

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Daniel D. Hall, Circuit Court Judge

WILLIAM T. SMITH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000517

APPENDIX

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

3 The State, }
4 -vs- } TRANSCRIPT OF RECORD
5 } 2019-GS-42-0113
6 William Tommie (Tommy)
Smith, }
7 Defendant. } July 26 - 27, 2021
 } Spartanburg, South Carolina

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10
11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE; and a jury
13
14

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

16 BARRY JOE BARNETTE, ESQUIRE
Attorney for the State

17 CHARLES WILLIAM SNYDER, III, ESQUIRE
18 Attorney for the Defendant
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21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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4	S-2	Metal baseball bat	32	68
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Jury qualification

1 (Proceedings July 26, 2021)

2 (The following takes place at the Spartanburg Memorial
3 Auditorium.)

4 THE COURT: Good morning, ladies and gentlemen of the
5 jury.

6 My name is Derham Cole, and I'm a resident judge here
7 in the Seventh Judicial Circuit. And I'm going to be
8 presiding over the next case that's going to require some
9 of your participation.

10 The title of that case is the State vs. William Tommie
11 Smith.

12 Mr. Smith has been accused by the prosecutor by way of
13 the indictment with having committed the crime of murder.
14 The indictment alleges that William Tommie Smith did here
15 in Spartanburg County on or about December the 2nd of 2018,
16 did wilfully and with malice aforethought kill one Brenda
17 Kay Tanner by striking her with a lethal weapon and that
18 she died as a proximate result of that injury.

19 Now, as to those allegations and as to that charge the
20 defendant has entered a plea of not guilty, and a plea of
21 not guilty places upon the state the burden of proving the
22 allegations that they have made by way of the indictment,
23 the burden of proving each of the essential elements of the
24 crime that is alleged against the defendant set forth in the
25 indictment; and therefore the burden is upon the state to

Jury qualification

1 establish the defendant's guilt to the satisfaction of 12
2 jurors beyond a reasonable doubt before any such finding
3 could be made, and therefore we're going to be selecting
4 probably 14 of you to participate in the trial.

5 You're going to simply be called upon to consider
6 testimony and other evidence received during the trial, to
7 decide the facts where you can that relate to the
8 allegations, apply the law and determine whether or not the
9 defendant has been proven guilty beyond a reasonable doubt.

10 Before we begin with jury selection in the case I'm
11 going to be introducing some folks to you. Some of those
12 people are here in this room, and others are not. But
13 others will be identified.

14 And so as a person is introduced or as their name is
15 provided to you, if you have any connection whatsoever with
16 that person, whether it be by blood or by marriage or you
17 have a personal or a social, you have a business or a
18 professional relationship, you attend church with them, you
19 attended school with them, you have worked at the same place
20 that they have worked, or some members of your family or
21 their family have a connection, I need you to stand and let
22 me know of that fact. And we'll determine whether or not
23 that connection would have any bearing upon your judgment or
24 your ability to serve as a juror in the case.

25 Then I'll have some other questions to ask you after

Jury qualification

1 that. But right now I'm going to engage in the
2 introductions.

3 The defendant, the person who is accused of having
4 committed the crime of murder, is William Tommie Smith.

5 Mr. Smith, if you will, please stand and face the jury
6 panel so that they may see who you are.

7 (Whereupon, the defendant stood.)

8 THE COURT: Thank you. Be seated.

9 Mr. Smith is represented by Chad Snyder who is an
10 assistant public defender employed in the Seventh Judicial
11 Circuit Public Defender's Office.

12 (Whereupon, Mr. Snyder stood.)

13 THE COURT: As I read from the indictment, the person
14 alleged to be the victim of this crime is Brenda Kay
15 Tanner.

16 So if anybody knows Brenda Kay Tanner or any members
17 of her family, I'll need you to let me know of that fact.

18 And presenting the case on behalf of the state is
19 Barry Barnette. He is the elected circuit solicitor for
20 the Seventh Judicial Circuit.

21 (Whereupon, Mr. Barnette stood.)

22 THE COURT: Potential witnesses to be called during
23 the trial include the following: Mandy Cockrell employed
24 with 9-1-1; Jason Wilson, a sheriff with the Spartanburg
25 County Sheriff's Department.

Jury qualification

1 Until I stop, all of the persons I'm going to recite
2 the names, I'm going to recite now, are employed with the
3 Spartanburg County Sheriff's Department.

4 So in addition to Jason Wilson, we have Joshua Clark;
5 Robert Atkins; Brandt Miller; Nathan Pinker; Sarith Mao;
6 Coby Stepp; Robert Talanges; Andy Lawson; Lanham Graham;
7 Courtney Burgess; Robert Rosenberg; Angela Nelson; and Nate
8 Cantrell. Those are all employed at the sheriff's
9 department.

10 In addition, we have a number of witnesses that are
11 employed in the state law enforcement division, commonly
12 referred to as SLED.

13 Those include Andrea Harrison; Samuel Stewart; Jackie
14 Davis; Brooklynn Gonzalez; Jessica Kapp; Bethany Davidson;
15 Lesa Chapman; Charlotte Pitts; Doris Yarborough; Julia
16 Begeman; Megan -- and Megan Rick.

17 We also have an additional witness who is now deceased
18 but whose testimony will be presented by way of a
19 video-taped deposition or video-taped testimony. And that
20 is Watson Dupree Brannon. He was a resident of Chesnee in
21 Spartanburg County.

22 Also potential witness Rick McCraw, Spartanburg County
23 Coroner's Office; Linda Owensby, Spartanburg Regional
24 Medical Center; and John David Wren, Pathologist,
25 Spartanburg Regional Medical Center.

Jury qualification

1 Are there any other potential witnesses to be called
2 on behalf of the state?

3 MR. BARNETTE: No, sir.

4 THE COURT: The defendant?

5 MR. SNYDER: No, sir.

6 THE COURT: All right. So those are all of the
7 potential witnesses that -- and other persons that have
8 been identified. Of course the lawyers have been
9 introduced to you and the defendant's been introduced to
10 you.

11 Not only do I need to find out if you know any of
12 those or have any connection with any of those people, but
13 also do you have any such connection with any other person
14 who has not been identified but who you know to be employed
15 in the Seventh Judicial Circuit Solicitor's Office and/or
16 the Seventh Judicial Circuit Public Defender's Office? So
17 do you know anybody else that's employed in either of those
18 offices? If so, I need you to stand and let me know of
19 that fact.

20 All right. As you stand, if you will, tell me your
21 name and your juror number. And then tell me what
22 information you have to share.

23 JUROR NO. 77: I'm John Johnston, Juror No. 77. And I
24 am a friend of Rick Gregory. I think he's with the
25 solicitor's office. I'm not positive.

Jury qualification

1 THE COURT: He is. Anything about that? Y'all are
2 personal friends?

3 JUROR NO. 77: I go to church with him.

4 THE COURT: Okay. Is there anything about that
5 connection that would have any bearing upon your decision
6 in this case?

7 JUROR NO. 77: No, sir.

8 THE COURT: All right. Thank you. Be seated.
9 That's Juror 77.

10 JUROR NO. 4: Your Honor, I'm Juror No. 4. I'm
11 Kenneth Anthony. I'm an attorney. I have, of course,
12 dealt with Solicitor Barnette in court over the years, and
13 I believe I've also dealt with Mr. McCraw at the coroner's
14 office.

15 THE COURT: Dealt with -- what was the last thing?

16 JUROR NO. 4: McCraw.

17 THE COURT: Rick McCraw. Okay.

18 JUROR NO. 4: And my son was formerly employed with
19 the solicitor's office.

20 THE COURT: All right. Is there anything about those
21 connections that would have any bearing in your decision in
22 this case?

23 JUROR NO. 4: No.

24 THE COURT: Thank you. Be seated.

25 Anybody else?

Jury qualification

1 (No response.)

2 THE COURT: Has any member of the jury panel or any
3 members of your immediate family -- and let me define an
4 immediate family member as a parent or a spouse or a child
5 or a sibling -- parent, spouse, child or sibling. Have you
6 or any members of your immediate family, as I just defined
7 it, ever been the victim of any type of criminal offense
8 which might be described as violent?

9 And that would include murder, manslaughter, armed
10 robbery, criminal sexual conduct, aggravate assault and
11 battery, domestic violence of a high and aggravated nature
12 or any other similar type of criminal offense.

13 Have you or a family member as I defined it ever been
14 the victim of such, as well as have you or a family member
15 ever been accused of having committed any of those types of
16 criminal offenses?

17 So if you have been -- you or a family member has been
18 the victim of such or you or a family member has been
19 accused of such, I would ask that you please stand to
20 provide me with that information.

21 All right. Now, I've got several standing. So I need
22 your name and your juror number, and also this. If -- and
23 I'll ask you some questions when I get to you. But if you
24 prefer not to answer the question where you are, you prefer
25 to come down here to provide me with that information, you

Jury qualification

1 may do that. You'll just have to let me know of that fact.

2 All right. I'll start over here. Your name and
3 number, please, ma'am.

4 JUROR NO. 63: Stephanie Hill, 63. And I prefer to
5 come up.

6 THE COURT: Okay. You may.

7 (Bench conference held off the record with Juror No. 63
8 and counsel present.)

9 THE COURT: All right. Juror 63 is excused from
10 serving in the trial of this case.

11 JUROR NO. 121: Juror 121, Ita Oliver.

12 THE COURT: Was it you or a family member?

13 JUROR NO. 121: Me and family members.

14 THE COURT: All right. And were you or that family
15 member the victim or the accused?

16 JUROR NO. 121: Victim.

17 THE COURT: And what was the nature of the offense?

18 JUROR NO. 121: Domestic violence.

19 THE COURT: I don't need to know the circumstances
20 just --

21 JUROR NO. 121: Domestic violence.

22 THE COURT: All right. Domestic violence. And who
23 was the family member?

24 JUROR NO. 121: Who was the family member?

25 THE COURT: That was also a victim. I mean, what

Jury qualification

1 relation to you.

2 JUROR NO. 121: A child.

3 THE COURT: A child. Okay. Is there anything about
4 that experience and those circumstances that you have had
5 that would impair your ability to be fair and impartial in
6 this case if you were selected to serve?

7 JUROR NO. 121: No, sir.

8 THE COURT: All right. Thank you. You may be seated.
9 Next.

10 JUROR NO. 136: Timothy Chad Putnam. I'm Juror 136.
11 My wife eight years ago was a branch manager at a bank that
12 there was an armed robbery. She was a victim.

13 THE COURT: All right. Anything about that fact that
14 would impair your ability to be fair in this case?

15 JUROR NO. 136: No, sir.

16 THE COURT: Thank you. Be seated.

17 JUROR NO. 100: No. 100, Shawn Lynn.

18 THE COURT: All right.

19 JUROR NO. 100: Armed robbery and criminal domestic
20 violence.

21 THE COURT: And was it you?

22 JUROR NO. 100: Yeah.

23 THE COURT: You were the victim of an armed robbery
24 and domestic violence?

25 JUROR NO. 100: Yes, sir.

Jury qualification

1 THE COURT: Is there anything about those
2 circumstances that would affect your ability to be fair in
3 this case?

4 JUROR NO. 100: No, sir.

5 THE COURT: Thank you. Be seated.

6 JUROR NO. 185: Juror 185.

7 THE COURT: 185. And was it you or a family member?

8 JUROR NO. 185: It was me. I've got three different
9 things. I don't know if you -- I was sexually abused as a
10 child by my father; I got caught up in the middle of a bank
11 robbery; and additionally I got beaten up and taken to the
12 hospital when I was a child by a stranger who attacked me
13 in my grandma's yard.

14 THE COURT: All right. Is there anything about those
15 circumstances that you had experienced that would impair
16 your ability to be fair and impartial in this case if you
17 were selected?

18 JUROR NO. 185: I don't -- that's a lot of trauma but
19 I spent a lot of time putting it behind me. I prefer not
20 to have to potentially relive it trying to be fair to
21 someone else.

22 THE COURT: I understand that. So you believe it
23 might impact your judgment?

24 JUROR NO. 185: I don't think I would know until it
25 was too late.

Jury qualification

1 THE COURT: Right. But what I'm saying is you think
2 there's a reasonable probability that --

3 JUROR NO. 185: Yes.

4 THE COURT: -- your personal experience would impact
5 your judgment.

6 JUROR NO. 185: Yes.

7 THE COURT: Okay. We'll excuse Juror 185 from service
8 in the trial of this case. But don't leave quite yet.

9 Is that everybody?

10 (No response.)

11 THE COURT: Has any member of the jury panel or any
12 members of your immediate family ever been the subject of a
13 restraining order issued by a court protecting another --
14 you or that family member from some type of harm, or have
15 you ever been the person who is subject to that order? In
16 other words, you were prevented from having contact with
17 some other person by a court order of protection. Anyone
18 been involved in a court-ordered-protection circumstance?
19 If so, please stand.

20 You are Juror 121.

21 JUROR NO. 121: Yes, sir.

22 THE COURT: And, Juror 121, you were the subject of a
23 protection order? Does that relate to the same information
24 you previously gave?

25 JUROR NO. 121: It was for my daughter, yes.

Jury qualification

1 THE COURT: Okay. Would that have any impact in your
2 decision here?

3 JUROR NO. 121: No, sir.

4 THE COURT: Thank you. Be seated.

5 Is any member of the jury panel a member of or do you
6 contribute time or money to -- to any type of organization
7 that might be characterized or described as a law
8 enforcement support type of organization?

9 Those might include Citizens Against Violent Crime,
10 Mothers Against Drunk Driving, honorary sheriff's
11 association, a neighborhood watch association, a -- the
12 troopers' association, any type of victims' advocacy group.

13 I need to know if you belong to any of those types of
14 organizations or do you contribute your time or your money
15 to any of those types of organizations. If so, please
16 stand.

17 (No response.)

18 THE COURT: Is any member of the jury panel, or has
19 any member of the jury panel ever been employed as any type
20 of law enforcement officer, or do you have a family member
21 who is now or has been employed as any type of law
22 enforcement officer? If so, please stand.

23 JUROR NO. 75: My son-in-law is a police officer.

24 THE COURT: All right. And your number?

25 JUROR NO. 75: Seventy-five.

Jury qualification

1 THE COURT: And what department?

2 JUROR NO. 75: well, he's changed over, but can I say
3 his name?

4 THE COURT: If you want to.

5 JUROR NO. 75: Okay. Kevin Collins.

6 THE COURT: All right. And he works for what
7 department?

8 JUROR NO. 75: He's Spartanburg.

9 THE COURT: The sheriff's department or city police?

10 JUROR NO. 75: He has been a deputy sheriff.

11 THE COURT: Okay. Is there anything about that fact
12 that would affect your judgment in this case?

13 JUROR NO. 75: No, sir.

14 THE COURT: Thank you. Be seated.

15 Next.

16 JUROR NO. 44: My name is Matthew Fowler, Juror
17 No. 44. My father was a state trooper -- South Carolina.

18 THE COURT: Was that in Spartanburg or somewhere else?

19 JUROR NO. 44: Spartanburg. He moved around, but he
20 worked up here also.

21 THE COURT: Okay. Would that have any bearing in your
22 decision?

23 JUROR NO. 44: No, sir.

24 THE COURT: Thank you. Be seated.

25 JUROR NO. 128: I'm No. 128. I have an uncle in the

Jury qualification

1 sheriff's department.

2 THE COURT: Anything about that fact that would affect
3 your judgment in this case?

4 JUROR NO. 128: No, sir.

5 THE COURT: Thank you. Be seated.

6 JUROR NO. 102: Jacqueline Marshall, Juror 102. My
7 father was a SWAT team for the Brevard County Sheriff's
8 Department in Florida.

9 THE COURT: Would that have any bearing in your
10 decision in this case?

11 JUROR NO. 102: No, sir.

12 THE COURT: Thank you. Be seated.

13 JUROR NO. 108: Okay. Dave McElroy, Juror 108. I
14 worked for Greenville County Sheriff's Office and also U.S.
15 Capitol Police in D.C.

16 THE COURT: And would that have any bearing in your
17 decision in this case?

18 JUROR NO. 108: No.

19 THE COURT: Thank you. Be seated.

20 Where is this event alleged to have occurred?

21 MR. BARNETTE: Where it occurred at?

22 THE COURT: Yes.

23 MR. BARNETTE: Waters Road in Inman, South Carolina.
24 Waters Road.

25 THE COURT: W-A-T-T-E-R-S?

Jury qualification

1 MR. BARNETTE: Yes, sir. Just water.

2 THE COURT: All right. This is an event which I have
3 previously told you is alleged to have occurred on December
4 the 2nd of 2018, and it is alleged to have occurred at a
5 residence on Waters Road in the community of Inman, South
6 Carolina, here in Spartanburg County, involving this
7 defendant and Brenda Kay Tanner. They were boyfriend and
8 girlfriend. The state alleges that he struck her and
9 killed her by the use of a baseball bat.

10 Has any member of the panel -- do you think you've
11 heard, seen or read anything about the circumstances that
12 might relate to this particular case? And have you heard
13 anything about it or have you been exposed to any type of
14 information relating to the case from any source, whether
15 it be television, radio, newspaper, just people talking at
16 work or at home or at church or just casual conversation?

17 Do you think you've heard, seen or read anything about
18 the facts that could relate to this particular case, or
19 have you received information from any source whatsoever?
20 If so, please stand.

21 (No response.)

22 THE COURT: Is there anything about the nature of the
23 allegations and the nature of the charge itself that would
24 prevent any juror from being able to be fair and impartial
25 if you were selected to participate in the case? If so,

Jury qualification

1 please stand.

2 (No response.)

3 THE COURT: Does any juror know of any reason
4 whatsoever why you think you could not be fair and
5 impartial if you were selected to serve as a juror in this
6 particular case? If so, please stand and let me know of
7 that fact.

8 (No response.)

9 THE COURT: Any other questions requested by the
10 state?

11 MR. BARNETTE: None from the state, Your Honor.

12 THE COURT: By the defendant?

13 MR. SNYDER: No, sir.

14 THE COURT: All right. Now, you've already been
15 through jury selection, so you know how it works. The
16 computer is going to select names. You'll be called to
17 come forward as your name is called beginning with the
18 first name on the computer-generated list.

19 So as you come forward, as you know, each side is
20 going to have an opportunity to have you seated for serving
21 in the case or to have you excused from serving in the
22 case.

23 If both agree to have you seated for service, you'll
24 be having a seat in the jury seats to your left and to my
25 right. If either side asks that you be excused from

Jury qualification

1 serving in the case, just simply go back and have a seat
2 where you are now.

3 So please come forward as your name is called, and
4 you'll be told if you have been accepted for service or
5 excused from service in the case.

6 Yes, ma'am.

7 JUROR NO. 144: Yes. I just have a question.

8 If you go back for the list of people that you said
9 were -- could possibly testify or were involved, one of the
10 names, I believe myself and my students have contact with
11 at Spartanburg Regional.

12 THE COURT: All right. The two -- tell me your name
13 and number, please.

14 JUROR NO. 144: Amy Ryan, 144.

15 THE COURT: 144.

16 JUROR NO. 144: Yes.

17 THE COURT: All right. The two individuals from
18 Spartanburg Regional Medical Center that I identified were
19 Linda Owensby and John David Wren.

20 JUROR NO. 144: Yes, sir. I believe it is Linda
21 Owensby.

22 THE COURT: All right. And how do you -- what
23 connection do you have with Ms. Owensby?

24 JUROR NO. 144: In labor and delivery. That is where
25 she works. My students rotate through there, and I make

Jury qualification

1 contact with her. I'm a surgical tech instructor.

2 MR. BARNETTE: She works in the morgue on the
3 weekends, Your Honor. Works in the morgue on the weekends.

4 THE COURT: Ms. Owensby. Ms. Owensby works at the
5 morgue on the weekends.

6 JUROR NO. 144: That's fine. It's not the same Linda.

7 THE COURT: Okay.

8 JUROR NO. 144: Just making sure.

9 THE COURT: But, in any event --

10 JUROR NO. 144: Yeah.

11 THE COURT: -- if it were -- if there was some
12 connection there would it have any bearing in your
13 decision?

14 JUROR NO. 144: No, sir.

15 THE COURT: All right. Thank you. Be seated.

16 THE CLERK: Juror No. 55, Andrew Harrill.

17 What says the state?

18 MR. BARNETTE: Please present the juror.

19 THE CLERK: What says defense?

20 MR. SNYDER: Please excuse this juror.

21 THE CLERK: Juror No. 8, Rodney L. Beaty, Sr.

22 MR. SNYDER: What number?

23 THE CLERK: Eight.

24 What says the state?

25 MR. BARNETTE: Please present the juror.

Jury qualification

1 THE CLERK: What says defense?

2 MR. SNYDER: Please seat the juror.

3 THE CLERK: Juror No. 37, Kathryn England.

4 What says the state?

5 MR. BARNETTE: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. SNYDER: Please excuse this juror.

8 THE CLERK: Juror No. 66, Lisa Holder.

9 What says the state?

10 MR. BARNETTE: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. SNYDER: Please excuse this juror.

13 THE CLERK: No. 84, Donna King.

14 What says the state?

15 MR. BARNETTE: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. SNYDER: Please seat this juror.

18 THE CLERK: No. 44, Matthew Fowler.

19 What says the state?

20 MR. BARNETTE: Please present the juror.

21 THE CLERK: What says defense?

22 MR. SNYDER: Please seat this juror.

23 THE CLERK: No. 5, Stephanie Auman.

24 MR. BARNETTE: May I approach the bench for a second,

25 Your Honor?

Jury qualification

1 (Bench conference held off the record.)

