on the fact that the false statement in the affidavit in support of the search warrant constituted a reckless disregard for the truth. (R. p. 97, lines 5 – 25). The judge denied the motion to suppress. (R. p. 100, lines 11-12). The judge stated, "For all the reasons that come into play when you look at Franks v. Delaware assuming that part of these statements were made to the master was false, there's still probable cause, I do believe." (R. p. 100, lines 14-17). The judge erred.

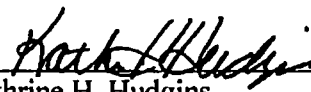
In State v. Davis, 371 S.C. 412, 415-416, 639 S.E.2d 457, 459 (Ct.App. 2006), the South Carolina Court of Appeals wrote, “Franks outlined a two-part test for challenging the warrant affidavit's veracity. First, to mandate an evidentiary hearing, there must be ‘allegations of deliberate falsehood or of reckless disregard for the truth ... and those allegations must be accompanied by an offer of proof.’ ... Second, ... the court must consider the affidavit's remaining content, with the affidavit's false material set to one side, to determine if it is sufficient to establish probable cause.”

The remaining facts contained in the affidavit do not establish probable cause for the issuance of a search warrant for an apartment where appellant no longer lived. The other factors relied upon in the affidavit included an alleged statement from appellant that he had been with Robinson on the date that he disappeared, speculation that appellant believed Robinson stole his rent money and factors indicating that Robinson had not been assaulted and shot where the body was eventually discovered months after his disappearance. (R. pp. 68-100). The affidavit lacked probable cause and the judge erred in refusing to suppress evidence seized as a result of the defect search warrant.

CONCLUSION

Based on the above argument, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of February, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Richland County

 L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VICTOR SMITH,

APPELLANT

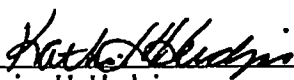
 PETITION TO BE RELIEVED AS COUNSEL

Counsel for Victor Smith states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge L. Casey Manning, which was held on October 6, 2011, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Victor Smith.

Respectfully submitted,



 Kathrine H. Hudgins
 Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of February, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VICTOR SMITH,

APPELLANT

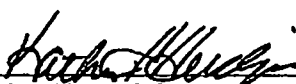
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment and sentencing sheet;
- (2) Trial transcript;
- (3) Sentencing transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

February 11th, 2013



Kathrine H. Hudgins
Appellate Defender

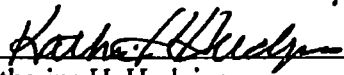
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 11, 2013



Katherine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Richland County

 L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

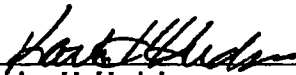
V.

VICTOR SMITH,

APPELLANT

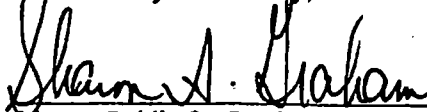
 CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Victor Smith, #348112 at Lieber Correctional Institution, this 11th day of February, 2013.


 Kathrine H. Hudgins
 Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
 this 11th day of February, 2013.


 Shannell A. Graham (L.S.)
 Notary Public for South Carolina
 My Commission Expires: April 27, 2022

11-3918

ATTORNEY GENERAL'S OFFICE 827
RECEIVED 11-20-13
ADMINISTRATIVE SERVICES

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Victor Smith, Appellant.

Appellate Case No. 2011-201306

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2013-UP-423
Submitted October 1, 2013 – Filed November 20, 2013

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Donald J. Zelenka,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

County of Richland2014C P400 4334
In the Court of Common PleasVictor O. Smith # 348112

Full name and prison number (if any) of Applicant,

vs.

State of South Carolina

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEFRICHLAND COUNTY
FILED
2014 JUL -9 PM 1:50
JEANNETTE W. MCBRIDE
C.C.P. & G.S.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lieber Correctional Institution, P.O. Box 205 Ridgville, SC
29472
2. Name and location of Court which imposed sentence Richland County Judicial Center
1701 Main Street, Columbia S.C. 29201
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2010-GS-40-12999, Murder
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 6, 2011 - Life
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

- 830
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty ✓
 - (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. Court of Appeals
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Dismissed
- ii. _____
- iii. _____

(c) the date of each such result:

- i. November 20, 2013
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Unpublished Opinion No. 2013-UP-423
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Judicial Misconduct
- (c) Ineffective Assistance of Appellate Counsel

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Failure to investigate the facts of the case, Failure to Object to States Evidence
- (b) Canon 3b(8) violation, Due Process violation, Rule 502-Rule 1 violation
- (c) Failure to investigate the facts of the case, Failure to preserve appellate issues

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

(a) which grounds have been presented:

832

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Trial Counsel and Appellate Counsel failed to investigate facts and preserve appellate issues.

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Christopher R. Hart, 384 North Main Street, Columbia S.C. 29203

ii. Kathrine H. Hudgins, 1330 Lady Street, Suite 401, Columbia S.C. 29201-3332

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Arraignment, Trial, Sentencing.

ii. Direct Appeal

iii. _____

18. State clearly the relief you seek in filing this application.

Vacation of Sentence / New Trial

19. Are you now under sentence from any other court that you have not challenged?

No

County of Richland

I, Victor O. Smith # 348112, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Victor Smith 348112

SWORN to and subscribed before me this 1st

day of July, 19 2014

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

RICHLAND COUNTY
FILED
2014 JUL -9 PM 1:50
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Victor O. Smith # 348112, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Victor Smith 348112
Applicant

SWORN or affirmed to and subscribed before me this

1st day of July, 19 2014

Ludrean Bryant
Notary Public

My Commission Expires May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Victor D. Smith, #348112

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-4334

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed July 9, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the February 2010 term of the Court of General Sessions for Richland County for Murder (2010-GS-40-12999). Applicant was represented by Christopher R. Hart, Esq. Applicant proceeded to trial on September 19-23, 2011. He was convicted as indicted. On October 6, 2011, the Honorable Casey L. Manning sentenced Applicant to confinement for life.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Kathrine Hudgins, Esq. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Smith, No. 2013-UP-423 (filed November 20, 2013). The Remittitur was issued on December 6, 2013.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's trial hearing, Applicant's records for the Department of Corrections, and Applicant's appellate

records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance Counsel, in that;
 - a. Counsel "fail[ed] to investigate the facts of the case",
 - b. Counsel "fail[ed] to object to States evidence"
2. Judicial Misconduct, in that;
 - a. "Canon 3b(8) violation",
 - b. "Due Process Violation
 - c. "Rule 502 Rule 1 violation"
3. Ineffective Assistance of Appellate Counsel, in that;
 - a. "Failure to investigate the facts of the case"
 - b. "Failure to preserve appellate issues"

III.

Applicant's first claim is an allegation of ineffective assistance of trial counsel. Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's second claim is an allegation of judicial misconduct. Judicial misconduct is not an issue for Post-Conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-Conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A Post-Conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could

have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). The Applicant has not supported this allegation with any facts whatsoever. The Respondent submits the Applicant has not carried his burden of proving actual prosecutorial misconduct; therefore, this allegation should be summarily dismissed.

V.

Applicant's third claim is an allegation of ineffective appellate counsel. Respondent contends that Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed

to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of trial and appellate counsels. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VIII.

Each and every allegation contained within the application not either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 21, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

VICTOR D. SMITH, #348112)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2014-CP-40-4334

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia SC 29201

DATED this 21st day of July, 2015.


Sara B. Moore, Legal Assistant
 For Respondent

State of South Carolina)
)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2015-CP-40-4334

Victor D. Smith,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record

December 11, 2015
Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr., Judge

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

Jonathan D. Waller, Esq.
Attorney for the Applicant

J. Clayton Mitchell, III, Esq., Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>

Victor Smith

Direct Examination by Mr. Waller 13

Cross-examination by Mr. Mitchell. 29

Christopher Hart

Direct Examination by Mr. Waller 32

Cross-examination by Mr. Mitchell. 68

Redirect Examination by Mr. Waller 86

Certificate Page. 101

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>

No Exhibits Introduced.

1 THE COURT: Mr. Mitchell.

2 MR. MITCHELL: All right, may it please the court?

3 This is *Victor Smith vs. The State of South Carolina*,
4 2014-CP-40-4334. Mr. Smith was indicted February of 2010
5 for murder. He was represented on the charge by Mr. Chris
6 Hart. He proceeded to trial September 19th to September
7 23rd of 2011. He was convicted. He was sentenced a few
8 weeks later, October 6th, to life imprisonment.

9 A notice of appeal was filed and an *Anders* briefs was
10 submitted. The South Carolina Court of Appeals dismissed
11 that appeal, and a remittitur was issued December of 2013.
12 This application was filed timely July 9, 2014, where Mr.
13 Smith made various, various allegations of ineffective
14 assistance of counsel.

15 He is represented by Mr. Jonathan Waller, and I
16 believe the issues we're going forward with today are
17 counsel was ineffective for consenting to references that
18 Mr. Smith was in the Mississippi Department of Corrections
19 when he was arrested, that counsel was ineffective for an
20 improper objection to the victim's death certificate being
21 admitted into evidence, and I think an allegation of
22 failure to properly investigate the case and the witnesses.

23 THE COURT: Where are you getting that information?

24 MR. MITCHELL: This is -- it's not from an amendment.
25 If just from what Mr. Waller and I have spoken about

1 recently, but I'll let them speak more on that, articulate
2 the allegations.

3 THE COURT: My application doesn't have all of that,
4 correct?

5 MR. WALLER: I don't believe that it has all of that,
6 Your Honor. In addition, there are some other minor missed
7 objections or, or things of that nature that took place
8 during the trial, trial procedure issues that we will get
9 to.

10 THE COURT: All right, why don't you just tell me what
11 they are, and then you can ---

12 MR. WALLER: Sure.

13 THE COURT: --- call your witness.

14 MR. WALLER: Sure. Your Honor, I believe ---

15 THE COURT: Something about Mississippi.

16 MR. WALLER: Yes, sir, Your Honor. He was, he was
17 incarcerated in the Department of Corrections in
18 Mississippi when he was arrested. Investigators traveled
19 to Mississippi and, and interviewed him. There were
20 references -- obviously his statement needed to be a part
21 of the, part of the trial, and there was some confusion
22 about how to get into evidence without telling the jury
23 where he was and what he was there for. Mr. Hart consented
24 to the reference being made that he was in the Department
25 of Corrections in Mississippi when he was spoken to. That

1 reference came up approximately ten times I guess, Your
2 Honor, throughout the course of the trial.

3 Your Honor, the state also introduced the death
4 certificate of the individual who was killed. I believe
5 the objection -- Mr. Hart objected that it was not
6 admissible because the information contained in the death
7 certificate, which included the manner of death, could not
8 be verified. They never actually identified the remains
9 that were found as the individual Mr. Smith was on trial
10 for.

11 THE COURT: Say that again.

12 MR. WALLER: They were -- the body that was found was
13 found approximately a year after the murder supposedly took
14 place. They were never able to forensically identify that
15 that individual was the individual -- that the body was the
16 individual that was supposedly killed. Through witness
17 testimony and other things like that, that's how they tried
18 to do it, but there was a death certificate issued by the
19 coroner's office that stated the manner to death and also
20 the date of death, which was used by statements of -- from
21 codefendants and other witnesses to give that information
22 and put on the death certificate. That was admitted into
23 evidence. I think that the objection to the accuracy of
24 the manner and date of death were a valid objection, but I
25 don't think it was the best objection.

1 Your Honor, there was a witness ---

2 THE COURT: Did the -- did any forensic pathologist
3 testify?

4 MR. WALLER: Yes, sir, they did, multiple. Forensic
5 pathologists, a forensic anthropologist, two coroners, DNA
6 experts, and nobody was able to forensically, definitively
7 link that body ---

8 THE COURT: What was the name of the deceased?

9 MR. WALLER: Ernest Robinson. Went by E.J.

10 THE COURT: Okay.

11 MR. WALLER: Your Honor, there was a witness -- there
12 was a missing persons investigation done originally until
13 the body was found. There was a witness who was spoken to
14 who thought that she had seen -- potentially she had seen
15 the, the deceased after the supposed date of death. That
16 that was -- and that was never followed up on. She was not
17 called to testify at trial. She was interviewed during the
18 missing persons investigation. I don't believe it was
19 followed up on during the actual murder investigation. So,
20 we have a claim of failure to investigate.

21 Your Honor, there was, I believe, an improper comment
22 made to the jury in the judge's opening remarks.

23 THE COURT: Where would that be? Where could I find
24 that?

25 MR. WALLER: Page 105, line 17 where Judge Manning

1 tells the jury that if, if he makes a comment on the facts,
2 the quote is: You are at liberty to disregard my comments.
3 And there was ---

4 THE COURT: What's wrong with that?

5 MR. WALLER: Sir?

6 THE COURT: What's wrong with that, in your opinion?

7 MR. WALLER: My opinion, it's -- he needs to tell them
8 they must disregard his comments.

9 THE COURT: Oh.

10 MR. WALLER: Not that they are at liberty to.

11 THE COURT: Okay.

12 MR. WALLER: During the testimony of Major Stan Smith,
13 I think there was some bolstering of other law-enforcement
14 witnesses.

15 THE COURT: Where is that?

16 MR. WALLER: Page 293 and continuing on to page 294.
17 Additionally, I believe all that same area he testified
18 outside of the -- outside of his qualifications as an
19 expert.

20 THE COURT: Who?

21 MR. WALLER: The same...

22 THE COURT: Oh. Smith?

23 MR. WALLER: Yes, sir.

24 THE COURT: He's not expert.

25 MR. WALLER: I apologize, Your Honor. I mean Sergeant

1 Stan Richards.

2 THE COURT: Okay.

3 MR. WALLER: I apologize, and that would be on page
4 361, line 8.

5 THE COURT: 361?

6 MR. WALLER: Yes, sir, line 8.

7 THE COURT: Okay, bloodstain pattern analysis?

8 MR. WALLER: Yes, sir. Additionally, during his
9 testimony ---

10 THE COURT: He was qualified as an expert?

11 MR. WALLER: He was qualified as an expert in crime
12 scene analysis and blood, bloodstain patterns.

13 Additionally, during his testimony on page 370,
14 continuing on page 371, I think there was a missed
15 objection to speculation.

16 THE COURT: Okay.

17 MR. WALLER: And on page 389, again in his testimony,
18 I think he testified outside the scope of his expertise.

19 THE COURT: 389?

20 MR. WALLER: Yes, sir.

21 THE COURT: Okay.

22 MR. WALLER: Your Honor, the issue with the death
23 certificate begins on page 516. Additionally, when that,
24 when that death certificate, which was State's Exhibit 180,
25 I believe, was formally introduced and admitted into

1 evidence, there was no objection.

2 THE COURT: All right, 518?

3 MR. WALLER: 516, Your Honor.

4 THE COURT: Mr. Hart did make an objection.

5 MR. WALLER: He did, Your Honor. Page 529 is where
6 the consent to the references that he was in the Department
7 of Corrections in Mississippi was given.

8 THE COURT: I'm comfortable, Mr. Goldberg?

9 MR. WALLER: Yes, sir.

10 THE COURT: All right.

11 MR. WALLER: And page 532 is where the state
12 introduced the death certificate without objection.

13 THE COURT: All right.

14 MR. WALLER: I think that on page 551, the deputy
15 coroner was qualified as an expert in forensic
16 anthropology. Testified outside of his expertise on --
17 beginning on line 18.

18 THE COURT: About wind currents?

19 MR. WALLER: Yes, sir.

20 THE COURT: Okay.

21 MR. WALLER: On page 645, lines 7 through 70, Jasmine
22 Bright, a lay witness, is testifying. I believe there was
23 a missed objection to hearsay testimony, 645.

24 THE COURT: All right.

25 MR. WALLER: Your Honor, on page 685 on line 18,

1 Investigator Holdorf I believe improperly bolsters another
2 law enforcement witness's testimony.

3 THE COURT: What line?

4 MR. WALLER: Line 18, Your Honor.

5 THE COURT: All right.

6 MR. WALLER: During the same witness, the witness's
7 testimony on page 692, beginning on line 13 and continuing
8 through that page, I believe there was more bolstering,
9 this time of a lay witness and codefendant.

10 THE COURT: This was a codefendant case?

11 MR. WALLER: Sir?

12 THE COURT: There was a codefendant in this case?

13 MR. WALLER: Yes, sir. There were three codefendants.

14 THE COURT: All tried together?

15 MR. WALLER: No, sir. Mr. Smith was the only one
16 tried. Two testified against him. His brother was a
17 codefendant. Also was called and exercised his Fifth
18 Amendment right to remain silent.

19 THE COURT: Okay.

20 MR. WALLER: And then on page 714 of that same
21 witness, beginning on line 7 I think there was an
22 objectionable comment made.