2 THE COURT: Ma'am, were you to be excused from service
3 tomorrow?

4 JUROR NO. 5: That's not me.

5 THE COURT: That's not you.

6 MR. BARNETTE: I'm sorry. I just wanted to make sure.
7 Your Honor, we present the juror.

8 THE CLERK: What says defense?

9 MR. SNYDER: Please seat this juror.

10 THE CLERK: No. 92, Jesse Lee.

11 What says the state?

12 MR. BARNETTE: Please present this juror.

13 THE CLERK: What says defense?

14 MR. SNYDER: Please seat this juror.

15 THE CLERK: No. 75, Debra Johnson.

16 What says the state?

17 MR. BARNETTE: Please present the juror.

18 THE CLERK: What says defense?

19 MR. SNYDER: Please excuse this juror.

20 THE CLERK: No. 9, Jennifer Bell.

21 What says the state?

22 MR. BARNETTE: Please present the juror.

23 THE CLERK: What says defense?

24 MR. SNYDER: Please excuse this juror.

25 THE CLERK: No. 83, Timothy Kimmons.

Jury qualification

1 What says the state?

2 MR. BARNETTE: Please present the juror.

3 THE CLERK: What says defense?

4 MR. SNYDER: Please seat the juror.

5 THE CLERK: No. 69, Donna Hughes.

6 What says the state?

7 MR. BARNETTE: Please present the juror.

8 THE CLERK: What says defense?

9 MR. SNYDER: Please excuse this juror.

10 THE CLERK: No. 89, Mary Langhorne.

11 What says the state?

12 MR. BARNETTE: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. SNYDER: Please seat this juror.

15 THE CLERK: No. 142, Monique Roberson.

16 What says the state?

17 MR. BARNETTE: Please present this juror.

18 THE CLERK: What says defense?

19 MR. SNYDER: Please excuse this juror.

20 THE CLERK: 172, William Vick.

21 What says the state?

22 MR. BARNETTE: Please present the juror.

23 THE CLERK: What says defense?

24 MR. SNYDER: Please seat this juror.

25 THE CLERK: 108, David McElroy.

Jury qualification

1 what says the state?

2 MR. BARNETTE: Please present the juror.

3 THE CLERK: what says defense?

4 MR. SNYDER: Please excuse this juror.

5 THE CLERK: 77, John Johnston.

6 what says the state?

7 MR. BARNETTE: Please present the juror.

8 THE CLERK: what says defense?

9 MR. SNYDER: Please seat this juror.

10 THE CLERK: 163, Randall Tackett.

11 what says the state?

12 MR. BARNETTE: Please present the juror.

13 THE CLERK: what says defense?

14 MR. SNYDER: Please seat the juror.

15 THE CLERK: 102, Jacqueline Marshall.

16 what says the state?

17 MR. BARNETTE: Please present the juror.

18 THE CLERK: what says defense?

19 MR. SNYDER: Please excuse this juror.

20 THE CLERK: 86, Petr Kit.

21 what says the state?

22 MR. BARNETTE: Please present the juror.

23 THE CLERK: what says defense?

24 MR. SNYDER: Please seat this juror.

25 THE CLERK: 136, Timothy Putnam.

Jury qualification

1 What says the state?

2 MR. BARNETTE: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. SNYDER: Please excuse this juror.

5 THE CLERK: 31, Jessica Diett.

6 What says the state?

7 MR. BARNETTE: Please present the juror.

8 THE CLERK: What says defense?

9 MR. SNYDER: Please seat this juror.

10 THE CLERK: This is for the first alternate.

11 No. 4, Kenneth Anthony.

12 THE COURT: What happened to 137?

13 THE CLERK: I'm sorry.

14 THE COURT: 137.

15 Just a seat right there in that seat, Mr. Anthony.

16 THE CLERK: No. 23 on the list.

17 No. 137, Ahmad Reed.

18 What says the state?

19 MR. BARNETTE: Please excuse from service in this
20 case, Your Honor.

21 THE COURT: All right. Now No. 4, Mr. Anthony.

22 MR. BARNETTE: Please present the juror, Your Honor.

23 THE CLERK: What --

24 MR. SNYDER: Please seat this juror.

25 THE CLERK: 162, Danielle Sweeney.

Motions

1 What says the state?

2 MR. BARNETTE: Please present the juror.

3 THE CLERK: What says defense?

4 MR. SNYDER: Please seat this juror.

5 THE CLERK: Jury selection is complete.

6 (Whereupon, a jury was impaneled.)

7 THE COURT: Are there any matters to be addressed
8 regarding jury selection by the state?

9 MR. BARNETTE: None from the state, Your Honor.

10 THE COURT: By the defendant?

11 MR. SNYDER: No, sir.

12 (Whereupon, the remaining members of the jury venire
13 were excused.)

14 THE COURT: All right. Those jurors who have been
15 selected, we will not begin the trial of this case until
16 3:00 o'clock this afternoon -- 3:00 o'clock this afternoon.

17 So you're going to be excused for lunch now, but we'll
18 need for you to report to the Spartanburg County Courthouse
19 at 3:00 o'clock this afternoon.

20 Before you leave if you don't know where to park and
21 you don't know how to get into the courthouse, speak with
22 the bailiffs, and they'll let you know that information.
23 So be sure you have that information before you leave so
24 that you can report promptly to the courthouse this
25 afternoon at 3:00 o'clock. I'll see you at 3:00 o'clock.

Motions

1 Have a good lunch.

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

4 (Whereupon, a recess was taken.)

5 (The following takes place at the Spartanburg County
6 Courthouse.)

7 (9-1-1 call on December 2, 2018 marked State's Exhibit
8 No. 1 for Identification; metal baseball bat marked State's
9 Exhibit No. 2 for Identification; swabs marked State's
10 Exhibit No. 2.1 for Identification; swabs marked State's
11 Exhibit No. 2.2 for Identification; buccal swabs marked
12 State's Exhibits No. 3 through 8 for Identification; HDMI
13 electrical cord marked State's Exhibit No. 9 for
14 Identification; blood card from Brenda Tanner marked State's
15 Exhibit No. 10 for Identification; crime diagrams marked
16 State's Exhibit No. 11 for Identification; photographs
17 marked State's Exhibit No. 12 through 46 for Identification;
18 video marked State's Exhibit No. 47 for Identification;
19 video marked State's Exhibit No. 48 for Identification;
20 Department of Mental Health report dated February 26, 2020
21 marked Court's Exhibit No. 1; obituary of Watson Dupree
22 Brannon marked Court's Exhibit No. 2; photographs marked
23 Court's Exhibits Nos. 3 and 4.)

24 THE COURT: All right. Have State vs. William Tommie
25 Smith.

Motions

1 Motions?

2 MR. BARNETTE: Your Honor, the state has three
3 motions. I know we talked briefly back in chambers with
4 the defense.

5 The third-party-guilt motion, I don't think he's going
6 to have any third-party guilt from what Mr. Snyder said.

7 THE COURT: I've just got two up here. I don't see
8 it.

9 Did you file a third-party guilt?

10 MR. BARNETTE: Yes, sir. I did. I apologize, Your
11 Honor. I've got an extra copy here. May I approach the
12 bench?

13 THE COURT: Yes. All right.

14 MR. SNYDER: We don't intend to implicate anyone other
15 than Mr. Smith committed these crimes.

16 THE COURT: All right. That's agreed to.

17 What's the next one?

18 MR. BARNETTE: Okay. Your Honor, the second one is
19 the victim toxicology. Your Honor, anything in her system
20 during the time is not relevant in this case.

21 We feel like it's not relevant for several different
22 reasons.

23 One, obviously, we just feel like this is a flat
24 straight murder in this case, Your Honor. There's no
25 evidence of her showing that she fought with the defendant

Motions

1 or anything at this point, Your Honor, from the physical
2 evidence at the scene.

3 Also, if it is relevant, Your Honor, it'd be highly
4 prejudicial in this case unless the defense can make some
5 type of connection between this case and the toxicology
6 that's in her system.

7 THE COURT: Mr. Snyder.

8 MR. SNYDER: We -- we're not claiming that her being
9 under the influence had anything to do with this defense.

10 THE COURT: So you agree to the motion?

11 MR. SNYDER: Yes, yes, sir.

12 THE COURT: All right. Motion is agreed to.

13 MR. BARNETTE: And, Your Honor, the third one is
14 involving any prior incidents between the defendant or any
15 other individuals or this victim prior to this day on
16 December 2, 2018.

17 we don't think it's relevant in any way. If it is
18 relevant shown by the defense, we'd say it'd be highly
19 prejudicial and would not be allowed in this case.

20 THE COURT: I'm not sure what this addresses.

21 What is it, Mr. Snyder?

22 MR. SNYDER: I -- he's referring to other incidents
23 which we are not making reference to.

24 THE COURT: All right. So you don't have any prior
25 incidents between the defendant and any other persons?

Motions

1 MR. SNYDER: No, sir. We agree to all three.

2 THE COURT: Ms. Tanner.

3 MR. SNYDER: Yes, sir.

4 THE COURT: Okay. That's agreed to.

5 Any others?

6 MR. BARNETTE: Your Honor, that'd be the only -- the
7 only motion by the state.

8 Your Honor, I did show Mr. Snyder the exhibits I plan
9 to introduce.

10 For the record, Your Honor, Court's Exhibit -- I do
11 have court exhibits, Your Honor. Court's Exhibit 1 is the
12 evaluation that was done mentally on the defendant in this
13 case, Your Honor. And he was found competent to stand
14 trial, Your Honor. And I hand that up to Your Honor and
15 enter that into the record.

16 Mr. Snyder has a copy of this.

17 THE COURT: So the defendant was committed by order of
18 the circuit court for evaluation as to competency, and that
19 examination has been conducted by the South Carolina
20 Department of Mental Health, and the Department of Mental
21 Health and its examiners have determined that the defendant
22 is competent to stand trial?

23 MR. SNYDER: Yes, sir.

24 MR. BARNETTE: Yes, sir.

25 THE COURT: Was there any other evaluation done aside

Motions

1 from competency?

2 MR. SNYDER: I don't -- I don't believe so. He's
3 ready to go forward.

4 THE COURT: In other words, there's no
5 criminal-responsibility --

6 MR. SNYDER: No, sir.

7 THE COURT: -- examination?

8 MR. SNYDER: I can't remember. They may have done
9 that, but it's determined that he's ready to stand trial.

10 THE COURT: Well, excuse me. I see. This letter says
11 that he was ordered for an evaluation for criminal
12 responsibility and capacity to conform also. And those
13 examinations were performed?

14 MR. SNYDER: Yes, sir.

15 THE COURT: So I haven't read these exhibits because
16 I've just now seen it, but presumably y'all each have read
17 the reports from the Department of Mental Health. And does
18 the Department of Mental Health find -- or according to
19 this report did the examiner find that the defendant is
20 competent to stand trial, that he is criminally responsible
21 for any acts committed that constitute a crime at the time
22 of this event and that his capacity to conform -- or he did
23 have the capacity to conform to the requirements of the
24 law.

25 MR. SNYDER: Yes, sir.

Motions

1 THE COURT: Okay.

2 MR. BARNETTE: That's correct, Your Honor.

3 THE COURT: Okay. All right. Mr. Snyder, do you have
4 anything? You don't object to the admission of the records
5 from the Department of Mental Health?

6 MR. SNYDER: No, sir.

7 THE COURT: And the results of the examinations and
8 evaluations?

9 MR. SNYDER: No, sir.

10 THE COURT: And do you have any additional evidence
11 you'd like to present on any one of those points?

12 MR. SNYDER: No, sir. Not at this time.

13 THE COURT: Okay. I find the defendant is competent
14 to stand trial.

15 MR. BARNETTE: Your Honor, the next one will be
16 Court's Exhibit 2.

17 Your Honor, this is where one of the witnesses -- we'd
18 actually took video-tape testimony prior to Christmas of
19 this year, Your Honor, when this case was originally
20 scheduled for trial.

21 He was very sick. Your Honor granted us the ability
22 to go ahead and do -- go ahead with his testimony video
23 taped. And he was able to be cross-examined by Mr. Snyder.
24 And the defendant was also present during that examination,
25 Your Honor.

Motions

1 He passed away. This is his obit, Your Honor.
2 Court's Exhibit 2 where he passed away on January 23rd of
3 2021, Your Honor.

4 THE COURT: That was Mr. Watson Dupree Brannon?

5 MR. BARNETTE: That's correct, Your Honor.

6 THE COURT: Okay. All right. Mr. Snyder, do you have
7 any question about the death of Mr. Brannon?

8 MR. SNYDER: No, sir. We're not doubting he passed
9 away.

10 THE COURT: All right. Anything to address regarding
11 Mr. Brannon's testimony?

12 MR. BARNETTE: No, sir. What I do is plan to play it
13 at the appropriate time, Your Honor. He'll be called as a
14 witness in the case.

15 THE COURT: Okay.

16 MR. BARNETTE: Your Honor, I did show Mr. Snyder the
17 exhibits I was planning to introduce. He had objections to
18 two of them, Your Honor.

19 I've actually marked the original pictures as Court's
20 Exhibits 3 and 4. And there's a lot more graphic pictures
21 than that, Your Honor, obviously, I can share with the
22 Court.

23 The two that's in question, Your Honor, that's been
24 marked as State Exhibits 35 and 36, Your Honor, we actually
25 tried to redact a little bit taking the victim's face and

Motions

1 her facial features away from the picture.

2 The main part we wanted to show in -- and you'll hear
3 from the testimony that she was beaten with a ball bat and
4 she was also strangled with an H.D.M.I. cord.

5 And the jury, I feel like, needs to see that
6 especially -- I don't know what their defense is exactly
7 going to be, but if it has anything to do with manslaughter
8 or anything like that, I think that would go to showing the
9 murder, Your Honor, by showing the -- the way he tied her
10 up concerning that.

11 I think it's highly, obviously, relevant, and the
12 relevancy would outweigh the prejudicial effect.

13 THE COURT: Well, let me ask.

14 What's the difference between these four exhibits?
15 You got three and four and 35 and 36.

16 MR. BARNETTE: Yes, sir. What I did was -- if I could
17 approach the bench, Your Honor, with Mr. Snyder.

18 Your Honor, if you see State's Exhibit 35 and Court's
19 Exhibit 3, what we've done was we've cut her face basically
20 out of it so that way they can't see. They can just see
21 the cord around her arm and around her neck.

22 And the same thing here, Your Honor. What we did was
23 you can see more of the face on Court's Exhibit 4. We
24 actually took her face off. You can see her ear and see
25 where the cord is tied around her, the back of her neck as

Motions

1 well as around her arm.

2 Your Honor, I'm not going to enter any of the pictures
3 about where wounds were on her head. Dr. Wren will testify
4 to those, the numbers of injuries she had on her head from
5 the baseball bat hitting her as well as the effect of that,
6 Your Honor.

7 THE COURT: All right. So the ones that you're
8 offering that we have an objection to are marked as 35 and
9 36?

10 MR. BARNETTE: Yes, sir. I did Court's Exhibits 3 and
11 4 to show where we redacted some to show the difference.

12 THE COURT: All right. Mr. Snyder, do you object to
13 35 and 36?

14 MR. SNYDER: Yes, sir.

15 THE COURT: All right. State your grounds.

16 MR. SNYDER: We're at -- they should not be
17 admissible.

18 We're not contesting anything that happened in this
19 case. We've got -- there's a jury list with 20 something
20 police officers. They're perfectly capable of saying what
21 they found. Again, we're not denying that it happened. We
22 concede all of that.

23 The solicitor is just trying to inflame the passion of
24 the jury. He's trying to create a little passion and their
25 emotions.

Motions

1 I believe probative value is outweighed by the
2 prejudice simply -- cause Mr. Smith.

3 Again, the solicitor just acknowledged that he's
4 trying to use those photos to enhance this from a
5 manslaughter case to a murder case, and therefore I think
6 the admission is improper.

7 Photographs -- any photographs calculated to arouse
8 the sympathy or prejudice of the jury should be excluded.
9 They are irrelevant and unnecessary to substantiate
10 material facts or conditions. Again, Judge, we admit to
11 how she passed away.

12 THE COURT: All right. Well, once we get to -- at
13 what point do you wish to offer these into evidence, Mr.
14 Barnette?

15 MR. BARNETTE: Your Honor, that'll be the third
16 witness, Investigator Stepp.

17 THE COURT: All right. We'll see. Right now -- I
18 mean, I can perceive the relevance, but I'm not exactly
19 certain of what -- what it is unless the state is
20 contending that she was in fact -- I don't have that
21 information before me now, but if she did die by
22 strangulation, then clearly these photos would be relevant
23 to prove that point.

24 MR. SNYDER: Well, we -- we concede the fact that she
25 died by strangulation.

Motions

1 THE COURT: Well, I get that, but you can't concede
2 some things and not concede others in order to keep things
3 out that might be prejudicial to the case. So you say most
4 of it's not contested. Does he want to plead guilty to
5 murder?

6 MR. SNYDER: Manslaughter.

7 THE COURT: He wants to plead guilty to manslaughter.
8 Well, then these things might very well be relevant to the
9 issue of malice, but we'll see how -- I'm not exactly --
10 what -- certain, at least, what the evidence might show as
11 to the state's theory, but I can perceive that they would
12 become quite relevant.

13 MR. BARNETTE: And, Your Honor, for the record, I just
14 want to make sure. We have not offered any offers in this
15 case. I know that he wants to plead to manslaughter, and
16 we haven't offered any offers. I just want to make sure
17 that's clear for the record.

18 THE COURT: Okay. I guess if you had, we wouldn't be
19 picking this jury. We wouldn't have picked this jury.

20 MR. BARNETTE: Yes, sir.

21 THE COURT: But anyway. All right. Well, I'll
22 address the photos at the time they're offered. We'll see
23 what the evidence looks like at that point.

24 All right. What else?

25 MR. SNYDER: This monitor is really in the way. Is

Motions

1 there any way we can --

2 THE COURT: What is it?

3 MR. SNYDER: It's just very inconvenient to me.

4 THE COURT: For the record, you're referring to what?

5 MR. SNYDER: Monitor. This big screen right here.

6 THE COURT: In what way is it interfering with you?

7 MR. SNYDER: For one thing, I had to walk around just

8 so I could see Your Honor. And it might be interfering

9 with my client's ability to see witnesses.

10 THE COURT: Can you see Mr. Alford, Mr. Smith? It

11 won't interfere with his ability to see the witness.

12 MR. SNYDER: Yes, sir.

13 THE COURT: All right. Anything else?

14 MR. BARNETTE: Nothing else from the state, Your

15 Honor.

16 THE COURT: All right.

17 MR. BARNETTE: Your Honor, just for the record, I

18 could add -- I can introduce -- this is not to create

19 prejudice for the jury or whatever. I have some really

20 photographs that are very graphic. I'm not introducing any

21 of those. That's just for the record too since Mr. Snyder

22 said that. That's not the purpose of putting in those two

23 photographs.

24 THE COURT: Oh, I understand. Yeah. I can -- I mean,

25 I can -- I think it's fairly clear what -- what the state's

1 purpose is in offering the photographs. The state has the
2 obligation to prove that the defendant committed the crime
3 of murder, and if this is part of that proof and
4 strangulation was part of the cause of death, then clearly
5 these photos would be relevant.

6 And since Mr. Smith, according to Mr. Snyder, is
7 contesting that, clearly the probative value would not be
8 outweighed by any danger of unfair prejudice. So, but
9 we'll see when the time comes.

10 MR. BARNETTE: Yes, sir.

11 THE COURT: All right. We're ready for the jury.

12 Bring them in. Ask Mr. Beaty to take the foreperson's
13 seat.

14 (The following takes place in the presence of the
15 jury.)

16 THE COURT: Good afternoon, ladies and gentlemen.
17 We are ready to begin with the trial of the case for
18 which each of you have been selected.

19 Mr. Beaty -- is it pronounced Beaty or Beatty?

20 THE FOREPERSON: Yes, sir.

21 THE COURT: I'm going to ask you to serve as the
22 foreperson of the jury, and as the foreperson you're going
23 to have three specific duties that the other jurors will
24 not have.

25 First of all, you'll be asked to serve as the

1 spokesperson for the jury, and that just means if something
2 arises during the course of the trial that needs to be
3 brought to my attention -- that is you or one of your
4 fellow jurors has some difficulty or problem or question --
5 you'll be the person to let me know of that fact.

6 You can do it directly if you're in the courtroom. Do
7 it through the bailiff if you're outside of the courtroom.

8 Secondly, you'll be called upon to preside over jury
9 deliberations when that time comes. That of course will
10 not be until the end of the trial after all of the evidence
11 has been received and I have instructed you on the law
12 that's applicable in the case. But when the time does come
13 for jury deliberations you will be called upon to preside
14 over that process in the jury room simply to ensure that
15 those deliberations are carried out in some orderly
16 fashion.

17 And, thirdly, you'll be called upon to actually write
18 the verdict of the jury. You'll do that on a verdict form
19 that I'll provide you when you go back to begin
20 deliberations. And on that verdict form you will indicate
21 the jury's unanimous decision as to the charge.

22 Now, the foreperson has those specific duties that
23 I've just indicated, but that doesn't mean that he's any
24 more important than any of you other jurors, and that's
25 because the decision of a jury is the unanimous consensus

Jury sworn

1 opinion of all 12 jurors, and so all of you and each of you
2 will have an equal say and an equal vote in what the
3 ultimate decision will be in this case.

4 Someone simply has to be delegated those
5 responsibilities that I've just indicated, and I have
6 delegated those to Mr. Beaty in appointing him as the
7 foreperson. But all of you jurors are equally important so
8 far as the ultimate decision in this case is concerned,
9 because, as I've stated, the verdict has to be unanimous.
10 All of you must be in agreement.

11 Mr. Anthony and Ms. Sweeney, each of you have been
12 selected as alternate jurors. And as the name implies, you
13 are called upon to take the place of one of the original 12
14 jurors in the event during this trial one of these 12 cannot
15 continue to serve for some person.

16 And so if a juror is unable to continue to serve, then
17 one or both of you would be called upon to become the
18 twelfth juror. And if that occurs, then you participate
19 throughout the trial, including the jury deliberations when
20 that time comes.

21 If however when the time does come for jury
22 deliberations the original 12 are able to perform that
23 function, then the service of the alternates ends and you
24 don't participate any further. That's because the decision
25 of a jury is that of 12, and no more than 12 are permitted

1 to engage in that deliberation process.

2 But it is important that you pay just as careful
3 attention as we ask of all of the jurors in the case because
4 it does occur from time to time for one reason or another
5 one of these 12 may be unable to continue. In that event
6 one or both of you would be called upon to become the
7 twelfth.

8 So we do appreciate your participation as alternate
9 jurors, just as we appreciate the participation of each of
10 you jurors who have been selected for the purpose of
11 deciding the verdict in this particular case.

12 You may swear the panel.

13 (Whereupon, the jury was duly sworn.)

14 THE COURT: Is everybody hearing me fine? Because I
15 don't think those microphones are working. If you can't
16 hear for some reason, whether it's me or a witness or
17 lawyer, let us know and we'll remedy that situation.

18 Ladies and gentlemen, as you know now, you have been
19 sworn to decide the verdict in the case of the State vs.
20 William Tommie Smith.

21 Mr. Smith, as you've previously been told, has been
22 accused by the prosecutor by way of the indictment with
23 having committed the crime of murder.

24 The state alleges in the indictment that Mr. Smith did
25 here in Spartanburg County on or about December the 2nd of

1 2018 wilfully and with malice aforethought kill one Brenda
2 Kay Tanner by striking her in the head with a baseball bat
3 and that she died as a proximate result of those injuries
4 inflicted by the defendant.

5 The indictment is not evidence of anything. It
6 doesn't prove anything. It is the means by which any
7 person who is accused of a crime where the jurisdiction
8 lies in this court is brought to this court by way of this
9 document, the indictment.

10 If you didn't have an indictment we wouldn't be having
11 this trial today. So the indictment is required before we
12 can convene, select a jury and have the trial of the case.
13 But, as I say, the indictment is not evidence and should
14 not be considered by you as any evidence upon which you
15 will base your decision. You have to base your decision
16 upon the evidence that comes in through the course of the
17 trial.

18 Now, the indictment will be in the jury room when you
19 go back to begin deliberations.

20 Mr. Foreman, it's going to be on the back of the
21 indictment that you'll indicate the jury's unanimous
22 decision. But other than serving as the verdict form, the
23 indictment serves no purpose so far as you jurors are
24 concerned.

25 Now, as to the allegations contained in the indictment

1 and as to the charge made by way of that indictment the
2 defendant has entered a plea of not guilty. A plea of not
3 guilty places upon the state, because they've brought the
4 charge, they made the accusation, to establish the
5 allegations that they have made by way of the indictment.

6 The burden is upon the state to establish each of the
7 essential elements of the crime that they have alleged
8 against the defendant in this case, and therefore the
9 burden is upon the state to establish the defendant's guilt
10 to the satisfaction of you 12 jurors beyond a reasonable
11 doubt before any verdict of guilty could be returned.

12 Every person who is accused of a crime is always
13 presumed to be innocent of that charge. That presumption
14 of innocence remains with any defendant, as it does with
15 this defendant, from the time that he is placed under
16 arrest, throughout the course of the criminal process and
17 even throughout the course of the actual trial in the case.

18 That presumption of innocence will be with Mr. Smith
19 at this trial's conclusion as you go back to begin with
20 your deliberations, and that presumption of innocence will
21 be with him in that jury room, and it'll be with him
22 forever unless you 12 jurors determine that he's no longer
23 entitled to the presumption of innocence.

24 In other words, after you have carefully considered
25 all of the evidence received during the trial of the case,

1 and from that evidence you've been able to decide the facts
2 as they relate to the allegations made, and after deciding
3 the facts you apply the law that I will have provided you,
4 if you 12 jurors unanimously determine that his guilt has
5 been proven beyond a reasonable doubt, then he would no
6 longer be entitled to that presumption of innocence. But
7 it is only if, unless and until you are satisfied of his
8 guilt beyond a reasonable doubt that the presumption of
9 innocence would no longer be applicable.

10 Now, the way the trial will proceed is that in a
11 moment the lawyers are going to address you in what are
12 called opening statements.

13 There are two occasions in the trial of a case where
14 lawyers are permitted to address the jury directly, and
15 that is at the beginning of the trial before any evidence
16 is introduced, then again at the conclusion of the trial
17 after all of the evidence has been received.

18 But please keep in mind, as I've just indicated, that
19 the evidence comes in, upon which you will base your
20 decision, between the opening and the closing statements of
21 the lawyers; and therefore what the lawyers tell you is not
22 to be considered by you as any evidence upon which you will
23 base your decision, and that's because the lawyers aren't
24 witnesses to anything that relates to this case. If they
25 were, they wouldn't be participating as lawyers.

1 The lawyers aren't going to take the witness stand.
2 They're not going to testify from any personal knowledge or
3 perception. They're not going to be placed under oath and
4 subject to direct and cross-examination like witnesses will
5 be when they are called to testify before you.

6 And so what the lawyers say is not to be considered by
7 you as any evidence upon which you will base your decision,
8 but you should listen to what the lawyers have to say
9 because the statements serve a purpose.

10 The opening statements serve to provide you with a
11 basic understanding as to what this case is about from both
12 the perspective of the state and of the defense so that
13 you'll have some context in which to place the evidence
14 that we will be receiving shortly thereafter.

15 The closing statements occur after all the evidence
16 has been received. And, again, while those statements are
17 not evidence, it does afford the lawyers an opportunity to
18 discuss with you the evidence that you have seen and heard
19 during the course of the trial. And through that
20 discussion each will be trying to persuade you or to
21 convince you that the evidence in the case does or does not
22 support a particular decision.

23 And it's in between those opening and closing
24 statements that we actually receive the evidence upon which
25 you will base your decision.

1 As I've stated, the state has the burden of proof, and
2 therefore the state goes forward first in its presentation
3 of evidence.

4 After the state has concluded with its presentation
5 any defendant has an opportunity to testify or to call a
6 witness or to introduce additional evidence. But please
7 understand that in a criminal case the burden is never upon
8 a defendant or a person accused of a crime to prove that
9 they are not guilty or to prove that they are innocent
10 because in some cases that might not be possible.

11 And so a defendant in a given trial may not testify or
12 may not call any additional witnesses or may not introduce
13 any other evidence. If that happens, that's not a
14 circumstance or a fact that the jury may consider in any
15 way whatsoever against a defendant or in your determination
16 as to whether or not the evidence in the case supports a
17 verdict of guilty.

18 So while a defendant cannot be required to testify and
19 while he has no burden of proof, a defendant is always
20 provided the opportunity to testify or to call additional
21 witnesses or to introduce additional evidence if he or she
22 wished to do so.

23 So after all of the evidence has been received, you'll
24 hear the final summations of the lawyers. And after that
25 I'm going to instruct you on the law, and I'll instruct you

1 fully on the law as it relates to the criminal law
2 generally and as it relates to this specific charge
3 particularly.

4 And after that you'll be asked to go back and to begin
5 with your deliberations. And through that process and
6 through the exercise of good judgment and common sense
7 conscientiously applied to the testimony and evidence in
8 the case you're going to be called upon to determine the
9 facts that relate to the material elements of the offense.

10 If you're able to decide those facts, you then apply
11 the law that I will have provided you, and you will
12 determine whether or not the state has proven the defendant
13 to be guilty of the crime with which he is charged beyond a
14 reasonable doubt. And if they have proven that, then the
15 verdict is guilty. If they've failed to prove that, then
16 the verdict is not guilty.

17 Now, all that we're going to ask for you to do is to
18 pay careful attention throughout the course of the trial.
19 Give every witness the same degree of attention because --
20 because you are the judges of the facts in this case, you
21 are necessarily the judges of the credibility and the
22 believability of each witness that has testified.

23 And so you can believe everything that a witness
24 testifies to, or you may choose to believe none of it. You
25 can believe some portion of a witness' testimony and reject

Opening statements

1 some other portion of that same witness' testimony.

2 You could believe one witness as opposed to several,
3 or several as opposed to one. But in order for you to be
4 in a proper position to fairly evaluate and assess the
5 credibility of a witness' testimony you have to pay
6 attention while they testify so that in the end you can
7 evaluate that testimony in light of not just that witness'
8 own testimony but in light of all of the testimony and all
9 of the evidence received during the course of the trial.

10 It's also important that you keep an open mind
11 throughout the course of the trial, and that simply means
12 that you are not to begin making up your minds or
13 formulating your opinions as to what you think the outcome
14 ought to be until all of the evidence has been received,
15 until I have instructed you on the law that's applicable
16 and until you've been asked to go back to begin with your
17 deliberations.

18 That is the process that has been designed over the
19 last 240-some-odd years in order to ensure that you can
20 arrive at a fair and impartial decision in this case or any
21 other case that you might be called upon to participate in.

22 So I do want to thank you in advance for your
23 participation, as well as for your careful attention. I
24 would ask that you please give the lawyers your attention
25 now as they give you their opening statements.

Opening statements

1 MR. BARNETTE: May it please the Court, Your Honor.

2 THE COURT: Solicitor Barnette.

3 MR. BARNETTE: Mr. Foreman, ladies and gentlemen of
4 the jury, I'd like to take you back to December 2nd of
5 2018.

6 That day 9-1-1 -- Ms. Cockrell who you'll be hearing
7 from -- received a 9-1-1 call. In that 9-1-1 call the
8 caller talked about killing Brenda Tanner. He was very
9 graphic in what he did with the baseball bat, beating her
10 to death with it, choking her with an electrical cord,
11 saying what the location was, [REDACTED] Waters Road in Inman,
12 South Carolina.

13 officers arrived there after they hear from 9-1-1.
14 You'll hear from Officer Clark. He was one of the officers
15 that arrived there on the scene.

16 When he went in there -- and you'll see that he had
17 his body cam on -- he found Brenda Tanner in her bedroom in
18 her bed. You'll see the condition that she was in.

19 You'll see when Investigator Coby Stepp --
20 Investigator Stepp will testify to what happened when he
21 received there and working the crime scene. He'll tell you
22 what he observed. He'll tell you about the blood splatter.
23 He'll tell you about the condition that Ms. Tanner was
24 found in.

25 Through their investigation they found out he went and

Opening statements

1 met with a gentleman, a Mr. Brannon. Mr. Brannon was
2 related to him by marriage at one time. He was married to
3 the defendant's sister.

4 Mr. Brannon is no longer with us. He's passed away
5 since this case has happened. Fortunately, enough we was
6 able to get his testimony, and you'll be hearing that
7 testimony.

8 In that testimony the defendant came to his house and
9 told him that he killed Brenda Tanner, that he beat her to
10 death with a baseball bat.

11 He brought Brenda Tanner's car over to -- for Mr.
12 Brannon to look at it in Chesnee. He switched cars out.
13 He left Ms. Tanner's car there at Mr. Brannon's residence
14 in Chesnee.

15 He takes that car to Mr. Brannon and eventually winds
16 up in jail here in Spartanburg County. At the jail he
17 makes a statement to one of the officers that he did kill
18 Ms. Tanner.

19 You'll see D.N.A. testing was done. You'll see the
20 pictures and everything. You'll see how brutal this murder
21 was.

22 The judge will give you the jury charge at the end of
23 the case, and we have to prove malice aforethought, and I
24 will contend with you that there is plenty of malice here
25 once you see what this gentleman did to Brenda Tanner.

Mandy Cockrell
Direct examination by Mr. Barnette

1 They were living together at that residence, and
2 you'll see the evidence showing that he did do this, ladies
3 and gentlemen.

4 Myself along with Brenda Tanner's family members are
5 here in the gallery today.

6 We'll be coming to you at the end of the case. We're
7 going to be asking you to return a verdict of guilty of
8 murder on this case.

9 Thank you very much for your service. Thank y'all for
10 being here.

11 Thank you, Your Honor.

12 MR. SNYDER: I'll be brief. There's not a whole lot I
13 can say right now that's going to change anything. You've
14 heard the allegations in the indictment and from the
15 solicitor just now.

16 You're about to be exposed to a lot of violent
17 imagery. All I ask is that instead of thinking what
18 happened, think why it happened. And that's the
19 solicitor's whole case. Thank you.

20 MR. BARNETTE: May it please the Court, Your Honor.
21 I'd like to call Ms. Cockrell to the stand.

22

23

24

25

Mandy Cockrell
Direct examination by Mr. Barnette

1 MANDY COCKRELL, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q Ms. Cockrell, I'm going to ask you to talk really loud
5 so these folks back here can hear you. Okay?

6 A Okay. No problem.

7 Q Okay. Back on December 2nd of 2018, where was you
8 working at then, ma'am?

9 A I was working at Spartanburg County 9-1-1.

10 Q What was your position there, ma'am?

11 A I was the assistant supervisor.

12 Q Okay. And where do you work now, ma'am?

13 A I work at Greenville County Sheriff's Office.

14 Q But back then was you working for 9-1-1 and was you
15 manning calls coming in to the center?

16 A Yes, sir.

17 Q And did you receive a call from an individual talking
18 about what occurred at [REDACTED] Waters Road here in Inman, South
19 Carolina?

20 A Yes, sir.

21 Q And is that in Spartanburg County also?

22 A Yes. In the Inman community.

23 Q Let me show you what's been marked as State's
24 Exhibit 1. Have you had a chance to review that recording?

25 A Yes, sir.

Mandy Cockrell
Cross-examination by Mr. Snyder

1 Q And was this a recording of the 9-1-1 call that you
2 took that day.

3 A Yes, sir.

4 MR. BARNETTE: Your Honor, I'd like enter State's
5 Exhibit 1 into evidence at this time.

6 MR. SNYDER: No objection.

7 THE COURT: It's admitted.

8 (9-1-1 call on December 2, 2018, marked State's Exhibit
9 No. 1.)

10 MR. BARNETTE: Permission to publish it to the jury,
11 Your Honor.

12 THE COURT: You may.

13 (Whereupon, State's Exhibit No. 1 was played for the
14 jury.)

15 Q Was that the phone call that you remember receiving,
16 ma'am?

17 A Yes, sir.

18 Q And that was the call?

19 A Yes, sir. That is.

20 Q Thank you. If you would, please answer any questions
21 the defense may have for you.

22

23

24

25

Joshua Clark
Direct examination by Mr. Barnette

1 CROSS-EXAMINATION

2 BY MR. SNYDER

3 Q Ms. Cockrell, I only have a couple of questions.

4 That was Mr. Smith who called 9-1-1, correct?

5 A I'm assuming. He didn't give me his name.

6 Q Okay. Did anyone -- was there any other calls to 9-1-1
7 that reported this incident?

8 A No, sir.

9 Q In that call -- presumably from Mr. Smith -- he
10 mentioned that he just lost control.

11 A Yes, sir. That's what he told me.

12 Q Then, finally, he informed you that he wanted to turn
13 himself in and he was going to.

14 A Yes, sir.

15 Q Thank you.

16 MR. BARNETTE: Your Honor, I have no further questions
17 for this witness.

18 Your Honor, we'd ask for her to be excused.

19 THE COURT: You may step down. You may also be
20 excused. Thank you.

21 THE WITNESS: Thank you.

22 (Whereupon, the witness was excused.)

23 MR. BARNETTE: Your Honor, I would like to call Deputy
24 Clark to the stand please.

25

Joshua Clark
Direct examination by Mr. Barnette

1 JOSHUA CLARK, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, sir, please state your name for the
5 record.

6 A Joshua Clark.

7 Q I'm going to have to ask you to talk a little bit
8 louder so they can hear you.

9 A I apologize. Joshua Clark.

10 Q Thank you, sir.

11 Where do you work at, sir?

12 A I'm a deputy in the Spartanburg County Sheriff's
13 office.

14 Q And how long have you been there, sir?

15 A Five years.

16 Q Back on December 2nd of 2018, was you working that day,
17 sir?

18 A I was.

19 Q And did y'all receive a call at [REDACTED] Waters Road?

20 A We did, yes, sir.

21 Q And is that Inman, South Carolina?

22 A It is in Inman, South Carolina.

23 Q And that's Spartanburg County; is that right?

24 A Correct.

25 Q Here in South Carolina.

Joshua Clark
Direct examination by Mr. Barnette

1 when you arrived there did you turn your body cam on?

2 A I did.

3 Q At that point did other officers meet you there?

4 A I received a call and was asked to assist other
5 deputies who responded to that address, and in order to
6 conduct a welfare check. And once on the scene I turned my
7 body camera on and was able to enter the residence.

8 Q State's Exhibit 47. Have you had a chance to review?

9 Is this your -- a copy of your body cam video, sir?

10 A Yes, sir. It is.

11 MR. BARNETTE: Your Honor, I'd like to enter this into
12 evidence at this time.

13 MR. SNYDER: No objection.

14 (Video marked State's Exhibit No. 47.)

15 Q And does this fairly represent what -- when you went
16 inside the residence?

17 A Yes, sir.

18 MR. BARNETTE: Permission to publish, Your Honor.

19 THE COURT: You may.

20 Q Sir, before I play this, the first 30 seconds is blank,
21 is that right?

22 A Correct.

23 Q Is that the way the video system is designed?

24 A Yes, sir, it is. The first 30 seconds, you're not able
25 to hear any audio.

James Coby Stepp
Direct examination by Mr. Barnette

1 Q So that's the way they're all done, like that.

2 A Correct, yes, sir.

3 (Whereupon, State's Exhibit No. 47 was played for the
4 jury.)

5 Q Sir, y'all cleared the whole house, is that right?

6 A Yes, sir.

7 Q In clearing the house, was the only place you saw where
8 anything happened was where Ms. Tanner was found in the
9 bedroom?

10 A Correct.

11 Q You didn't see any blood or anything anywhere else.

12 A No, sir.

13 Q What could you see from where you was? I know they saw
14 the body cam. What could you see inside that bedroom?

15 A What I could see was an unresponsive female with a cord
16 wrapped around her neck. And as you can see in the video,
17 after I was able to observe that I cleared the rest of the
18 house, and then I was instructed to go outside and put up
19 crime scene tape.

20 Q You didn't see any other blood anywhere, in any other
21 rooms or anything else showing any kind of struggle or
22 anything else.

23 A No, sir.

24 Q And, obviously, you didn't go in the room. Once y'all
25 saw it, you cleared it out for a crime scene.

James Coby Stepp
Direct examination by Mr. Barnette

1 A Correct.

2 Q If you would, please answer any questions that
3 Mr. Snyder has.

4 A Yes, sir.

5 MR. SNYDER: I have no questions. Thank you for your
6 service.

7 THE WITNESS: Thank you.

8 THE COURT: You may step down.

9 MR. BARNETTE: Your Honor, we would ask for this
10 witness to be excused, Your Honor.

11 THE COURT: He may be.

12 (Whereupon, the witness was excused.)

13 MR. BARNETTE: Your Honor, I'd like to call
14 Investigator Stepp to the stand, Your Honor.

15 JAMES COBY STEPP, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BARNETTE

18 Q If you would, sir, please state your full name for the
19 record, please.

20 A James Coby Stepp.

21 Q I'm going to have to ask you to speak up too. With
22 this plastic, it might be hard for them to hear. I
23 apologize.

24 A James Coby Stepp.

25 Q And where do you work at, sir?

James Coby Stepp
Direct examination by Mr. Barnette

- 1 A Spartanburg County Sheriff's Office.
- 2 Q And what is your position there, sir?
- 3 A Crime scene investigation.
- 4 Q And how long have you been with the sheriff's
- 5 department, sir?
- 6 A Twenty-two years.
- 7 Q How long have you been in the crime scene
- 8 investigation?
- 9 A About ten.
- 10 Q Back on December 2nd of 2018 was you called to the
- 11 scene at [REDACTED] Waters Road?
- 12 A Yes, sir, I was.
- 13 Q Is that in Spartanburg County?
- 14 A In Spartanburg County.
- 15 Q And when you arrived there, if you would, tell the jury
- 16 what you did or what you observed.
- 17 A Yes, sir. When I arrived, waited on a search warrant
- 18 to be executed. And it arrived on scene by Detective Lawson
- 19 and was opened approximately about 10:30 a.m.
- 20 Once we opened the search warrant we did a walk-through
- 21 of the residence and entered the residence through the back
- 22 sliding glass door through the -- entered the residence
- 23 through a screened-in porch that leads into a sliding glass
- 24 door.
- 25 I did a walk-through to the bedroom, which is located

James Coby Stepp
Direct examination by Mr. Barnette

1 directly to the left as you go in from the sliding glass
2 door. And there I observed the victim laying on her left
3 side on the bed inside.

4 Q And was that Brenda Tanner that y'all identified?

5 A Yes. It was Ms. Tanner.

6 Q And can you tell -- tell the jury how she was dressed.

7 A She -- she was nude from the waist down. She had a
8 black fabric type top on -- I think they call it camisole --
9 on her body. That was the only -- that I saw at the time.

10 Q And did you notice anything around her neck?

11 A Yes. There was a black cord wrapped around her neck
12 and around her upper right arm.

13 Q And did you notice blood or anything?

14 A Yeah. I noticed blood that was on the bed itself --
15 pillows, sheets, on the things on the side of the bed, on
16 the headboard, on some areas up, appeared on the ceiling and
17 the walls around the bed itself, as well as some items
18 beside the bed in the vicinity of the bed. The example,
19 like a baseball bat was laying to the right of the bed.
20 Observed what appeared to be dried reddish-brown matter on
21 it as well.

22 Q Did y'all take pictures of that, sir?

23 A Yes.

24 Q Okay. And did you also do -- was a -- did the
25 sheriff's department also do a crime scene diagram also,

James Coby Stepp
Direct examination by Mr. Barnette

1 sir?

2 A Yes.

3 Q Let me show you what's been marked as...

4 MR. BARNETTE: May I approach the witness, Your Honor?

5 Q Let me let you see State's Exhibit 12 -- that's 11.

6 Let me make sure. Let me let you look at 11 real quick

7 there, sir.