23 THE COURT: Okay.

24 MR. WALLER: I think that there should have been an
25 objection to the jury charge, the hand of one, hand of all

1 jury charge that was given. The example that was given to
2 the jury was two codefendants shooting another person with
3 one gun, one bullet, and they can both be charged. I think
4 that's too close to the facts at hand. There was no
5 objection to that. There was also no charge, no charge
6 conference held on the record for any objections prior to
7 Judge Manning giving his charge.

8 Your Honor, there was one other issue. Judge Manning
9 makes some comments at the beginning when he is qualifying
10 the jury. He makes several comments that he is hard of
11 hearing, and a witness or a -- excuse me, a potential juror
12 gives his name and juror number several times, and Judge
13 Manning doesn't hear him for, for whatever reason. I
14 don't, I don't know that it was because he couldn't
15 actually hear him or, or just didn't hear him, but he makes
16 a comment that he is hard of hearing. There was no
17 questioning of that. No, no questioning of Judge Manning
18 as far as whether he was able to actually hear. I do know
19 that Judge Manning has a sense of humor, and it could be
20 that that's where his comment came, but I, I would like to,
21 to question the witnesses about that.

22 THE COURT: Would like what?

23 MR. WALLER: To question the witnesses here today
24 about that.

25 THE COURT: Oh. Here today.

1 MR. WALLER: Yes, sir. That took place pages 26, 28,
2 and 32, Your Honor.

3 THE COURT: I don't see that.

4 MR. WALLER: I apologize. Not line -- not page 26.

5 THE COURT: Oh.

6 MR. WALLER: Just 28 and 32.

7 (A PAUSE.)

8 THE COURT: I don't see where he says that on 32.

9 THE COURT: Your Honor, on 32 he asks a question of a
10 juror and does not ask a follow-up question. I think it's
11 the lack of, of a response that ---

12 THE COURT: What line do you have?

13 MR. WALLER: Line 20 and on the next page on 24.

14 THE COURT: Page 32, line 20. Is that what you're
15 saying?

16 MR. WALLER: Yes. Yes, sir, and then continuing on.

17 THE COURT: Sir, what's your name and number? And the
18 juror says name and number.

19 MR. WALLER: Your Honor, continuing on to page 33 down
20 to line 18, the juror gives the response that on, on --
21 excuse me, on page 17, Judge Manning doesn't seem to hear
22 him the first time.

23 THE COURT: Page what?

24 MR. WALLER: The next page, page 33.

25 THE COURT: Yeah.

V. SMITH - DIRECT EXAMINATION BY MR. WALLER

13

1 MR. WALLER: The juror responds that it would not
2 affect his ability to be a fair juror in this case. He,
3 the juror, responds no. Judge Manning doesn't seem to hear
4 him. He says -- he asks, asks him again.

5 THE COURT: He says you're sure.

6 MR. WALLER: Yes, sir. I'll, I'll withdraw that issue
7 then. Your Honor, I apologize for not providing the court
8 with those claims cited in advance.

9 THE COURT: All right, if that's it, call your first
10 witness.

11 MR. WALLER: Thank you, Your Honor. Applicant would
12 call Victor Smith.

13 VICTOR SMITH, BEING DULY SWORN,
14 TESTIFIES AS FOLLOWS:

15 THE COURT: Have a seat in the witness box, and state
16 your full name for the record.

17 WITNESS: Victor Smith.

18 DIRECT EXAMINATION BY MR. WALLER:

19 Q. Good morning, Mr. Smith. How are you today?

20 A. Good morning.

21 Q. Mr. Smith, how did Mr. Hart come to be your attorney
22 in this case?

23 A. He was *pro bono*.

24 Q. Okay. He was appointed to represent you?

25 A. Yes, sir.

V. SMITH - DIRECT EXAMINATION BY MR. WALLER

14

1 Q. Okay. When were you -- what day were you actually
2 arrested?

3 A. What day was I arrested? October 1, 2008.

4 Q. Okay. What day were you actually served with a
5 warrant in this case, if you recall?

6 A. I'm not really sure the date. I was, I was already in
7 the Department of Corrections.

8 Q. Was it sometime after October 21, 2008?

9 A. Yes, sir.

10 Q. Okay. Do you remember about how long?

11 A. Maybe about a year, maybe a little bit longer than
12 that.

13 Q. Okay. So, a significant amount of time?

14 A. Yes, sir.

15 Q. Okay. Where were you when you got served -- where
16 were you prior to getting served with this warrant?

17 A. Mississippi Department of Corrections.

18 Q. Okay. Why were you in the Mississippi Department of
19 Corrections?

20 A. I had a fugitive of justice warrant. When I was
21 apprehended in my apartment, I had a fugitive of justice
22 warrant for a probation violation.

23 Q. Okay. So, the probation violation was out of
24 Mississippi?

25 A. Yes, sir.

V. SMITH - DIRECT EXAMINATION BY MR. WALLER

15

1 Q. Okay. What were you on probation for?

2 A. Burglary.

3 Q. Okay. So, it wasn't a violent or it wasn't an
4 assault-type crime or anything like that?

5 A. No, sir.

6 Q. Okay. Was Mr. Hart aware of what you were in the
7 Department of Corrections for in Mississippi originally?

8 A. I would assume he, I would assume he did. We spoke on
9 it before.

10 Q. Y'all did talk about it?

11 A. Yes, sir.

12 Q. Okay. When he was first -- when you were arrested in
13 October of 2008, you were arrested where?

14 A. North Stone Apartments, apartment ■.

15 Q. So, here in Columbia?

16 A. Yes, sir.

17 Q. Okay, and how did you end up from there at the
18 Department of Corrections in Mississippi?

19 A. I was arrested for simple possession of marijuana when
20 they checked the apartment. They found out I had a
21 fugitive of justice warrant. I was taken to the Alvin S.
22 Glenn Detention Center, and I signed my extradition papers
23 to go to Mississippi.

24 Q. Okay, and while you were in Mississippi, did you have
25 contact with any law-enforcement agents or investigators

1 from Columbia or, or Richland County?

2 A. Yes, sir.

3 Q. Okay. Do you remember approximately how long you had
4 been back in Mississippi when they spoke with you?

5 A. No, sir. I don't remember.

6 Q. Okay. You gave a statement to them. Is that correct?

7 A. Yes, sir.

8 Q. You gave them some DNA, a swab?

9 A. Yes, sir.

10 Q. Okay. Did you ever not -- tell them you didn't want
11 to talk to them?

12 A. No, sir.

13 Q. Did you ever not want to give your DNA to them?

14 A. No, sir.

15 Q. Okay. At what point did you end up back here in
16 Richland County?

17 A. I want to say the end of 2010.

18 Q. Okay.

19 A. December 2010.

20 Q. Okay, and when you came back, how long after you were
21 back did you first meet with Mr. Hart?

22 A. I'm not sure. It was fairly quick.

23 Q. Okay. How often do -- excuse me. How many times
24 total do you think you met with him?

25 A. I'm not sure. Maybe, I'd say about six to ten, six to

V. SMITH - DIRECT EXAMINATION BY MR. WALLER

17

1 ten times.

2 Q. Okay.

3 COURT REPORTER: Speak up, please.

4 A. Six to ten times.

5 Q. When y'all first began to meet and discuss your case,
6 did y'all discuss the charge that was against you, what you
7 were charged with?

8 A. Yes, sir.

9 Q. Okay. Did y'all discuss the potential penalties of
10 that charge?

11 A. Yes, sir.

12 Q. Did you discuss what evidence the state might have?

13 A. Yes.

14 Q. Okay. What did Mr. Hart tell you about what evidence
15 the state might have?

16 A. It was really -- everything was pretty much
17 circumstantial. There was just testimony from my
18 codefendants. That was pretty much the gist of it, you
19 know. Wasn't too much outside of that, actual physical
20 evidence.

21 Q. Okay. Did y'all discuss the physical evidence or lack
22 of physical evidence that the state might have?

23 A. We discussed the lack of it, yes.

24 Q. Did y'all discuss that some forensic testing had been
25 done in this case? DNA, blood analysis, those type of

1 things?

2 A. Yes, sir.

3 Q. Okay. Did y'all discuss what had been found or not
4 been found?

5 A. Yes, sir.

6 Q. Okay. Did you understand those conversations?

7 A. Yes, sir.

8 Q. I know throughout this process you have maintained
9 your innocence, but you knew your codefendants and some
10 other people that testified against you. Is that right?

11 A. Yes, sir.

12 Q. Were you able to provide Mr. Hart with any information
13 about any of those people?

14 A. Yes, sir.

15 Q. Okay. Did you ask him to do any investigation about
16 any of those people?

17 A. Yes, sir.

18 Q. Do you know, to your knowledge, did he do any of that
19 investigation?

20 A. Not all of it.

21 Q. Okay. What did you tell him and ask him to do that he
22 did not do?

23 A. We spoke of Ms. Melissa Rowe. She testified -- well,
24 actually didn't testify. She made a statement and -- two
25 written statements that she had seen ---

V. SMITH - DIRECT EXAMINATION BY MR. WALLER

19

1 MR. MITCHELL: Objection. Hearsay.

2 THE COURT: Overruled.

3 BY MR. WALLER:

4 A. She made statements. First of all, she's an
5 individual that says she knew the supposed victim, Ernest
6 Robinson, Mr. E.J. She was someone that says she's known
7 him for at least thirteen years; they'd actually lived
8 together at one point in time. Well, the court was saying
9 the man was supposedly killed on -- I think it was
10 September 27th, and she actually made a statement to
11 investigators stating that she saw the individual after the
12 date of September 27th.

13 Q. Okay. Did you ask Mr. Hart about contacting her?

14 A. Yes, sir.

15 Q. And what was his response?

16 A. I'm not sure, but I know, you know, we was going back
17 and forth about it as far as investigating that and having
18 her to testify.

19 Q. Okay. So, y'all talked about her possibly testifying?

20 A. Yes, sir.

21 Q. Okay. Do you know if she was contacted in the missing
22 persons investigations or in the, the murder investigation?

23 A. I don't know if she was contacted in either.

24 Q. Okay.

25 A. Never got an answer.

1 Q. Okay. Were you provided with a copy of the discovery
2 in this case?

3 A. Yes, sir.

4 Q. Okay, and have you reviewed that discovery?

5 A. Yes, sir.

6 Q. Okay. In reviewing that discovery, do you recall
7 which investigator mentioned Ms. Rowe?

8 A. I believe it's Investigator Holdorf.

9 Q. Okay. Was there anything else that you provided to
10 Mr. Hart that you asked him to investigate other than
11 Melissa Rowe?

12 A. I was asking for the specific -- I don't know if you
13 would say, like, calculations as far as the DNA tests, as
14 far as what they did on the body. They removed two molars
15 and the femur from the skeletal remains that they found and
16 did a swab of the paternal uncle and the supposed victim's
17 mother, and the results came back inconclusive. I was
18 striving to get the exact measurements on that test. Never
19 were able to get the exact numbers as far as that, and also
20 I gave, voluntarily gave a DNA sample, a swab of my own
21 DNA. That was never used in the trial either.

22 Q. Okay. Did Mr. Hart or you on, on your behalf hire an
23 investigator in this case?

24 A. I believe we spoke about it, but I don't really know.

25 Q. You don't know if it actually happened? Did you hire

V. SMITH - DIRECT EXAMINATION BY MR. WALLER

21

1 one?

2 A. No, I didn't.

3 Q. Okay.

4 A. I requested one. I know he sent an individual that
5 was supposed to investigate it to me. I met with that
6 individual one time while in the county and didn't see him
7 again.

8 Q. Okay. So, you did meet with an invest -- with who you
9 thought was an investigator?

10 A. Yes, sir.

11 Q. Okay. The DNA that you just spoke about, the two
12 molars and I believe it was a femur?

13 A. Yes, sir.

14 Q. Is that correct? What is your understanding of what
15 testing was done on all three of those items?

16 A. It was explained to me through a lot of research that
17 when dealing with skeletal remains, the femur and the
18 molars are the best sources to get DNA when a body is
19 decomposed to that state, and that's the best form of
20 testing that they use, yet it still came back inconclusive.

21 Q. Okay. Do you know if they tested the femur in this
22 case?

23 A. No, sir.

24 Q. Okay. Did you and Mr. Hart ever discuss retaining
25 your own expert to potentially test those, those items?

1 A. No, sir.

2 Q. Okay. Getting back to your codefendants and some of
3 the other witnesses, do you have any information in
4 particular about your codefendants or Jasmine Bright, who
5 was, I believe, the mother of your child and live-in
6 girlfriend at the time? Did you provide Mr. Hart with any
7 information that he could use some against their
8 credibility when they testified?

9 A. Yes, sir.

10 Q. Okay. What did you tell him?

11 A. Well, Allen Fulton and Jeremiah Jones, both had prior
12 burglary charges, multiple burglary charges. So, I
13 notified him of that, and as far as Jasmine Bright, she
14 didn't have any other charges on her except for the simple
15 possession of marijuana.

16 Q. Okay. Was there -- at what point did you decide that
17 you and Mr. Hart were going to get ready for trial? At
18 what point did you find you were going to trial?

19 A. Immediately. I knew I wanted to go to trial from the
20 very beginning.

21 Q. Okay. At what point did y'all start preparing for the
22 actual trial?

23 A. I wouldn't know an exact date. Like I said, from the
24 very beginning of coming back to Alvin S. Glenn, that was,
25 that was my plan.

V. SMITH - DIRECT EXAMINATION BY MR. WALLER

23

1 Q. Okay. When you and Mr. Hart met and discussed your
2 preparations, did he have any questions for you as far as
3 information he needed from you in, in getting ready for
4 trial? Did y'all discuss what your strategy was going to
5 be?

6 A. No, we never discussed a specific strategy. You know,
7 he would ask me things about my codefendants. He would ask
8 me things that I thought were interesting as far as in the
9 case, and that was about it. He didn't sit down and say,
10 well, we're going to speak about this or speak about that.

11 Q. Okay. Did y'all discuss the circumstances surrounding
12 your statement that you gave?

13 A. I don't believe so.

14 Q. Okay, and again you voluntarily gave that statement.
15 Is that right?

16 A. That's right.

17 Q. Okay, and once you got to the actual trial in the
18 courtroom, were you and Mr. Hart able to communicate?

19 A. Not really.

20 Q. Okay. Did you have a notepad to ---

21 A. Yes, sir.

22 Q. --- take notes and stuff? Okay. Were you able to
23 pass those to him at breaks and things like that?

24 A. Yes.

25 Q. Okay. Were y'all able to -- was he able to respond to

1 the questions that you might have?

2 A. When I would pass him a note, yeah, we conversed.

3 Q. Okay. Did you -- when the trial started and Judge
4 Manning began to qualify and select the jury, did you have
5 any issues about his hearing?

6 A. Yes, sir.

7 Q. Okay. What did you notice when -- during that jury
8 selection process?

9 A. He got to one particular juror -- I want to say his
10 name was Jason Taylor -- and when he was supposed to say
11 his name and jury number, he went to say his name and jury
12 number and Judge Manning kept getting it wrong, and the
13 clerk stopped and said the correct name. Then he finally
14 said the correct name and he said, you know, I'm sorry. I
15 can't hear very well, and after that, I believe it's two
16 other jurors. I can't really remember their names, but he
17 asked them would the terms of the, of the case make them,
18 you know, unable to be fair and impartial. They said no.
19 When he asked them if they were sure, they said no and he
20 never corrected them.

21 I don't feel as though he could hear because he wasn't
22 really responding correctly to the answer. If someone asks
23 you are you sure of something, you know, the correct answer
24 would be yes, that you're sure. Instead he, you know, he
25 allowed them to say no, which kind of caused confusion.

V. SMITH - DIRECT EXAMINATION BY MR. WALLER

25

1 So, I don't know if they were confused or if he did not
2 hear the confusion and clarify it.

3 Q. Okay. Had you ever met or been in front of Judge
4 Manning at that point?

5 A. No, sir.

6 Q. Okay. Did you -- were you concerned with that?

7 A. Yes, sir.

8 Q. Did you bring that up to Mr. Hart?

9 A. Yes, sir.

10 Q. Okay. When the, the trial was taking place, what --
11 it was a several-day trial. Before the trial started,
12 during lunch, and after the trial, were you and Mr. Hart
13 able to, to sit down talk and, and, and go over what had
14 happened or what was going to happen?

15 A. We usually did that in between breaks.

16 Q. Okay. What did y'all talk about?

17 A. Speak on the progress of whatever was, you know, going
18 on that day. We'd get up to speed as far as, you know, how
19 he felt about different arguments that he had made or
20 cross-exam, things of that nature.

21 Q. Okay, and leading up to the trial beginning, I believe
22 you testified, and I don't want to get this wrong, that you
23 weren't sure exactly what your specific trial strategy was.
24 Is that right?