8 A Yes, sir.

9 Q Was that the diagram that the sheriff's department did,
10 sir?

11 A That is the diagram of the residence, not to scale,
12 yes, sir.

13 Q Yes, sir. And let me let you look through State's
14 Exhibit 12 through State's Exhibits 34 and see if those
15 pictures fairly represent what you saw that day when y'all
16 went to the crime scene.

17 (Pause.)

18 A Yes, sir. The photos do accurately -- just told what I
19 observed that day.

20 MR. BARNETTE: Your Honor, I'd like to enter State's
21 Exhibit 11 through State's Exhibit No. 34 into evidence at
22 this time.

23 MR. SNYDER: I have no objection to these pictures.

24 THE COURT: They're admitted.

25 (Crime scene diagrams marked State's Exhibit No. 11;

James Coby Stepp
Direct examination by Mr. Barnette

1 photograph marked State's Exhibits No. 34.)

2 MR. BARNETTE: Thank you, Your Honor.

3 Before I publish it, Your Honor, I'd like to ask him
4 one more question on some evidence real quick.

5 Q Let me show you what's been marked as State's Exhibit
6 No. 2, sir.

7 A No. 2?

8 Q Yes, sir.

9 A State's Exhibit 2. Okay.

10 Q State's Exhibit 2. Was that the baseball bat that you
11 collected from the crime scene there at [REDACTED] Waters Road?

12 A Yes, sir.

13 Q Okay.

14 MR. BARNETTE: Your Honor, I would like enter State's
15 Exhibit 2 into evidence at this time, which is the baseball
16 bat.

17 MR. SNYDER: No objection.

18 THE COURT: Admitted.

19 (Metal baseball bat marked State's Exhibit No. 2.)

20 MR. BARNETTE: And then, Your Honor...

21 Q Let me let you look at State's Exhibit No. 9. Was that
22 the cord that was collected by the sheriff's department --

23 A Yes.

24 Q -- from the body of Ms. Tanner?

25 A Yes, sir, yes, sir. It is.

James Coby Stepp
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, I'd like to enter State's
2 Exhibit No. 9 into evidence.

3 MR. SNYDER: No objection.

4 THE COURT: It's admitted.

5 (HDMI electrical cord marked State's Exhibit No. 9.)

6 MR. BARNETTE: Your Honor, permission to publish these
7 items to the jury.

8 THE COURT: You may.

9 MR. BARNETTE: Your Honor, permission to push the T.V.
10 over a little bit.

11 Q Can you see that, sir?

12 A No, sir.

13 Q Do you want to step down for a second just right there
14 so you can see it? And just be where you can see it where
15 she can still hear you.

16 A Okay. Can you hear me?

17 (Whereupon, the witness left the stand.)

18 MR. SNYDER: Judge, we can't see you with this screen
19 now.

20 MR. BARNETTE: Is that better?

21 MR. SNYDER: Yes. It is.

22 Q Okay. Just showing the jury here, is this just a
23 diagram of the residence there at [REDACTED] Waters Road?

24 A Yes, sir. It is.

25 Q In there it just shows the different areas from there.

James Coby Stepp
Direct examination by Mr. Barnette

1 which part did y'all come from and where did the sheriff's
2 department enter in at, sir?

3 A Well, we entered -- do you want me to go up there and
4 point?

5 Q You can, yes, sir. That's fine. Or you can come here
6 and point if you would like to. Just go up there. That
7 would probably be easier to just go right there, sir.

8 A Entered through the black -- back siding glass door off
9 the screened-in.

10 Q Okay. And then she was found in one of the back
11 bedrooms, is that right?

12 A Yes, sir.

13 Q In that bedroom there?

14 A Yes, sir.

15 Q Okay. Let me show you page two of that diagram, sir.
16 And this is not to scale, is that correct?

17 A Not to scale.

18 Q Is this a diagram with Ms. Tanner's body in there in
19 the bedroom?

20 A Yes, sir, it is.

21 Q And you had different marks and different items marked
22 that you had in this diagram, is that right?

23 A Yes, sir. The location of the evidence items collected
24 on scene.

25 Q Okay. And then you also had them marked.

James Coby Stepp
Direct examination by Mr. Barnette

- 1 A Legend.
- 2 Q A legend before that, is that right?
- 3 A Yes, sir.
- 4 Q Okay. Now it's showing the different items and where
5 found at.
- 6 A Yes, sir.
- 7 Q Like Item 1 was found right at the foot of the bed.
- 8 A Yes, sir. The ball bat.
- 9 Q And that's the red and white -- the red ball bat, is
10 that right?
- 11 A Yes, sir.
- 12 Q And then it goes through the different items that was
13 found by y'all.
- 14 A Yes, sir.
- 15 Q No. 2 was the black pair of underwear, is that right?
- 16 A Yes, sir. Right here.
- 17 Q Okay. And that's showing over there. And then blue
18 jeans and things like that. So the diagram matches up with
19 the item number that's on the diagram.
- 20 A Yes, sir.
- 21 Q And you also took pictures of those, is that right?
- 22 A Yes, sir.
- 23 Q Let me show you what's been marked State's Exhibit
24 No. 12. Is this the baseball bat that you found inside the
25 bedroom?

James Coby Stepp
Direct examination by Mr. Barnette

1 A Yes, sir, laying right to the right side of the bed on
2 the floor.

3 Q Let me show you State's Exhibit 13. Is it marked by
4 the placard No. 1?

5 A No. 1 to scale.

6 Q And that's the one on the diagram that matches your
7 diagram, is that right?

8 A Yes, sir.

9 Q Showing you a closeup on one end of the bat, State's
10 Exhibit 14.

11 A Yes, sir.

12 Q Trying to take the glare out. Do you see the red
13 material that you testified to earlier, sir?

14 A Yes, sir. Right in this area.

15 Q Okay. Is it around the D.E. on the --

16 A Yes, sir.

17 Q Showing you what's been marked as State's Exhibit 15.

18 A Yes, sir.

19 Q Is those items that you found -- of course the baseball
20 bat is down at the bottom end of the picture, is that right?

21 A Yes, sir, at the very bottom to the left-hand side.

22 Q And then you have the black underwear, blue jeans and
23 different items that were found.

24 A Yes, sir.

25 Q And those are marked on your diagram.

James Coby Stepp
Direct examination by Mr. Barnette

- 1 A They're marked on my diagram -- on the diagram.
- 2 Q State's Exhibit 16. Is this Item No. 7 that was found?
- 3 A That's Item 7 that was found.
- 4 Q And there's blood also there on that sheet, I guess.
- 5 A Yes, sir, right under the pillow.
- 6 Q State's Exhibit 8. Is this a phone that was found in
- 7 the bedroom?
- 8 A Yes, sir.
- 9 Q And was there also blood on the pillow and the sheet
- 10 there?
- 11 A Yes, sir.
- 12 Q Let me show you what's marked as State's Exhibit 18.
- 13 What's this a picture of, sir?
- 14 A It's a little financial card to renter -- foot.
- 15 Q And they were just laying there beside the bed.
- 16 A Just like that is the way we found them, yes, sir.
- 17 Q And that's the way she was laying in the bed, is that
- 18 right?
- 19 A That's the way she was laying in the bed when we
- 20 arrived on the scene.
- 21 Q Showing you State's Exhibit No. 19. What's this a
- 22 picture of, sir?
- 23 A I don't have my list in front of me but I think it was
- 24 the --
- 25 Q Here, sir. I can give that list to you right here.

James Coby Stepp
Direct examination by Mr. Barnette

1 A Thank you.

2 Q You're welcome.

3 A The cell phone charger that was found underneath the
4 pink hoodie. Charger was wrapped around and the cell phone
5 was underneath the hoodie.

6 THE COURT: You've got to speak up. You're away from
7 the microphone.

8 THE WITNESS: Yes, sir.

9 Do you need me to restate what I said?

10 THE COURT: Yes.

11 A Item 10 was the cell phone with a charger cord that was
12 underneath a hoodie on the bed -- a pink hoodie.

13 Q Tell you what. Why don't you go in this side? That
14 way you'll be facing her and she can hear you better. How
15 about that?

16 A Okay.

17 Q Showing you State's Exhibit No. 20.

18 A That would be the pink hoodie.

19 Q Okay. And this is going to be State's Exhibit 21.
20 What is that, sir?

21 A That's the blue, white and green comforter that was
22 near the body as well.

23 Q Okay. And is this her body up here in this area?

24 A Yes, it is. Body's up here.

25 Q That's the way it was laying.

James Coby Stepp
Direct examination by Mr. Barnette

1 A That's the way it was laying when I arrived on the
2 scene.

3 Q State's Exhibit 22. What is that, sir?

4 A A blue pillow.

5 Q And these correspond with your diagram, is that right,
6 sir?

7 A Yes, sir.

8 Q I understand. State's Exhibit 23. What is that, sir?

9 A A blue and white pillowcase.

10 Q Was there also a cord down here, I believe?

11 A Yes, sir.

12 Q Okay. State's Exhibit 24. What is that, sir?

13 A Item No. 15 was a blue and white pillowcase and Item 16
14 was the dark blue pillow laying beside the blue pillowcase.

15 Q Showing you State's Exhibit 25. What is that, sir?

16 A A dark blue t-shirt that was located on the bed.

17 Q Show you State's Exhibit 26. What is that, sir?

18 A Twenty and 20 -- 20 was a blue and white pillowcase and
19 21 was a blue and white pillowcase with the pillow as well.

20 Q And up here, did you later find some medicine bottles
21 and things like that?

22 A Yes, sir.

23 Q Did you take pictures of those items or a couple of
24 those items later?

25 A A couple of the items later that we photographed, yes,

James Coby Stepp
Direct examination by Mr. Barnette

1 sir.

2 Q State's Exhibit 27. What's that a picture of, sir?

3 A No. 18 was a cell phone located on the bed.

4 Q Was there also another cord there?

5 A Yes, sir.

6 Q State's Exhibit 28. What is that, sir?

7 A That is the exterior bathroom door to the right of the
8 bed, and that is a blood -- area of blood on the exterior of
9 the wall. And I used quick check to check for the
10 presumptive presence of blood. It tested presumptive
11 positive for the presence of blood as you see by the tip.

12 Q Was that -- that appeared to be blood splatter?

13 A Yes, sir.

14 Q Is that marked in your diagram also, sir?

15 A Yes, sir, yes, sir.

16 Q And I believe State's Exhibit 29, is that just a
17 close-up picture of that area?

18 A Yes, sir.

19 Q State's Exhibit 30. Can you tell us what this is, sir?

20 A That appears to be blood spatter to the right of that
21 bedroom door that was -- the other sample was taken from, is
22 to the right of that wall of the bedroom door.

23 Q Let me show you State's Exhibit 31. What is that, sir?

24 A That's on the wall as you come into the bedroom. If
25 you're coming into the bedroom, it's to the left. If you're

James Coby Stepp
Direct examination by Mr. Barnette

1 facing out of the bedroom, it's the wall to the right of the
2 door.

3 Q Let me show you what's been marked as State's
4 Exhibit 32. Is that a close-up, just of the picture we
5 looked at, splatter being tested?

6 A Yes, sir. That's the close-up of the picture of that
7 area.

8 Q And the blue, that's a presumption test for blood, is
9 that right?

10 A Yes. If there -- the swab will remain white that you
11 use if there is no presence of blood. If you get the color
12 blue, then it will show you that it is presumptive positive
13 for the presence of blood.

14 Q And actually we see red in the substance underneath the
15 blue, is that right?

16 A Yes. Right there.

17 Q And showing you State's Exhibit 33. You collected --
18 y'all took a look at the pill bottles on that little side
19 stand, is that right, sir?

20 A Yes, sir.

21 Q And showing you State's Exhibit 33. What is this, sir?

22 A It's a prescription bottle with William Smith's name on
23 it -- prescription.

24 Q Did y'all determine that Mr. Smith, the defendant, had
25 lived there previously?

James Coby Stepp
Direct examination by Mr. Barnette

1 A That's what I was informed by the detectives.

2 Q And showing you State's Exhibit 34. This is another
3 pill bottle?

4 A Yes, sir, with the name William Smith on it.

5 Q And that's also -- was found in that bedroom.

6 A Yes, sir.

7 Q If you will, sir, please have a seat. Thank you.

8 A Thank you.

9 (Whereupon, the witness returned to the stand.)

10 Q If you would, sir, I'll show you State's Exhibit No. 2.
11 If you would, could you open that for the jury, sir? I
12 don't know if you have a knife or not.

13 A I do not have a knife.

14 (Pause.)

15 Q And before you open that, sir, it appeared to be
16 sealed, is that right, sir?

17 A Sir?

18 Q It's sealed, is that correct?

19 A Yes, it's sealed, yes, sir. I'm just being careful.
20 Sorry I'm taking time.

21 Q Take your time, sir.

22 (Pause.)

23 Q I will let you use the scissors on this.

24 A Yes, sir.

25 (Pause.)

James Coby Stepp
Direct examination by Mr. Barnette

- 1 Q Do you need any gloves or anything?
- 2 A Yeah. I would like to have gloves.
- 3 (Pause.)
- 4 A Do you want me to remove it?
- 5 Q Yes, sir, if you would.
- 6 (Pause.)
- 7 Q Okay. Sir, was that the bat that y'all recovered from
- 8 the crime scene?
- 9 A Yes, sir, this is the bat I recovered from the crime
- 10 scene.
- 11 Q And was that sent? Was that placed into evidence?
- 12 A This was placed and secured in evidence at the
- 13 sheriff's office.
- 14 Q And was it later sent for testing at the state law
- 15 enforcement division?
- 16 A It was later sent for testing at the state law
- 17 enforcement division.
- 18 Q If you would, sir, just place it back inside. Thank
- 19 you.
- 20 (Pause.)
- 21 Q I should have let you kept your gloves on. I'm sorry.
- 22 I'll get you another pair.
- 23 A Okay.
- 24 Q If you would, I'm going to show you State's Exhibit
- 25 No. 9.

James Coby Stepp
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, permission to publish this
2 to the jury, Your Honor.

3 THE COURT: You may.

4 Q Sorry. My fault.

5 A Sorry about that.

6 Q That's all right. I should have told you. I believe
7 we had one more. Thank you, sir.

8 (Pause.)

9 Q For the record that has been sealed, is that right,
10 sir?

11 A Yes, sir. Take it out?

12 Q Yes, sir. Is that the cord that was used and wrapped
13 around Ms. Tanner?

14 A Yes, sir. That was the cord that was collected at
15 autopsy.

16 Q Okay. And that was placed into evidence by the
17 sheriff's department, is that right, sir?

18 A Placed in evidence, yes, sir.

19 Q Okay. If you would, sir, please place that back in the
20 bag. Now you can remove those gloves.

21 MR. BARNETTE: May I approach for a second, Your
22 Honor?

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

25 Q Sir, let me let you look at State's Exhibits 35 and 36.

James Coby Stepp
Direct examination by Mr. Barnette

1 Do those pictures fairly represent what you saw that day?

2 A Yes, sir. It is.

3 Q And was that the cord wrapped around Mr. Tanner's neck?

4 A Yes. It was.

5 Q And it's one picture from the front of her and one
6 picture from the back?

7 A Yes, sir. It is.

8 Q Okay.

9 MR. BARNETTE: Your Honor, I'd like to move State's
10 Exhibits 35 and 36 into evidence at this time.

11 MR. SNYDER: We object to the admission based on the
12 reasons stated earlier.

13 THE COURT: Overruled. They're admitted.

14 MR. BARNETTE: Thank you, Your Honor.

15 (Photographs marked State's Exhibits Nos. 35 and 36.)

16 MR. BARNETTE: Permission to publish to the jury, Your
17 Honor?

18 THE COURT: Yes, sir.

19 Q Let me show you State's Exhibit 36, sir. Can you see
20 it okay or do you need to step down, sir?

21 A Can I step down?

22 Q Yes, sir, you can. Just make sure you keep your voice
23 up.

24 (Whereupon, the witness left the stand.)

25 Q Is this the way the cord appeared to you from the back

James Coby Stepp
Direct examination by Mr. Barnette

1 side of the picture that was taken, sir?

2 A Yes, sir. That's how it appeared to be in the picture.

3 Q Let me show you State's Exhibit 35. I believe this is
4 from the front view of Ms. Tanner.

5 A Yes, sir. Front view neck and toward the right arm.

6 Q And how many times was it wrapped around her neck?

7 A It appeared to be twice.

8 Q And was it tied off, or I guess tied off around -- it
9 was around her arms here?

10 A Yes, sir. There.

11 Q Thank you, sir. Please have a seat.

12 (Whereupon, the witness returned to the stand.)

13 MR. BARNETTE: One moment, Your Honor. I just want to
14 make sure I got all of the exhibits in.

15 (Pause.)

16 Q Just ask y'all one other piece of evidence real quick.
17 Actually two if I can. Let me let you see State's Exhibits
18 3 and 10. State's Exhibit 3 is a buccal swab that was taken
19 with the consent from the defendant, Mr. Smith.

20 A Uh-huh.

21 Q And then State's Exhibit 10 was a blood card that was
22 done from Ms. Tanner's blood from the autopsy? Was both of
23 these entered at the sheriff's department or taken by the
24 sheriff's department, sir?

25 A Yes. Both of these were taken and labeled and sealed.

James Coby Stepp
Direct examination by Mr. Barnette

1 Q And was they sent to SLED for testing at a later date?

2 A Yes, sir.

3 MR. BARNETTE: Your Honor, I'd like to enter State's
4 Exhibits 3 and 10 into evidence at this time.

5 MR. SNYDER: No objection.

6 THE COURT: Three and ten are admitted.

7 (Buccal swab marked State's Exhibit No. 3; blood card
8 from Brenda Tanner marked State's Exhibit No. 4.)

9 MR. BARNETTE: Again, for the jury's information, may
10 I publish it to the jury, Your Honor?

11 THE COURT: You may.

12 Q See if I can go ahead and get you these real quick. I
13 just want you to open it so we can look at the envelope.

14 A Okay.

15 (Pause.)

16 Q I'm first going to show you State's Exhibit 3. This is
17 a buccal swab that was collected from the defendant, Tommie
18 William Smith, is that right, sir?

19 A That's correct.

20 Q And can you tell the jury what a buccal swab is?

21 A A buccal swab is where you take two cotton swabs. You
22 place inside the inner cheek of the person that you want the
23 sample from. You gently scrape the inside of each cheek.

24 Q And is that -- can you get somebody's D.N.A. from those
25 swabs?

Watson Brannon
Video testimony

1 A Sir, I couldn't hear you.

2 Q Is people's D.N.A. used from those swabs to determine
3 their D.N.A.?

4 A Yes.

5 Q And SLED does that, is that right?

6 A That's correct.

7 Q Let me show you State's Exhibit 10. At the autopsy was
8 blood taken from the victim in this case -- Brenda Tanner?

9 A Yes. It was.

10 Q And is that put like on a blood card by the coroner's
11 office?

12 A Yes, it is.

13 Q And was that sent? Was her blood card sent to SLED?

14 A Yes.

15 Q And this was collected at autopsy from her -- her
16 blood.

17 A Correct.

18 MR. BARNETTE: One moment, Your Honor, please.

19 (Pause.)

20 MR. BARNETTE: Your Honor, that would be all the
21 questions I have for Investigator Stepp. Thank you.

22 MR. SNYDER: I have no questions.

23 Thank you for your service.

24 THE WITNESS: Thank you, sir.

25 THE COURT: You may step down.

Watson Brannon
Video testimony

1 THE WITNESS: Thank you.

2 MR. BARNETTE: Your Honor, we'd ask for the witness to
3 be excused, Your Honor.

4 THE COURT: He may be.

5 (Whereupon, the witness was excused.)

6 MR. BARNETTE: Your Honor, the next witness will be
7 Mr. Brannon. I'd like to play his testimony, Your Honor.

8 THE COURT: Let me see y'all just a minute.

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

11 THE COURT: For the benefit of the jury, the next
12 testimony to be presented is by way of that video testimony
13 provided by Mr. Brannon previously who is now deceased. So
14 they're going to play that video-taped testimony.

15 MR. BARNETTE: Thank you, Your Honor.

16 Your Honor, permission to publish State's Exhibit 48.

17 THE COURT: You may.

18 MR. BARNETTE: Thank you.

19 THE COURT: No objection to 48?

20 MR. SNYDER: No, sir.

21 (Video of the testimony of Watson Brannon marked
22 State's Exhibit No. 48.)

23 (Whereupon, a portion of State's Exhibit 48 was played
24 for the jury.)

25 MR. BARNETTE: Your Honor, I'm going to restart over.

1 It seems like -- I don't know why the volume is a little
2 different, but the voice is different.

3 THE COURT: It just doesn't seem that way. It is that
4 way.

5 MR. BARNETTE: It is that way. I don't know why it's
6 doing that. If I can start it over and see if I can get it
7 corrected.

8 (Pause.)

9 (Whereupon, State's Exhibit 48 was played for the
10 jury.)

11 MR. BARNETTE: Your Honor, may we approach for a
12 second?

13 THE COURT: Yes, sir.

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

16 THE COURT: Ladies and gentlemen, we're going to
17 recess for the afternoon.

18 We'll resume with the continuation of the trial at
19 10:00 o'clock in the morning.

20 Keep in mind during the overnight recess you have to
21 base your decision upon what you see and hear presented
22 during the trial.

23 You can't supplement your wealth of knowledge by
24 conducting any outside research or doing your own
25 investigation into the case or any issue related to it.

Guilty plea

1 You're not permitted to discuss the case with any
2 person whatsoever in any fashion whatsoever -- family,
3 friends, even fellow jurors. You can't talk about the case
4 at all until you're involved in jury deliberations.

5 You also, as I say, cannot conduct any research or do
6 your own investigation. You can't attempt to do any type
7 of internet search or consult television, radio or
8 newspapers if something might exist about it.

9 As I say, you have to base your decision upon what you
10 see and hear during the trial. So no discussions with
11 anybody, no research, no investigation, no media exposure.

12 Have a good evening. I'll see you in the morning at
13 10:00 o'clock. Report to the courthouse at 10:00 o'clock
14 in the morning. Have a good afternoon.

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

17 THE COURT: Court is in recess until 10:00 o'clock in
18 the morning.

19 END OF PROCEEDINGS JULY 26, 2021
20
21
22
23
24
25

Guilty plea

1 (Proceedings July 27, 2021)

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

4 THE COURT: Are we ready for the jury?

5 MR. BARNETTE: The state's ready, Your Honor.

6 THE COURT: All right. Bring them in.

7 We will be at ease 15 minutes.

8 (Whereupon, a recess was taken.)

9 MR. BARNETTE: May it please the Court, Your Honor.

10 This is the case. I know we've been in trial on this
11 case, State vs. William Tommie Smith.

12 Your Honor, he's pleading guilty to murder, the charge
13 as indicted, Your Honor, on Indictment No. 19-GS-42-113.

14 Your Honor, this is a straight-up plea. Your Honor,
15 there's no negotiations on it in this case. He's
16 represented by Mr. Chad Snyder.

17 May I approach the bench, Your Honor?

18 And, Your Honor, what I'd like to do too as part of
19 the facts in the case, I'd like to move all the exhibits
20 that the state has entered, plus the ones that we were
21 going to enter, all 48 exhibits in as part of the evidence
22 and facts of the case, as well as the testimony that's
23 already been presented in this case as part of the facts
24 and testimony in the case.

25 I did have one more exhibit, Your Honor, I showed to

Guilty plea

1 Mr. Snyder. It's State's Exhibit No. 49, which is the
2 autopsy report that was done by Dr. Wren. I'd like to make
3 that also part of the facts and the evidence in the case
4 and provide that to the Court, Your Honor.

5 May I approach, Your Honor?

6 (Swabs marked State's Exhibit No. 2.1; swabs marked
7 State's Exhibit No. 2.2; buccal swabs marked State's
8 Exhibits No. 5 through 8; blood card from Brenda Tanner
9 marked State's Exhibit No. 10; photographs marked State's
10 Exhibit No. 12 through 33 and 37 through 46; autopsy report
11 dated December 3, 2018, marked State's Exhibit No. 49.)

12 THE COURT: All right. You are William Tommie Smith.

13 Mr. Smith, Mr. Snyder is your lawyer. As you know,
14 you are charged in Indictment 2019-0113 with having
15 committed the crime of murder, the state alleging that that
16 occurred on or about December the 2nd of 2018.

17 They allege on that date that you did -- that you did
18 wilfully and with malice aforethought kill Brenda Kay
19 Tanner by striking her in the head with a baseball bat and
20 that she died as a result of that act.

21 If convicted by a jury or if you enter a plea of
22 guilty to the crime of murder you must receive a mandatory
23 minimum sentence of not less than 30 in jail, and you could
24 receive a maximum sentence of life imprisonment or anything
25 in between.

Guilty plea

1 Do you understand what the charge is?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand the potential sentence
4 that can be imposed if you decide to enter a plea of
5 guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you had plenty of time to talk with
8 Mr. Snyder about your decision as to how you wish to
9 proceed?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Has he been over the indictment with you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And did he explain what the state would
14 have to prove in court before you could be convicted or
15 found guilty of the crime of murder?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And did he tell you what kind of sentence
18 you could receive if you were convicted --

19 THE DEFENDANT: Yes.

20 THE COURT: -- of the crime of murder?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you tell Mr. Snyder everything you
23 know about the allegations made against you by way of this
24 indictment?

25 THE DEFENDANT: Yes, sir.

Guilty plea

1 THE COURT: Did you and Mr. Snyder discuss the
2 evidence that the state has that they would present in
3 court during the trial of your case?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And did Mr. Snyder share all of that
6 discovery with you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And did y'all discuss the case fully?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you explained to him what you know
11 about it and about the event that occurred on
12 December 2nd of 2018?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And after y'all discussed it did you and
15 he determine whether or not you have some defense to the
16 charge of murder?

17 THE DEFENDANT: Yes.

18 THE COURT: Are you aware of any defense that you have
19 to the charge of murder?

20 THE DEFENDANT: Yes.

21 THE COURT: And what defense do you believe you have
22 to the crime of murder?

23 THE DEFENDANT: It is overpowering of the passion that
24 took place, Your Honor.

25 THE COURT: All right. Does that mean that you

Guilty plea

1 believe that you would be entitled to have a jury
2 instruction if your case went to trial and the jury decided
3 the case? Do you believe that you would be entitled to an
4 instruction given to the jury to a lesser included offense?

5 THE DEFENDANT: Yes.

6 THE COURT: In other words, you're not denying that
7 you're guilty of an unlawful homicide, but you believe that
8 you have a defense to the crime of murder.

9 THE DEFENDANT: Yes.

10 THE COURT: Do you believe that you have a defense to
11 the crime of voluntary manslaughter?

12 THE DEFENDANT: Yes.

13 THE COURT: What would be your defense to voluntary
14 manslaughter?

15 THE DEFENDANT: Not to voluntary manslaughter, no.
16 I'm sorry.

17 THE COURT: All right. So you and Mr. Snyder have
18 discussed the elements of the crime of murder?

19 THE DEFENDANT: Yes.

20 THE COURT: And you've discussed the elements of the
21 crime of voluntary manslaughter.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And it is your -- is it your position that
24 you believe that you are guilty of the crime of voluntary
25 manslaughter?

Guilty plea

1 THE DEFENDANT: Yes.

2 THE COURT: But you're not guilty of the crime of
3 murder.

4 THE DEFENDANT: Correct.

5 THE COURT: But you understand the state is proceeding
6 under a legal theory that you're guilty of the crime of
7 murder.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And I'm told now that you want to enter a
10 plea of guilty to the crime of murder.

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that if you enter a plea
13 of guilty to the crime of murder that you'll be giving up
14 your right to assert that you are only guilty of a lesser
15 included offense?

16 THE DEFENDANT: Yes.

17 THE COURT: By that I simply mean that you're going to
18 be able to present that information by way of mitigation as
19 to the punishment, but it's not going to result in you
20 being found guilty of any lesser included offense.

21 By pleading guilty to the crime of murder, if I accept
22 that plea, you will be convicted of the crime of murder and
23 I'll sentence you based upon whatever the range of
24 sentencing is for the crime of murder. Not less than 30;
25 not more than life.

Guilty plea

1 (Pause.)

2 THE DEFENDANT: Yes.

3 THE COURT: All right. Mr. Smith, can you remove your
4 mask so the court reporter can be certain and hear
5 everything you say?

6 (Whereupon, the defendant complied.)

7 THE COURT: All right. Now, do you understand that if
8 you go forward with a guilty plea you're pleading guilty to
9 the crime of murder?

10 THE DEFENDANT: Yes.

11 THE COURT: And even though you say that you're not
12 guilty of that offense.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Is that still what you wish to do?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Has Mr. Snyder explained to you each of
17 the constitutional rights that you have that you must give
18 up if you want to plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did he explain that you have the right to
21 remain silent?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And that of course means that you don't
24 have to say anything.

25 You don't have to answer any questions; you don't have

Guilty plea

1 to make any statement. You don't even have to testify
2 during the actual trial of the case if your case goes to
3 trial before a jury, because you always have a right to
4 remain silent and to require the state to meet their burden
5 of proof, and that is the burden of proving you guilty of
6 the crime of murder beyond a reasonable doubt.

7 You never have to assist them in their efforts to
8 prove you guilty by testifying or making statements or
9 answering questions that might tend to prove your own
10 guilt.

11 However, if you wish to plead guilty you have to give
12 up your right to remain silent because I have a number of
13 questions that I'm going to be asking you in addition to
14 those I've already asked, and the purpose of some of those
15 questions is for me to determine whether or not your
16 decision to plead guilty is freely and voluntarily made,
17 that you have an understanding of that decision, that you
18 understand the consequences of that decision and that
19 nobody is forcing you or pressuring you into making that
20 decision.

21 In other words, that you've made that decision of your
22 own free will and accord after having plenty of time to
23 reflect upon it.

24 So do you understand your right to remain silent?

25 THE DEFENDANT: Yes, sir.

guilty plea

1 THE COURT: Do you understand you have to give that
2 right up if you want to plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to give that right up, or not?

5 THE DEFENDANT: Yes.

6 THE COURT: Which is it?

7 THE DEFENDANT: Give it up.

8 THE COURT: All right. Did Mr. Snyder also explain to
9 you that you have a right to confront and to examine any
10 witness in court that would provide testimony or other
11 information or evidence tending to prove you guilty?

12 In other words, because the state has the burden of
13 proof, you've got a right to make them prove it in court
14 before a jury, have each witness take the witness stand,
15 testify under oath in your presence. You can see who they
16 are. You can hear what they have to say.

17 Your lawyer can cross-examine them on that testimony
18 in order to test their reliability or credibility and the
19 reliability of the information they're providing.

20 Now, you know that process because we've already begun
21 the trial and there are some witnesses that have testified,
22 but if you go further that would still be the case. Each
23 witness the state has to provide relevant information would
24 have to testify under oath from the witness stand so you
25 could see them, hear them and have your lawyer

Guilty plea

1 cross-examine them.

2 Do you understand your right to confront and to
3 examine each witness in court?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that that process is not
6 going to continue if you plead guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you wish to give that right up?

9 THE DEFENDANT: Yes.

10 THE COURT: And Mr. Snyder has explained to you that
11 you have a right to continue with this trial before the
12 jury and have the jury decide if you're guilty or not?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that, as I've stated,
15 the state has the burden of convincing the jury that you're
16 guilty?

17 All 12 jurors must be convinced of your guilt beyond a
18 reasonable doubt before they could find you guilty. If all
19 12 do not agree as to a verdict, no verdict can be
20 rendered.

21 Also, as you know, during the trial you can testify or
22 not, call a witness or not, present additional evidence or
23 not. That would simply be up to you.

24 But you'd have a right for the jury to consider the
25 evidence in the case and determine whether or not you are,

Guilty plea

1 in fact, guilty of the crime that the state claims you have
2 committed.

3 If you plead guilty the jury is going to be dismissed.
4 They won't continue to participate and they won't decide
5 the verdict in your case.

6 Do you understand your right to have a jury make the
7 decision as to whether or not you're guilty of the crime of
8 murder?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you wish to give that right up?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has anybody promised you anything or
13 offered you anything in return for your decision to plead
14 guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Has anybody forced you in any way,
17 threatened you in any fashion or placed any type of
18 pressure upon you that caused you to make the decision to
19 plead guilty that you otherwise would not have made?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you pleading guilty freely and
22 voluntarily?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Was it your decision?

25 THE DEFENDANT: Yes.

Guilty plea

1 THE COURT: Are you satisfied with it?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that whatever sentence
4 you receive is a day-for-day sentence? You don't get any
5 type of work credits, education credits or good-time
6 credits.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you also understand that murder is
9 classified as a violent offense under the law?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: It's classified as a most serious offense
12 under the law.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And that it's classified as a no-parole
15 offense under the law.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And that means actual no-parole. You
18 serve it day-for-day. Mr. Snyder has explained that to
19 you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you understand it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How long have you been in custody?

24 THE DEFENDANT: About 33 months, sir.

25 THE COURT: And have you ever been treated for any

Guilty plea

1 type of substance abuse or addiction?

2 THE DEFENDANT: I participated in some in-house
3 classes, yes, sir.

4 THE COURT: Do you suffer from any such a condition
5 today as to an addiction to any type of drug?

6 THE DEFENDANT: No, sir.

7 THE COURT: And have you ever been treated for any
8 type of mental illness or emotional disturbance?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And when were you treated and what were
11 you treated for?

12 THE DEFENDANT: Depression.

13 THE COURT: And how long ago has that been?

14 THE DEFENDANT: Three or four years.

15 THE COURT: All right. Have you suffered from that
16 condition while you have been in custody?

17 THE DEFENDANT: Somewhat, sir.

18 THE COURT: Are you receiving any type of medication
19 or therapy?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. And what are -- what are you
22 receiving?

23 THE DEFENDANT: Not sure of the name -- of the
24 clerical call name of the medication, but it's to reduce
25 the severity of mood-swing type pressure or things go up

Guilty plea

1 and down and how you handle everything.

2 THE COURT: So you're taking prescribed medication to
3 assist you with your mental condition?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And does that medication alleviate the
6 issues that you have?

7 THE DEFENDANT: For the most part, yes.

8 THE COURT: All right. Does that medication in any
9 way prevent you from understanding fully what you're doing
10 right now?

11 THE DEFENDANT: No, sir.

12 THE COURT: Does it, in fact, enhance your ability or
13 make it easier for you to understand fully your situation?

14 THE DEFENDANT: Keeps everything fairly level, yes.

15 THE COURT: Okay. You are 66 years old.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And how far did you go in school?

18 THE DEFENDANT: I have a G.E.D.

19 THE COURT: Have you ever been married?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: When?

22 THE DEFENDANT: The last marriage was August 11th of
23 2001.

24 THE COURT: And when were you divorced?

25 THE DEFENDANT: We didn't. My wife passed away May

Guilty plea

1 the 29th of 2014.

2 THE COURT: Okay. And did you have children?

3 THE DEFENDANT: No, sir. We had children by separate
4 marriages.

5 THE COURT: How many children do you have?

6 THE DEFENDANT: Five.

7 THE COURT: And are they all adults?

8 THE DEFENDANT: Yes.

9 THE COURT: What kind of work have you done?

10 THE DEFENDANT: I've been an industrial contractor
11 most of my life, and I was on disability. I was almost
12 killed in a motorcycle accident, so they gave me disabled.
13 I can't lift over ten pounds.

14 THE COURT: All right. And do you have any questions
15 you need to ask me about this process or about your
16 decision?

17 THE DEFENDANT: No, sir. It's very clear.

18 THE COURT: Do you need to discuss it with Mr. Snyder
19 any further before we continue?

20 THE DEFENDANT: No, sir. I'm all right.

21 THE COURT: All right. I'm going to ask the solicitor
22 to tell me about his position in the case, and that is what
23 evidence he would present to a jury if your case continued
24 to trial before that jury. And when he's concluded with
25 that I'll ask you if you agree or disagree with any factual

Guilty plea

1 information he's provided to me. So be sure you pay
2 attention to it.

3 MR. BARNETTE: Thank you, Your Honor.

4 I need to mark two more or three more exhibits, Your
5 Honor.

6 (SLED report dated February 14, 2019, marked State's
7 Exhibit No. 50; SLED report dated July 30, 2019, marked
8 State's Exhibit No. 51; RAP sheet of defendant marked
9 Court's Exhibit No. 5.)

10 MR. BARNETTE: May it please the Court, Your Honor.

11 THE COURT: Mr. Barnette.

12 MR. BARNETTE: Your Honor, I did add two more exhibits
13 or actually three more exhibits to the current list, Your
14 Honor.

15 The first one is State's Exhibit 49, which is the
16 autopsy court, Your Honor. State's Exhibit 50, Your Honor,
17 is latent prints.

18 In this case, Your Honor, this Agent Harrison, she's
19 present here in court. She was going to testify concerning
20 what she did with the baseball bat, taking swabs from that
21 was sent for D.N.A. testing.

22 Then Agent Stewart, Your Honor, State's Exhibit 51,
23 was the D.N.A. report showing the D.N.A. was her D.N.A. as
24 well as the defendant's D.N.A., was found in the back --
25 was found in the bedroom.

Guilty plea

1 Also, the two cars that he drove, Deputy Talanges was
2 going to testify about -- he's here present also, Your
3 Honor -- about the two cars where he processed and found
4 her D.N.A. and his D.N.A. on the steering wheels, as well
5 as the door, Your Honor, in both cars. That was Mr.
6 Brannon's car that he took, and then Ms. Tanner's car that
7 he took and drove to Mr. Brannon's house.

8 Your Honor, and then they also swabbed both of his
9 hands, Your Honor. Both of his hands had blood on them,
10 Your Honor, and it wound up being Ms. Tanner's blood on
11 there.

12 There's pictures that was going to be introduced, Your
13 Honor, as part of the case. Those pictures of the
14 defendant, Your Honor, I can show you a couple of those.
15 He did not have any mark on him. That would be the
16 testimony of the officer in this case from there.

17 You saw what happened to Ms. Tanner. You can see with
18 the autopsy report, Your Honor.

19 Briefly, I'd like to move all of that evidence, all of
20 the testimony, everything, submit the facts, I am going to
21 be submitting to the Court, Your Honor. I know you're
22 already aware of those, Your Honor.

23 This happened back on December 2nd of 2018, Your
24 Honor. Ms. Tanner was living with the defendant in this
25 case, Your Honor, at [REDACTED] Waters Road here in Inman, South

Guilty plea

1 Carolina, Spartanburg County.

2 He called 9-1-1. He -- and I know you've heard the
3 9-1-1 call. He admitted to beating her to death with a
4 baseball bat and tying her with the cord in that case and
5 leaving her dead in the bedroom there, Your Honor.

6 After he called 9-1-1 when he was talking to them he
7 said he was smoking crack cocaine. Obviously, intoxication
8 is not a defense in our state -- from that state -- and,
9 Your Honor, he went to Mr. Brannon's house. You heard Mr.
10 Brannon's testimony through the video tape.

11 In this case, Your Honor, he went there and took -- he
12 actually hid Ms. Tanner's car, took Mr. Brannon's car. He
13 did drive it to the jail like he told the 9-1-1 operator.

14 Officer Pickens here, Your Honor, he would have
15 testified that he came to the jail, that he told them that
16 he killed Brenda Tanner in this case. And he's also
17 present in the courtroom today and was going to testify,
18 Your Honor, in this matter.

19 You see the evidence, Your Honor. It's overwhelming.
20 No question in my mind there's been malice aforethought.

21 One of the arguments I was going to argue to the jury
22 was that she was asleep in bed, it appears. If you look at
23 the pictures and you look at the body cam of the officer,
24 officer Clark's body cam, she's in the bedroom. There's
25 nothing else anywhere in the house.

Guilty plea

1 She's found. She's bludgeoned to death. All of the
2 blood except the blood splatter that hit the walls from the
3 beating that she took from the baseball bat was found in
4 the bed from there. You saw the cord. I know you saw the
5 two pictures that were introduced into evidence, as well as
6 the court's exhibits where he tied her at least twice
7 around the neck.

8 If you look, the cord had to be cut off. Dr. Wren was
9 going to testify about the cord and so forth, about her
10 injuries. He saw at least ten wounds to her head, Your
11 Honor. You can see in the autopsy report.

12 You can also see he talked about the strangulation in
13 his report, Your Honor. It was a very brutal murder in
14 this case.

15 I know the family has a representative. They're all
16 here, Your Honor, as you can see on our side. And I know
17 he's going to speak for the family in this case, Your
18 Honor. This is about as brutal of murder as you can get
19 from that standpoint. I know you've seen many murder
20 cases, and it ranks up there with that, Your Honor.

21 Your Honor, I did enter his prior record. The only
22 thing I can report to the Court is a prior D.V. conviction
23 that he has with that. But I did enter that N.C.I.C. sheet
24 from there.

25 I know Jamel would like to address the Court at the

Guilty plea

1 appropriate time, Your Honor, and I don't know if that's
2 the proper time now or not.

3 THE COURT: All right. Yes, sir.

4 JAMAL TANNER: Thank you, Your Honor.

5 On behalf of the family, we lost more than just a
6 normal black lady, another mother. We lost our mother and
7 out grandma.

8 She barely got to meet my wife. He basically took her
9 away from me.

10 He deserves the maximum penalty that he can get.
11 Nothing less. Life. He deserves life. He took a life.
12 We're going to take his. He doesn't deserve another minute
13 on this planet, but if he is going to be on this planet he
14 ought to be in prison the whole time because he don't
15 deserve nothing -- nothing, just like we don't have
16 nothing.

17 We sitting here. We're crying for three years.
18 Grandkids. She got grandkids, son, that she ain't got to
19 touch, she ain't got to hold, love on.

20 You deserve a lot worse than what you get, my boy.

21 He deserves a lot worse, Your Honor. That's on behalf
22 of our whole entire family.

23 THE COURT: Tell me again what your name was.

24 JAMAL TANNER: Jamal Tanner.

25 THE COURT: Jamal Tanner?

Guilty plea

1 JAMAL TANNER: Yes, sir.

2 THE COURT: Thank you.

3 MR. BARNETTE: And, Your Honor, I told the family that
4 he's pleading straight up to this. Obviously, they were
5 ready to go forward with the trial. We were ready to go
6 forward with the trial, but I told them that he's pleading
7 guilty and the sentence would be totally left up to you,
8 Your Honor. Thank you, Your Honor.

9 THE COURT: All right. Mr. Smith, you've heard what
10 the solicitor just told me.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you agree or disagree with what he
13 stated?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Which is it?

16 THE DEFENDANT: Agree.

17 THE COURT: You agree?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you still wish to plead guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. I'll accept your plea and hear
22 from you and Mr. Snyder.

23 MR. SNYDER: Thank you, Judge.

24 As you just heard from Solicitor Barnette, William is
25 66 years old. As he informed Your Honor, he is disabled

Guilty plea

1 after multiple car accidents, the worst being in 2013.

2 He mentioned his previous wife, Ellen Smith. She
3 passed away May 29th of 2014. They were very close. She
4 had multiple medical issues that he helped her get through.
5 That just brought them even closer. And she passed away.
6 She was in the hospital. He was at her bedside, and he saw
7 her life being taken.

8 So he spent a period of time grieving. After that
9 period of time he met Ms. Tanner. They dated for
10 approximately a year before he let her into his house.
11 Eventually some of the family moved in.

12 In 2017 his house was foreclosed. She went to live at
13 the location where this happened. William eventually moved
14 in.