25 A. Yes, sir.

1 Q. Okay. What conversations did you and Mr. Hart have,
2 maybe not the overall trial strategy, but, but specific
3 items that you were going to try to attack that the state
4 was going to try to present?

5 A. First it was the search warrant because there were,
6 there were false statements within the affidavit that was
7 used in order to obtain the search warrant, attack that.
8 We attacked the death certificate due to the fact that the
9 DNA results that were done by SLED came back inconclusive.
10 And I made mention to the fact of -- the fact that October
11 21st, it was the DST task force that searched this same
12 apartment that I was apprehended from, I was arrested from
13 on October 21, 2008. They searched the entire house. A
14 lot of the investigators in, in the crime -- in the, in the
15 case mentioned that the blood splatter and things that were
16 found in this apartment were visible to the naked eye
17 without having to use any type of chemicals or any other
18 type of testing.

19 My thing was if I was arrested and this supposedly
20 happened in September, and I was arrested from the same
21 residence in October of the same year, and they searched
22 the entire house yet found no blood splatter, and this was
23 not found until June of 2009 when I'd already been
24 incarcerated and never been home -- that was one of the
25 main issues, especially considering that when a search

V. SMITH - DIRECT EXAMINATION BY MR. WALLER

27

1 warrant was taken out on the apartment and in the midst of
2 doing, you know, doing the search warrant, an individual
3 showed up to the house with keys to the apartment that did
4 -- that was not on the lease.

5 Q. Okay, and I want to get back to the search warrant a
6 little bit. You, at the time of the trial and for
7 approximately a year prior to that, you were not living
8 there. Is that correct?

9 A. That's correct.

10 Q. Okay, and were you still on the lease as the
11 leaseholder?

12 A. No, sir.

13 Q. Okay. Were you on the lease? Were you ever on the
14 lease?

15 A. No.

16 Q. Okay. At what point did you not live there anymore?

17 A. I would say, I would say maybe, like, April of 2008 I
18 stopped actually just living there. I mean, I would go
19 there as far as, you know, dealing with my son and the fact
20 that she is my son's mother. I didn't actually stay there.

21 Q. Okay. Who, who was on the lease?

22 A. Just Jasmine Bright.

23 THE COURT: What was that name?

24 WITNESS: Jasmine Bright.

25 BY MR. WALLER:

1 Q. How long prior to April of 2008 when you stopped
2 staying or stopped living there you said, how long were you
3 living there prior to that?

4 A. Maybe a year, year and a half.

5 Q. Okay. So April 2008, you no longer are a resident of
6 that house. You stay there sometimes. Is that right?

7 A. No. Everything -- after April, I, I really didn't
8 stay there. I just visited during the day. You know, that
9 was the time allotment I had with my son.

10 Q. Okay. Did you have any -- did you keep clothes there?

11 A. Yes.

12 Q. Did you keep a toothbrush there?

13 A. No.

14 Q. Did you have your own room?

15 A. I mean, my clothing was still in the same master
16 bedroom closet, but -- and that was just it.

17 Q. Okay. Did you get mail there?

18 A. No, sir.

19 Q. Okay. Did you and Mr. Hart discuss whether or not you
20 had standing to challenge the search warrant?

21 A. I believe we did. As far as the false statements?

22 Q. No, sir. Did y'all discuss whether or not you could
23 even challenge the search warrant because it was or was not
24 your residence?

25 A. No, sir.

V. SMITH - DIRECT EXAMINATION / CROSS-EXAMINATION

29

1 Q. Okay. Was there anything that you asked Mr. Hart to
2 do in preparation for the trial that, that you don't think
3 he did?

4 A. As far as I just wanted Melissa Rowe to be subpoenaed
5 to testify because I felt like that was a big part of my
6 case, considering the fact that she knew the victim,
7 supposed victim for thirteen years prior, and that would
8 have been a very credible witness.

9 Q. Okay. Mr. Smith, I've asked you all the questions
10 that I have for you. Is there anything you think I've left
11 out or that you think the judge needs to be aware of about
12 Mr. Hart's representation of you?

13 A. No, sir. That's about it.

14 MR. WALLER: Please answer any questions Mr. Mitchell
15 has.

16 WITNESS: All right.

17 CROSS-EXAMINATION BY MR. MITCHELL:

18 Q. Good morning, Mr. Smith.

19 A. Good morning.

20 Q. So, the state's, the state's case kind of centered
21 around the codefendants' testimony, right?

22 A. Yes, sir.

23 Q. And that was the main evidence against you. You
24 testified to that earlier, right?

25 A. Yes, sir.

1 Q. There's nothing -- no real smoking gun that -- tying
2 your fingerprints to a murder weapon or anything like that,
3 right? Isn't that right?

4 A. Yes, sir. That's correct.

5 Q. The state's case was there were three codefendants,
6 and girlfriend at the time testified that they -- well,
7 three codefendants testified they took part in the murder
8 with you, right?

9 A. Yes, sir.

10 Q. And then your girlfriend at the time testified that
11 you confessed to her, right?

12 A. Yes, sir.

13 Q. Okay, and, you know, I know you take issue with some
14 of the DNA, seeing some of the results, but, I mean, the
15 DNA on the victim's body, they, they never were sure,
16 right? I mean, the results of the DNA was -- were
17 inconclusive?

18 A. Yes, sir, they were inconclusive.

19 Q. And that was a big thing that Mr. Hart talked about,
20 right?

21 A. He spoke about it, yes, sir.

22 Q. In front of the jury and, you know, throughout the
23 trial ---

24 A. Yes, sir.

25 Q. --- right? You talked a little bit about your

V. SMITH - CROSS-EXAMINATION BY MR. MITCHELL

31

1 codefendants had prior burglary convictions?

2 A. Yes, sir.

3 Q. And that was brought out, too, right?

4 A. Yes, sir.

5 Q. They were questioned on that, I think, maybe even by
6 the solicitor because they wanted to get out in front of
7 it?

8 A. Yes, sir.

9 Q. And you never made any -- in your statement to the
10 investigators that came to see you in Mississippi, you
11 never took issue with the voluntariness of that statement,
12 right?

13 A. No, sir.

14 Q. That's what you told Mr. Hart?

15 A. Correct.

16 Q. That's why he didn't challenge that before. Pretrial,
17 right?

18 A. Mm-hmm.

19 COURT REPORTER: Repeat that, please, your answer.

20 A. Yes.

21 Q. Now, you testified that you spoke with Mr. Hart about
22 this Melissa Rowe. Is that it?

23 A. Yes, sir.

24 Q. And that you discussed with him that she should be
25 subpoenaed for the case?

C. HART - DIRECT EXAMINATION BY MR. WALLER

32

1 A. Yes, sir.

2 Q. And that was before the trial in your talks with him?

3 A. Yes, sir.

4 MR. MITCHELL: No further questions. Thank you, Mr.
5 Smith.

6 WITNESS: Thank you.

7 THE COURT: Anything further?

8 MR. WALLER: Nothing in redirect.

9 THE COURT: All right, you may come down. Thank you.

10 WITNESS: You're welcome.

11 (THE WITNESS EXITS THE STAND.)

12 THE COURT: Next witness.

13 MR. WALLER: Your Honor, the applicant will call
14 Christopher Hart.

15 CHRISTOPHER HART, BEING DULY
16 SWORN, TESTIFIES AS FOLLOWS:

17 THE COURT: Have a seat in the witness box. State
18 your full name for the record.

19 WITNESS: Christopher Hart.

20 DIRECT EXAMINATION BY MR. WALLER:

21 Q. Good morning, Mr. Hart. How are you today?

22 A. Good morning. How are you, sir?

23 Q. Good. Mr. Hart, how did you come to be Mr. Smith --
24 Mr. Victor Smith's attorney?

25 A. I was appointed by the court.

C. HART - DIRECT EXAMINATION BY MR. WALLER

33

1 Q. Okay. Do you recall about when you were appointed?

2 A. I do not. If you give me some dates, I can tell you
3 if it's accurate or not.

4 Q. Well, do, do you recall about how -- approximately how
5 long before you went to trial that you were appointed?

6 A. It was at least over a year.

7 Q. Okay. At what point did -- when you were appointed
8 did you first meet with Mr. Smith?

9 A. Usually -- the system has changed now. I don't do any
10 more appointed cases, but at this time you would receive a
11 notice from the clerk of court's office, and the letter
12 directs you to, I think, to see the client within maybe
13 seven days. So, whatever date I received the letter from
14 the Richland County clerk of court, it would have been
15 within seven days that I went to go see Mr. Smith.

16 Q. Okay. At that point, did you have any discovery at
17 that...

18 A. I don't know. I can't, I can't say if I did or
19 didn't.

20 Q. Okay. Do you happen to recall at that first meeting
21 what y'all would have talked about?

22 A. My standard is initially just to kind of go down,
23 introduce myself such as Mr. Smith, told him Chris Hart.
24 I've been appointed by the court.

25 Main -- mostly what I do is when I first meet clients

1 in jail, the first thing I tell them, all of them, stop
2 talking. Don't talk to your cell mate. Don't talk to the
3 guards. Don't get on the phone. Just stop talking. If
4 you've been talking, stop. I know that's the very first
5 thing I tell everybody, and I'm pretty sure I had that
6 conversation with Mr. Smith.

7 And his brother was down there. I told him don't talk
8 to your brother. I know I asked him specifically if any of
9 those codefendants, if they're in his cell, if he's had any
10 communication with them, to stop talking. Just plain and
11 simple stop talking.

12 Q. Okay. At that point, he had already spoken with
13 investigators, though. Is that right? He'd already given
14 his statement?

15 A. That is correct.

16 Q. Okay.

17 A. Well, I can't -- at that initial meeting, I can't
18 remember if I had the discovery or not. If I had the
19 discovery, then I could say yes, but I can't recall if I
20 had ---

21 Q. Okay.

22 A. --- the discovery or not.

23 Q. Did y'all discuss the fact that he had, prior to being
24 served with this warrant, been in the Mississippi
25 Department of Corrections?

C. HART - DIRECT EXAMINATION BY MR. WALLER

35

1 A. Not in that first meeting, no.

2 Q. Okay. At some point, did y'all discuss that?

3 A. Yes. It would have had to have been after I got the
4 discovery.

5 Q. Okay. Did you -- do you recall whether or not y'all
6 discussed what his original charge was? Not that he was in
7 there on a probation violation, but what the original
8 charge was?

9 A. I, I can't -- I don't know. Be honest with you, I
10 just don't recall.

11 Q. Did you, did you know what his original charge was
12 when y'all went to trial?

13 A. Yes, I knew at trial. I can't tell you now what it
14 was, but I knew at the time of the trial.

15 Q. Okay. Did y'all have any discussions about his
16 statement and whether his statement could come in and
17 anything you would try to keep it out, or any discussions
18 about his statement?

19 A. Yes, we did.

20 Q. Do you recall what y'all discussed?

21 A. As to -- I know later as we got closer to trial, I
22 know I was discussing with him the manner in which his
23 statement was given, did he understand everything, did he
24 feel that the statement was coerced, that it was forced,
25 that he didn't understand his rights because I know we had

1 to have that conversation to determine whether I was going
2 to have a *Jackson vs. Denno* hearing or not. So, I'm pretty
3 -- I know we had the conversation about it.

4 Q. Okay, and did y'all actually have a *Jackson vs. Denno*
5 hearing?

6 A. Not that I recall.

7 Q. Okay. So, you were satisfied that his statement was
8 made involuntarily and was not coerced?

9 A. That's based off of me looking at his statement and
10 based off the conversations I had with Mr. Smith.

11 Q. Okay, and it's your understanding he gave that
12 statement while he was in the Department of Corrections in
13 Mississippi?

14 A. It's starting to come back to me slowly now. I think
15 it was an Investigator Faust. Was it Faust that went out
16 there?

17 Q. It was Galagos.

18 A. Oh, it was Galagos?

19 Q. And one of them ---

20 A. I'm almost certain Faust went out there.

21 Q. Okay.

22 A. But yes.

23 Q. Okay. When he gave a statement, he also gave a tissue
24 sample to be tested for DNA. Is that correct?

25 A. Yes.

C. HART - DIRECT EXAMINATION BY MR. WALLER

37

1 Q. And DNA was a big issue in this case in your opinion.
2 Is that right?

3 A. That's correct.

4 Q. Okay. What, what was your strategy going into the
5 trial about DNA evidence, the, the lack thereof?

6 A. Well, I can tell you right now Mr. Smith got one hell
7 of a trial. I mean, I gave him a hell of a trial, I can
8 tell you that now because looking at the evidence, there
9 was nothing. If you look at my opening statement, one of
10 the things I told the jury is you're going to see a lot of
11 evidence. You're going to see over a hundred pieces of
12 evidence, but will you -- what you will not see is any
13 physical evidence, any DNA evidence that links Mr. Smith to
14 this crime. That was none.

15 I think for, like, three days, even through direct
16 examination and cross-examination I repeatedly asked every
17 single witness: have you been able to identify the body as
18 Ernest Robinson? All of them said no. I asked them very
19 specifically: do you have any physical evidence that links
20 Victor Smith to this crime? All of them said no, and I
21 think that went on the first three days.

22 Q. Okay. About the DNA, the state attempted -- when I
23 say state, the investigation aspect of it, attempted to get
24 some DNA from some teeth and a bone from the body that was
25 found. Did you ever consider having those pieces tested

1 independently?

2 A. What I'm thinking about is, I'm trying to remember if
3 that stuff was still available. I know I went to the
4 sheriff's department and physically viewed all of the
5 evidence that was available. My recollection is I don't
6 remember any skeletal remains being available. I could be
7 -- I just don't recall.

8 Q. Okay.

9 A. I do, I do recall when I was at the sheriff's
10 department, it was Dan Goldberg, Carter Potts, sheriff's
11 department. Was in this conference room and they had bags
12 and gloves and they were -- they pulled out a shower
13 curtain, a lot of photographs. I never viewed a skull; I
14 never viewed any teeth. I, I just don't recall view of
15 skeletal remains.

16 Q. Okay. A witness testified that they attempted to
17 obtain DNA from the two teeth, but they did not test the,
18 the femur. Is that your recollection?

19 A. I don't -- I can't remember.

20 Q. Okay.

21 A. Be honest with you.

22 Q. Did you ever consider -- did you ever hire an
23 investigator?

24 A. Yes.

25 Q. Did y'all ever consider trying to obtain DNA of Ernest

C. HART - DIRECT EXAMINATION BY MR. WALLER

39

1 Robinson to have something for the state to attempt to
2 match against the body?

3 A. I don't recall any skeletal remains, but even if there
4 were, I don't think I would have done that because looking
5 through all the discovery, there was no identification of
6 Ernest Robinson. So, if there -- that was a plus for us
7 that I shared with Mr. Smith. So, even if there were
8 remains, I don't think I would have tried to get them
9 tested and take the chance of it coming back positive.
10 That would have hurt Mr. Smith, not help him.

11 Q. Okay. If they came back negative, would you agree
12 with me that that would have helped him greatly?

13 A. That's the chance you take, but I think we were in a
14 very safe zone without them being able to identify it at
15 all.

16 Q. Okay. You objected to a great number of pieces of
17 evidence, the majority of the forensic evidence based on a
18 -- the search warrant that was conducted at the apartment.

19 A. Uh-huh.

20 Q. Is that right? Do you recall whether -- what you and
21 Mr. Smith discussed about the search warrant and what you
22 based your objection on?

23 A. If I -- if you could recollect my memory, where it --
24 I can try to help you through it if you can show me where
25 it is.

1 Q. The -- I don't know if it was ever entered into
2 evidence. You base objection on the affidavit being
3 obtained -- or the affidavit being presented based on
4 statements given by codefendants and other witnesses. You
5 objected to the veracity of those statements. Did you and
6 Mr. Smith ever discuss the fact that he may or may not have
7 standing to even challenge the search warrant?

8 A. I'm trying to go back because part of our strategy was
9 that Mr. Smith wasn't present, that he wasn't there, and
10 I'm trying to remember all this stuff. If, if I remember
11 correctly, what Mr. Smith and I discussed was do we go just
12 *carte blanche* with he wasn't there and not challenge that
13 search warrant, or do we challenge it and get the
14 opportunity for it to be suppressed. And I'm almost
15 certain I told Mr. Smith I think it's best that we
16 challenge this and not just let it in without giving any
17 challenge.

18 Q. Okay. Did, did you think that Mr. Smith had standing
19 to challenge the search warrant?

20 A. Well, I know the apartment wasn't in his name. He did
21 have some belongings there. I know he -- I think he had
22 clothing there still in the apartment. It goes back to the
23 same thing I just mentioned: whether he had the, whether he
24 had the right, legal right to challenge it and not say
25 anything and lose the opportunity for it to be suppressed,

C. HART - DIRECT EXAMINATION BY MR. WALLER

41

1 or do we go after it and at least give it a shot.