15 They were using drugs together, Judge. At one point
16 William told her that they needed to get clean, they needed
17 to move on, they needed to change the way they were living
18 their lives. She didn't agree to that.

19 They eventually got into an argument which led to her
20 informing Mr. Smith, William, that she had been having sex
21 with other people in the bed they're sharing together.

22 He snapped, Judge. He doesn't remember what happened
23 after that, and we don't deny what happened. It was a
24 terrible thing. Our deepest sympathies go to the family
25 and everyone involved. It was a horrible incident, but he

Guilty plea

1 doesn't remember hardly any of it. He just -- he lost it.

2 when he finally came to his senses he went to Watson
3 Brannon's house. You heard that he wanted to kill himself.
4 He felt terrible about it. He didn't get the gun, but he
5 eventually left and called 9-1-1 and told them what
6 happened. He also turned himself in. He never denied what
7 happened.

8 It was never our position that anything other than
9 what the solicitor laid out is what happened. He just
10 wanted an opportunity to tell someone why it happened.

11 Again, Judge, and as the solicitor said, this is a
12 horrific event. It doesn't get much worse than this, but
13 at some point everything happens for a reason.

14 Mr. Smith just wanted people to understand that
15 reason. He apologizes to the family. He has decided to
16 enter a plea now for them not to have to go through any
17 more of this.

18 He wants Your Honor to know he accepts responsibility.
19 He has always accepted responsibility. Again, he just
20 wanted -- he never denied what happened. He just wanted
21 people to know why it happened.

22 For those reasons, Judge, we just ask for mercy.
23 Thank you.

24 THE COURT: All right. Mr. Smith, do you want to add
25 anything to what your lawyer's told me?

1 THE DEFENDANT: He covered it, Your Honor.

2 MR. SNYDER: Just to add, Judge, he's 66 years old. A
3 minimum sentence here is 30 years. Whatever sentence you
4 give him will be a life sentence.

5 MR. BARNETTE: Your Honor, just to make it part of the
6 record, we have Court's Exhibit No. 1 which shows he,
7 obviously, had no mental issues with this or whatever. He
8 was found competent in this case.

9 THE COURT: All right. On Indictment 2019-42-00113,
10 the sentence of Court is you, William Tommie Smith, be
11 confined to the South Carolina Department of Corrections
12 for a period of 40 years, he being given credit for any
13 time he's entitled to pursuant to 24-13-40.

14 (Whereupon, the jury was returned to the courtroom and
15 excused outside the presence of the defendant.)

16 END OF REQUESTED TRANSCRIPT OF RECORD
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 26th day of July 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 7, 2022

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Spartanburg)

Full name and prison number (if any) of Applicant)

William Tommie Smith)
249438)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2022-CP-42-00785

APPLICATION FOR

POST-CONVICTION RELIEF

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 clear to which question any such continued answer refers.

Since every application must be sworn 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 the applicant was convicted.

1. Place of detention Spartanburg County
2. Name and location of Court which imposed sentence General Sessions
Spartanburg County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018A4210204526-29
 - (b) MURDER, POSS. WEAPON DURING

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2022 MAR -8 PM 2:25
CLERK OF COURT
SPARTANBURG COUNTY
AMY V. COX

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 07-27-2021
- (b) no Parole 40 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I was not made aware that I
- (b) could appeal.

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CLEVELAND COUNTY
ADMINISTRATIVE

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- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) He was ineffective in that he did
- (b) not object to a recorded testimony
- (c) in which the witness was told what to say.
12. 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 petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), 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. _____

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CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

(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. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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CLERK OF COURT
DISTRICT COURT
ALABAMA

16. If any ground set forth in (10) 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) Because of my not understanding
 (b) How.
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? He was assigned, but said nothing.
 (b) your trial, if any? He was assigned, but said nothing.
 (c) your sentencing? He was assigned, but said nothing.
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Charles Snyder
366 North Church Street, Suite 3000
Spartanburg SC 29303
 ii. _____
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

~~STATE OF SOUTH CAROLINA~~

County of _____

VERIFICATION

I, _____, 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.

Willie Tammy Smith

SWORN to and subscribed before me this _____ day of _____, _____

15th
2022

Sandra Culler

(L.S.)

Notary Public

My Commission Expires: _____

2/17/24

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, William Tommie Smith, 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 thereof.

William Tommie Smith
Applicant

SWORN or affirmed to and subscribed before me this

1st day of March, _____.

Sandra Oullen
Notary Public

My Commission Expires: 2/17/24

2022 MAR 10 PM 3:20
 CLERK OF DISTRICT COURT
 DISTRICT OF COLUMBIA

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

William Tommie Smith, #249438,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2022-CP-42-00785

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on March 8, 2022, by William Tommie Smith (hereafter "Applicant"). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its January 2019 term, the Spartanburg County Grand Jury indicted Applicant for murder (2019-GS-42-0113). Applicant was represented by Charles W. Snyder, III, Esquire. Solicitor Barry J. Barnette of the Seventh Circuit Solicitor's Office prosecuted the case. On July 27, 2021, Applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty as indicted without any negotiations or recommendations. Judge Cole sentenced Applicant to forty years' imprisonment for murder. Applicant did not pursue a direct appeal.

II. Statement of Facts

On December 2, 2018, the victim was living with Applicant when Applicant called 911, admitting to beating the victim to death with a baseball bat and tying her up with a cord and

leaving her dead in the bathroom. (Tr. 104-05). After he called 911, he admitted to smoking crack cocaine. (Tr. 105). Applicant went to Watson Brannon's home, hid the victim's car, and took Brannon's car. (Tr. 105). Applicant went to the jail and admitted to killing the victim. (Tr. 105). At the time of the incident, the victim was seemingly asleep in bed, where she was found bludgeoned to death. (Tr. 105-06). All the blood was found in the bed, except for the blood splatter on the surrounding walls. (Tr. 106). The cord was cut off the victim, and Dr. Wren saw at least ten wounds to her head and signs of strangulation. (Tr. 106). After recitation of the facts, Applicant stated he agreed with what was stated. (Tr. 108).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. "Ineffective assistance of counsel."
 - a. "He was ineffective in that he did not object to a recorded testimony in which the witness was told what to say."

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

IV. Argument

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Effective assistance of counsel does not mean perfect or mistake-free representation. See *Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) ("[A] defendant has a right to effective representation, not a right to an attorney who performs his duties 'mistake-free.'" (citation omitted)); *Burt v. Titlow*, 571 U.S. 12, 24 (2013)

("[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]"); *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. *Strickland*, 466 U.S. at 687-688.

When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment."

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); *see Dunn v.*

Reeves, 141 S. Ct. 2405, 2410 (2021) (noting counsel's strategic decisions are to be afforded "strong presumption" of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead,

would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea."

Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

Respondent contends the plea was entered freely, knowingly, and intelligently. Applicant stated he understood the charge, the potential sentence, the elements of the offense, the evidence, and the indictment. (Tr. 90, 92). Applicant stated that Counsel explained everything to him. (Tr. 90). Applicant stated he discussed and reviewed the discovery with Counsel. (Tr. 91). Applicant stated that the defense at trial he discussed with Counsel was that he may be entitled to a lesser included instruction of voluntary manslaughter, but that he had no defense to a voluntary manslaughter charge. (Tr. 91-92). Applicant stated he understood by pleading he was waiving his right to request a lesser included instruction, right to remain silent, right to a jury trial, and the right to call and confront witnesses. (Tr. 92-98). Applicant stated that no one promised or offered him anything, that he was pleading freely and voluntarily, and that he was satisfied with his decision. (Tr. 98-99). Applicant stated he understood he had to serve his sentence day-for-day and that the offense is classified as violent, most serious, and no-parole. (Tr. 99). Applicant stated he was treated for substance abuse in the past, but he does not have an addiction at the time of the plea and that he had been treated for his depression. (Tr. 99-101). He also stated that his medication did not impact his ability to understand the plea proceedings. (Tr. 101).

Accordingly, the plea was seemingly entered freely, knowingly, and intelligently, and should not be withdrawn now. Additionally, Applicant's allegation that Counsel was ineffective for allowing recorded testimony to come in during the trial was seemingly waived by entering the plea. To the extent that Applicant insists he was forced to plead because of this error on the part of Counsel, Applicant has failed to show how Counsel was deficient on this ground, why the

statement would not have come in at trial, or why he would have proceeded forward with the trial but for Counsel's alleged error. Thus, Respondent contends this allegation likely lacks merit but still requests an amended application be filed to further address this issue, as well as any additional issues Applicant may seek to raise.

Still, the ineffective assistance of counsel allegations probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant's allegations. Applicant alleges that plea counsel was constitutionally ineffective because of failure to challenge the State's witnesses and evidence. However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in Applicant’s PCR application not explicitly admitted, qualified, or explained in this return is hereby denied by the Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant’s court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRPC and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRCP (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

2020-03-13
09:59

VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-0386

May 9, 2022

2022 MAY 15 PM 058
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

William Tommie Smith, #249438

Applicant,

v.

State of South Carolina

Respondent,

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL
) CIRCUIT

) Case No.: 2022-CP-42-00785

) Certificate 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 and Motion for a More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

DATED this 9th day of May 2022.



Grayson Horton, Legal Assistant
For Respondent

2022 MAY 10 11:58
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)
)
)

WILLIAM SMITH,
APPLICANT.

) AMENDED APPLICATION
)
)

v.

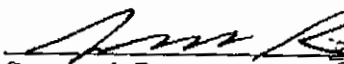
THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2022-CP-42-00785
)
)

This matter comes before the Court by way of application of post conviction relief filed March 8, 2022, alleging ineffective assistance of trial counsel. A Return and Motion for a More Definite Statement was made on May 9, 2022. This application is intended to incorporate the allegations of the original application and add the following allegations of ineffective assistance of trial counsel for:

1. failure to communicate with Applicant discuss legal provocation;
2. failure to prepare for trial as evidenced by lack of opening statement;
3. failure to cross video witness Brannon about the Applicant's suicidal state;
4. allowing the State to make improper opening and reference pardoned charge; and
5. advising the Applicant he could not testify to what victim said that triggered violence which would go to his state of mind and to plead guilty to murder.

Respectfully submitted,


Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

CLERK OF COURT
SPARTANBURG COUNTY
JULY 11, 2022

2022 AUG -5 PM 12:22

FILED

Greenville, South Carolina
This 1 day of August, 2022

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

WILLIAM SMITH,
APPLICANT.

**AFFIDAVIT OF SERVICE
BY MAIL**

Y.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

CASE # 2022-CP-42-00785

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Application** in the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of Attorney General Alan Wilson
P.O. Box 11549
Columbia, SC 29211


Attorney for Applicant

This 2 day of August, 2022

FILED
2022 AUG -5 PM 12:22
CLERK OF COURT
SPARTANBURG COUNTY
ALAY W. COX

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

IN THE COMMON PLEAS
7th JUDICIAL CIRCUIT

3 WILLIAM T. SMITH,
4
5 Applicant,

6 vs.

CASE NO. 2022-CP-42-00785

7 THE STATE OF SOUTH CAROLINA,
8
9 Respondent.

10 HEARING BEFORE: HONORABLE DANIEL D. HALL
11
12 DATE: August 9, 2022
13
14 TIME: 10:00 AM
15
16 LOCATION: Spartanburg County Judicial Center
17 180 Magnolia Street
18 Spartanburg, SC 29306

19 REPORTED BY: LORA L. McDANIEL,
20 Registered Professional Reporter
21

22 APPEARANCES:

23 ATTORNEYS FOR THE APPLICANT
24 SUSANNAH C. ROSS, ESQ.
25

ATTORNEYS FOR THE RESPONDENT
CHELSEY F. MARTO, ESQ.

WILLIAM T. SMITH vs. STATE OF SOUTH CAROLINA

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I N D E X

DIRECT CROSS REDIRECT RECROSS

WITNESS/EXAMINATION

WILLIAM T. SMITH

BY MS. ROSS	5	--	20	--
BY MS. MARTO	--	15	--	--
CHARLES W. SNYDER, III				
BY MS. MARTO	22	--	--	--
BY MS. ROSS	--	27	--	--
BARRY BARNETTE				
BY MS. MARTO	29	--	--	--
BY MS. ROSS	--	31	--	--

CERTIFICATE OF REPORTER Page 33

E X H I B I T S

(No Exhibits Proffered)

WILLIAM T. SMITH vs. STATE OF SOUTH CAROLINA

1 THE COURT: Ms. Marto, whenever you're ready.

2 MS. MARTO: This is the case of William Smith
3 versus State of South Carolina, docket number 2020-CP-42-00785,
4 presently confined in the South Carolina Department of
5 Corrections. During its January 2019 term, he was indicted for
6 murder. He was represented by Mr. Charles Snyder, and
7 Solicitor Barry Barnette prosecuted the case.

8 On July 27, 2021, he appeared before the Honorable
9 J. Derham Cole and pled guilty to the indictment without
10 negotiation or recommendation. This was done after exhaustion
11 of pretrial motions. Judge Cole sentenced him to 40 years
12 imprisonment for murder. He did not pursue a direct appeal.

13 Application was filed March 8, 2022. And the
14 return was made May 9, 2022.

15 With that I'll turn it over to Ms. Ross.

16 THE COURT: Ms. Ross.

17 MS. ROSS: Thank you, Your Honor. May it please
18 The Court. I filed an amended application, which I believe
19 contains most of Mr. Smith's allegations after we discussed
20 them. In it he's saying that it was ineffective assistance
21 that his lawyer didn't really communicate with him and discuss
22 the legal terms and the law around his case. Specifically,
23 legal provocation and what that means.

24 In talking to him from the beginning, he is talking
25 about a murder is an unlawful killing with malice aforethought.

WILLIAM T. SMITH vs. STATE OF SOUTH CAROLINA

1 He is saying that did not exist in this situation. That was
2 not discussed at any length with his lawyer prior to trial.

3 And the second allegation, failure to prepare for
4 trial as evidenced by the opening statement, for instance, on
5 page 57, which is about six lines.

6 Failure to cross video witness Brannon about the
7 Applicant's suicidal state. Apparently, a witness, the
8 Applicant's brother-in-law, died prior to the trial. His
9 testimony was presented by video. A recording was made of his
10 earlier testimony and cross-examination. He was not allowed to
11 answer questions about Applicant's state of mind and how he
12 seemed at the time.

13 Fourth one was allowing the State to make an
14 improper opening where he talks about he's representing the
15 victims, and the Solicitor are all asking for a verdict of
16 guilt. And referencing a charge that had been pardoned.
17 That's at page 106 of the transcript.

18 Advising the Applicant he could not testify to what
19 the victim had said that triggered the violence. And advising
20 the Applicant to plea guilty of murder after the trial started.

21 With that I would call Mr. Smith to the stand at
22 this time.

23 THE COURT: Thank you.

24 Mr. Smith, if you'll come on up.

25 Mr. Smith, if you'll place your left hand on the

WILLIAM T. SMITH DIR BY MS. ROSS

1 Bible, raise your right hand.

2 WILLIAM T. SMITH

3 being first duly sworn, testified as follows:

4 THE COURT: Thank you. You can take the stand.

5 DIRECT EXAMINATION

6 BY MS. ROSS:

7 Q. Mr. Smith, you understand that at post-conviction
8 relief, the relief is to be put back into the position before
9 your trial and plea?

10 A. Yes, ma'am.

11 Q. With that understanding, it's your -- you want to
12 still proceed?

13 A. Yes, ma'am.

14 Q. Did you retain or was Mr. Snyder appointed to
15 represent you?

16 A. Appointed.

17 Q. We've alleged that he failed to investigate and
18 prepare you for trial. Can you talk to The Judge a little bit
19 about what kind of meetings you had with Mr. Snyder, review of
20 discovery, and trial preparation that happened in your case.

21 A. During the 30-some-odd months that I was in the
22 county jail --

23 THE COURT: I'm going to ask that you speak up,
24 Mr. Smith, just so I can hear you.

25 THE WITNESS: All right. Can you hear me?

WILLIAM T. SMITH DIR BY MS. ROSS

1 THE COURT: Yes, sir.

2 THE WITNESS: 30-some-odd months that I was in the
3 county jail, my interaction with Mr. Snyder was very sparingly.
4 I tried to contact him through -- the only means I had -- was
5 through that kiosk. He continued to fail. He wouldn't
6 respond.

7 And I even brought him to court at one point to try
8 to relieve him of his duties simply because he would not
9 communicate with me at all. We didn't discuss anything. The
10 only thing he ever said to me was what the prosecutor said he
11 would do or wouldn't do.

12 BY MS. ROSS:

13 Q. Let's talk a little bit. Did you ever go to
14 Columbia where you were evaluated?

15 A. Yes, I did. This is approximately a year or so
16 after I was in the county. I was initially told that the ride
17 to Columbia was to verify my state of mind at the time of the
18 incident. I thought it was odd because it was a year later.

19 When I came to find out, come to realize that it
20 had nothing to do with my state of mind, only whether or not I
21 was competent to stand trial.

22 Q. So at that evaluation, did they ask you anything
23 about whether you had any ability to conform your actions at
24 the time?

25 A. Not to my knowledge they didn't.

WILLIAM T. SMITH DIR BY MS. ROSS

1 Q. Did you feel that evaluation went to the core of
2 what you thought your case was about? Let me rephrase that.

3 A. Go ahead.

4 Q. With the evaluation, do you think it assisted with
5 what your defense was in the case?

6 A. No, ma'am.

7 Q. Going to the day of the -- approximately, how many
8 times did Mr. Snyder meet with you prior to trial?

9 A. It wasn't over six, if it was that many. I don't
10 really remember how many times but it was very sparingly.
11 Maybe four times during that whole time.

12 Q. Did y'all discuss the definition of legal
13 provocation and then the charge that you were going to confront
14 at your trial?

15 A. No, ma'am. We didn't discuss any -- he didn't
16 bring up any details to me about any of the proceedings and how
17 we would or would not proceed.

18 Q. During the plea, you're asking Judge Cole, you're
19 telling him that you believe it was voluntary manslaughter.
20 Was that really the first time those things had been explained
21 to you?

22 A. Yes, ma'am.

23 Q. We've also alleged failure to cross witness
24 Mr. Brannon about your state of mind. Who was Mr. Brannon?

25 A. Mr. Brannon was my brother-in-law.

WILLIAM T. SMITH DIR BY MS. ROSS

1 Q. Can you give The Judge a little idea why he was a
2 witness in this case and what had happened.

3 A. The reason they got Buddy to be a witness --
4 everybody called him Buddy. His name was Watson. He was my
5 brother-in-law. I knew that Buddy had a couple loaded guns in
6 his house. The day of the incident, I went to his house in
7 order -- hoping to find where they always laid on the table in
8 his little office. I went there with the intent to pick up
9 that gun and blow my brains out because of what had just taken
10 place that I had no control over.

11 Q. Did you end up doing that? Obviously not.

12 A. No, ma'am. My brother, he wanted to know what was
13 going on. So I told him things had gone drastically wrong
14 between me and Brenda. I asked him about the guns. He said:
15 I put them up. So he would not allow me to have a gun. So I
16 left his house and drove to the county jail.

17 Q. What kind of questions would you want Mr. Snyder to
18 ask Buddy?

19 A. I wanted him to ask a question directly that would
20 involve the state of mind that I was in when I came to his
21 house that day. It was only a couple or so hours, a few hours
22 after the event when I got to his house. That was the true
23 state of mind that I was in that morning, and it was -- I don't
24 know what kind of state of mind. I wasn't myself.

25 I did not -- when Brenda said to me what she said,

WILLIAM T. SMITH DIR BY MS. ROSS

1 and the conversation that we were having that morning, she told
2 me that she had slept with someone in my bed in a house that me
3 and my wife Ellen, whom I had -- passed away on May 29th in
4 2014. I allowed Brenda to come in. When she slept with
5 someone else in the bed that I had shared with my wife -- I
6 still wasn't over her.

7 I don't know to this minute what took place in my
8 mind. It's a blank between -- I realize what happened. But
9 the actual participation in it I do not know. I cannot recall
10 the actual participation.

11 When I saw what had taken place, that's when I
12 called the police.

13 Q. After you called the police, you went over to
14 Buddy's house?

15 A. Yes.

16 Q. How long had you known him, Buddy?

17 A. I've known him since 1994.

18 Q. And what do you think -- if he asked the right
19 questions, what do you think Mr. Snyder could've gotten out of
20 Buddy about your state of mind?

21 A. Watson could have told him exactly how I acted,
22 what I was saying, what I was doing, how nervous and fidgety I
23 was. And the fact that the car that I came in -- I knew where
24 he kept the keys to the Volkswagen. I just picked up the keys
25 to the Volkswagen, got in his car and came to the county jail.

WILLIAM T. SMITH DIR BY MS. ROSS

1 Q. Would Mr. Brannon or Buddy have been able to tell
2 the jury or tell the people there at his video testimony that
3 you were suicidal at that time?

4 A. Yes.

5 Q. At the trial part of your case, do you feel like
6 Mr. Snyder objected or did a good job trying your case?

7 A. No.

8 Q. What was your feeling about his handling of your
9 trial?

10 A. The first day of the trial was July 26th. On the
11 morning of the 27th, the very next day, the way things had
12 transpired on the 26th, Mr. Snyder didn't object. He didn't
13 say anything. He didn't cross-examine. He didn't ask any
14 questions.

15 The morning of the 27th, with the way things were
16 going in the trial, I never denied what happened. Only the
17 reasons why.

18 Q. In fact, you had called 911 and confessed and then
19 later confessed and went to the Sheriff's Office?

20 A. Yes. At that point, the family was in the
21 courtroom. I carried them through enough anguish, and all I
22 could see was them further having to go through. I considered
23 all that. So rather than prolong any of that any further, I
24 chose to plea.

25 Q. Now, if you felt like Mr. Snyder was doing a good

WILLIAM T. SMITH DIR BY MS. ROSS

1 job at your trial, what would you have done?

2 A. I would've continued. That's the reason I came to
3 trial to start with.

4 Q. Was the reason you pled because you felt like he
5 wasn't defending you?

6 A. No, ma'am. I was washing down the river, and he
7 was allowing it. He didn't put up any resistance.

8 Q. I'm just going to refer you to a couple pages in
9 your transcript, put this on the record. Page 57, line four,
10 the Solicitor states: Myself along with Brenda Tanner's family
11 members are here in the gallery today. We'll be coming to you
12 at the end of the case asking for a guilty verdict.

13 That's just what it says in the transcript; is that
14 correct? Line four.

15 A. Who said that?

16 Q. The Solicitor in the opening statement.

17 A. I don't remember hearing that.

18 Q. Your lawyer didn't object when that was stated?

19 A. No, ma'am. He didn't say anything.

20 Q. On page 106, line 22 of the transcript, this is
21 during your guilty plea, the Solicitor talked about a prior
22 domestic violence conviction. It mentions that during your
23 guilty plea in the transcript. Can you explain about that
24 prior domestic violence conviction?

25 What happened with that?

WILLIAM T. SMITH DIR BY MS. ROSS

1 A. There was a young lady at my house, and I wanted
2 her to leave.

3 Q. Was that conviction pardoned? The prior
4 conviction.

5 A. That conviction took place after the pardon.

6 Q. Did the Solicitor mention a case that had been
7 pardoned?

8 A. Not verbally.

9 Q. Can you explain that a little bit.

10 A. In the transcript that I have, I read, it said that
11 my rap sheet was put in front of the judge, was brought into
12 it. It was inadmissible as it's been pardoned. I tried my
13 best to straighten out the things that I've done in my youth.

14 Q. The sentencing judge was told of a pardoned
15 conviction?

16 A. Yes.

17 Q. And did your lawyer object to that?

18 A. No.

19 Q. What was your lawyer's advice about what would
20 happen if you testified at your trial?

21 A. His advice to me, if I testified in the trial, it
22 would only further prove guilty.

23 Q. His advice is that your testimony would be of no
24 assistance to the jury?

25 A. Yes, ma'am.

WILLIAM T. SMITH DIR BY MS. ROSS

1 Q. What could you have told the jury that you think
2 would've changed the verdict or would've affected your trial?

3 A. I could have -- I could have said this. The reason
4 why all this took place to start with, my wife, she passed
5 away. I stood at the foot of her bed and watched her die on
6 May 29, 2014.

7 Now, the relationship that Ellen and I had was a
8 very good relationship. That's the best relationship I've ever
9 been in, in my life. It took me a year-and-a-half to allow
10 Brenda in the house. And another several months to allow her
11 in our bed.

12 I was going through feelings of desecration what I
13 was doing to the memory of the woman that I so dearly and still
14 do love very much. And she had been dead eight years. Now,
15 for me to desecrate that, I had enough problems in my life with
16 me feeling that I was doing nothing but desecrating her. And
17 then finally to allow -- life moves on, so I tried to move on.

18 And then just to find out that I had been treated
19 the way that I had been treated. Now, when I was told that,
20 there was something happening in my brain. I don't remember
21 doing what I did.

22 Q. Is it fair to say that you just snapped and you
23 don't recall what happened?

24 A. Something took place. Snapping, I don't know if
25 that's a word we can use for it or not. The whole time I was

WILLIAM T. SMITH DIR BY MS. ROSS

1 in the county there was a lady named Margaret that came to the
2 county jail. She's a health and wellness lady with mental
3 health or what have you.

4 Up until then, talking to her, I had never thought
5 about or even considered the possibility of a person, anybody
6 of their brain actually shutting down and not allowing it to
7 retrieve things. I've always had a fairly good memory about
8 things. For me not to be able to recall that very incident...

9 Q. Did you have any malice aforethought prior to this
10 killing?

11 A. No, ma'am.

12 Q. You would've told the jury that or could've told
13 the jury that?

14 A. Yes, ma'am.

15 Q. Again, you ended up pleading guilty. Was that
16 because you felt like you had no -- your lawyer was not
17 defending you in any way?

18 A. I felt at that point that he wasn't doing a very
19 good job. And by the thing -- I was unsure about whether or
20 not I was ever going to get to say what I'm saying here today.

21 Q. Because he had told you, you shouldn't or you
22 couldn't?

23 A. Yes, ma'am.

24 MS. ROSS: I have no further questions. Please
25 answer any questions from the Solicitor.

WILLIE T. SMITH CROSS BY MS. MARTO

1 THE COURT: Ms. Marto.

2 MS. MARTO: Yes, Your Honor.

3 Good morning, sir.

4 THE WITNESS: Good morning.

5 CROSS-EXAMINATION

6 BY MS. MARTO:

7 Q. So you effectively pled because you thought that
8 your attorney wasn't doing a good job?

9 A. Yes, ma'am.

10 Q. Did you bring up the fact that you were
11 dissatisfied with your attorney to The Court's attention?

12 A. No, ma'am, I did not. I was very confused and
13 disoriented through the whole process of that trial.

14 Q. You didn't want to tell the judge that you were
15 confused throughout the whole thing, though?

16 A. I was unaware of how to do it. And once I entered,
17 began to enter the plea, things moved very rapidly through this
18 court.

19 Q. Did you talk about the decision to plea versus
20 going to trial with your attorney before the trial?

21 A. No, ma'am.

22 Q. So you never talked about your options?

23 A. He never discussed it.

24 Q. Did you talk about the discovery in this case?

25 A. He never discussed any of that with me.

WILLIE T. SMITH CROSS BY MS. MARTO

1 Q. What did you talk about during your meetings?

2 A. During our meetings, I talked to him -- I asked him
3 questions about whether or not my history that had been
4 pardoned was being brought into the courtroom. He just simply
5 said to me that I could not prove whether or not it was.

6 In my mind, that suggested to me that it was being
7 used. It may not have been brought up verbally, but it was
8 nevertheless brought up.

9 By his wording of saying that's something that I
10 cannot prove suggested to me that it was being used. And there
11 is no way I could actually prove it because it wasn't verbally
12 brought up.

13 Q. So the only thing that you talked to your attorney
14 about was your prior offenses?

15 A. No, not my prior offenses. About how we was going
16 forth in this. That was just part of it.

17 Q. What was the other part of it?

18 A. The other part was how he was going to represent
19 me, what was he going to say. The fact that Mr. Watson
20 Brannon, the day that he testified on tape, he sat right here
21 in this very chair and testified to things that I never said to
22 him.

23 Q. That was the tape; correct?

24 A. Yes, that was the videotape.

25 Q. That was played because Mr. Brannon had since been

WILLIE T. SMITH CROSS BY MS. MARTO

1 deceased?

2 A. Yes. The Court was aware he was in a lot of health
3 issues. He had three different kinds of cancer. And his
4 health was failing very rapidly. They decided to, I guess, to
5 tape testimony of his in the event that, when the trial
6 started, he was no longer alive. And that was the case.

7 During the process of that taping, I told
8 Mr. Snyder that the things that he's saying I never said. He
9 implied to me that I shouldn't bring that up because it would
10 further prove guilt. And I don't know how to say this without
11 sounding even further guilty. It wasn't guilt that I was here
12 trying to establish. It was the fact, the reason why all of
13 this took place.

14 Q. Is it fair to say you wanted to testify that you
15 did kill the woman, that you did it in, I guess, a heat of
16 passion?

17 A. Yes.

18 Q. So you told the judge that at the plea; correct?

19 A. Yes.

20 Q. And you stated that you thought this was a
21 voluntary manslaughter case, not a murder?

22 A. Yes.

23 Q. Yet you still pled to murder; correct?

24 A. I felt overwhelmed and without any chance
25 otherwise.

WILLIE T. SMITH CROSS BY MS. MARTO

1 Q. Did you think the evidence was overwhelming that
2 you killed her?

3 A. It was all on pictures. Everything. Like I said,
4 I never denied the fact of it.

5 Q. She was killed with a baseball bat; correct?

6 A. Correct.

7 Q. She suffered at least ten hits to the head; is that
8 what they said?

9 A. That's what they said.

10 Q. You also called 911; correct?

11 A. Yes.

12 Q. You admitted to killing her then?

13 A. Yes.

14 Q. You admitted to using crack cocaine?

15 A. We both did.

16 Q. There were also strangulation signs; correct?

17 A. That's what they said.

18 Q. Who said that? The pathologist?

19 A. It was in the wording that I had been reading.

20 Q. Did your attorney ever tell you something to the
21 effect you would likely be found guilty at trial?

22 A. No, ma'am.

23 Q. 'Did he say that your chances at trial were very
24 good?

25 A. He said they were very little.

WILLIE T. SMITH CROSS BY MS. MARTO

1 Q. Chances at trial were very little?

2 A. Yes.

3 Q. You told the judge at the plea hearing about your
4 mental illness; correct?

5 A. Ma'am?

6 Q. Did you tell the judge that you struggled with
7 mental illness at the plea hearing?

8 A. I'm not sure if I said that or not. If I did, it's
9 written down.

10 Q. Were you present during the taping of Mr. Brannon?

11 A. Yes.

12 Q. And was Mr. Snyder present?

13 A. Yes.

14 Q. Did Mr. Snyder ask him any questions?

15 A. He attempted to.

16 Q. You wanted him to bring out the fact that you
17 killed her; just that you did it in a heat of passion; correct?

18 A. I wanted him to ask questions that would bring out
19 the fact, the state of mind and at that very moment I appeared
20 and was very suicidal. Had I gotten my hands on a weapon that
21 I knew my brother-in-law had, I would've ended my very life
22 that day.

23 Q. Again, he told you not to ask those questions
24 because it would make you look more guilty?

25 A. Yes. I don't know what kind of advice that was but

WILLIE T. SMITH REDIR BY MS. ROSS

1 that's what he said.

2 MS. MARTO: One moment, Your Honor.

3 (A pause transpired.)

4 MS. MARTO: No further questions.

5 THE COURT: Anything further?

6 MS. ROSS: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. ROSS:

9 Q. Can you just briefly explain, there was something
10 that you had told me about Brannon being told -- what Brannon
11 would've said was hearsay. He said what you said. What was
12 that?

13 A. Mr. Brannon was -- they told me that I could not
14 bring up the conversation that took place between me and
15 Brannon because it was hearsay. There was no one to either
16 suggest or say or verify what I was saying.

17 Q. All that stuff was said. You weren't certain
18 whether it was true or not what was said; is that correct?
19 This is just your perception of what was said. It wasn't
20 whether it was true or not; whether she actually had been in
21 your bed?

22 A. I'm not sure I understand what you're asking me.

23 Q. That's okay. I wanted to get back to, as far as
24 the testimony, the video testimony of Brannon, did your lawyer
25 say some of the things he would've said were hearsay if he said

WILLIE T. SMITH REDIR BY MS. ROSS

1 things that you had said that went to his perception of you and
2 your mental state?

3 A. He never really got down to asking Watson a
4 question that deserved -- he finally just said -- well, what
5 did he say? Asked my brother-in-law what did I say. That's
6 when he testified that -- of what I had told him, which I never
7 did; not those very words.

8 Q. Were you later informed -- did you later talk to
9 your brother-in-law about the testimony?

10 A. Yes, ma'am. He was actually in the hospital. And
11 my sister was up here from Florida. So I called her. She was
12 at the house that they shared. She was helping him get
13 re-established in the house. He wanted to talk to me. I
14 didn't ask to speak to him, he asked to speak to me. He told
15 me -- he said he didn't really want to testify. He said: And
16 they told me what to say.

17 He said that I couldn't use that because no one was
18 identified who they were.

19 MS. ROSS: I have no further questions.

20 THE WITNESS: The prosecution subpoenaed him or
21 brought him here for his testimony.

22 BY MS. ROSS:

23 Q. Did the State object to any questions that your
24 lawyer tried to ask your brother-in-law?

25 A. Yes.

CHARLES SNYDER DIR BY MS. MARTO

1 Q. What was that?

2 A. Initially -- I'm not very sure about the wording of
3 how Mr. Snyder asked the initial question, was what state of
4 mind or how was I acting. How did I act that morning?

5 And when Mr. Brannon attempted to answer the
6 question, judge -- the judge would not allow him to ask the
7 question in that direct manner. He had to rephrase the
8 question simply just for him to say: Well, he said what he
9 did.

10 MS. ROSS: I have no further questions.

11 MS. MARTO: Nothing further.

12 THE COURT: You can step down, Mr. Smith.

13 Ms. Ross, call your next witness.

14 (The witness exited the stand.)

15 MS. ROSS: We don't have any other questions.

16 MS. MARTO: We would call Mr. Charles Snyder to the
17 stand.

18 THE COURT: Place your left hand on the Bible,
19 raise your right hand.

20 CHARLES W. SNYDER, III
21 being first duly sworn, testified as follows:

22 THE COURT: Ms. Marto.

23 DIRECT EXAMINATION

24 BY MS. MARTO:

25 Q. Good morning, sir.

CHARLES SNYDER DIR BY MS. MARTO

1 A. Good morning.

2 Q. You represented Mr. Smith in his underlying
3 criminal proceedings; correct?

4 A. Yes, ma'am.

5 Q. Did you have the case from its inception?

6 A. Yes, ma'am.

7 Q. Roughly, how many times did you meet with
8 Mr. Smith?

9 A. We didn't -- our office did not call the file back
10 from storage. I did have some notes in the computer. These
11 are not comprehensive. They do indicate some things about this
12 case.

13 Based on these notes, I met with him at least five
14 times.

15 Q. Do you recall generally what y'all discussed during
16 those meetings?

17 A. Yeah. I mean, every meeting was virtually the
18 same. He was not denying what happened. He just wanted
19 everyone to know why it happened. And I explained to him how
20 that would play out in the prosecution of this case.

21 Q. Did you think that he had a strong case for a
22 trial?

23 A. No. It was one of the harder cases I've ever had
24 to work. I believe he did react to what was said to him. And
25 that was essentially our defense at trial.

CHARLES SNYDER DIR BY MS. MARTO

1 Q. Was your defense at trial to, hopefully, get a
2 voluntary?

3 A. Yes. Mr. Barnette could be reasonable at times. I
4 thought that should be the outcome because I don't think, due
5 to his age and everything else, I don't think that -- to just
6 be blunt about it -- he could have survived his sentence for
7 either one. To save time throughout. That was, again, that
8 was our defense.

9 Q. He was effectively looking at a life sentence
10 regardless of whether it was voluntary or murder; correct?

11 A. Correct.

12 Q. As you stated, you discussed legal provocation with
13 Mr. Smith; correct?

14 A. Yes.

15 Q. That was effectively the defense at trial; correct?

16 A. That would've been if we ever got to that point.

17 Q. Mr. Brannon was not present for the actual trial;
18 correct?

19 A. We did a video testimony because, due to his age
20 and his health, the Solicitor believed there is a good chance
21 that he wouldn't survive until trial. That's why we did it
22 that way. But I also requested in the days that he was still
23 alive that he testify from the witness stand.

24 Q. Full testimony of him was conducted via video;
25 right?

CHARLES SNYDER DIR BY MS. MARTO

1 A. Yes.

2 Q. You had an opportunity to cross-examine him?

3 A. Due to his age and his health it was difficult. I
4 had a hard time. He couldn't hear very well. He had someone
5 with him that kind of helped him through the process. Helped
6 him get around.

7 I do distinctly remember trying to elicit testimony
8 that Mr. Smith was not acting in the right state of mind. I
9 was trying to get it out of Mr. Brannon how Mr. Smith was
10 acting at the time. He was just saying he was not in his right
11 state of mind.

12 Q. Did y'all ever discuss entering a plea on this case
13 before the day of trial, or was this always going to trial?

14 A. As I mentioned I had -- we had discussed his
15 options from the outset. And through talking through it, we
16 determined that it was -- that he was acting in the heat of
17 passion, that this is voluntary manslaughter and not murder.

18 Again, I tried to give him -- get Mr. Barnette to
19 agree to voluntary manslaughter. For various reasons, he
20 didn't decide to allow that.

21 Q. Do you recall what changed between the decision to
22 go to trial that day and then what lead to the plea thereafter?

23 A. He felt that it was not going well for him.

24 Q. What was the evidence, in broad strokes, concerning
25 this case, do you recall?

CHARLES SNYDER DIR BY MS. MARTO

1 A. Yes. If I remember correctly, he had been using
2 drugs. He came home. He got into an argument with the girl he
3 was sleeping with. She responded by saying: Well, I've been
4 fucking people in your bed while you were gone this entire
5 time.

6 He snapped. He used an extension cord to strangle
7 her. Then he started beating her in the head with a baseball
8 bat. When he was leaving, he called 911 and admitted to what
9 he did.

10 Q. Did you discuss with Mr. Smith the option to
11 testify at trial?

12 A. I have that conversation with every client before
13 trial. And I also, I had this, that I told him that, for the
14 jury to believe that he was not acting or that he was acting in
15 a heat of passion, I would need to get that out of Mr. Brannon,
16 which was difficult due to his age and health and everything
17 else. I had a hard time communicating with him. Or he would
18 have to testify. There would be no other way for the jury to
19 come to that conclusion without some more information.

20 Q. Do you recall if Mr. Smith was going to testify at
21 the trial if the trial continued?

22 A. I can't answer that right now. I'm pretty sure
23 that we didn't get that far into it. I can't remember if he
24 indicated he wanted to testify or not. I would've told him
25 that his testimony would've been needed for a jury to

CHARLES SNYDER CROSS BY MS. ROSS

1 understand why he did what he did.

2 Q. You decided to, I think, plea before the defense
3 was able to present their case at trial; correct?

4 A. Yeah. Mr. Barnette usually has a very long jury --
5 or witness list. I don't think we got very far.

6 Q. Do you recall any reference to his pardon charge?

7 A. Yeah. He informed me about that early on. I
8 looked into it. And he was right. And I looked into the law
9 regarding pardon and admissibility. I informed him that
10 Mr. Barnette would not be able to make reference during the
11 trial to any of those charges.

12 I haven't had a chance to look through the
13 transcript. I believe those records that he mentioned during
14 the plea, I think would've said that it had been pardoned but
15 it never got in front of the jury.

16 MS. MARTO: One moment, Your Honor.

17 (A pause transpired.)

18 MS. MARTO: No further questions.

19 THE COURT: Anything from Ms. Ross?

20 CROSS-EXAMINATION

21 BY MS. ROSS:

22 Q. I'm questioning the evaluation. How did the
23 evaluation come about?

24 A. Again, every time we would discuss this case, there
25 was basically the same conversation. He never denied what

CHARLES SNYDER CROSS BY MS. ROSS

1 happened. He denied or he said he would tell me why it
2 happened and that he wasn't in the right state of mind. He was
3 acting in the heat of passion.

4 We went ahead and had him evaluated just to get
5 that out of the way, just to make sure he was ready to go
6 forward.

7 Q. Was it a competency evaluation only or was it also
8 an evaluation into his capacity to conform?

9 A. I believe it was both. I usually ask for both.

10 Q. And I guess this doesn't really matter. I'm sure
11 you did ask for both. On page 35 of the transcript, they talk
12 about it and they just say competency. Line 13.

13 A. He was found competent.

14 Q. It makes no mention of capacity to conform in that
15 transcript?

16 A. Correct. That would've been our defense at the
17 trial to show the jury that he was not acting in the right
18 state of mind, he was acting in the heat of passion because of
19 what he had just been told.

20 Q. Correct. That was his position the whole time was
21 that this was not a murder because he did not have malice
22 aforethought?

23 A. Yes, ma'am. He was reacting to what he had been
24 told, and he was acting in the heat of passion.

25 MS. ROSS: Thank you. I have no further questions.

BARRY BARNETTE DIR BY MS. MARTO

1 MS. MARTO: Nothing further.

2 THE COURT: Mr. Snyder, you can step down.

3 (The witness exited the stand.)

4 THE COURT: Ms. Marto.

5 MS. MARTO: Yes, Your Honor. We would call
6 Mr. Barry Barnette.

7 BARRY BARNETTE

8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MARTO:

11 Q. Good morning.

12 A. Morning, ma'am.

13 Q. You prosecuted this case; correct?

14 A. Yes, ma'am, I did.

15 Q. Can you give us a brief description of what the
16 evidence in the case was.

17 A. Yes, ma'am. He lived with Brenda Tanner at the
18 time. He literally beat her to death with a baseball bat.
19 Then he took a cord like USB cord and strangled her with it.
20 It was a horrible case. He later called 911, basically,
21 admitted to everything, just didn't give his name. He said he
22 had to go smoke some crack cocaine.

23 He went and visited his brother-in-law. Basically,
24 he testified later -- we actually had it on videotape -- he was
25 getting ready to die from cancer. He died shortly after we had

BARRY BARNETTE DIR BY MS. MARTO

1 the testimony.

2 One reason why we did the testimony was it was
3 during COVID. We was getting ready to try the case. And
4 everything is getting continued at the time because of the
5 COVID situation.

6 We made a motion to have his testimony presented to
7 the court, and Judge Cole heard that. Like I said, he shortly
8 died after that. I'm glad we did that from that standpoint.
9 The evidence was very strong in the case.

10 Q. Were there pictures of the scene?

11 A. Yes, ma'am. Had pictures of the ball bat. DNA
12 came back. Everything from that standpoint. There was a lot
13 of evidence in this case. Like I said, she died very violently
14 in this case. The thing that was really bad, beat her to death
15 with a baseball bat, and made sure he finished off with the
16 strangulation with the cord.

17 Q. Would you consider it a strong case for the State?

18 A. Yes, ma'am, it was a murder case.

19 MS. ROSS: Judge, I would just object; point out
20 lack of relevance to the issue here at the PCR of ineffective
21 assistance of trial counsel.