2 Q. Okay. Did you ever ask explore any other, any
3 potential other ways of challenging the search warrant
4 other than the statements in the affidavit?

5 A. Whatever is in the record, that's what I did. I can't
6 remember what else that's...

7 Q. Okay. At the beginning of the trial, Judge Manning is
8 qualifying and selecting a jury. I'm not -- maybe just
9 selecting the jury. He seems to become hard of hearing at
10 one point or during that process. Is that something that,
11 that stood out to you? Do you recall that at all?

12 A. Where? What page are you on?

13 Q. I believe -- I apologize. I believe it's page 28.

14 A. 28.

15 Q. Beginning on line 11.

16 (A PAUSE.)

17 A. I, I don't recall. I don't recall me ever making an
18 objection and Judge Manning not hearing, or me making an
19 objection and him asking the witness to repeat their
20 statement or asking the court reporter to read back what
21 the witness just said. It never -- I don't recall.

22 Q. Okay. So, it didn't stand out to you as something
23 that he couldn't hear throughout the entire trial?

24 A. No. That, that never became -- I've never had a
25 feeling that Judge Manning couldn't hear from any of the

1 witness or hear from any of the lawyers.

2 Q. Okay.

3 A. Why do you think that's an issue?

4 Q. I just asked. I was just, just seeing if it was
5 something you noticed throughout the trial or was just an
6 isolated incident.

7 A. Oh. Okay.

8 Q. Do you have a copy of the transcript in front of you?

9 A. I have volume 1 of 2 and volume 2 of 2.

10 Q. Okay. If you could turn to page 105 and look at line
11 17 or beginning on line 16. Judge Manning is giving his
12 initial comments to the jury and makes the comment that
13 they -- if at any time he makes a comment regarding the
14 facts, that they are at liberty to disregard his comments.

15 A. You said page 117?

16 Q. 105, line 17.

17 A. Yes, sir, I see it.

18 Q. Is it your recollection of, of what took place?

19 A. Yes, sir.

20 Q. What was the strategy behind not objecting to Judge
21 Manning not telling them they must disregard any of his
22 comments?

23 A. Because immediately thereafter he says:

24 It is especially important that you perform your
25 duty and determine the facts diligently and

C. HART - DIRECT EXAMINATION BY MR. WALLER

43

1 conscientiously, for ordinarily there is no means
2 of correcting an erroneous determination of the
3 facts by a juror.

4 Q. Okay.

5 A. So, in essence, that was -- if there was any issue
6 with may or must, in the very next statement he says, you
7 know, you must do this.

8 Q. Okay.

9 A. He didn't use the word must, but the statement has the
10 effect of saying it is especially important that you
11 perform your duty to determine the facts.

12 Q. So, you didn't have any issue when you took the -- his
13 comments as a whole?

14 A. As a whole, no.

15 Q. Okay.

16 A. No, sir.

17 Q. Okay. If I could get you to turn to page 293 and
18 continuing on to 294?

19 A. You want me to start at the top of 293?

20 Q. I apologize. The bottom, the last paragraph.

21 A. Start at line 20?

22 Q. Yes, sir.

23 A. Well, first of all, you've got to give me some
24 context. What, what --- whose ---

25 Q. I ---

1 A. --- testimony is this?

2 Q. This is Major Stan Smith. I apologize.

3 A. Okay.

4 (A PAUSE.)

5 A. Okay.

6 Q. What was your reason, if any, for not objecting to his
7 comments about the Investigator Holdorf, having the utmost
8 confidence in Investigator Holdorf?

9 A. Did -- you asked me what was my reasoning? Say that
10 again.

11 Q. For not objecting, if, if you had a reason for not
12 objecting to the statement that he had the utmost
13 confidence in individuals like Holdorf -- being
14 Investigator Holdorf -- that worked these homicides?

15 A. I'm trying to think back again. Usually when we're in
16 the heat of the battle, I got to make a split-second call
17 as to object and whether this objection is something that
18 weighs in the evidence. And, and that probably was one of
19 my -- that, that had to have been my line of thinking. I
20 just can't -- that had to have been my line of thinking
21 about the different objections to make.

22 Q. Okay. On page 361 -- or excuse me. Let me back up.
23 Sergeant Stan Richards testified in this trial, and he was
24 qualified as an expert in crime scene and also bloodstain
25 pattern analysis without any objection from you. Is that

C. HART - DIRECT EXAMINATION BY MR. WALLER

45

1 your recollection?

2 A. Where are you?

3 Q. He's testifying. Where I'm getting to is page 361.

4 A. Where does his testimony start?

5 Q. I apologize. His testimony, his testimony begins on
6 page 335, and he is qualified on page 336.

7 (A PAUSE.)

8 A. I'm Looking at 335 and I'm looking at 336, and it says
9 from Mr. Goldberg:

10 At this time, we offer Sergeant Richards as an expert
11 in crime scene analysis and bloodstain pattern.

12 Mr. Hart: I don't think I have an objection, Your
13 Honor.

14 Q. I can move on. That was just kind of an introductory
15 question. What is your understanding of the crime scene
16 investigators, the testing they do for blood, to determine
17 if something is blood?

18 A. If it's actual blood? I mean, that's something that
19 you would have to do in a laboratory with DNA to know if
20 it's blood. I mean, you can have blood, but you're going
21 to have to do some type of DNA analysis to determine if
22 it's animal blood or if it's human blood.

23 Q. Okay. So, the crime scene investigator doesn't do --
24 doesn't -- isn't able to make the determination, the
25 definitive determination that something is human blood at

1 the scene?

2 A. My guess is not. Well, there -- I don't know if they
3 have the capability to do it at the scene, but my
4 understanding of the analysis is that it's done in a lab
5 with DNA testing, and I don't think it's going to be
6 accurate if you could do it at the scene.

7 Q. Okay. Do you recall if there was any testimony about
8 a presumptive test that they do to determine if something
9 is blood or not?

10 A. I, I don't recall.

11 Q. Okay.

12 A. Do you have...

13 Q. If you could turn to page 361?

14 A. All right.

15 Q. Beginning on line 8 and continuing just that
16 paragraph.

17 A. Line 8 through 12?

18 Q. Yes, sir. At that point or, or to your recollection
19 at any point, had there been any testimony that that was --
20 that the patterns on the wall were actual blood that were
21 tied to Ernest Robinson?

22 A. No. Again, that goes back to what I -- my
23 cross-examination for three days: that all of what you see
24 and hear has no connection to Ernest Robinson, has no
25 connection to Victor Smith. That, that was my line of

C. HART - DIRECT EXAMINATION BY MR. WALLER

47

1 questioning for three straight days.

2 Q. Okay.

3 A. For each witness.

4 Q. Okay.

5 A. Including this.

6 Q. At that point, to your recollection, had anybody
7 testified that the stains on the wall were blood of any
8 kind definitively?

9 A. No. Again, that's why I kept asking everybody can you
10 identify whatever you found in that apartment to be
11 connected to Ernest Robinson or Victor Smith. Has anything
12 you collected come back to Victor Smith or Ernest Robinson,
13 and each time the answer was no.

14 Q. Okay. So, on, on line 8 of that page, 361, Sergeant
15 Richards testifying that what he's seeing as bloodstain, do
16 you feel that he was qualified to testify that that was
17 bloodstain?

18 A. If I remember, one of his qualifications was
19 identifying bloodstain patterns. He doesn't say whether
20 this is human blood or whether this is blood of an animal,
21 if this is blood of Ernest Robinson or blood of Victor
22 Smith. He's talking about the pattern and being able to
23 identify the pattern.

24 Q. Okay. During his testimony, you made several
25 objections to, to him speculating to different things.

1 Beginning at the bottom of page 370 and continuing on 371
2 -- 22 is the question and continuing on to 371. What was
3 the strategy behind not objecting to him speculating to
4 what took place in the room?

5 A. You said starting at line 22?

6 Q. Starting at line 22 on page 370 is the question and
7 through his next answer, which goes on to 371, line 15.

8 (A PAUSE.)

9 A. I, I don't recall. I'm looking at this. I just don't
10 recall anything.

11 Q. Okay. During this same testimony on 389, beginning on
12 line 20, he testifies that:

13 The bloodstains on the wall were those that you
14 would see with a gunshot, and it's also
15 consistent with blunt-force trauma.

16 Do you feel he was qualified to testify on blunt-force
17 trauma?

18 A. He, he was qualified to testify about the bloodstain
19 splatter.

20 Q. Okay. Is blunt-force trauma a medical diagnosis that
21 would need to be made?

22 A. Well, it depends on what you're asking. If you are
23 asking -- there's no way he could have taken the stand to
24 testify as to what the person died of, what was the cause
25 of death, what was the manner of death. He was not

C. HART - DIRECT EXAMINATION BY MR. WALLER

49

1 qualified to do that. You would need a pathologist to do
2 that, but to be able to identify a bloodstain splatter, he
3 was qualified to identify the amount of force that, I
4 guess, the splatter appears to be, wherever it is. If it's
5 on the floor, if it's on the wall, anywhere, but no, he
6 can't testify. And I'm -- and he wasn't testifying as to
7 the manner and cause of death, whether it was blunt-force
8 trauma or not.

9 Q. But he testified that the -- what he saw on the wall
10 was consistent with blunt-force trauma?

11 A. Well, he was qualified to testify to the splatter.

12 Q. Okay. I want to talk a little bit about the death
13 certificate that was admitted into evidence. What were,
14 what were your concerns with the death certificate?

15 A. That, if I, if I remember correctly, they never could
16 identify that the skeletal remains that they examined was
17 Ernest Robinson. They can never do that. However, in the
18 death certificate it had Ernest Robinson's name, it had
19 the, the cause of death, and part of it, that it was an
20 official document from the state of South Carolina. And I
21 had some, some concerns about whether the jury was going to
22 interpret that, that official document with the seal to say
23 because it's an official state document with the seal, then
24 whatever is in that document is presumed to be true. And
25 that was my issue with the death certificate.

1 Q. Okay. You objected that there was no way to verify
2 the information in the document because the body had never
3 been identified as Ernest Robinson?

4 A. Yes, sir.

5 Q. Did you ever consider having Judge Manning perform a
6 Rule 403 analysis on that piece of evidence coming in?

7 A. Well, take me to the -- take me to where you are, and
8 that will help me recollect.

9 Q. The discussion begins on page 516.

10 A. Okay.

11 Q. Your objection is based on the information being true
12 and accurate, which is overruled. My question to you is
13 did you, did you ever consider basing your objection on
14 other grounds?

15 A. That's what I'm -- that's what's in here. If you look
16 at -- if you go back, it says -- Judge Manning says:

17 Your objections is overruled. What else? You
18 can still make your argument, but I'm going to
19 let it in. Go ahead.

20 That's the argument that we're making, that it's going
21 to be highly prejudicial.

22 Q. Okay.

23 A. And it's going to outweigh any relevant testimony or
24 evidence that is presented. I mean, that's the whole
25 argument I make when it says here are the reasons. This is

C. HART - DIRECT EXAMINATION BY MR. WALLER

51

1 me talking:

2 Mr. Hart: Here's the reasons we object to it,
3 Your Honor.

4 The Court: All right.

5 Mr. Hart: As we've heard from the past three days
6 of testimony, there's absolutely no testimony
7 that the remains that were found had been
8 positively identified as Ernest Robinson.

9 He says:

10 Well, that's why we have circumstantial evidence.

11 This is Judge Manning. I go back to:

12 Yes, sir. I understand. So, what I believe is
13 that this document, which is going to be official
14 document the state is going to be using, this
15 jury is going to look at this document and think
16 that, well, okay, may it didn't -- may it did
17 happen because we now have an official document.

18 That's what I'm saying. It's going to be highly
19 prejudicial.

20 Q. Okay. Did you ever ask Judge Manning to conduct a
21 Rule 403 analysis on the record to preserve it for appeal?

22 A. I -- if it's not -- I don't recall. If it's not in
23 the transcript, then...

24 Q. Okay. When that, when that piece of evidence, the
25 death certificate, was offered and ultimately admitted into

1 evidence, you did not object to it. What was the strategy
2 behind not renewing your objection that you had previously
3 made? It's on page 532.

4 A. I don't recall; I can't remember.

5 Q. Okay. Going back to Mr. Smith's statement, there was
6 some argument and some discussion about what the state
7 could and couldn't go into, what you could and couldn't go
8 into as far as the circumstances surrounding the statement
9 where he was, why he never returned home to the apartment.
10 And on page 529, you consent to the state at the bottom of
11 the page being able to say that he was in the Department of
12 Corrections in Mississippi when he gave his statement.
13 What was the strategy behind consenting to, to that being
14 able to be presented to the jury?

15 A. That was a alibi. That, that was -- because remember
16 the discussions that me and Mr. Smith had, Mr. Smith and I
17 had was that he was not present. Whatever happened in that
18 apartment, we don't know because he wasn't there. And if
19 you, if you come back to my opening statement, one of the
20 things that I said to the jury in the very beginning was
21 remember these dates. There were three things. There was
22 the date that, as Mr. Smith said, the DST, Drug Suppression
23 Team, showed up and they searched the apartment, and they
24 didn't find any of the evidence that they found the
25 following year, I think, which was June.

C. HART - DIRECT EXAMINATION BY MR. WALLER

53

1 Our strategy was, which Mr. Smith and I discussed, is
2 that he wasn't present. He left the apartment and never
3 returned. So, to me, that helped us with the jury knowing
4 that he was in the Department of Corrections because part
5 of our strategy -- and what I told the jury was he left and
6 he never returned, but we didn't have anybody to say where
7 he was at the time. So, that's why we allowed the stuff
8 about the Department of Corrections in Mississippi because
9 that gave him a location and a alibi for being somewhere
10 other than in that apartment.

11 Q. Did you file a notice of alibi in preparing for this
12 trial?

13 A. We didn't have anybody.

14 Q. Okay.

15 A. There wasn't anybody to say that he was there -- that
16 he was not -- I'm sorry, that he was not in the apartment.

17 Q. Well, he was in Department of Corrections, right?

18 A. That is correct.

19 Q. Okay. Did you look into getting anything, any
20 documents or a witness from the Department of Corrections
21 in Mississippi to say he was there?

22 A. I think that was something that we looked at, but you
23 had -- it was one of those decisions you had to make about
24 how it's going to look, and one of the decisions that me
25 and Mr. Smith discussed, what to do about it, if that makes

1 sense. I knew that the statement that he had given was
2 given in the Mississippi Department of Corrections, if that
3 makes sense. Am I making any sense to you?

4 Q. Well, I'm just trying to understand. If your, if your
5 theory of the case was that he had an alibi because he was
6 in the Department of Corrections in Mississippi but you did
7 not file a notice of alibi with the clerk of court and then
8 serve it on the solicitor's office and didn't present any
9 witnesses as to his alibi, what was the strategy behind
10 that?

11 A. Same thing I just told you is that he left that
12 apartment, according to what Mr. Smith and I discussed.
13 That he never returned.

14 THE COURT: Does this -- clarify for me. Are we
15 talking about as of the date of the alleged murder or ---

16 MR. WALLER: Your Honor, he was ---

17 THE COURT: I mean, there's a hazy, foggy time period
18 here that I'm not following.

19 MR. WALLER: He was arrested. He was arrested about a
20 month, not quite a month after the murder allegedly took
21 place, and I am -- that was kind of a follow-up question.
22 I, I wasn't -- that wasn't exactly where I was going with
23 it. I was -- just based on something Mr. Hart said, just
24 trying to develop that a little further.

25 He was arrested October 21st of 2008. The murder was

C. HART - DIRECT EXAMINATION BY MR. WALLER

55

1 -- allegedly took place September 27th of 2008, or I guess
2 into maybe the morning.

3 THE COURT: In questioning Mr. Hart, are you implying
4 that he was in the Department of Corrections on September
5 22nd of 2008? Is that the basis for the question?

6 MR. WALLER: No, sir. No, sir, and I can ask some
7 questions to clarify it.

8 THE COURT: Go ahead. I just -- my dates, as I say,
9 were a little hazy there.

10 MR. WALLER: Yes, sir.

11 BY MR. WALLER:

12 Q. Mr. Hart, was, was the strategy of your defense that
13 Mr. Smith had a total alibi because the date of the crime
14 couldn't be definitively pinned down?

15 A. No, it -- that could not have been the strategy.
16 Otherwise, we would have explored it a lot more. And Mr.
17 Smith, I don't recall Mr. Smith telling me he was somewhere
18 else and -- somebody who could support his position that he
19 was someone else -- somewhere else.