22 THE COURT: I note your objection. I'll overrule
23 your objection.

24 MS. ROSS: Thank you, Your Honor.

25 BY MS. MARTO:

BARRY BARNETTE CROSS BY MS. ROSS

1 Q. Sir, do you recall any discussions over this pardon
2 charge that was discussed?

3 A. There was a charge of pardon. The DV that we're
4 talking about was actually Ms. Tanner. I don't think it was
5 ever pardoned from that standpoint. Maybe not mentioned. He
6 had numerous charges that was pardoned. I don't know why they
7 were pardoned but they were pardoned.

8 It was just the DV charge lifted from Ms. Tanner
9 that was not pardoned, the information that I received when I
10 saw the rap sheet. They didn't mention the other offenses that
11 he had been pardoned for, which was very substantial and would
12 probably qualify him for life without parole if he hadn't been
13 pardoned. I do remember specifically discussing that.

14 MS. MARTO: No further questions.

15 THE COURT: Ms. Ross.

16 CROSS-EXAMINATION

17 BY MS. ROSS:

18 Q. Off the top of your head, do you recall if the
19 pardon charges were on the rap sheets that you handed up to
20 Judge Cole?

21 A. They probably were because they always mark pardon
22 on the rap sheets.

23 MS. ROSS: I have no further questions.

24 MS. MARTO: Nothing further, Your Honor.

25 THE COURT: Thank you, Mr. Barnette. You can step

WILLIAM T. SMITH vs. STATE OF SOUTH CAROLINA

1 down.

2 THE WITNESS: Thank you, Your Honor.

3 (The witness exited the stand.)

4 MS. MARTO: No further witnesses, Your Honor.

5 THE COURT: Anything further from the Petitioner,
6 the Applicant?

7 MS. ROSS: No, Your Honor.

8 MS. MARTO: Nothing further.

9 THE COURT: I'll take the matter under advisement
10 and issue my ruling by the end of next week.

11 MS. ROSS: Thank you, Your Honor.

12 (The hearing was concluded at 10:45 a.m.)

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WILLIAM T. SMITH vs. STATE OF SOUTH CAROLINA

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter
and Notary Public for the State of South Carolina at Large, do
hereby certify that the foregoing transcript is a true,
accurate, and complete record.

I further certify that I am neither related to, nor
counsel for, any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 9th day of May, 2023 at Spartanburg, Spartanburg
County, South Carolina.



Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
William Tommie Smith, #249438,	)	Case No.: 2022-CP-42-00785
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

This matter comes before this Court by way of Applicant's post-conviction relief application filed March 8, 2022. Respondent made its return on May 9, 2022, requesting an evidentiary hearing be convened. An evidentiary hearing was held on August 9, 2022, at the Spartanburg County Courthouse. Susannah C. Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Charles W. Snyder, III, and Solicitor Barry J. Barnette, Esquires, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its January 2019 term, the Spartanburg County Grand Jury indicted Applicant for murder (2019-GS-42-0113). Applicant was represented by Charles W. Snyder, III, Esquire. Solicitor Barry J. Barnette of the Seventh Circuit Solicitor's Office prosecuted the case. On July 27, 2021, Applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty as indicted without any

negotiations or recommendations. Judge Cole sentenced Applicant to forty years' imprisonment for murder. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On December 2, 2018, the victim was living with Applicant when Applicant called 911, admitting to beating the victim to death with a baseball bat and tying her up with a cord and leaving her dead in the bathroom. (Tr. 104-05). After he called 911, he admitted to smoking crack cocaine. (Tr. 105). Applicant went to Watson Brannon's home, hid the victim's car, and took Brannon's car. (Tr. 105). Applicant went to the jail and admitted to killing the victim. (Tr. 105). At the time of the incident, the victim was seemingly asleep in bed, where she was found bludgeoned to death. (Tr. 105-06). All the blood was found in the bed, except for the blood splatter on the surrounding walls. (Tr. 106). The cord was cut off the victim, and Dr. Wren saw at least ten wounds to her head and signs of strangulation. (Tr. 106). After recitation of the facts, Applicant stated he agreed with what was stated. (Tr. 108).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Ineffective assistance of counsel."
 - a. "He was ineffective in that he did not object to a recorded testimony in which the witness was told what to say."

By amendment filed August 5, 2022, Applicant, through Counsel, alleged:

1. Ineffective assistance of counsel:
 - a. Failure to communicate with Applicant to discuss legal provocation.
 - b. Failure to prepare for trial as evidence by lack of opening statement.
 - c. Failure to cross video witness Brannon about Applicant's suicidal state.
 - d. Allowing the State to make improper opening and referenced pardoned charge; and
 - e. Advising Applicant he could not testify to what victim said that triggered violence, which would go to his state of mind and to plead guilty to murder.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective Assistance of Counsel
 - a. Failure to effectively communicate with Applicant.
 - b. Failure to secure a competency evaluation addressing his mental health issues and his ability to conform.
 - c. Failure to discuss charges.
 - d. Failure to get charge dropped down to voluntary manslaughter as part of the plea agreement.
 - e. Failure to discuss adequate legal provocation.
 - f. Failure to cross-examine Brannon about his suicidal state.
 - g. Failure to adequately prepare for trial.
 - h. Failure to object to State's opening argument.
 - i. Failure to object to mention of Applicant's pardoned charge.
 - j. For encouraging Applicant not to testify at trial.
 - k. Failure to discuss proceeding to trial or pleading.
 - l. Failure to review discovery.
2. Invalid Plea
 - a. The plea process was confusing, which rendered the plea unknowing and unintelligent.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant stated that Counsel was appointed to him. Applicant stated that he spent thirty months in the county jail and that interaction with Counsel was sparing. He stated that they met between four and six times. He stated communication was primarily through the kiosk and that Counsel failed to respond. He stated he tried to relieve Counsel in court for failure to communicate with him. He stated that they did not discuss anything beyond what the prosecutor would or would not do.

He stated he received a competency evaluation about a year into the case and that it had nothing to do with his state of mind. Instead, he stated it only dealt with his competency to stand trial. He stated he did not recall receiving an evaluation concerning his ability to conform. He

stated that the evaluation did not assist in his defense.

Applicant stated that he did not discuss the charges or legal provocation with Counsel. He stated Counsel did not discuss the proceedings at all with him. He stated that he told Counsel that this was a voluntary manslaughter case, not a murder case.

He stated that Counsel was ineffective for failure to cross-examine video witness Brannon about Applicant's suicidal state. He stated Brannon was his brother-in-law and he became involved because Applicant went to the house to obtain a gun, he could kill himself with. He stated he did not follow through with this. He stated he told Brannon that he and the victim were having a difficult time together. He stated he wanted Counsel to question Brannon about Applicant's state of mind the day of the incident. He stated he was not himself that day. He stated that the victim told him that she slept with someone else in his home and bed. He stated he was not over the passing of his wife at the time, that he opened up to Victim, that she slept with someone else, and something came over him. He stated he called the police and went to Buddy's house. He stated he knew Buddy since 1994. He stated that Counsel could have questioned Buddy about how nervous and fidgety he was that night, the car he arrived in, and how he got in Buddy's car and went to jail. Applicant testified that Counsel did not object or cross-examine witnesses at trial.

He stated he confessed to the crime because Victim's family was in the courtroom, and they had been through enough. He stated he pled because he did not want to prolong matters further. He stated he also pled because Counsel did a poor job during the trial.

He stated that Counsel did not object to the State's opening concerning the mention of his pardoned charge. He stated he had a prior domestic violence charge that he incurred after the pardon. He stated that his rap sheet was given to the judge, even though it was inadmissible. He

stated that the sentencing judge was told about the pardon, but Counsel did not object.

Applicant stated that Counsel encouraged him not to testify at trial because it would make him look more guilty. He stated that Counsel told him that his testimony would not have helped him. He stated that he would have testified about how his wife passed away and it took him a year and a half to let Victim into his life. He stated that he dishonored his wife by letting Victim in. He stated he did not recall the incident because something took over him. He stated he did not have malice aforethought and that he would have told the jury that if he testified. He stated he pled because Counsel was not representing him well.

On cross-examination, Applicant testified that he did not tell the Court he was dissatisfied with Counsel because he was confused. He stated that he did not tell the judge that he was confused because it all moved very rapidly. He stated that Counsel did not discuss his options to plead or to proceed to trial with him. He stated that Counsel did not review discovery with him. He stated that Counsel did not discuss the admissibility of his prior offenses with him. Applicant testified that Brannon's testimony was taped, and that Brannon testified to things Applicant never discussed with him. He stated that Brannon's testimony was pre-recorded because he passed away before trial due to three types of cancer.

Applicant testified that he wanted to testify at trial that he killed Victim but did so in a heat of passion. He stated he told the plea judge that the killing was in a heat of passion. He stated that he never denied killing Victim. He stated he killed her with a baseball bat and that Victim suffered ten hits to the head. He stated he called 911. He stated he admitted to using crack at the time. He stated that the pathologist stated she showed strangulation signs. Applicant stated Counsel told him he had a very little chance of winning at trial. He stated he did not recall telling the plea judge about his mental illness. He stated he and Counsel were present during the taping

of Brannon's testimony. He stated that Counsel attempted to question Brannon. He stated that Counsel told him he would look more guilty if he testified that he killed Victim but in a heat of passion.

On re-direct, he testified that he was told he could not discuss his conversation with Brannon at trial because it was hearsay. He stated Brannon was interviewed in the hospital and was told what to say by the State. He stated that the State objected to Counsel asking about Applicant's state of mind and the judge told Counsel to rephrase the question.

Counsel Testimony

Counsel testified that he met with Applicant at least five times. He stated Applicant never denied what happened, but just wanted everyone to know why it happened. He stated he explained to Applicant how everything would play out at trial. He stated that this was one of the hardest cases he ever had to try. He stated that the trial strategy was to try to get a voluntary manslaughter conviction. He stated that Applicant would not survive a voluntary manslaughter or murder sentence, given his age. Counsel testified that Brannon was not present for the actual trial, but they captured his testimony on video before trial because of his health and age. He stated that this was a difficult case for him to try, but that he remembered trying to get the testimony about Applicant not acting in the right state of mind. He stated that they discussed Applicant's options from the outset and their attempts to secure a voluntary manslaughter conviction, instead of a murder conviction. He stated that he thought Applicant decided to plead because he realized that the trial was not going well for him. He stated that Applicant was high on drugs, came home, got into an argument, snapped, and used an extension cord to strangle his girlfriend with and began beating her with a baseball bat. He stated that Applicant then called 911 and confessed. Counsel testified he discussed proceeding to trial with Applicant and told

him that to secure a voluntary conviction the jury would have to believe he acted in a heat of passion. He stated that he told Applicant this had to come out through Brannon or Applicant would have to testify. He stated that he did not recall whether Applicant wanted to testify but stated that they did not get far enough into the trial for Applicant to reach that decision. He stated that Applicant was pardoned on another case. He stated this case never went to a jury.

On cross-examination, Counsel testified that they discussed getting a mental health evaluation at all their meetings. He stated Applicant never denied what happened but stated he was not in the right state of mind at the time. He stated he thought Applicant was competent.

Solicitor Testimony

Solicitor testified that Applicant beat the victim with a baseball bat, strangled her with an extension cord, and then called 911 and confessed, telling them that he needed to smoke crack cocaine. He stated that one of the witness's testimonies was taken and recorded before trial and played at trial because he died shortly before trial. Solicitor testified that they found DNA evidence tracing back to Applicant on the bat and that the victim died violently. He stated the State had a strong murder case. He testified that Applicant had an unrelated domestic violence charge involving a different victim that was dropped because the victim died. He stated that Applicant was not pardoned on this charge. He stated Applicant was charged with and convicted of other offenses not discussed at the PCR hearing.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to

observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Invalid Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent

solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant “lacks knowledge of material evidence in the prosecution’s possession.” *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.”

Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

This Court finds that the plea was entered freely, knowingly, and intelligently. Applicant stated he understood the charge, the potential sentence, the elements of the offense, the evidence, and the indictment. (Tr. 90, 92). Applicant stated that Counsel explained everything to him. (Tr. 90). Applicant stated he discussed and reviewed the discovery with Counsel. (Tr. 91). Applicant stated that the defense at trial he discussed with Counsel was that he may be entitled to a lesser included instruction of voluntary manslaughter, but that he had no defense to a voluntary manslaughter charge. (Tr. 91-92). Applicant stated he understood by pleading he was waiving his right to request a lesser included instruction, right to remain silent, right to a jury trial, and the right to call and confront witnesses. (Tr. 92-98). Applicant stated that no one promised or offered him anything, that he was pleading freely and voluntarily, and that he was satisfied with his decision. (Tr. 98-99). Applicant stated he understood he had to serve his sentence day-for-day and that the offense is classified as violent, most serious, and no-parole. (Tr. 99). Applicant stated he was treated for substance abuse in the past, but he does not have an addiction at the time of the plea and that he had been treated for his depression. (Tr. 99-101). He also stated that his medication did not impact his ability to understand the plea proceedings. (Tr. 101). Accordingly, the plea was entered freely, knowingly, and intelligently, and should not be withdrawn now.

Failure to Effectively Communicate with Applicant

Applicant alleges that Counsel was ineffective for failure to effectively communicate with Applicant. “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would

have resulted in a different outcome.” *Id.* See *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant failed to show what Counsel did not communicate with him enough or how further communication would have caused him to proceed to trial. Thus, Applicant has failed to meet his burden of proof concerning both deficiency and prejudice. Accordingly, relief is denied on this ground.

Competency Evaluation

Applicant claims Counsel was ineffective for failing to request a competency evaluation. “Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea.” *Matthews v. State*, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004) (citing *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595-96 (1992)). “In a PCR action, the petitioner must prove by a preponderance of the evidence that he was incompetent when he entered his guilty plea.” *Id.* at 458-59, 596 S.E.2d at 50. “In order to find that petitioner’s trial counsel was ineffective for refusing to request a *Blair* hearing on petitioner’s competency to stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner’s proceedings.” *Id.* at 459, 596 S.E.2d 50-51. Prejudice is found when the petitioner shows a “‘reasonable probability’ that he was either insane at the time [the crime was committed] or incompetent at the time of the plea.” *Id.* (citing *Jeter v. State*, 308 S.C. 230, 233,

417 S.E.2d 594, 596 (1992)).

Counsel was credible in testifying he did not see a competency issue. Additionally, Applicant failed to establish, through report, witness, or otherwise, that Counsel was incorrect in that determination. Thus, he has failed to meet his burden of proof in showing that he would have been found incompetent at the time of the plea. Accordingly, relief is denied.

Failure to Discuss Charges

Applicant claims Counsel was ineffective for failure to discuss the charges with him. Based upon Applicant's testimony, he seemingly had a working understand of murder and how that differed from voluntary manslaughter. Additionally, Applicant was informed of the charges at his plea hearing. (Tr. 90, 92). Thus, Applicant is found not credible, and relief is denied on this ground.

Adequate Legal Provocation

Applicant claims Counsel was ineffective for failure to explain to Applicant what adequate legal provocation was. Counsel credibly testified that the defense chosen from the beginning was to try to secure a voluntary manslaughter conviction. Counsel credibly testified that this was a central part of his discussions with Applicant. This Court finds it unbelievable that Counsel would explain voluntary manslaughter at such great lengths with Applicant and not discuss such a core element of the offense with Applicant. Even so, this Court fails to find how further discussion about this would have caused Applicant to proceed to trial instead. Accordingly, relief is denied.

Opening Argument

Applicant claims Counsel was ineffective for failure to object to the State's opening argument. This Court declines to find anything improper about the argument. Further, this Court

finds that Applicant would not have proceeded to trial but for this alleged deficiency. Applicant's cited reasons for not proceeding to trial were to protect the victim's family from being subject to more mental and emotional turmoil over what happened and because he knew trial was not going well. This is not rooted in Counsel's failure to object to the State's argument. Accordingly, Applicant has failed to meet his burden of proof and relief is denied.

Failure to Get Charge Dropped to Voluntary Manslaughter

Applicant claims Counsel was ineffective for failure to get the charge dropped down to voluntary manslaughter as part of the plea agreement. "[A] defendant has no constitutional right to plea bargain." *Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400-01 (Ct. App. 1999). (citing *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff'd as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997)). "Prosecutors have broad powers in the plea bargain process[.]" *Id.* Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." *Id.*, 333 S.C. at 684, 511 S.E.2d at 400-01. "The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor's actions." *Id.* Yet, plea offers must be analyzed within the bounds of judicial restraint. *Id.*

Prosecutor credibly testified that he had a strong murder case at hand. He was not required to drop the charge down to the lesser-included offense upon Applicant's request. Accordingly, relief is denied.

Failure to Prepare for Trial

Applicant claims Counsel was ineffective for failure to prepare for trial. Counsel's credible testimony reflected that this was not the case. Regardless, this allegation was waived

through entry of an otherwise valid plea. Accordingly, relief is denied.

Failure to Object to Pardoned Charge

Applicant claims Counsel was ineffective for failure to object to the Solicitor mentioning a charge that Applicant was pardoned of. Solicitor credibly testified that he was never pardoned, and the charge was dropped because the victim died. He credibly testified that Applicant was never pardoned, and that Applicant was charged and convicted of other offenses not discussed at the PCR hearing. Thus, the allegedly objectionable basis did not exist. Regardless, Applicant has failed to establish prejudice because of Counsel's alleged failure to object. Accordingly, relief is denied.

Telling Applicant Not to Testify

Applicant's allegation that Counsel was ineffective for telling Applicant not to testify. "The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. However, if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions." *Brown v. State*, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations." *Id.* "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." *Id.*

Regardless of what was conveyed by Counsel, Applicant had a right to testify if he chose to do so at trial. Applicant waived this right through entry of an otherwise valid plea. Accordingly, relief is denied.

Cross-Examine Brannon

Applicant claims Counsel was ineffective for failure to properly cross-examine Brannon on how Applicant was acting and about his state of mind that day. Counsel credibly testified that he attempted to elicit as much of this testimony as possible at the trial. Applicant has failed to show how a more thorough cross-examination on this point would have changed his mind as to the plea. Accordingly, relief is denied.

Trial v. Pleading

Applicant claims Counsel was ineffective for failure to discuss with him his options of pleading or going to trial. This Court finds this testimony not credible given the fact that Applicant decided to plead halfway through the trial itself. This alone is a clear indication that he was aware of both options. Even so, there is no indication that he would have continued with the trial but for the lack of conversation about his options. Accordingly, relief is denied.

Failure to Review Discovery

Applicant claims Counsel was ineffective for failure to review discovery. This Court finds Applicant was aware of the evidence against him, as the bulk of it was rooted in Applicant's 911 call that coupled as a confession. Even so, this Court finds Applicant would not have proceeded to trial but for Counsel sharing the discovery. Applicant's cited reasons for not proceeding to trial were to protect the victim's family from being subject to more mental and emotional turmoil over what happened and because he knew trial was not going well. This is not rooted in the discovery. Accordingly, Applicant has failed to meet his burden of proof and relief is denied.

Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not

established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 14th day of March, 2023.

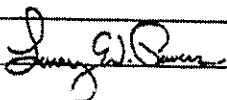


DANIEL D. HALL
Presiding Judge
Seventh Judicial Circuit

York, South Carolina.

WITNESSES

Spartanburg County Sheriff's Office



ARREST WARRANT NUMBER

2018A4210204526

ACTION OF GRAND JURY

JAN 23 2019

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

19-GS-42-0113

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 28 2019

TERM

THE STATE

v.

WILLIAM TOMMIE (TOMMY) SMITH

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

JAN 23 2019 14:13

TDD

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

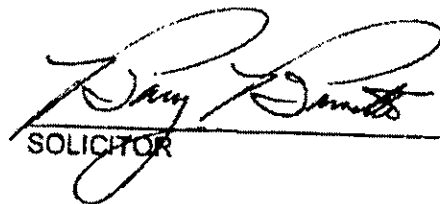
INDICTMENT

At a Court of General Sessions, convened on JAN 23 2019, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

That the Defendant, William Tommie (Tommy) Smith, did in Spartanburg County on or about December 2, 2018, feloniously, willfully, and with malice aforethought, kill one Brenda Kay Tanner, by striking her in the head with a baseball bat, and the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *The South Carolina Code of Laws*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

William Tommie Smith

AKA:

Race: BLACK Sex: M Age: 66DOB: [REDACTED] SS# [REDACTED]Address: [REDACTED]City, State, Zip: Chesnee, SC 29323-9736DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4200113A/W#: 2018A4210204526Date of Offense: 12/2/2018S.C. Code § : 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Murder / Murderin violation of § 16-03-0010; 16-03-0020 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 CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BARRY J. BARNETTE
BARNETTE, BARRY J

SCB13039

SC Bar#

Defendant

CHARLES W. SNYDER III
Snyder III, Charles W.
Attorney for Defendant

SCB79961

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 40 days/months/years/Time Served ☐ Youthful Offender Act not to exceed — yearsand/or to pay a fine of \$ — provided that upon the service of — days/months/years/Time Served 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.

The sentence shall run

☐ 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 SCDoc. — days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS

William Tommie Smith

INDICTMENT/CASE#:

2019GS4200113

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling☐ Completion of GED☐ Random Drug/Alcohol testing☐ Attend Voc. Rehab. or Job Corp☐ No Contact with☐ Domestic Violence Intervention Program☐ Mental Health Counseling☐ May serve W/E
beginning : _____☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430☐ Public Service Employment 0 _____ days/hours☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.☐ Other: _____☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$14-1-206 (Assessments 107.5 %)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$56-1-286 (DUI Breath Test)

\$14-1-212 (Law Enforce. Funding)

\$14-1-213 (Drug Court Surcharge)

\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

\$100

\$100

\$12

\$25

\$25

\$150

\$41

\$50

\$40/ea

TBD

\$500

TBD

TOTAL

\$ 133.90

Clerk of Court/ Deputy Clerk:

T. Camp

Court Reporter:

L. Moffitt

Presiding Judge:

Judge Code:

Sentence Date:

2093
 MAY 27, 2021