20 Q. Okay.

21 A. Otherwise, I would have pursued those issues of being
22 -- having an alibi.

23 Q. When the murder was alleged to have taken place, he
24 was not in the Department of Corrections in Mississippi?

25 A. That's my understanding, yes.

1 Q. Okay. Okay. Do you recall knowing what he was in the
2 Department of Corrections for?

3 A. Not five years later I don't.

4 Q. Okay. If I told you it was originally -- it was a
5 probation violation from an original burglary, would you
6 take my word for it?

7 A. Yes, sir.

8 Q. Okay. Did you ever consider -- once the decision was
9 made to let the jury know that he was in the Department of
10 Corrections, did you ever consider letting the jury know
11 what he was there for?

12 A. If I remember, I think we had a discussion on the
13 record about them not being able to mention that.

14 Q. Okay. My question is what, what was the strategy
15 behind consenting to the jury knowing he was in the
16 Department of Corrections but kind of letting their minds
17 run wild as to what he's there for?

18 A. I, I can't recall, to be honest with you.

19 Q. Okay, and I guess just to clarify, your original
20 consent to let the jury know he was in the Department of
21 Corrections in Mississippi tracked your strategy that after
22 October 21st, he was no longer in that house. And the, the
23 evidence obtained, because he couldn't be linked to Ernest
24 Robinson, could have come from anywhere. Is that correct?

25 A. Oh, okay. It's, it's coming back to me now, I think.

C. HART - DIRECT EXAMINATION BY MR. WALLER

57

1 Okay. Our strategy was -- why the mention of Department of
2 Corrections was because part of it was that it did not
3 happen on September 27th because it couldn't have happened
4 on September 27th because they responded three days later.
5 And the evidence that -- if it happened on September 27th,
6 the evidence that was there on September 27th was there --
7 not three days later but about a month later, October 21st.
8 Let me get -- it's coming back slowly now.

9 If the state's version was that it happened on
10 September 27th, and the police responded less than a month
11 later and searched the apartment and didn't see any of the
12 evidence -- and it was a lot of evidence -- and didn't see
13 any evidence that was supposed to be there on -- less than
14 a month earlier, then it could not have happened on
15 September 28th. And October 30 -- 21st -- Victor Smith has
16 never been back.

17 Q. Okay.

18 A. That, that was the reason. Does, does that make
19 sense? Am I connecting the dots for you?

20 Q. Your, your strategy was that the murder took place
21 after October 21st when Mr. Smith was not at the apartment
22 and had not been back. Is that correct?

23 A. It had to have been that because if that evidence was
24 there when they responded to it, and they searched the
25 apartment and it was blood on the carpet, blood on the

1 walls -- I think the girlfriend testified of Victor using
2 bleach to try to clean the apartment, all in the bathroom.
3 If all of that stuff was there on the 27th of September, it
4 had to have been there when DST was there less than a month
5 later.

6 Q. Okay. So, I'm going to ask you one final time. Then
7 I'll move on. Did you file a notice of appeal or have any
8 -- or, excuse me, notice of alibi witness, witnesses, or
9 have any alibi witnesses subpoenaed to testify from the
10 Department of Corrections in Mississippi?

11 A. No, sir, I did not.

12 Q. Okay. What was the strategy behind not having those
13 people there?

14 A. Because it's, it's the same thing. You get it -- I
15 guess you got to pick which one you want. For instance, I
16 knew if we'd have done it the way you're talking about it
17 -- filing alibi, Department of Corrections -- Mississippi
18 Department of Corrections come and they testify that Mr.
19 Smith was there, so it comes in that way. Or you can get
20 the same thing from the investigators who went out to see
21 him there, that he was there, and they still cannot talk
22 about why he was there. Even if Mississippi would have
23 come here and testified that he was there, I would not have
24 want them to say, well, what was he there for.

25 Q. Okay. If someone had come from Mississippi, would

C. HART - DIRECT EXAMINATION BY MR. WALLER

59

1 they have been able to testify? Would the state have
2 objected to it?

3 A. I can't tell you what the -- I can't tell you what
4 they would have done.

5 Q. Okay. The deputy coroner testified; he testified as
6 an expert in forensic anthropology. Do you remember that?
7 Do you recall that?

8 A. You said a deputy coroner?

9 Q. Yes, sir.

10 A. What page are you on?

11 Q. What I'm looking at is page 551.

12 A. Okay.

13 Q. He was qualified as an expert in forensic anthropology
14 without objection. I think that was -- I don't think there
15 was any issue with that. Do you recall his testimony was,
16 was mainly about facial features and heights and dental
17 patterns? About different races and genders and ages and
18 how they, I think, kind of narrow down some remains to, to
19 not identify the body but to kind of put it into a category
20 to narrow down a list of missing persons or a list of
21 suspects? Do you recall his testimony about that?

22 A. I don't see it on 551 where you -- okay, yes, at the
23 very top where it says: So, a tall and skinny individual?

24 Q. It -- it's prior to that. That's just what this --
25 the majority of his testimony was about that. That's not

1 what I'm getting to. On page 551, on line 18, he testifies
2 that he has looked at some literature on air currents and
3 air currents coming up slopes and, and off ponds, and how
4 basically his reasoning is that's why no one smelled the
5 body is that he had done some, some review of some
6 literature about air currents, and that's why no one
7 smelled the body. What was the strategy behind not
8 objecting to that?

9 A. I, I don't recall. I don't think that the state -- I
10 think that was one of our strategies, to question all of
11 the state witnesses about whether anyone could smell the
12 body. I don't think in the beginning they were questioning
13 anybody about a decomposing body, whether it smelled. That
14 was one of our strategies, and I think they picked up on
15 our line of questioning after a couple of days.

16 Q. Okay. Do you think that the forensic anthropologist
17 was qualified to give an expert opinion on air current
18 based on his review of the literature?

19 A. I'm not sure. I don't -- I can't recall, be honest
20 with you.

21 Q. Okay. Jasmine Bright was the live-in girlfriend,
22 mother of Mr. Smith's son. Is that correct?

23 A. Yes, sir.

24 Q. Okay. Was Mr. Smith able to provide you with
25 information about her prior to her testimony, prior to

C. HART - DIRECT EXAMINATION BY MR. WALLER

61

1 trial?

2 A. I think, I think she had written him some letters and
3 sent some pictures to him, if I recall correctly.

4 Q. Okay.

5 A. And I think I remember asking Victor has he been
6 communicating with her and if he has, to stop. Don't
7 communicate with her anymore. Don't write her, don't call
8 her, nothing, if I recall correctly.

9 Q. Okay. When the apartment was searched, she wasn't
10 present. Do you recall that she was in North Carolina
11 somewhere at a family function?

12 A. Yeah, because I think that's where the state
13 investigators went and picked her up from North Carolina.
14 As a matter of fact, I think they -- because -- I'm trying
15 to think if we, if -- they had a tough time finding her.

16 Q. That's ---

17 A. They almost didn't find her.

18 Q. That's ---

19 A. They found her the very last minute.

20 Q. They picked her up from, from North Carolina and, and
21 she gave her statement kind of on the ride back. If you
22 could turn to page 645, lines 7 through 17?

23 THE COURT: Which page and line? I'm sorry.

24 MR. WALLER: 345, Your Honor, 7 through 17. In
25 particular, line 15 through 17.

1 THE COURT: I've got it.

2 BY MR. WALLER:

3 A. 15 through 17?

4 Q. Yes, sir. She was repeating some things the
5 investigator had told her on the, on the ride back. What
6 was, what was your strategy behind not objecting to what
7 the -- her repeating what the investigator said,
8 particularly when he confirmed her use of the term
9 bloodbath?

10 A. Who's doing the questioning here on...

11 Q. This is the -- I believe Solicitor Goldberg.

12 (A PAUSE.)

13 A. I, I can't recall.

14 Q. That's okay.

15 (A PAUSE.)

16 A. Okay.

17 Q. Okay?

18 A. I'm ready.

19 Q. The lead investigator on this case was Travis Holdorf.
20 Is that correct?

21 A. Yes.

22 Q. Okay, and he is one of the investigators that was
23 present when Allen Fulton gave his statement. Is that your
24 recollection?

25 A. Yes.

C. HART - DIRECT EXAMINATION BY MR. WALLER

63

1 Q. Okay. If you could turn to page 692, beginning on
2 line 13 and in particular lines 19 and 20?

3 A. Okay.

4 Q. Did you feel that the investigator was, was bolstering
5 the credibility of the witness by telling the jury that he
6 was believable because he was emotional?

7 A. I cannot -- I just don't recall.

8 Q. Okay. Do you recall if there was a trial strategy
9 behind not objecting to that?

10 A. I can't remember if it was a trial strategy. I just
11 knew -- I remember -- I'm trying -- if I remember
12 correctly, I knew none of those witnesses told the truth up
13 front. And I remember stating that in the opening, that
14 you can't believe anything that they say and -- I, I can't
15 remember if it was a strategy or not. I just, I don't
16 recall. I don't remember.

17 Q. The investigator's telling the jury you can believe
18 them because they were emotional. Did, did you -- is that
19 something you would normally object to?

20 A. It depends on the strategy which you -- let's see.

21 (A PAUSE.)

22 A. If you go to page 721, which is the cross I did of
23 Travis Holdorf where I'm asking him about the written
24 statements, did he participate in the statement from
25 Jeremiah Jones. He says: I typed it. I said: You typed

1 it? He says: Yes, sir. Then if you go to 723 where it
2 talks about Jeremiah's educational level and -- because I
3 knew there were some questions about Jeremiah's educational
4 level, which is why I asked Holdorf about that, and he
5 says: He just could not read well, which is why we printed
6 it off.

7 Q. My question is not about Jeremiah Jones's statements.
8 It's about Allen Fulton's statement.

9 A. I'm, I'm getting there.

10 Q. Okay.

11 A. And then at the bottom of 723, line 25 it says: And
12 you confronted Allen Fulton, who's also known as Smurf?

13 And then on 723, I say, I asked Holdorf:

14 But you're aware Allen did not tell the truth in
15 his first statement?

16 He says: Oh, yes, sir.

17 He had to be brought back again?

18 He says: Yes, sir.

19 And then I go into asking him that:

20 None of the codefendants walked into the
21 sheriff's department voluntarily and told them
22 what happened. That they had to be picked up.

23 Q. Okay.

24 A. Which goes, which goes to their ability.

25 Q. Mr. Hart, I understand that. I think that's excellent

C. HART - DIRECT EXAMINATION BY MR. WALLER

65

1 cross-examination. My question to you is on page 692, what
2 was the strategy behind not objecting to the investigator
3 saying that he was believable because he was emotional when
4 giving his statement?

5 A. Sitting here today, I can't tell you that.

6 Q. Okay.

7 A. I just -- I, I can't.

8 Q. Okay. How was the jury charge? Did y'all have a jury
9 charge conference?

10 A. I don't recall. If it's not in the transcript, I
11 don't recall us having one on the record.

12 Q. Okay. Was -- it is something y'all talked about in
13 chambers maybe?

14 A. Yes.

15 Q. Okay, and Judge Manning indicated that he wanted to
16 charge hand of one, hand of all. There were four
17 codefendants in this case. Is that right?

18 A. Yes, sir.

19 Q. Was that -- how did that come up? Was it your
20 request? Was it just ---

21 A. Of course I'm not -- say it again.

22 Q. I'm just trying to try to figure out how that got into
23 -- who, who suggested that being the charge?

24 A. Oh, well, you know I'm not going to request the hand
25 of one, hand of all.

1 Q. Okay. Did Judge Manning go over the example he was
2 going to use in hand of one, hand of all?

3 A. You mean in chambers?

4 A. Yes, sir.

5 A. If I remember correctly, we talked about the different
6 things he was going to charge, but I don't think he read --
7 I'm almost certain he didn't read line by line of every
8 charge.

9 Q. Okay. If I can direct your attention to page 790,
10 beginning on line 19, and the pages in the transcript are a
11 little bit off. Lines -- this is the smaller number page
12 of 790.

13 A. Oh, I see what you're saying. It has 791 at the top
14 but ---

15 Q. And then ---

16 A. --- within the border ---

17 Q. --- within the border ---

18 A. --- it says 790.

19 Q. 790, and that's what I'm talking about, page ---

20 A. Okay.

21 Q. Within the borders of 790.

22 Q. Okay.

23 A. Beginning on line 19, the example Judge Manning used
24 is:

25 By way of illustration, two people can be guilty

C. HART - DIRECT EXAMINATION BY MR. WALLER

67

1 of killing another of murder when only one of the
2 two has a pistol and only one bullet.

3 Do you have any issue with the example he uses being a
4 very similar scenario to the case that was at trial, and
5 would have requesting a different example at a charge
6 conference been helpful?

7 A. I, I can't remember. I...

8 Q. Okay, and to the best of your recollection, you did
9 not object to the, the jury charge. Is that correct?

10 A. Let's see. If it's...

11 Q. Page 792.

12 A. Yeah, I'm looking at 792. I don't see an objection,
13 and it appears that I did not object.

14 Q. Did you have a specific strategy behind not objecting
15 to that?

16 A. Sitting here today, I can't tell you.

17 Q. Okay.

18 MR. WALLER: Beg the court's indulgence.

19 (COUNSELOR CONFERS WITH APPLICANT.)

20 MR. WALLER: Mr. Hart, I have no further questions.

21 Please answer anything Mr. Mitchell might have for you.

22 WITNESS: Okay. Thank you.

23 THE COURT: Let's take a short break.

24 (OFF THE RECORD.)

25 THE COURT: All right, Solicitor, you may proceed.

1 CROSS-EXAMINATION BY MR. MITCHELL:

2 Q. All right. Good morning, Mr. Hart.

3 A. Good morning.

4 Q. All right. So, you were appointed on this case?

5 A. Yes, sir.

6 Q. And then you devised a strategy after meeting with the
7 client and reviewing all the discovery and whatnot. Is
8 that, is that right?

9 A. Yes.

10 Q. So, what was the overarching strategy of the case? I
11 mean, was it just attack credibility of the witnesses? Try
12 to, you know, push the blame onto girlfriend or the
13 codefendants who had already admitted to doing it,
14 something along those lines?

15 A. That was one of the themes. The main strategy was,
16 was what I talked about in the opening was that they had
17 the wrong person on trial, which was Victor Smith. And
18 that was the biggest thing that -- something happened.
19 Something happened in that apartment, but none of it
20 connects back to Victor Smith.

21 Q. You know, they couldn't prove that that was actually
22 Ernest Robertson -- Robinson definitively, correct?

23 A. That is correct. They couldn't prove it through
24 physical evidence, that's correct.

25 Q. All right, I'm going to jump right into his

C. HART - CROSS-EXAMINATION BY MR. MITCHELL

69

1 allegations. I think we'll start with the search warrants.
2 You did challenge the search warrant on the grounds that
3 the statements that the warrant relied on were not
4 accurate. Is that how you remember arguing it and framing
5 that issue at least?

6 A. The best of my recollection, yes, sir.

7 Q. You talked a little bit about the standing to the
8 search warrant. I mean, that's really something for the
9 solicitor to bring up, to bring up to counter your argument
10 on the search warrant, right?

11 A. That is correct. As a defense attorney, I, I wouldn't
12 imagine I would position myself out of making a legal
13 challenge. That doesn't make sense to me, that I would say
14 well, Judge, I don't have standing to challenge those
15 warrants, so we're just going to concede. I don't -- I
16 just -- I don't see a defense attorney making that argument
17 against the interest of their client.

18 Q. Well, there weren't really any problems with standing
19 in your eyes, were there, at that point? The lease was in
20 his name; he had belongings there. He had lived there at
21 some point, right?

22 A. Right, and he was there when DS -- the Drug
23 Suppression Team showed up. I think Mr. Smith was there,
24 and he did have some belongings there.

25 Q. All right. That was when he was arrested, correct?

1 A. Yes, sir.

2 Q. Dealing with Judge Manning during the jury selection,
3 did you have any issues with any of the jurors with their
4 impartiality?

5 A. No, sir. None came to -- I don't recall any issues of
6 anybody.

7 Q. Even if you had some issues with the impartiality of
8 the jurors, would you have brought that to Judge Manning's
9 attention?

10 A. Yes, and also -- which is why in the end I polled the
11 jury just to make sure, ensure that there were no issues
12 raised during deliberations of somebody being impartial.

13 Q. So, you didn't really have any problem with Judge
14 Manning not being able to hear or you didn't have any
15 concerns with that at that point?

16 A. I'm not following him saying I can't hear you. I'm
17 not following how -- I'm just -- I'm not following that. I
18 just don't remember making an objection and Judge Manning
19 not hearing the objection, I have to repeated it and say,
20 Judge, did you hear me. Or making an argument and Judge
21 Manning saying I didn't hear you. I, I don't remember the
22 hearing being an issue.

23 Q. As far as Judge Manning's comment as to how the jury
24 may disregard any comments he makes on the facts, did you
25 think that that was not a problem because of the way he

C. HART - CROSS-EXAMINATION BY MR. MITCHELL

71

1 expounds on it later in those comments to where -- and this
2 is back on 1-0 -- page 105. This is the kind of may/must
3 dilemma.

4 A. That is correct. Looking at line 18 of page 105 where
5 Judge Manning states: It is especially important that you
6 perform your duty. Your duty is -- wow, he didn't say
7 must. Duty is something that you have to do; it's not
8 something that you have a choice to do. You have a duty to
9 determine the facts.

10 Q. And that was instructed later in the trial by Judge
11 Manning as well?

12 A. That's my understanding, yes, sir.

13 Q. Going to Stan Smith's testimony on 390 -- 293, 293.
14 This is where the allegation regarding whether he was
15 bolstering testimony of Investigator Holdorf, where he says
16 has the utmost -- or where he has the most confidence in
17 these people sort of. I mean, that's a fairly isolated
18 comment here, isn't it?

19 A. Yes, sir.

20 Q. Do you see that as improper? It probably is
21 objectionable, but do you think it's improper?

22 A. No, sir, I don't.

23 Q. You know, it's kind of a general question. When you
24 have something like this that seems a bit isolated, do you
25 make a decision not to object to it, you know, because you

1 don't want to bring the jury's attention to something kind
2 of minor.

3 A. A lot of that goes into trial strategy. A lot of
4 times what you just mentioned is if you bring it to the
5 attention of the jury, those -- some of those legal issues
6 the jury, it may just blow right past them, but as lawyers,
7 we're trained to pick up on everything, and you have to
8 make that split-second decision. Do I bring this to the
9 attention of a lay witness or someone who may not
10 understand the specifics of bolstering a witness or
11 bolstering testimony.

12 Q. Moving to Stan Richards's testimony on 361. So, he is
13 qualified as crime scene analysis expert and bloodstain
14 pattern expert, right?

15 A. Yes, sir.

16 Q. Okay, and, you know, during the *voir dire*, he goes
17 through his list of training, the list of areas where he's
18 had significant training and does deal with blood and, you
19 know, really a number of aspects of crime scene analysis.
20 Is that right?

21 A. Yes, sir.

22 Q. Okay. You know, we talked about whether he was
23 qualified to testify to whether it was actually blood. If
24 you'll turn to page 349?

25 A. Okay.

C. HART - CROSS-EXAMINATION BY MR. MITCHELL

73

1 Q. Line 24. I think that's where Mr. Richards's concern
2 -- Sergeant Richards testified it was a presumptive test, a
3 positive test. Is the right?

4 A. Yes, sir.

5 Q. So, that's kind of how they do it. They, they go
6 there as the crime scene. You know, if they, if they see
7 something that could be blood, they have something they can
8 test quickly and get a reading of whether it could be blood
9 or not. Is that your understanding of that testimony
10 there?

11 A. Yes, sir.

12 Q. So, he was qualified -- or, yeah, qualified and
13 offered as bloodstain pattern, pattern examiner. So, I
14 mean, he should be qualified to say that it's a bloodstain
15 through the presumptive test.

16 A. Yes.

17 Q. In the context of that, right?

18 A. Yes.

19 Q. Like he's testified to earlier, the testing was done
20 there, but it was also done at the lab to where its, you
21 know, the definitive test of whether it was blood, not the
22 presumptive test.

23 A. That's correct.

24 Q. Okay, and sticking with him, talking about whether it
25 was speculation to what -- to his testimony on a dynamic

1 bloodletting event, that's about page 371. I mean, do, do
2 you think that's a -- any kind of speculation? I mean,
3 isn't he really just offering his ultimate opinion of what
4 he concluded after doing his analysis?

5 A. What line are you on?

6 Q. Let's see. I don't have the transcript in front of
7 me.

8 A. Okay.

9 Q. Somewhere around 371 where he talks about ---

10 A. All the bloodstain ---

11 Q. Right, a dynamic bloodletting event, splatter on the
12 walls.

13 A. Ask me your question again.

14 Q. So, do you consider that more of his ultimate opinion
15 rather than speculation?

16 A. Yes, sir.

17 Q. I mean, because that's what he was there to do, right?
18 It was to see what -- how these bloodstains are patterned
19 and then the conclusions you draw from there, if there's a
20 large pool of blood there, and then he concluded that there
21 was -- a dynamic bloodletting event took place in that
22 area, right?

23 A. Yes, that's correct. Yes, sir.

24 Q. So, you think that was -- you know, that's just his
25 expert opinion, using his training and the evidence he

C. HART - CROSS-EXAMINATION BY MR. MITCHELL

75

1 collected and the analysis that was done, and that's just
2 what he concluded, right?

3 A. Right.

4 Q. That's not really speculation if it's his expert
5 opinion on -- you know, basing off of everything that,
6 everything that he had gathered to form that opinion,
7 right?

8 A. Right.

9 Q. Okay, and this is right along the same -- this is page
10 389 from the same note, whether he was qualified to testify
11 that blunt-force trauma, whether it was consistent with
12 blunt-force trauma. I mean, that's, that's really his
13 opinion as well, isn't it?

14 A. That's correct.

15 Q. You know, it was that the blood spatter that he saw
16 was consistent with a blunt-force trauma injury, right?

17 A. That is correct.

18 Q. And that goes right along with what bloodstain pattern
19 examiners examine.

20 A. Right.

21 Q. Moving to the death certificate, and y'all have talked
22 about this a good bit, you know, and you made the
23 objections. It's not, it's not certain that it's Ernest
24 Robinson, or the state's made the case that it is, and the
25 death certificate reflects the fact that Ernest Robinson

1 was -- the cause of death was a gunshot wound to the head,
2 and they have a date on the death certificate. So, your
3 argument was essentially that's prejudicial because there's
4 nothing to support -- well, there's no definitive support
5 as to those conclusions. Is that right?

6 A. That's correct.

7 Q. Okay. I mean, when you were arguing that, did you
8 think in terms of Rule 403? I know that was -- I know
9 y'all say 403 when you're arguing, but the -- is that, you
10 know, the road you were arguing out there a little bit?

11 A. Yes. As I explained, and I, I can't remember.

12 WITNESS: What's your name?

13 Q. Mr. Waller.

14 A. Mr. Waller, that's what I was trying to explain to him
15 when he was asking me that question. If you look at the
16 basis of my objection, that is a 403 objection.

17 Q. When you talk about, you know, it's got the state seal
18 on it, so we don't want them just to give it weight because
19 it's got some kind of letterhead on it or seal and say
20 stamped by state of South Carolina. It's, like, oh, this
21 is him. You can argue that in closing, though, right? I
22 mean, say something like, you know, that death certificate
23 means nothing because they're just basing that off of what
24 was testified here today.

25 A. Right.

C. HART - CROSS-EXAMINATION BY MR. MITCHELL

77

1 Q. And as was said earlier, you did not renew your
2 objection to -- you did not object when this was actually
3 offered but, I mean, you -- Judge Manning was pretty clear
4 on the ruling at that point, wasn't he?

5 A. That is correct.

6 Q. I think the death certificate argument took place
7 without the jury, without the jury being present and when
8 it came in, obviously the jury was present and you did not
9 object then, but, I mean, you knew Judge Manning's ruling.
10 You knew which way that was going to go. Is that right?

11 A. That's correct.

12 Q. Moving to the -- to where you ended up consenting to
13 -- or where you make the objection to the references to Mr.
14 Smith being held in the Mississippi Department of
15 Corrections, you did make an objection to that. I think
16 that's on page 529, I think, or that's maybe when you --
17 around 529 to 532, I believe. So, Solicitor Goldberg
18 essentially argued that you had opened the door because you
19 had put out there that he wasn't at this apartment after
20 this specific date because he was arrested. And then he
21 wanted to get into why he was not at this apartment at that
22 point. Is that your recollection of that?

23 A. I was reading. I'm sorry. Ask that question again.

24 Q. Solicitor Goldberg is the one who brought this up
25 because I think he wanted to try to get into why Mr. Smith

1 was not at the apartment after thee date, as you had said
2 in your opening statement. Is the right?

3 A. That's correct.

4 Q. Okay. You kind of come to an agreement to where you
5 can say that he was being held at the Mississippi
6 Department of Corrections. Then you don't get into
7 anything further, that it was a probation violation or
8 anything, burglary. That it had happened before. Is that
9 right?

10 A. That's correct.

11 Q. And we kind of talk about the alibi a little bit. I
12 mean, it's not quite -- it's not a perfect alibi. Is that
13 right?

14 A. Right.

15 Q. I mean, it wasn't that he was not there on the day the
16 state says the incident took place. It's kind of your
17 position that, you know, the date that the state says it
18 took place is wrong to begin with. Isn't that right?

19 A. That's right.

20 Q. Because the authorities had been to this apartment two
21 times, I believe, after the alleged incident took place in
22 that apartment, right?

23 A. Right.

24 Q. And then it was part of your strategy to really
25 highlight the fact that if these investigators are coming

C. HART - CROSS-EXAMINATION BY MR. MITCHELL

79

1 there and this evidence is obviously in the apartment, how
2 could they have missed it if they did a search and arrested
3 Mr. Smith there, right?

4 A. That's correct.

5 Q. So, it wouldn't really have been appropriate to file a
6 notice of alibi defense at that point?

7 A. Right.

8 Q. And this kind of goes back to the overall strategy. I
9 mean, the three -- well, the two codefendants had already
10 confessed to taking part in this. And then Mr. Smith's
11 girlfriend, Ms. Bright, she testifies that he had confessed
12 to her but wasn't, wasn't part of the -- like you said
13 earlier, the theme of the case was to kind of push the
14 blame off onto the people who would have been -- who have
15 been -- admitted to being involved or were very likely
16 involved like Ms. Bright, right?

17 A. Right.

18 Q. Ms. Bright, on your cross-examination of Ms. Bright,
19 you really get into how could she have been living at this
20 apartment while this murder took place and then have been
21 sleeping in a different room without hearing anything or
22 seeing anything or being suspicious that someone was
23 murdered there.

24 A. That's correct.

25 Q. So, you really emphasize attacking actually the

1 credibility of the state's main witnesses, right?

2 A. That's correct. Yes, sir.

3 Q. All right, and you've kind of already testified to
4 this, too, but just to hit it real quick, you didn't, you
5 didn't subpoena anyone from the Department of Corrections
6 from Mississippi because you could get this evidence out
7 through the state's witnesses who went and interviewed him
8 there, right?

9 A. That's right.

10 Q. So, I mean, you at that point, you risk putting up a
11 case to get some information that really would be easy to
12 get from other witnesses, right?

13 A. That's correct.

14 Q. Is that a consideration that you make in -- generally
15 make in trials whether to put up a case or not and whether
16 that affects last closing argument?

17 A. Yes. That's a huge consideration.

18 Q. So, if it's -- if you could put a case and put up
19 something very minor, you may not put up a case at all if
20 it's something you can freely argue without having to put
21 in any evidence. Is that, is that a fair statement?

22 A. Right. I -- if, if you look at it, that would have
23 been the only other -- that would have been the only
24 evidence that we would put up in our case in chief, which
25 means we would lose that last right to argue at closing

C. HART - CROSS-EXAMINATION BY MR. MITCHELL

81

1 when I knew from the beginning that it was going to come in
2 through the investigators.

3 Q. So, it doesn't really make sense to have someone there
4 just to say something and then lose last argument, right?

5 A. That's correct.

6 Q. Moving to Bill Stevens, the aspiring anthropologist,
7 this is about page 551 where he testifies about the wind
8 currents and the body, and this is probably pretty clear
9 but I'll risk being repetitive. Throughout the trial, you
10 make significant points that a decomposing body would reek
11 essentially, right?

12 A. That's right.

13 Q. And that anyone around this body would have at least
14 noticed some kind of stench?

15 A. That's correct.

16 Q. I mean, the body that was -- Mr. Robinson, or
17 allegedly Mr. Robinson, the body was found, it was found
18 within 60 yards of the apartment. Is that right?

19 A. Yes. It was a lot of apartments.

20 Q. So, there -- a lot of traffic through that area, a lot
21 of people? Not like, you know, an isolated, you know,
22 wooded area or anything, right?

23 A. I actually visited the scene several times and took
24 photographs with and without the investigator. But where
25 the body was found was just a few feet from the windows and

1 back doors of residents who lived in the apartment.

2 Q. So, it was part of your case to really make the point
3 that if this body had been there for as long as the state
4 said, and if you go with what the codefendants said, it was
5 dumped a year, almost nearly a year earlier. That it
6 would've been very noticeable to the people around that,
7 right?

8 A. Somebody should have smelled something.

9 Q. And it didn't make sense that they didn't, right?
10 That's the point you were trying to get across?

11 A. Right.

12 Q. So, the state kind of tries to combat that with Mr.
13 Stevens's testimony where he tests -- where he goes through
14 something about winds and odors being carried. He also
15 testifies that, I think, bodies had been found in people's
16 backyards without them knowing. That's something likely
17 qualified to testify to if he had come across that, isn't
18 it?

19 A. Yes.

20 Q. Was the body in a bit of a -- I don't want to say
21 ditch but like a lower elevation, lower elevated area than
22 the surrounding?

23 A. My understanding of where the body was found was that
24 you have the apartments, and then there's a portion of the
25 backyard that slopes off and drops down. And the part

C. HART - CROSS-EXAMINATION BY MR. MITCHELL

83

1 where it slopes off is where the body was found.

2 Q. Okay.

3 A. Not up top, the yard where the residents live.

4 Q. So, it's not really expert testimony for him to kind
5 of talk about positioning of the body being lower than the
6 apartment area.

7 A. That's correct.

8 Q. Okay. Once again, sorry. Oh, as far as the hearsay
9 statements by Ms. Bright on this page 645 where she's
10 recalling, retelling a bit of what the investigator told
11 her about what potentially happened at her apartment. I
12 mean, it's not really hearsay at that point because it's
13 really just her retelling her reaction to what was being
14 told her. I think it's line 7 through 17.

15 A. It doesn't appear that she was trying to prove the,
16 the truth of the matter.

17 Q. Well, you know, the statements that the investigator
18 told her, that's not -- you know, she's not trying to say
19 that is true. It's just that she's really going through
20 her reaction to what -- her surprise, very surprised with
21 what had happened. Is that how you see it there?

22 A. Yes, sir.

23 Q. Okay, and even if it was something, you know, where
24 she said, oh, well, the investigator told me that, you
25 know, Mr. Smith did it, would you -- that seems a little

1 isolated, kind of like what we talked about earlier. Is
2 that right?

3 A. That's correct, and then -- well, she testified that
4 Victor told her he did it.

5 Q. Right. Well, I guess Victor's a bad example, but, you
6 know, this is just something that's kind of like another
7 small detail where, you know, something comes in. Is that
8 something where you would maybe not object because you
9 didn't want to bring attention to it and cause a big fuss
10 where the jury may not have really grabbed on to what was
11 said?

12 A. That's correct.

13 Q. I believe she said something about a bloodbath or
14 blood, rolling around in blood, her child. That's her
15 statement. That not from the investigator, though.

16 A. Right.

17 Q. Okay. Moving to Investigator Holdorf, the claim
18 whether his testimony was bolstering other witnesses. The
19 page cite was 692 if you want to flip to that, but, I mean,
20 this is really just a fight over credibility. I mean, you
21 were able to point out that each witness for the state gave
22 varying statements and level of detail. Is that ---

23 A. Yes.

24 Q. --- fair to say?

25 A. That is.

C. HART - CROSS-EXAMINATION BY MR. MITCHELL

85

1 Q. So, I mean, you think you were able to really impeach
2 each witness that the state put up as far as the fact
3 witnesses who were the eyewitnesses that were there?

4 A. Yes.

5 Q. And Judge Manning, of course, notes in, well, I guess,
6 jury instructions but throughout the trial that it's up to
7 the jury to judge credibility. Is that your experience?

8 A. Yes.

9 Q. With that jury charge on the hand of one, hand of all
10 example, I'm sure you would not have asked, requested a
11 hand of one, hand of all charge. Is that, is that right?

12 A. That is correct.

13 Q. It looks like it came in anyway. Does that seem to be
14 a correct statement of law? It's page 790. Starts at line
15 19.

16 (A PAUSE.)

17 A. Yes, that's correct. I mean, my understanding is that
18 if both people together acting, assisting each other in the
19 commission of a crime, that's hand of one, hand of all.

20 Q. And Mr. Smith really takes issue, I guess, with the
21 example he gives, but, I mean, is that example an accurate
22 illustration of what hand of one, hand of all is?

23 A. Right. If there are several folks committing a crime
24 and only one person has the gun and only one person does
25 the shooting, the people who don't do the shooting, doesn't

1 mean that they aren't guilty of hand of one, hand of all.

2 Does, does that make sense?

3 Q. Yes, it does. You spent a lot of time preparing for
4 this case?

5 A. Oh, yeah. Yes. Me and Mr. Smith spent a tremendous
6 amount of time together.

7 Q. Did you try this case to the best of your ability?

8 A. Yes, I did.

9 MR. MITCHELL: Thank you. No further questions.

10 THE COURT: Any redirect?

11 MR. WALLER: Just briefly, Your Honor.

12 REDIRECT EXAMINATION BY MR. WALLER:

13 Q. Mr. Hart, talking about Judge Manning's initial
14 comments to the jury, you testified that the sentence after
15 he tells the jury they may disregard his comments, then he,
16 he tells them they have to -- they're -- they have to
17 enforce their duty. Does, does -- Judge Manning's initial
18 comments to the jury, he sets the tone for the entire
19 trial. Is that right?

20 A. You said the initial comment sets the tone?

21 Q. Yes, and it's the first time the jury has got a chance
22 to hear from the judge.

23 A. I don't know if the judge sets the tone of the trial.
24 The judge gives you the law that they must follow. And in
25 that particular sentence, the paragraph that you mention,

C. HART - REDIRECT EXAMINATION BY MR. WALLER

87

1 Judge Manning tells them that's their duty to decide the
2 facts. My understanding of the duties, you don't -- my
3 understanding of the definition of duty is you don't have a
4 choice. It's, it's not like you -- you're at liberty to do
5 -- you either can do this or you can't do it. It's your
6 duty to do it. That's my understanding of duty.

7 Q. Okay. When Judge Manning tells them, and this is a
8 quote beginning on page 105, line 18. It's the line after
9 what we're talking about. It says:

10 It is especially important that you perform your
11 duty of determining the facts diligently and
12 conscientiously for ordinarily there is no means
13 of correcting an erroneous determination of facts
14 by a jury.

15 Where in that sentence would it lead the jury to
16 believe that they can't use Judge Manning's comments to
17 determine the facts? Their duty is to determine the facts,
18 but he tells them they may disregard his comments, and they
19 also may not disregard his comments and use his comments as
20 input in determining their version of the facts.

21 A. Well, I think a better question I should mention is
22 where in the transcript does Judge Manning comment on the
23 facts of the case?

24 Q. Mr. Hart, this is the first time the jury has gotten
25 to hear from Judge Manning. Is that correct?

1 A. Yes, sir.

2 Q. Switching gears to the death certificate, I believe
3 you just testified that you essentially made a Rule 403
4 objection even though you didn't specifically put that on
5 the record and ask Judge Manning to go through the
6 analysis. If you do not specifically make, make it, citing
7 the rule, how is that preserved for appeal?

8 A. By the objection I made.

9 Q. Okay, if you don't cite the rule you're objecting --
10 the grounds you're objecting on, how is that preserved for
11 appellate review?

12 A. My understanding at the time was that I was making the
13 objection based off of whether the death certificate was
14 going to be highly prejudicial and outweigh any relevance
15 that it may bring in.

16 Q. Okay. Respectfully, Mr. Hart, that's not the
17 objection that you make. The objection that you make is
18 that the wording on the death certificate is -- can't be
19 verified because they can't prove that it's Ernest Robinson
20 and that the information they got was obtained through
21 statements of witnesses, and there was nothing tying into
22 that. Do you recall specifically making an objection that
23 it was highly prejudicial and not that it was inaccurate?

24 A. Now I got to go back. I can tell you exactly -- tell
25 me what page that's on again.

C. HART - REDIRECT EXAMINATION BY MR. WALLER

89

1 Q. It begins on page 516.

2 A. 516.

3 (A PAUSE.)

4 A. If you look at all the arguments I was making to Judge
5 Manning at the time, which is why he says, Judge Manning
6 says:

7 We have circumstantial evidence now.

8 Yes, sir, I understand that, which is going to be
9 an official document.

10 Which that document, in essence, is going to be highly
11 prejudicial and it's going to outweigh any probative value
12 that it has.

13 Q. Okay. The last sentence that you -- the transcript
14 doesn't say highly prejudicial. Is that correct?

15 A. No, sir. You're correct. It does not say that.

16 Q. Okay. If that document is presented to the jury,
17 could you have raised the argument in your objection that
18 that shifts the burden because that is an element the state
19 would be required to prove, that Ernest Robinson was killed
20 in this matter?

21 A. I don't think I'm following. Say that again.

22 Q. The death certificate that was presented to the jury
23 said that Ernest Robinson was killed on this date in this
24 manner: gunshot wound to the head on September 27, 2008.
25 By that, by that being presented to -- in Richland County.

1 By that being presented to the jury, does that not shift
2 the burden from the state on to Mr. Smith and yourself
3 having to disprove that that's when Mr. Robinson was killed
4 and in the manner he was killed?

5 A. Well, you got to look at -- you got to -- see, a lot
6 of it you're taking out of context, and I think you got to
7 look at it as -- from the whole, entire trial. Our
8 strategy was they couldn't identify that that was Ernest
9 Robinson. We didn't never want to say that was -- well,
10 not say it. Well, there was no evidence showing that was
11 Ernest Robinson, and that's what we pounded over and over
12 and over and over again. So, there is no way I would've
13 gotten up and, and talked to that jury about that being
14 Ernest Robinson when my whole strategy was to say they
15 don't have any evidence this is him.

16 Q. I understand.

17 A. Or that he died from a gunshot wound because they
18 don't know if it's Ernest Robinson or now. So, I don't
19 know how that makes sense that I would get up and do that.

20 Q. My question is about your objection to the death
21 certificate, okay?

22 A. Yes, sir.

23 Q. Not about presenting it to the jury at all. Your
24 objection made to Judge Manning, my question is why did you
25 choose to object saying that the information wasn't true

C. HART - REDIRECT EXAMINATION BY MR. WALLER

91

1 and accurate or you don't believe it's true and accurate
2 instead of that it was unduly prejudicial or that it
3 shifted the burden?

4 A. My arguments were that they were unduly prejudicial.
5 You're saying I didn't say the word, but if, if you look at
6 each argument, it's saying look. It's, it's, it's going to
7 be -- the prejudice is going to outweigh any probative
8 value that this death certificate had.

9 Q. Okay. Mr. Hart.

10 A. That was each argument that I made each time.

11 Q. Mr. Hart, if you don't cite the rule or use the
12 language, how is that reserved for appellate review?

13 A. I'm not sure.

14 Q. Okay. You testified when the assistant attorney
15 general asked you about the alibi, and you said that it
16 wasn't a perfect alibi in that the state alleged that the
17 event took place in September. You and Mr. Smith's theory
18 of the case, that he was arrested in October, had never
19 returned, that the house had been searched by law
20 enforcement twice since then, and so it must have taken
21 place after he was gone. So, in essence, it wasn't an
22 alibi to the September date. It was an alibi to anything
23 after October, and you're saying the crime could not have
24 taken place prior to October 21st because law enforcement
25 had been there. Is that right?

1 A. Yes, sir.

2 Q. Did you consider retaining a pathologist or any sort
3 of expert to examine the remains to try and determine a, a
4 time of death?

5 A. I think you've asked me that before. There were -- I
6 don't remember having -- I don't recall there being any
7 remains left.

8 Q. Okay. I believe there was testimony -- and I
9 apologize I can't point you directly to it -- that the
10 estimation of when the remains were -- was at the upper end
11 of one year. So, maybe not quite a year but the upper end
12 of a year based on different -- they thought that the crime
13 had been committed in the late fall based on the, I guess,
14 insect larvae and that type of thing. Do you recall that?

15 A. Yes, sir.

16 Q. Did you have any reason to challenge that, and did you
17 think of retaining your own expert to try to shift the, the
18 date of the murder of -- or the date that the remains came
19 to be there beyond October 21st if your theory was that the
20 crime could not have taken place before then?

21 A. Yes, I did. Well, yeah, because you got to look at
22 what -- you're talking about three weeks. Had it been --
23 had the time span been a year or two years, maybe so, but
24 three weeks, I'm not sure of that.

25 Q. Okay. You don't think you could have -- that was too

C. HART - REDIRECT EXAMINATION BY MR. WALLER

93

1 close to make it -- have a big enough gap basically where
2 you, you, you could have an expert say that there was no
3 way it could have happened this soon because the time
4 wasn't very far apart?

5 A. Right and I'm trying -- because we had -- I remember I
6 hired an investigator -- I'm trying to go back to my train
7 of thought and thinking back then. I believe -- and I'm --
8 to the best of my recollection, I think my train of thought
9 back then was you're looking at September 27th to October
10 31st -- I mean, I'm sorry, October 21st, which is about
11 three weeks less than a month, and so I'll go back to my
12 previous statement of had this been a year or two years
13 later, I believe my thinking would have been different.

14 Q. I'm just trying to understand if your theory of the
15 case wasn't -- was an alibi in saying that the state had
16 the date wrong. What steps did you take to present Mr.
17 Smith's defense in that the state had the date of death
18 incorrect and that it was actually after October 21st?

19 A. Well, you're talking about walking a very thin and
20 tight line because I wanted to be careful not to get in too
21 much to confirm the state's position that, number one, this
22 was Ernest; number two, that Ernest was killed. Part of
23 this, we don't know if Ernest is still alive or not because
24 they have not been able to confirm that he died. So, it's
25 a very tight rope that you walk. Now, I want to make sure

1 that we did not step off the rope of what the evidence
2 showed, that they did not know that this was Ernest, and
3 they couldn't prove that it was Victor Smith, if anything
4 happened. They couldn't connect anything to Victor Smith.

5 Q. Okay. You testified on cross-examination that you
6 consented to -- you didn't want to bring in your own
7 evidence of Mr. Smith being in the Department of
8 Corrections. You didn't want to lose the last closing
9 argument when you testified that you knew it would come in
10 through the investigators anyway. It came in when you
11 consented to it coming in. How, how did you know that it
12 would come in through the investigators?

13 A. Well, you never know what the ruling is going to --
14 you can't -- of course, you can always anticipate what a
15 judge may do. You never know exactly, but I knew that
16 there was a statement taken from Victor at the Mississippi
17 Department of Corrections. I knew the investigators had
18 taken it, and I know that if possible, they could testify
19 that the statement was taken at Mississippi Department of
20 Corrections. So, I couldn't tell you exactly, yes, I know
21 definitely that this is going to come in. No, I could not
22 make that assessment until we're in trial.

23 Q. Okay. If -- why did you not let Judge Manning make
24 the determination whether it could come in or not?

25 A. What page are you on?

C. HART - REDIRECT EXAMINATION BY MR. WALLER

95

1 Q. It's -- page 529 is when you give your consent,
2 beginning on line 22.

3 A. 529?

4 Q. Yes, sir.

5 (A PAUSE.)

6 A. I think it goes back to the same thing I've been
7 saying is that -- of our theory that me and Victor
8 discussed about he left and he never came back. And I, I
9 think -- I'm trying to recollect about my frame of thinking
10 during that time as to why I did or did not do something.

11 Q. Okay. You testified on cross-examination that you
12 thought that the forensic anthropologist was qualified to
13 testify as to the wind currents. Is that correct?

14 A. No, sir, I didn't say that.

15 Q. Okay. So, you don't think he was qualified?

16 A. No. I'm telling you I didn't, I didn't say he was
17 qualified to testify to wind currents.

18 Q. Okay.

19 A. What I was asked was his opinion, was he giving some
20 opinions about, I think, the smell.

21 Q. That's ---

22 A. Whether there was or was not a smell.

23 Q. That's correct. He makes a comment that he's reviewed
24 some literature on wind currents and that explains the
25 smell. Based on his ---

1 A. You mean lack of smell.

2 Q. Lack of smell. I apologize. Based on his
3 qualification as an expert in forensic anthropology, how is
4 he qualified to testify to wind currents, how that would
5 affect smell or lack of smell traveling up a slope?

6 A. I can't tell you.

7 Q. When Investigator Holdorf testified regarding Allen
8 Fulton's statement, on direct examination he talks about
9 him being truthful because he was emotional. You testified
10 earlier, both in direct and cross, that he gave
11 inconsistent statements. They had to confront him with
12 some, confront him with some other evidence and he -- his
13 statements did not match up. He either minimized his
14 involvement or did not -- wasn't truthful in his first
15 statement. Is that your recollection?

16 A. Yes.

17 Q. Okay, and you cross-examined him to that, to those
18 questions?

19 A. Yes, sir.

20 Q. Okay, and in your opinion, that damaged his
21 credibility by making inconsistent statements?

22 A. You say in my opinion, does it damage his credibility
23 about making incon -- about not telling the truth? Yes.

24 Q. Okay, and that's what you were trying to show on
25 cross?

C. HART - REDIRECT EXAMINATION BY MR. WALLER

97

1 A. Right. Right. Right.

2 Q. Right?

3 A. Right.

4 Q. Okay. Is that -- is, is the questions you asked him
5 on cross, was that negated by Investigator Holdorf saying
6 that he is believable because he was emotional when he was
7 giving the statement?

8 A. That was the whole plan of the cross-examination: to
9 negate anything that Investigator Holdorf had said.

10 Q. Okay.

11 A. Anything that Allen Fulton had said. That was the
12 whole purpose of showing the inconsistent statements and
13 that Allen Fulton was untruthful. That's what I mentioned
14 in the very beginning at the opening to the jury. You
15 can't believe anything these people are going to say.

16 Q. If you had been able to keep out Investigator Holdorf
17 testifying that he knew Allen Fulton was truthful because
18 he became emotional, why would you have anything to negate?

19 A. You mean about Fulton? Because all the, all the
20 inconsistent statements. The very first statement he gave
21 was untruthful. Why would I not want to negate that? I
22 mean, I don't know if I follow you.

23 Q. Okay. On direct examination, Investigator Holdorf
24 says he gave this statement, and I know he was truthful and
25 the jury can believe he's truthful and because he was

1 emotional when he said it, okay? If you had been able to
2 keep Investigator Holdorf talking about why the jury should
3 believe ---

4 A. Well, no, he didn't say that. That's not what he
5 said, that the jury can believe this because he was
6 emotional.

7 Q. Okay. On page 692, beginning on line 19, Investigator
8 Holdorf said:

9 He was emotional. I think it is very real what
10 he was saying because, again, he was emotional.
11 There are just some things, you get a feeling
12 they're not faking. He didn't want to tell but
13 he didn't have a choice. He even implicates
14 himself in the murder. When he started doing
15 that, it was actually surprising to us.

16 Did you not feel that was objectionable based on him
17 bolstering the credibility of Allen Fulton?

18 A. I think you've asked me that before. What did I, what
19 did I tell you? I, I can't remember. I think you're
20 trying to ask me the same question several times, but the
21 answer is not going to change.

22 Q. Okay, Mr. Hart, I'm not, I'm not sure if I've gotten
23 an answer, though.

24 A. Well, when you first did your direct examination, you
25 asked me this same question, right?

C. HART - REDIRECT EXAMINATION BY MR. WALLER

99

1 Q. Yes, sir, I did.

2 A. My answer is not going to change.

3 Q. Okay. Have you participated in a trial where the hand
4 of one, hand of all was charged to a jury with a different
5 example of it than a gunshot?

6 A. Oh, man. I'm thinking. I think the only trials that
7 I've had with death, with murder, has been -- it's been
8 gunshot, dealing with gunshots. I think those...

9 Q. Was the -- when the hand of one, hand of all was
10 charged, was presented to the jury, what example was used?

11 A. Oh, man, you seriously ask me that? I can't remember
12 the charge. I've been practicing law fifteen years. I
13 can't remember every jury charge that a judge has given.

14 Q. Okay, let me ask it this way then. Can you imagine
15 or, or can you think of a situation where a judge could
16 properly explain hand of one, hand of all to a jury without
17 using the exact same crime the person is on trial for?

18 A. I don't know. You're confusing me now, man. I mean,
19 I could, I guess I could sit here and create a hundred
20 different fact scenarios about hand of one, hand of all. I
21 mean, it's -- it -- I can -- I don't know, man. I don't
22 know.

23 MR. WALLER: Okay. No further questions.

24 THE COURT: Anything further?

25 MR. MITCHELL: Nothing further from the state.

1 THE COURT: All right. Thank you very much.

2 WITNESS: Thank you.

3 THE COURT: You may come down, Mr. Hart.

4 (THE WITNESS EXITS THE STAND.)

5 THE COURT: Anything further the record?

6 MR. WALLER: Nothing.

7 MR. MITCHELL: Nothing from the state, Your Honor.

8 THE COURT: Thank you very much, counsel. I expect
9 proposed orders in thirty days.

10 MR. WALLER: Thank you, Your Honor.

11 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM 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 ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 11TH DAY OF DECEMBER, 2014.

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

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JUNE 20TH, 2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Victor D. Smith, #348112,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-04334

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2016 FEB 18 AM 9:17
JEANETTE W. MCBRIDE
C.C.P. & S.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 9, 2014. Respondent file a Return on July 23, 2015, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed by the Richland County Clerk of Court. An evidentiary hearing was held on December 11, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Christopher R. Hart, Esquire. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, the trial transcript, and the appellate records.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the February 2010 term of the Court of General Sessions for Richland County for Murder (2010-GS-40-12999). Applicant was represented by Christopher R. Hart, Esq. Applicant proceeded to

trial on September 19-23, 2011. He was convicted as indicted. On October 6, 2011, the Honorable Casey L. Manning sentenced Applicant to confinement for life.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Kathrine Hudgins, Esq. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Smith, No. 2013-UP-423 (filed November 20, 2013). The Remittitur was issued on December 6, 2013.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial counsel was ineffective in:
 - a. Failing to properly object to the victim's death certificate admission into evidence;
 - b. Failing to object to Applicant's jail records from the Mississippi Department of Corrections;
 - c. Failing to investigate the victim's date of death;
 - d. Failing to object to an alleged improper comment by Judge Manning;
 - e. Failing to object to improper testimony given by Stan Smith;
 - f. Failing to object to improper testimony given by Stan Richards;
 - g. Failing to object to Deputy Coroner Bill Stevens allegedly testifying outside the scope of his expertise;
 - h. Failing to object to alleged bolstering testimony given by Investigator Travis Holdorf.

II. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.



The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the transcripts, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the appellate records, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Gibbs 3

Ineffective Assistance of Trial Counsel

I. Failing to properly object to the victim's death certificate admission into evidence

First, Applicant alleges Counsel was ineffective in failing to properly object to the victim, Ernest Robinson's death certification being admitted into evidence. The State offered the victim's death certificate into evidence as a self-authenticating document. (Trial Tr. p. 516, lines 16-22). Counsel objected on the grounds that the State has not been able to prove with certainty that the person found near Applicant's apartment complex was Ernest Robinson. (Trial Tr. p. 517, line 24 – p. 520, line 12). Counsel argued that the death certificate was not true and accurate and that it would allow the jury to rely on an official State document in finding that the body recovered was in fact Robinson's body. The objection was overruled and the death certificate was admitted into evidence.

This Court finds this allegation without merit. Death certificates are mandated by statute and kept as a public record. Here, South Carolina Code Ann. § 44-63-74 (1976) requires a death certificate to be filed with the Bureau of Vital Statistics within five (5) days after death. Thus, the death certificate is not hearsay pursuant to Rule 803(8) and (9).

Counsel testified that he made an objection to the death certificate's admission under Rule 403, SCRE. This Court finds Counsel's testimony credible. At trial, Counsel argued the death certificate was prejudicial because it contained the State's seal and was not probative because it could mislead the jury. Counsel testified he believed that was a proper argument under Rule 403, SCRE. This Court agrees and finds a proper argument was made to exclude the death certificate. This allegation is denied and dismissed.

GL 4

II. Failing to object to Applicant's jail records from the Mississippi Department of Corrections

Next, Applicant alleges Counsel was ineffective in failing to object to Applicant's jail records from the Mississippi Department of Corrections being admitted. He argues those records were prejudicial to his case.

Counsel testified that he consented to the jail records admission because it provided an alibi after October 21, 2008. While the State alleged the murder took place on September 27, 2008, Counsel testified he argued that it had to have taken place sometime after that because authorities responded to the apartment where the murder occurred days after and did not see any signs of a murder. He testified he was able to argue that the State could not prove when the murder took place and if the jury believed it was after October 21, 2008, then Applicant could not have participated in the murder and must be acquitted. This Court finds Counsel made a reasonable strategic decision in allowing the jail records to be admitted. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). This Court will not second guess Counsel's strategy. This allegation is denied and dismissed.

III. Failing to investigate the victim's date of death

Next, Applicant alleges Counsel was ineffective in failing to investigate the victim's date of death. Applicant suggests that Melissa Rowe saw the victim after the date the State alleged the murder occurred. Applicant testified that Rowe saw the victim after September 27, 2008.

"Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation

ES
me 5

of the facts and circumstances of the case.” Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). Applicant has not provided this Court with any admissible testimony as to an alternative date of death. This allegation rests entirely on speculation because Rowe was not produced at the hearing. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.”). Applicant failed to present any evidence to this Court as to how this investigation could have changed the result of the trial.

IV. Failing to object to an alleged improper comment by Judge Manning

Applicant next argues Counsel was ineffective in failing to object to a comment Judge Manning made to the jury during his opening remarks. Judge Manning stated: “If at any time I should make any comments regarding the facts, you are to at liberty to disregard my comments.” (Trial Tr. p. 105, lines 16-18). Applicant argues that the jury *must* disregard any comment on the facts. Counsel testified that Judge Manning later expounds upon those comments and made clear that the jury must determine the facts independently. This Court finds, taking the opening comments as a whole, Judge Manning correctly conveyed that the jury was to be the sole judge of the facts. This allegation is denied and dismissed.

V. Failing to object to improper testimony given by Stan Smith

Applicant next argues Counsel was ineffective for failing to object to improper bolstering testimony given by Major Stan Smith of the Richland County Sheriff’s Department. Specifically, Applicant alleges Counsel should have objected to the following exchange:

Q: You talked about someone who is a supervisor over these kinds of incidents, would it have been your job to conduct every last detail of the investigation in this case or would that have been assigned?”

CL 6

A: That's virtually impossible with the number of homicides that we have of violent crimes, unfortunately, but I sort of supervise them in an overview type – I was a little more involved in this one maybe more than some of the others. But I rely on experienced detectives, such as Investigator Holdorf to make the right call. I have the most confidence in individuals like Holdorf that work these homicides.

(App. p. 293, line 16 – p. 294, line 2).

Counsel testified he will normally base his decision on whether to object to such comments if they weigh in on the evidence. He noted that it did not and that he did not want to bring attention to an isolated comment by making an objection. This Court finds Applicant failed to show Counsel was ineffective. The comment that Smith had the confidence in Holdorf does not rise to the level of improper bolstering and Counsel had the full opportunity to cross examine Smith on his actions in the case. Applicant also cannot show that if this testimony was objected to that the result of the trial would have been different.

VI. Failing to object to improper testimony given by Stan Richards

Applicant alleges Counsel was ineffective for failing to object to Sergeant Stan Richard's testimony regarding the existence of a blood stain at the apartment where the murder took place. Applicant argues that although Richards was qualified as an expert, he was not qualified to testify to whether a stain was actually a blood stain.

Richards was qualified and admitted as an expert in crime scene investigation and blood stain analysis. (Trial Tr. p. 335, line 4 – p. 336, line 22). Counsel testified that Richards was qualified to give an opinion on whether certain stains were blood stains. He testified that Richards performed a presumptive test which gives an initial reading of whether there is any blood present. This Court finds Richards's testimony was not objectionable because it was within his qualifications as a blood stain analysis expert.

62

CONFIDENTIAL

Applicant also argues Counsel was ineffective in failing to object to alleged speculative testimony given by Richards. The relevant testimony is as follows:

Q: Based upon all the evidence that you examined in the apartment over a three day period, the swabs that were taken, photos that were taken, search that was conducted, the numerous hours that you spent there, how would you classify the event that took place in that front right bedroom?

A: First of all, I would say that assessing the scene and then going through the processing techniques that we do, I found, number one, I did not find any overlapping events in the bedroom. I found a major event with overlapping event segments, small segments that happened. I had spatter on the walls. Spatter means force. Bloodstains put into flight with some type of force at the blood source. I had large blood stains on the carpets that saturated through the padding, that saturated through the cement. I even had stains on the adjacent bedroom. So with all that being said, and all those things that come into play in a bloodstain analysis, that was a dynamic blood letting event inside that room.

(Trial Tr. p. 370, line 22 – p. 371, line 15). Applicant argues that Counsel was ineffective in failing to object to Richards's testimony that there was a "blood letting event."

Counsel testified he did not believe this was objectionable and that these comments amounted to Richards giving his ultimate opinion as an expert. This Court agrees and finds the testimony proper.

Applicant also alleges Counsel was ineffective for failing to object to Richards's testimony that the blood spatter was "consistent with a blunt force trauma pattern." (Trial p. 389, lines 23-24). Counsel testified he believed Richards was qualified to give an opinion as to force. This Court finds the testimony is within the scope of qualifications. The Court also notes that Richards testified the injury was consistent with blunt force trauma which is proper testimony admissible through an expert in blood stain analysis. These allegations are denied and dismissed.

VII. Failing to object to Deputy Coroner Bill Stevens allegedly testifying outside the scope of his expertise



Next, Applicant argues Counsel was ineffective in failing to object to Deputy Coroner Bill Steven's testimony regarding wind patterns as outside the scope of his qualifications. Stevens testified at trial that it would not be unusual for the residents of the apartment complex to not notice the smell of the victim's decomposing body in a nearby ditch. The portion of his testimony that Applicant believes is objectionable is as follows:

Also the back of Building 16, right here, is on the slope which leads down to a pond and a low lying area, and so I looked into some of the literature on air currents and – show the next slide. Air currents coming upslope and off of ponds produce eddies and they produce swirling wind currents, so it's likely that at certain times that odor would not have ever been carried up that slope toward those buildings, based on my review of the literature on that.

(App. p. 551, lines 18-25). Specifically, Applicant argues the testimony regarding the wind currents was outside the scope of his qualifications.

While this testimony was outside of the witness's expertise and qualifications, this Court finds that Applicant was not prejudiced by this testimony regarding wind currents. The result of the trial would not likely have been different had this testimony been excluded. The eyewitness testimony given by Applicant's codefendants is insurmountable. There is overwhelming evidence of Applicant's guilt considering the fact that the murder took place in his apartment and that he confessed to his girlfriend. This allegation is denied and dismissed.

VIII. Failing to object to alleged bolstering testimony given by Investigator Travis Holdorf

Finally, Applicant alleges Counsel was ineffective in failing to object to alleged bolstering testimony given by Investigator Travis Holdorf. Specifically, Applicant alleges the following should have been objected to: "Dottie Cronise has done a fantastic job." (App. p. 685, line 18). Counsel testified that he did not wish to bring attention to the comment in explaining why he did not object. This Court finds that was a reasonable strategic decision. Furthermore,

G. Z. 9

this isolated comment would not have had any bearing on the jury's determination of Applicant's guilt.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12 day of February, 2016.



G. THOMAS COOPER, JR.
Presiding Judge

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Victor D. Smith, #348112,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
5TH JUDICIAL CIRCUIT

**MOTION PURSUANT TO RULE 59(e)
SCRPC, TO AMEND**

Case No. 2014-CP-40-04334

2016 APR 12 PM 12:55
FILED
RICHLAND COUNTY
JEROME W. HARRIS
C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that the Applicant, Victor D. Smith, by and through his undersigned counsel, hereby gives notice of his intent to move and does so move the Court pursuant to Rule 59(e), SCRPC, for an Order of the Court to alter or amend its prior Order filed February 18, 2016 and served on counsel on March 31, 2016.

The Applicant filed a timely application for post-conviction relief (PCR) on July 9, 2014. In his application, Applicant alleged various instances of Ineffective Assistance of Counsel including counsel consenting to allow evidence of Applicant's prior bad acts; namely that he was incarcerated in the Department of Corrections in Mississippi when interviewed regarding the case at issue. The State was allowed to submit evidence to the jury that Applicant was incarcerated with no explanation or mitigation as to why he was incarcerated. Applicant contends that this issue was not waived and should have been addressed in the Order.

Further, while the Order discusses Applicant's assertions that Counsel was ineffective for failing to investigate the date of death of the victim, the Order is silent as to whether Counsel was ineffective for failing to properly raise the defense of alibi. During the testimony of Counsel, he testified that the strategy of the case was that Applicant could not have committed the crime because

the crime must have taken place after Applicant was incarcerated in Mississippi. Counsel argued at trial that law enforcement had been to Applicant's residence, which was also the alleged scene of the crime, shortly after the crime was to have taken place, yet saw no evidence of the crime. Applicant was arrested then and never returned to the residence. Counsel testified that despite having a defense of alibi, he never filed a notice of alibi defense, nor did he request a jury charge to that effect. Applicant contends that this issue was not waived and should have been addressed in the Order.

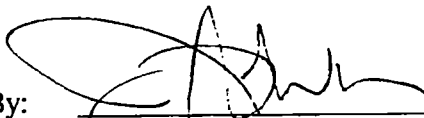
Additionally, Applicant contends that the Order is incomplete in that it does not address Applicant's allegations that Counsel was ineffective for failing to object to the jury charge. Specifically, Applicant contends that the examples used in the accomplice liability, "hand of one" charge were too similar to the alleged facts of the case at issue and could have confused and prejudiced the jury. Applicant contends that this issue was not waived and should have been addressed in the Order.

Finally, Applicant contends that the Order is incomplete in that it does not address Applicant's allegations that Counsel was ineffective for failing to object to the improper bolstering during Investigator Travis Holdorf's testimony. During Investigator Holdorf testified regarding the statement of Allen Fulten, a co-defendant. In particular, Investigator Holdorf testified that Allen Fulten was truthful in his statement because he was emotional while giving the statement. (Record at 692). Applicant contends that this testimony was improper and should have been objected to as improper bolstering and that counsel was ineffective for failing to object. Applicant contends that this issue was not waived and should have been addressed in the Order.

Applicant respectfully requests this Court to reconsider its prior Order pursuant to Rule 59(e), SCRCRCP and for the reasons stated below to grant the Application for Post Conviction Relief.

For the foregoing reasons, Applicant requests that the Court withdraw its previous Order and issue a new Order granting Applicant the Post Conviction Relief he seeks.

Respectfully submitted,

By: 

Jonathan D. Waller
Giese Law Firm, LLC
1315 Blanding Street
Columbia, South Carolina 29201
Telephone: 803-708-6767
Facsimile: 803-708-6769
E-mail: jwaller@thegieselawfirm.com

ATTORNEY FOR THE APPLICANT

April 8, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Victor D. Smith, #348112)

Applicant..)

v.)

State of South Carolina)

Respondent.)

IN THE COURT OF COMMON PLEAS

C/A No. 2014-CP-40-04334

**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND**

2019 MAR 29 AM 11:58

After careful consideration of the Respondent's Rule 59(e) Motion, and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. This Court is of the opinion that the issues raised in Applicant's Motion do not, and would not have met the burdens established in Strickland v. Washington (466 U.S. 668) to warrant relief. Accordingly, this Court hereby DENIES Respondent's Motion pursuant to Rule 59(e) SCRCP to Alter or Amend this Court's Order of Dismissal entered on or about February 18, 2016. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.



G. Thomas Cooper, Jr.
Presiding Judge, Fifth Judicial Circuit

March 27, 2019

957

WITNESSES

(S) Travis Holdorf - RCSD

ARREST WARRANT NUMBER

I-918240

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: FEB 10 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-40-12999

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

74

**THE STATE
vs.**

VICTOR DEWAINE SMITH

Indictment for

MURDER

SC Code: 16-3-10
CDR Code: 0116
Class FEL/EXM(V)

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
J. J. W. W. W. W. W.
C.C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

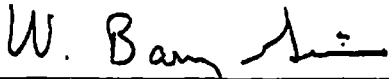
INDICTMENT

At a Court of General Sessions, convened on February 10, 2010, the Grand Jurors of Richland County present upon their oath:

MURDER

That VICTOR DEWAIN SMITH did in Richland County on or about September 27, 2008, feloniously, willfully and with malice aforethought, kill one Ernest Robinson, and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10.

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



Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATEINDICTMENT/CASE#: 2010-GS-40-12999VS.
Victor D. SmithAW#: I-918240

AKA: _____

Date of Offense: 7-27-08Race: B Spx: M Age: _____S.C. Code §: 16-3-10

DOB: _____

CDR Code #: 0116

Address: _____

City, S: _____

DL#: _____ SID#: _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murderin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: _____
Solicitor SC Bar # _____ Defendant Attorney for Defendant SC Bar # _____WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-289 (DUI Breath Test)	\$500	\$
§35.13 (Public Def/Prob)	\$25	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
§90.11 TP (SCCJA Surcharge)	\$5	\$
TOTAL	\$	_____

Court Reporter: Jeanette W. M. McBraden
Clerk of Court/ Deputy ClerkObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____ \$25 \$

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

PRESIDING JUDGE _____

Judge Code: _____

Sentence Date: _____

206 CERTIFIED TRUE COPY
10-10-10 ORIGINAL FILEDJ. W. M. McBraden
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA