

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Laurens County

Honorable Letitia H. Verdin, Circuit Court Judge

RONALD DUYANE DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001136

APPENDIX

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1 had pulled a gun out of a green bag?

2 A Yes.

3 Q Okay. And so you would assume that that Crown Royal
4 green bag would have been the green bag that your
5 information was talking about, your source was talking
6 about?

7 A That's correct.

8 Q All right. And did you collect that green bag into
9 evidence?

10 A No. It was not collected.

11 Q And why is that?

12 A There was nothing additional. It was photographed.
13 And there was nothing inside the bag, or you could not
14 have collected any latent prints from that. So it was
15 just documented.

16 Q Okay. Could the green bag not have been tested for
17 gunshot powder?

18 A It could have been. But in this case, it would not
19 have been necessary because any area where a gun is fired,
20 you would suspect gunshot residue because it's like
21 particles that go about the air. So you expect it to be
22 on everything in the room.

23 Q But if a gun had been previously fired and then
24 stored in a bag, wouldn't it be possible to find gunshot
25 powder inside where it had been stored?

1 A That is beyond my scope. I do not process anything
2 further with gunshot residue.

3 Q Okay. And who would be the person to process that
4 information?

5 A That would be -- I believe it would have been our
6 trace department.

7 Q And there's a person in the trace department who
8 could have done that that works at SLED; right?

9 A Possibly. I'm not sure what the other departments
10 do. But I know it could have been the trace department.

11 Q So the bag was not collected?

12 A It was not collected.

13 Q And you said that the two bedrooms to the left of the
14 living room, which would have been the child's bedroom
15 down at the front of the house and then the bedroom on the
16 other side of the bathroom, were unremarkable?

17 A That is correct.

18 Q What do you mean by unremarkable?

19 A Unremarkable meaning there was nothing of evidentiary
20 value.

21 Q So no bullet holes were in those bedrooms?

22 A That's correct.

23 Q Okay. No cartridges were found in those bedrooms?

24 A That is correct.

25 Q No signs of a crime, necessarily, were found in those

1 bedrooms?

2 A Correct.

3 Q Okay. Now, let's talk about that gunshot powder that
4 you were just discussing. You said when a gun is fired,
5 you can anticipate gunshot powder going everywhere?

6 A Correct.

7 Q And you would agree with me that a revolver, for
8 instance, would produce a big cloud, kind of a -- much
9 more gunshot powder than, say, a pipe weight
10 nine-millimeter?

11 A That's beyond my scope.

12 Q Okay. You did collect gunshot residue swabs. You
13 did swabs to see if gunshot residue existed on the
14 deceased; correct?

15 A Yes. It was not swabs. It's like a little sticky
16 particle -- sticky item that we use to try to collect
17 particles from the hands.

18 Q And where did you, actually, collect that from? Her
19 hands?

20 A Yes.

21 Q Okay. Did you do front and back of her hands?

22 A Yes. Correct.

23 Q So then is it, also, out of the scope of your
24 expertise to be able to testify as to whether or not a
25 person would have gunshot residue on their hands by either

1 being in close proximity of a gun or by firing a gun?

2 A Yes. That's beyond my scope.

3 Q That's beyond your scope?

4 A Yes, ma'am.

5 Q The cell phone that was found that was submitted into
6 evidence by the State -- let's see. This is State's
7 Exhibit No. 84. This is the cell phone that you found at
8 the scene; is that correct?

9 A Yes, ma'am. That's correct.

10 Q And you found this cell phone located --

11 MS. MCNEILL: Walter, would you go back to that
12 photo?

13 BY MS. MCNEILL:

14 Q In State's Exhibit No. 16, which is a photograph that
15 was taken -- and, obviously, you said that you found her
16 in a supine position; right?

17 A Yes.

18 Q Okay. And that means?

19 A On your back.

20 Q On your back. She's face up. And when you had found
21 her that way, it was after EMS had already worked on her;
22 right?

23 A Yes. That is correct.

24 Q Okay. So EMS had manipulated the body before you got
25 there and saw her?

1 A Yes, ma'am. That's correct.

2 Q And so all of this debris down here on the floor by
3 the bed and by the deceased's foot, this is EMS debris?

4 A Yes, ma'am.

5 Q Okay. And so the cell phone that is on the witness
6 stand with you, is that this cell phone that's right
7 underneath the nightstand and by the green Crown Royal
8 bag?

9 A Yes, ma'am. That's correct.

10 Q All right. And did you find it in this specific
11 condition?

12 A Yes. That's the condition it was found.

13 Q Okay. But you cannot say with a degree of certainty
14 how this cell phone got like this; correct?

15 A That's correct.

16 Q All you know is that it was there underneath the
17 nightstand. It could have been there for weeks, or a
18 week?

19 A It could have been.

20 Q You, also, talked about when you arrived at the
21 bedroom where the -- the master bedroom, that it was in
22 disarray?

23 A That's correct.

24 Q And you noted in your report several things about it
25 being in disarray on Page 5 of 15. Do you have your

1 report with you, ma'am?

2 A Yes, I do.

3 Q Okay. So would you mind flipping to that page?

4 A Okay.

5 Q All right. And underneath with respect to facing the
6 sliding glass door, the bedroom was observed left of the
7 den. Would you mind reading that paragraph below it or
8 the notes that you made?

9 A In the -- within the bedroom part?

10 Q Yes, ma'am.

11 A Within the bedroom, the area to the left side of the
12 bed nearest the bathroom was in disarray. The mattress
13 was slightly shifted to the right exposing the left side
14 of the box spring. Miscellaneous EMS supplies and
15 household items were observed about the floor. A green
16 Crown Royal bag was observed in front of the nightstand.
17 The victim's braided hairpieces were observed on the upper
18 left corner of the bed on the exposed box spring and on
19 the floor between the bed and the nightstand. A broken
20 cell phone was observed to be partially under the
21 nightstand directly collected by Investigator McIntosh

22 Q Thank you.

23 So the victim's braided hairpieces were observed on
24 the upper left corner of the bed on the exposed box spring
25 and on the floor between the bed and nightstand?

- 1 A That's correct.
- 2 Q So you found three braided hairpieces total?
- 3 A I would have to look at the crime scene video. I did
- 4 not count the hairpieces.
- 5 Q But, at least, three in your notes right there?
- 6 A Correct.
- 7 Q And then the deceased was, also, in clothing; right?
- 8 A That's correct.
- 9 Q What was she wearing that you noted?
- 10 A She was wearing a black shirt, a pink bra, and emoji
- 11 pants, and black sandals. The clothing that she was
- 12 wearing was cut, I assumed, by EMS.
- 13 Q And was her clothing collected?
- 14 A Her clothing was not collected.
- 15 Q And why is that?
- 16 A She was sent to -- well, she was taken away by the
- 17 coroner. But she had to go for an autopsy.
- 18 Q So the clothing would have followed her there to the
- 19 autopsy?
- 20 A That is correct.
- 21 Q Who would have been the person -- if you know this
- 22 answer. Who would have been the person to collect the
- 23 clothing from the autopsy and take it to be analyzed for,
- 24 say, gunshot powder, and stuff?
- 25 A That would have been whoever attended her autopsy.

1 Q Okay. And all of the -- and you were told by, I
2 believe, Laurens County Sheriff's Office that she had been
3 shot five times; is that correct?

4 A That's correct.

5 Q All right. And all five bullets went through and
6 through?

7 A Through and through, correct.

8 Q Meaning that there was no bullets found inside of
9 her?

10 A Correct.

11 Q And you were told that the suspect had turned himself
12 into the Laurens County Sheriff's Office at the jail
13 before you completed processing in Fountain Inn, which
14 would be the incident location, crime scene?

15 A Yes, ma'am. That's correct.

16 Q All right. Are you aware of -- so okay. Let me back
17 up. You were given information that a struggle ensued and
18 that somebody had been shot as a result of that struggle?

19 A Correct.

20 Q All right. And you were advised that it was between
21 a man and a woman?

22 A Correct.

23 Q And that the woman was the one that got shot?

24 A Correct.

25 Q But that the woman is, also, the one who, initially,

1 pulled out the gun from the green bag, according to
2 sources?

3 A Correct.

4 Q All right. Knowing this information, do you think
5 that it would have been a good idea to do some sort of
6 bullet trajectory analysis?

7 A It could have been, yes.

8 Q Okay. Are you aware of various methods for
9 documenting bullet trajectories?

10 A Yes. That's correct.

11 Q And what are some of these methods?

12 A Some of those methods could be what we call dowel
13 rods, which is, essentially, a wooden rod. And you have a
14 laser trajectory and you use metal -- we have some metal
15 rods you could, also, use of different sizes.

16 Q Is -- one of the dowel rods, would they look like
17 this, perhaps?

18 A Yes.

19 Q So the thought process is you could have stuck the
20 dowel rods into the bullet holes or the -- where the
21 defects were?

22 A Correct.

23 Q To try to figure out the angle that that projectile
24 had hit a surface?

25 A Correct.

1 Q All right. Did you do any trajectory analysis at
2 this particular scene?

3 A No. Trajectory was not done at that scene.

4 Q And isn't it true that a minimum of two points are
5 required to accomplish a basic trajectory?

6 A Correct.

7 Q And isn't it true that you did observe --

8 MS. MCNEILL: Can you go back to this?

9 BY MS. MCNEILL:

10 Q I'm now going to refer back to your diagram, ma'am,
11 which is State's Exhibit No. 78. Isn't it true that you
12 observed two corresponding points for the shots labeled C
13 and D?

14 A Correct.

15 Q Why then did you not visually document the basic
16 trajectories for these two shots?

17 A Those were not documented. That would have been
18 after -- where we were searching for the cartridge casing
19 and additional firearms evidence, the bed was moved. So
20 that would not have been a true trajectory if we had
21 placed the bed back where it was.

22 Q Even if it hadn't been a true trajectory, wouldn't it
23 have been better than no trajectory analysis?

24 A That is correct.

25 Q And isn't it reasonable to say that had you done

1 this, it could have provided this jury information about
2 the general path and direction from where these shots were
3 fired?

4 A It could have.

5 Q But we don't have that. So they don't know that, do
6 they?

7 A No.

8 Q Did you attempt to correlate any of the wounds with
9 the bullet holes at the scene?

10 A No, I did not.

11 Q Did you determine a scenario that would account for
12 the bullet defect in the driver door that was found in the
13 Toyota Avalon?

14 A I'm sorry. Would you repeat that?

15 Q Did you determine a scenario that would account for
16 the bullet defect that was found in the Toyota Avalon that
17 had been hit?

18 A Yes. That would be that the Avalon was at the
19 residence that -- like we were told.

20 Q Okay. But we don't know which bullet hole. Would it
21 have been B maybe?

22 A We don't know because the car was not at the
23 residence when we got there.

24 Q You talked about your search for additional bullets
25 outside of the residence. Did you document any of that?

1 A No. But we did -- we were out there searching. It's
2 a wooded area, and trees, and high grass in the backyard.

3 Q Okay. But when I first talked about this crime scene
4 investigation report that was -- that's now into evidence
5 as Defendant's Exhibit No. 2, you stated that you would
6 have put all of your information in that -- in those
7 several reports; correct?

8 A Yes.

9 Q But you didn't put in the report that you searched
10 for missing bullets outside that yielded negative results?

11 A No. That was not in there.

12 MS. MCNEILL: I beg the Court's indulgence.

13 THE COURT: Sure.

14 (Pause.)

15 BY MS. MCNEILL:

16 Q Ma'am, in looking at your report, is there -- is it
17 your opinion that there was one or two bullet holes that
18 went through the window?

19 A There was not a particular number, but from -- one of
20 the defects would appear that one went through the window.

21 Q Okay. When you -- and you're the one that collected
22 the projectiles and cartridges at the scene; right?

23 A Correct.

24 Q And you submitted them to who?

25 A Those are submitted to our crime scene laboratory.

1 And it goes to the firearms department.

2 Q So who would have been the person who would have
3 requested forensics to analyze the bullets for any
4 biological evidence, such as skin, or blood, or fiber?

5 A From what we know from experience, it would be you'd
6 have to add that onto the submission. So you'd have to
7 put additional DNA for DNA. But the examiners do look at
8 the bullets prior to even touching them.

9 Q Okay. But that wouldn't have been you?

10 A No.

11 Q Okay. When you went to -- let's go to the Newberry
12 location, which was located on CR Coon Highway.

13 A Yes, ma'am.

14 Q You -- did you take pictures of that residence, or
15 did somebody else?

16 A That would have been the -- my partner, Todd Shenk.

17 Q Okay. And that address was 13347 CR Coon Highway,
18 Newberry, South Carolina 29108?

19 A (There was no verbal response.)

20 Q I'm referring to Page 8 of 15.

21 A Can you repeat that again?

22 Q Sure. Was the address you responded to 13347 CR Coon
23 Highway, Newberry, South Carolina 29108?

24 A Yes, ma'am. That's correct.

25 Q And what time did you arrive there?

1 A At approximately 9:11 that morning.

2 Q And when you arrived at that house, did it appear
3 that somebody had been moving either in and/or out of that
4 location to you?

5 A Just for clarification. Are you asking for the
6 person who would be living at the residence moving in or
7 out, or just people in general?

8 Q People in general.

9 A No one was moving in or out of the residence when I
10 arrived.

11 Q It didn't look like somebody had been? There was,
12 like, a few pieces of furniture in the house, for example?

13 A There were a few pieces, yeah.

14 Q A few pieces?

15 A Yeah.

16 Q Was it a house full of furniture?

17 A It wasn't full of furniture, no.

18 MS. MCNEILL: Thank you.

19 No further questions.

20 THE COURT: All right. Redirect?

21 MR. MOWRY: Just very few questions, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. MOWRY:

24 Q Ms. McNeill asked you about biological evidence on
25 the bullets. What of any significance could have been

1 derived from that?

2 A That the bullets did come in contact with a person
3 possibly.

4 Q Okay. And we knew that Shana Prophet was there with
5 five bullet holes in her; isn't that right?

6 A That is correct.

7 Q Was there any real question as to where those bullets
8 had come from?

9 A No.

10 Q And who they had gone through?

11 A No, sir.

12 Q Ms. McNeill asked you about anything of any
13 significance in the other two bedrooms. But in this
14 bedroom, were there four projectiles that you found?

15 A Yes, sir. That is correct.

16 Q Were there seven shell casings?

17 A Yes, sir. That is correct.

18 Q Was there a broken cell phone?

19 A Yes, sir. That is correct.

20 Q And was there Shana Prophet's deceased body?

21 A That is correct.

22 MR. MOWRY: Thank you, ma'am.

23 That's all I have.

24 MS. MCNEILL: Just briefly.

25 THE COURT: Sure.

RECROSS-EXAMINATION

BY MS. MCNEILL:

Q Mr. Mowry just asked you if Ms. Prophet had been shot with five bullets; right?

A She had five bullet holes.

Q Okay. So she had five bullet holes. How many shell casings did you find?

A There were seven cartridge casings found in the location.

Q So, presumedly, seven bullets fired?

A Correct.

Q Which defects correspond to bullets that went through her?

A That is beyond my scope.

Q Okay. But a trajectory analysis might have been helpful to determine that?

A What went through her?

Q Yes.

A No --

Q Or where -- I'm sorry. For biological evidence, I meant.

A It's a possibility.

MS. MCNEILL: Okay. Thank you.

No further questions.

THE COURT: All right. Thank you, Ms. Key.

1 You can step down. And you're free to leave the
2 courthouse, ma'am.

3 All right. Let me see the lawyers up here for just a
4 second, please.

5 (WHEREUPON, a bench conference was held.)

6 THE COURT: Ladies and gentlemen, we have -- I
7 understand from the State, we have, as far as today, one
8 more witness that's relatively short. We're going to try
9 to get him up and out of here. And then we'll go ahead
10 and recess for the day. So hang in there with us a little
11 bit longer. Okay.

12 Thank you.

13 MR. MOWRY: The State calls Ben Blackmon to the
14 stand, Your Honor.

15 WHEREUPON,

16 BEN BLACKMON,

17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MOWRY:

20 Q You are Ben Blackmon?

21 A That's correct.

22 Q And I believe you are currently an investigator with
23 the Laurens County Sheriff's Office; is that right?

24 A That's right, sir.

25 Q Were you, also, employed in that capacity back in

1 July of 2016?

2 A That's correct.

3 Q In the early morning hours of July 3rd, 2016, did you
4 get a phone call?

5 A Yes, sir. I was contacted by Investigator McIntosh
6 and briefed on the situation at hand that -- and that he
7 was going to need a search warrant for the residence on
8 Allen Bridge Road. I went to the sheriff's office,
9 constructed the search warrant based on the information
10 Mr. McIntosh gave me. I went to the judge's home --

11 Q Which judge did you go to? Which magistrate?

12 A I believe it was Judge Copeland, I think.

13 Q Okay.

14 A It was in Clinton, because I was on my way to
15 Newberry. And I obtained that there, handed it off to, I
16 believe, Patrol Officer Van Pelt, who is, I think, working
17 somewhere else now.

18 And then I went on to 13347 CR Coon Highway in
19 Newberry where officers were awaiting at the residence
20 there after having been told the Defendant in this case
21 was possibly located inside.

22 Q Okay. So let me stop you there. Your search warrant
23 that you wrote up, was this the one that Ms. Key talked
24 about waiting for in -- in -- at the Fountain Inn
25 residence before she conducted her search?

1 A That's correct, sir.

2 Q All right. And once that was completed, once you got
3 that done, you said you gave it to Van Pelt. And then
4 where did you go?

5 A 13347 CR Coon Highway in Newberry.

6 Q Where did that information come from? How did you
7 know to go there?

8 A I had been told by Investigator McIntosh to -- that
9 the Defendant in this case was possibly at that address
10 where he resided at some point.

11 Q Okay. Do you know where that information came from,
12 besides McIntosh? But -- I mean, do you know where that
13 information originated?

14 A From my understanding, it came through dispatch to
15 Investigator McIntosh from the Defendant.

16 Q Okay. And dispatch is, also, 911; is that right?

17 A Yes, sir.

18 Q Okay. So what was your purpose in going to the
19 residence in Newberry?

20 A At that time, I was going to make contact with the
21 Defendant at this -- at that point to see if I could talk
22 with him, see what his side of the story was, or, if
23 anything else, see, you know, what was there.

24 Q Okay.

25 A During that time, officers in Newberry had, actually,

1 saw an individual around that area of CR Coon Highway, and
2 heard our radio traffic, and stopped at that residence.
3 So when I arrived, they were already set up and abreast of
4 the situation. And they tried to make contact with
5 whomever was inside the residence through loud speakers,
6 et cetera.

7 Q Was there any contact made?

8 A No, sir.

9 Q Was there -- did it turn out that anybody was in
10 there?

11 A No, sir. It -- as the morning progressed onward, I
12 believe Lieutenant Cheek had, actually, made contact with
13 the Defendant and met him at the Johnson Detention Center.

14 So at that point, we stayed -- stayed there to secure
15 that residence for possible evidence collection from the
16 Toyota Avalon or inside the residence.

17 Q Okay. And did anyone from the Newberry Sheriff's
18 Office get a search warrant?

19 A That's correct. Investigator Womack spoke to me by
20 telephone and obtained information about the situation at
21 hand. And he constructed a search warrant for their
22 magistrate in Newberry County and met us at that
23 residence.

24 Q I'm going to refer to State's Exhibit No. 57. Is
25 that the house?

1 A Yes, sir.

2 Q Okay. When the search warrant arrived, what did
3 y'all do?

4 A After -- after they arrived with the paperwork, we
5 went into the residence. Of course, Newberry being the
6 primary jurisdiction gained entry to the house, rather
7 than myself. And they secured it from a safety standpoint
8 first. And we just kind of held our ground until the SLED
9 agents arrived to process the vehicle.

10 After they had gotten through with their initial
11 photographs and looking through the vehicle, we walked
12 through the residence and looked for other items of
13 evidentiary value.

14 Q Okay. You were out of your jurisdiction; is that
15 right?

16 A That's right.

17 Q Okay. So you kind of had to rely on the Newberry
18 folks to take the lead a little bit; is that right?

19 A Yes, sir.

20 Q So this is the house. And you talked about the car.
21 Did you take any part in the search of the car, the Toyota
22 Avalon?

23 A I believe we left that up to the SLED agents, other
24 than maybe looking through the window or looking through
25 it after they had completed their initial documentation of

1 it.

2 Q Okay. Let me refer to State's Exhibit No. 59. Did
3 you see this, what's depicted in that picture?

4 A It appears to be an open drawer in the kitchen area
5 of that home. And it's -- that particular area had the
6 Crown Royal bags inside. And after finding those, the
7 agents came to take photographs of it.

8 Q Okay. But you saw those bags in their place; is that
9 right?

10 A Yes, sir.

11 Q What significance did those have to you?

12 A Investigator McIntosh had relayed to me earlier in
13 the evening --

14 Q Or the morning.

15 A Or the morning. I apologize. It was dark. While
16 there, he advised that there was, obviously, a firearm
17 involved that was not in custody of any law enforcement.
18 And that it had potentially been brought there in a green
19 Crown Royal bag.

20 And so he said he had a green Crown Royal bag. And
21 once I opened the drawer potentially hoping to find a
22 firearm or any other evidence, there's the green Crown
23 Royal bags.

24 Q Okay. And going forward to State's Exhibit No. 61, I
25 think -- yeah -- or State's Exhibit No. 60, I guess, at

1 this point. It's a closer-up picture?

2 A Yes, sir. That's just a closer shot.

3 Q And State's Exhibit No. 61 likewise; is that right?

4 A That's correct, sir.

5 Q Let me ask you to go to State's Exhibit No. 67. Did
6 you see this as well, what's depicted in that photograph?

7 A Yes, sir. That's the -- the box of ammunition that
8 was located in what I refer to as the rear most bedroom of
9 the home in a chest of drawers or stand that was there.

10 Again, maintaining communication with Investigator
11 McIntosh, I asked him if he recalled what the head stamp
12 on the cartridges that was found at the initial crime
13 scene were. And, also, I believe I spoke with the SLED
14 agent about it as well. And he said it was the same
15 brand.

16 Q And is this the box of bullets opened up?

17 A Yes, sir.

18 Q Okay. Let me show you what's been marked for
19 identification as State's Exhibit No. 103. Do you
20 recognize the contents of that?

21 A Yes, sir.

22 Q What is that, please, sir?

23 A That is the same box that I collected that morning
24 and brought back to the sheriff's office.

25 Q All right. So you collected this box that was in the

1 photographs; is that right?

2 | A That's correct, sir.

3 | Q What did you do with the box after you collected it?

4 A I collected it and turned it over to our evidence
5 custodian or evidence holding officer at the time. And
6 he, actually, repackaged it into a smaller bag, I believe,
7 which I think he notated in our system.

8 Q All right. But this is the box?

9 A That is the box.

10 Q And it has been in evidence since that time; is that
11 right?

12 A That's correct, sir.

13 MR. MOWRY: I would offer this into evidence at this
14 point, Your Honor.

15 MR. SHAFFER: No objection.

16 THE COURT: All right. Without objection, State's
17 Exhibit No. 103 is in evidence for the State.

18 (WHEREUPON, State's Exhibit No. 103 was admitted
19 into evidence.)

20 MR. MOWRY: Lieutenant Blackmon, I believe that's it.

21 Thank you, sir.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. SHAFFER:

25 Q I'm showing you State's Exhibit No. 103, the bullets.

1 So Lieutenant Blackmon, do you know who purchased those
2 bullets?

3 A No, sir.

4 Q Okay. Do you know when they were purchased?

5 A No, sir.

6 Q Can you tell from looking at it?

7 A It has a price and description of what was inside the
8 box. But it will not tell you who bought it, or how long
9 it was -- how long ago it was purchased. There's not a
10 date on it.

11 Q Okay. Are those rare bullets?

12 A No, sir.

13 Q Okay. They're fairly common; right?

14 A That's correct.

15 Q Most shooting ranges have them; correct?

16 A I would -- I would assume. I don't go to any ranges
17 outside of our own.

18 Q You get to go to your own?

19 A So I would assume most stores would have those.

20 Q They're a fairly cheap bullet; correct, not super
21 high quality?

22 A Correct.

23 Q Self-defense round?

24 A They're just --

25 Q Regular?

1 A -- run of the mill bullets.

2 Q Okay. Did -- did SLED do any sort of testing on this
3 box like maybe latent prints, or anything like that?

4 A Not to my knowledge.

5 Q Did they do any testing on any of the bullets inside
6 the box?

7 A Not to my knowledge. I would have to refer to the --
8 to the paperwork from the sheriff's office, but not to my
9 knowledge.

10 Q I see. So whenever you came in the building -- or
11 came in the house in Newberry, this -- the house in
12 Newberry, did it look like someone was living in there?

13 A It appeared that someone could live in there or had
14 been living in there. There were a few items around.

15 Q There were a few items around?

16 A Yes, sir.

17 Q Was it fully furnished?

18 A Not exactly.

19 Q Okay. Do you recall if there was a TV in the living
20 room?

21 A I don't recall one way or the other.

22 Q Do you recall how many TVs were in that bedroom that
23 you found the bullets in?

24 A No, sir, I don't.

25 Q Do you know who owned that furniture that was in the

1 bedroom?

2 A Outside of the occupant, I wouldn't know who
3 purchased it and placed it there.

4 Q Okay. Did it seem like the living area was -- the
5 living area was not fully furnished; correct?

6 A No, sir.

7 Q All right. Did it seem like the other bedrooms were
8 fully furnished, other than the bedroom you found the
9 bullets in?

10 A I don't recall, other than just the area which those
11 were found. I don't recall whether they were -- when you
12 say "fully furnished," your definition and mine may be
13 different.

14 Q That's fair. Did y'all take pictures of the other
15 bedrooms?

16 A I didn't, as the SLED agents had the nicer camera.
17 And I requested that they, please, photograph those items
18 for us in the sense that all the photographs would be
19 together from both scenes, all of that would be recorded
20 in one case file from them.

21 Q I thought that Crown Royal bags were purple?

22 A I --

23 Q They come in green, apparently?

24 A Apparently. I --

25 Q Were you familiar with that beforehand?

1 A No, sir. I don't drink.

2 Q Now, I'm going to go back to before you, actually,
3 arrived. When you arrived, there was, like, basically, a
4 SWAT team out there; right?

5 A Yes, sir.

6 Q Okay. Because y'all had had information that he may
7 be there; correct?

8 A That's correct.

9 Q And I think you said that maybe a SLED agent had said
10 that, no, they saw him walking down the street and he
11 crossed the road; is that right?

12 A I believe that they saw an individual walking down
13 the road in that -- right in that vicinity as they had,
14 actually, from my understanding, been deployed on another
15 bloodhound tracking call in Newberry. And these guys were
16 just kind of on their way back to their residences, or
17 wherever they go afterwards, and saw an individual in the
18 area. Then they heard the radio traffic and then stopped.

19 So there was, I guess you could say, a combination
20 of -- of equipped officers, SWAT, et cetera, in that area
21 to kind of start with. So they just kind of stopped and
22 everybody came to --

23 Q Help each other out?

24 A Yes, sir. And by the time I got there, they had
25 already kind of set their perimeter.

1 Q Now, soon after you got there, am I correct in saying
2 that y'all found out he had turned himself in?

3 A It was a little while later where I had stayed up
4 to -- abreast of the situation as best as I was informed
5 through my communications and, also, through SLED and
6 others who were assisting. And after -- after it was
7 determined that he was not there and at the jail -- or,
8 actually, someone had eyes on him at the Johnson Detention
9 Center is when everybody kind of started backing away from
10 that area.

11 Q Okay.

12 A Just leaving it secure for the crime scene
13 investigators.

14 Q And that's when y'all got the warrant and went in;
15 right?

16 A Yes, sir. Right in that time frame. I believe the
17 search warrant was, actually, under construction for a
18 little time maybe even before that just due to the fact
19 that he could have been inside and we needed the search
20 warrant not only to search, but look for this individual
21 as well.

22 MR. SHAFFER: The Court's indulgence.

23 (Pause.)

24 MR. SHAFFER: Nothing further.

25 Thank you.

1 THE COURT: Any recross [sic]?

2 MR. MOWRY: Just a very few questions, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. MOWRY:

5 Q Mr. Shaffer asked you about photographs in the other
6 rooms of the house. Was there anything of evidentiary
7 value found in those other rooms?

8 A No, sir, not to my knowledge. I looked through the
9 residence, as well as the investigator from Newberry, who
10 was assisting with the investigation. And upon finding
11 anything of value, we asked that it would be documented
12 through the SLED agents.

13 Q But you did find the three Crown Royal bags in a
14 drawer?

15 A That's right.

16 Q You did find the blazer brass -- the nine-millimeter
17 lugger ammunition, State's Exhibit No. 103?

18 A That's correct.

19 Q Who was the resident -- the occupant of that -- of
20 13347 CR Coon Highway?

21 A The Defendant in this case.

22 Q And those items were found in his residence; is that
23 right?

24 A That's correct, sir.

25 MR. MOWRY: Thank you, sir.

1 MR. SHAFFER: Your Honor, just a couple questions.

2 THE COURT: Do you want some recross?

3 MR. SHAFFER: Yes, Your Honor.

4 RECROSS-EXAMINATION

5 BY MR. SHAFFER:

6 Q So you're saying the bullets, obviously, were of
7 evidentiary value; correct?

8 A Yes, sir.

9 Q And the bags were of evidentiary value; correct?

10 A For documentation of there's a green bag here and
11 there's another one at the crime scene, if you want to
12 take a photograph of it, but maybe not collect it.
13 Because there's not a whole lot you could have done with
14 it, other than just the documentation of it.

15 Q Okay. So you didn't --

16 A There were several in a drawer.

17 Q But you didn't collect those; right?

18 A No, sir.

19 Q Now, if you were to see other pictures of the house,
20 would it refresh your recollection as to what furniture,
21 specifically, was in the house?

22 A It may.

23 MR. SHAFFER: No further questions.

24 THE COURT: You can step down, Officer Blackmon.

25 THE WITNESS: Thank you, sir.

1 THE COURT: Okay. Ladies and gentlemen, it's about
2 20 after 5:00. I think this would be a good time, and I'm
3 sure you will agree with me, that we'll recess for the
4 evening. We're going to start back at 9:00 in the
5 morning.

6 Get a good night's rest. For those of you who are
7 coffee drinkers, be sure to drink plenty of coffee. And
8 we'll get back to work at 9:00 in the morning.

9 Again, I remind you no discussion with anyone that
10 you see this evening about this case. And no research
11 into the case. And we'll see you bright and early at 9:00
12 in the morning.

13 Have a good evening.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 5:20 p.m.)

16 THE COURT: Okay. We will be in recess until 9:00 in
17 the morning.

18 If the lawyers can just come in the back for just a
19 second, please.

20 MR. SHAFFER: Your Honor, just before we go off the
21 record real quick. I'm going to introduce this disk as a
22 State's Exhibit in the hearing tomorrow. And I figured I
23 would go ahead and get it marked, and maybe give it to the
24 Court. It's a phone conversation I had with AT&T. They
25 sent me that part.

1 THE COURT: Okay. Now, let me make sure. For what
2 purpose do you want me to listen to it? I mean, what you
3 told me at our pre-trial last Tuesday, I think -- I mean,
4 you had indicated -- this is the same conversation --

5 MR. SHAFFER: Yes, sir.

6 THE COURT: -- that's on the disk? I mean, I believe
7 what -- you told me what the sum and substance of the
8 conversation was. So just educate me. Why do I need to
9 listen to that?

10 MR. SHAFFER: Well, Your Honor, this is -- basically,
11 I was doing it to complete the record to provide a better
12 description of everything that was said during the
13 conversation. I mean, she repeatedly said we're not the
14 technical people. We can't talk about the technical
15 reliability.

16 And she included Mr. -- the guy who signed the
17 affidavit that they're using to introduce this stuff. She
18 included him as one of the legal analysts and not one of
19 the people who can, actually, answer any questions about
20 the reliability of this stuff.

21 She said that AT&T does not think this is a hundred
22 percent reliable, and we would not even come testify about
23 this. And that's, basically, what -- because it's -- we
24 can't say it's reliable. It's an estimate. That's what
25 they said.

1 THE COURT: Right. Right. Certainly, have it marked
2 as a Court's Exhibit so -- for the record. If you're
3 asking me to reconsider my ruling, then, you know, I'll
4 listen to it. But if you -- but, otherwise, I don't see a
5 need for me to listen to it. But, certainly, have it
6 marked.

7 MR. SHAFFER: Your Honor, I would probably ask you
8 tomorrow to reconsider your ruling. You don't, actually,
9 have to listen to it right now. It's only, like, 10
10 minutes long, at the max.

11 THE COURT: Okay. Well, we can deal with that
12 tomorrow.

13 MR. SHAFFER: Okay.

14 MR. MOWRY: Your Honor, just for the record.
15 Mr. Shaffer in his opening statement, essentially,
16 confirmed all of the findings that Dan Kelly would testify
17 to. I mean, he, basically, said exactly the track that
18 Dan Kelly found. So I think that's pretty confirmed.

19 MR. SHAFFER: And, Your Honor, I think that a good
20 portion of what I was saying during my opening are
21 strategy in this case and was based off the fact that we
22 understand the Court to be allowing this information in.
23 That has a lot to do with our strategy in this case. And
24 it would probably be very different otherwise.

25 But that being said, with -- with that, we're still

1 objecting to it. And we still think that it's unduly
2 prejudicial, and a whole bunch of other stuff --

3 THE COURT: Okay.

4 MR. SHAFFER: -- a whole bunch of other problems to
5 that --

6 THE COURT: All right. Very good.

7 Yeah. Let me just see the lawyers in the back for
8 just a second.

9 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
10 identification and admitted into evidence.)

11 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Laurens County, South Carolina, on the 26th and 27th days of March, 2018.

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

December 3, 2018



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
RONALD DUYANE DAVIS,)
)
DEFENDANT.)
_____)

2016-GS-30-01382

2016-GS-30-01383

TRANSCRIPT OF RECORD

MARCH 28, 2018
LAURENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE, AND A JURY

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

ATTORNEY FOR PLAINTIFF:

O. WARREN MOWRY, JR., DEPUTY SOLICITOR
JARED SIMMONS, ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANT:

CHELSEA MCNEILL, ESQUIRE
TRISTAN SHAFFER, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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E X H I B I T S

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State's #88	GSR Kit	Page 73
State's #101	GSR Kit	Page 73
State's #102	Cell Phone	Page 20
State's #104	Search Warrant	Page 22
State's #105	Search Warrant	Page 22
Defense #4	Report	Page 92
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1 TRIAL DAY 3: March 28, 2018

2 THE COURT: Do we need to put anything on the record
3 before we bring the jury out?

4 MS. MCNEILL: Judge, I would just like the jury to be
5 polled about any sort of news that may have come out from
6 last night again.

7 THE COURT: Polled about what now, Ms. McNeill?

8 MS. MCNEILL: Any sort of news that came out about this
9 case in the news media.

10 THE COURT: Oh, because we had the issue yesterday
11 about -- I think Mr. Davis had indicated that there was some
12 report on the radio. So you want me to --

13 MS. MCNEILL: It was on the radio. It was also online,
14 and it might be in the press.

15 CLERK OF COURT: It was front page of the Advertiser. I
16 didn't read the article but it was on the front page.

17 THE COURT: Well, they wouldn't have seen the --
18 necessarily seen the Advertiser yet. But I'll inquire of
19 that.

20 MS. MCNEILL: And if you could also just please remind
21 them to be alert and attentive one more time.

22 THE COURT: Right, yeah. Well, I think they made two
23 pots of coffee. Okay, Mr. Bolt, let's bring the jury out,
24 please.

25 (Whereupon, the jury entered the courtroom at 9:18

1 a.m.)

2 THE BAILIFF: All jurors present, Your Honor.

3 THE COURT: Thank you, Mr. Bolt. Good morning, ladies
4 and gentlemen. I hope everyone's doing well, and I hope
5 that everyone got a good night's rest. I remind you that
6 it's so, so very important to remain alert and attentive
7 throughout this process that we're going through.

8 And I don't think I've mentioned this to you. I do not
9 have a problem when you come out from a break if you want to
10 have a cup of coffee or water, or there's soft drinks back
11 there, and have it with you when you're in the jury box. I
12 have no problems with that. Try not to spill it. But if
13 that would be good for you all, then you certainly are
14 welcome to do that. I understand that there's food back
15 there. Don't bring any food out. We can't have that. But
16 certainly something to drink will be fine.

17 And if you remember yesterday, I made an inquiry of you
18 concerning listening to the radio, any media accounts on the
19 radio, internet, newspaper, and I hope that all of you have
20 refrained from that. If you have not, I need for you to
21 raise your hand.

22 (Whereupon, no jurors raise hands.)

23 THE COURT: Okay, seeing none. And again, local -- any
24 local media coverage, whether it's in print, radio, just
25 continue to stay away from that during the -- during the

Keith McIntosh-Direct Examination

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1 trial of this case. Very, very important. Okay?

2 Solicitor, are you ready to proceed?

3 MR. MOWRY: Yes, sir, Your Honor. We call Keith

4 McIntosh. . KEITH MCINTOSH, having

5 first been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MOWRY:

8 Q You are Keith McIntosh?

9 A Yes, sir.

10 Q Mr. McIntosh, are you currently employed?

11 A No, sir. I'm retired.

12 Q Where did you retire from?

13 A Laurens County Sheriff's Office.

14 Q When did you retire?

15 A 10/28th of last year.

16 Q So coming up on a year?

17 A Yes, sir.

18 Q Prior to your retirement what was your position with

19 the Laurens County Sheriff's Office?

20 A I was an investigator with the investigative division

21 of the Laurens County Sheriff's Office.

22 Q And what was your rank?

23 A I was a lieutenant.

24 Q Okay. In that capacity, were you employed on July the

25 3rd of 2016?

1 A Yes, sir. I was.

2 Q During the early morning hours of July 3rd did you get
3 a call to go somewhere?

4 A Yes, sir. I did. I was the on call investigator.

5 Q What is that?

6 A We -- we divide it up between all investigators. We
7 took a week, and this was my week to be on call. If
8 anything happened after hours that the road deputies needed
9 our assistance, or other agencies, that we would -- we would
10 get a call and we would come out.

11 Q So as an investigator, what were your normal working
12 hours?

13 A 9:00 to 5:00.

14 Q And if anything came up after those hours it was the
15 duty of the on call investigator to lead up the
16 investigation; is that right?

17 A Yes, sir. It was.

18 Q All right. So this was yours?

19 A Yes, sir.

20 Q Did you get a call that morning?

21 A Yes, sir. I got a call from dispatch.

22 Q And what was the gist of the call?

23 A That there had been a possible shooting at the incident
24 location on Allen Bridge Road. That an individual called in
25 and give us some information, and so...

1 Q Based on that information, what did you do?

2 A I proceeded to, of course, get dressed and go to the
3 incident location. While I was en route to the incident
4 location I called my two partners, which we normally work
5 cases like this together of this magnitude. So I called
6 Lieutenant Cheek and Lieutenant Blackman.

7 Q So Bryant Cheek and ---

8 A Bryant Cheek and Ben Blackman.

9 Q --- Ben Blackman, both of whom testified yesterday?

10 A Yes, sir.

11 Q Okay. And then what happened?

12 A I proceeded to go to the incident location. I was met
13 -- Lieutenant Cheek was already on scene because he does --
14 he lives a little closer than I did. Lieutenant Blackman
15 came shortly after me. I was met by the shift commander,
16 Lieutenant Marty Crain at that time, and his deputy, Deputy
17 Howard. I believe that Deputy Timmons, Sergeant Timmons,
18 was also on the scene. And I met with Marty Crain,
19 Lieutenant Crain, and got more information from him about
20 the 911 call. And also the EMS had already been there and
21 had worked with the victim at that time.

22 Q What was the report on the victim's condition?

23 A She was deceased.

24 Q All right. What -- what did you decide to do at that
25 point?

1 A First of all, I called SLED. That's protocol for us.

2 If it's something like this we call for their assistance.

3 Q Let me ask you this. Does Laurens County -- does the
4 Sheriff's Office, or really any agency in Laurens County,
5 have a dedicated crime scene unit?

6 A No, sir. We didn't.

7 Q So if you have a major case like this, what do you do?

8 A We call -- we would call the State Law Enforcement
9 Division, known as SLED, and inform them of what we had and
10 they would send out a crime ID team to the incident location
11 to process the scene.

12 Q In the meantime, while SLED was en route, did you
13 advise Lieutenant Blackman to do anything?

14 A Yes, sir. I asked Lieutenant Blackman to get a search
15 warrant for the residence. SLED, before they'll proceed to
16 do anything, they want a search warrant in hand, and
17 Lieutenant Blackman did obtain a search warrant after typing
18 it up and got a judge to sign it.

19 Q And that -- was that brought to the scene or --

20 A Yes, sir.

21 Q Okay. What happened next?

22 A Once the -- we -- while we was there, they showed us
23 the scene and, of course, where the deceased individual was
24 at. SLED arrived on scene, and once they arrived on scene I
25 give them the search warrant and filled them in on what we

Keith McIntosh-Direct Examination

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1 knew as far what we were told, and assisted SLED at that
2 time.

3 Q Let me ask you this. The information that you gave
4 them about what might have happened at the scene, where did
5 that information come from?

6 A From the Defendant, when he called 911. Called
7 dispatch.

8 Q So nobody else gave you information? It all came from
9 the Defendant; is that right?

10 A That's correct. Just from the Defendant. No -- no --

11 Q The fact that there -- or the thought that there'd been
12 a struggle with a gun and --

13 A Right.

14 Q -- all of that came from the Defendant?

15 A That came from the Defendant.

16 Q Okay. What happened next? What was -- what was your
17 next step?

18 A Well, we were still trying to determine that -- the
19 identity of the deceased, and also the identity of the
20 individual, the Defendant. While we was in there, with the
21 assistance of SLED, I noted just in plain view there was a
22 receipt from a rental company where Ronald Davis and the
23 deceased had signed a rental agreement to where -- at that
24 particular residence, the money that he paid, and their
25 names were on the receipt. So I felt confident then that we

1 were getting closer to who the two individuals were.

2 Q Did you also receive information from 911 about any
3 names?

4 A Yes, sir. He did give a name, himself, Ronald Davis,
5 when he talked to dispatch.

6 Q What else happened?

7 A We assisted SLED, like I said, going into the
8 residence, going -- helping them. I didn't really -- I just
9 observed and let them do what they do. And anything they
10 needed, of course, I'd be there and assist them. And they
11 would notify me if they found cartridges or if they found a
12 projectile or anything of that nature.

13 Q Who was the expert as far as crime scene was concerned?

14 A The lady that testified yesterday.

15 Q That's not your bailiwick necessarily. I mean, it's
16 part of what you do, but --

17 A Right.

18 Q -- that was her area of expertise, right.

19 A Right. We can process a scene if it's a burglary or
20 something like that. But something of this nature, we
21 depend on SLED to help us out.

22 Q Right. What happened next?

23 A Well, just shortly after we was there we got
24 information from our dispatch that Mr. Davis was in Newberry
25 at a residence, or somewhere in Newberry, and he was very

Keith McIntosh-Direct Examination

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1 distraught, as testimony has been given. And at that time,
2 Lieutenant Blackman had arrived at the scene, so -- on Allen
3 Bridge Road, so I asked him to go to Newberry, because
4 Newberry had been notified, Newberry Sheriff's Office, and I
5 asked him to go and assist them in any way that he could.
6 And he did proceed to go to Newberry. Lieutenant Cheek
7 stayed on the scene with me.

8 Q Okay. What else happened at the scene?

9 A Just basically begin to -- they began to take pictures,
10 collect evidence and things like that.

11 Q At -- you got on scene at about what time?

12 A Oh, probably three o'clock, a little bit right in
13 there, because I got the call around 2:00, 2:15.

14 Q And SLED was on scene by what time?

15 A I believe it was around 3:40, thereabout, they were on
16 scene.

17 Q And you all wrapped up there at [REDACTED] Allen Bridge Road
18 at what time?

19 A About eight, o'clock, 8:15 they were completing their
20 investigation.

21 Q Okay. At that stage did you get -- ever get word about
22 where the Defendant was?

23 A Yes, sir. I had still needed -- just from what he was
24 calling in and talking to the dispatchers, that he was
25 inebriated, but he was going to turn himself in at the

1 Johnson Detention Center.

2 Q Okay. What had you advised -- what, if anything, had
3 you advised Lieutenant Cheek to do during this interim?

4 A Lieutenant Cheek volunteered to proceed to go to the
5 Johnson Detention Center to meet with the Defendant.

6 Q Prior to that what had been his function?

7 A He was on the phone, as much as he could possibly on
8 the phone, because like he's testified, cell phone service
9 was not very good up there and -- but he did communicate
10 with Ronald Davis, the Defendant, after he was talking about
11 committing suicide and he was distraught, Lieutenant Cheek
12 on numerous occasions. And some of the times I'd be
13 standing there with Lieutenant Cheek and he would be
14 communicating with him.

15 Q So you could hear his side of the conversation; is that
16 right?

17 A No. I could only hear Cheek's side of the
18 conversation.

19 Q Right.

20 A He didn't have it on speaker or anything.

21 Q Right. What special training were you aware of that --
22 that -- excuse me. I can't speak this morning. Did
23 Lieutenant Cheek have -- had you call -- had you -- having
24 him call the Defendant?

25 A Well, Lieutenant Cheeks is a good negotiator. He's

Keith McIntosh-Direct Examination

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1 done it before. He can communicate with individuals to -- a
2 lot of times just -- not only this incident, but just to
3 calm people down and try to get them to talk to him. And
4 that was the key to getting Mr. Davis to calm down was --
5 Lieutenant Cheek was able to do that with his expertise --
6 Lieutenant Cheek's expertise of communication.

7 Q Okay. After you wrapped up at the scene on Allen
8 Bridge Road what did you do?

9 A After that I proceeded -- I believe I went to the
10 Detention Center -- no, I didn't. I met with Lieutenant
11 Cheek and the SLED agent at Waffle House to turn over the
12 GSR kit, gunshot residue kit, to -- chain of custody over to
13 the SLED agent.

14 Q So Lieutenant Cheek had gone to the Law Enforcement --
15 or to the Detention Center, right?

16 A Yes, sir.

17 Q And he had met with the Defendant there; is that right?

18 A Yes, sir, he did.

19 Q Let's see here. And referring to State's Exhibit No.
20 88, the gunshot residue kit from the Defendant. That's what
21 was turned over to the SLED agent?

22 A Yes, sir. It was.

23 Q Did you have information from Lieutenant Cheek about
24 any statement the Defendant might have given?

25 A Yes, sir. He did reveal to me that he took a statement

1 from the Defendant, Ronald Davis, at the Detention Center.

2 Q I'm going to hand you what has been marked as State's
3 Exhibit No. 87, the written statement. Is that the gist of
4 what was revealed to you at that time?

5 A Yes, sir. This is the statement that he told.

6 Q Okay. Based on this information, did you seek any
7 charges against the Defendant at that time?

8 A Yes, sir. I did. I came to the Magistrate's Office
9 here at the courthouse and I did obtain two warrants.

10 Q And what were those charges?

11 A For homicide, and also being in possession of a weapon
12 during the commission of a violent crime.

13 Q So murder and the possession of a weapon during the
14 commission of a violent crime?

15 A Yes, sir.

16 Q Did your investigation continue after that?

17 A Yes, sir. At this time I was in contact with Mr.
18 Davis' ex-wife, Marlana Davis, and --

19 Q By the way, who had brought him to the Detention
20 Center?

21 A To our knowledge, it was Ms. Davis, his ex-wife.

22 Q So you said you'd been in contact with her. Without
23 going into the conversation, what did you do as a result of
24 that conversation?

25 A I met with her. We talked a little while. Like I

Keith McIntosh-Direct Examination

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1 said, she was very cooperative. She was very nice, as much
2 as possibly she could be. And at that time she told me that
3 she was in possession of Mr. Davis' cell phone.

4 Q Did you receive the cell phone from him?

5 A From her.

6 Q Or from her. I'm sorry.

7 A I did.

8 Q And let me hand you State's Exhibit No. 102 and ask you
9 if you can identify that.

10 A Yes, sir. This is the phone that she turned over to
11 me.

12 Q Were you aware of the Defendant's number?

13 A Yes, sir.

14 Q Defendant's phone number?

15 A Yes, sir. I was.

16 Q Lieutenant Cheek had called him?

17 A Right. And also, he called dispatch, so I was aware of
18 his phone number.

19 Q Did you test the phone to determine if that, indeed,
20 was the phone that --

21 A Right. After I received it.

22 Q How did you go about doing that?

23 A I called it.

24 Q Okay. And it rang?

25 A Yes, sir.

1 Q Thank you, sir. What was your purpose in getting the
2 cell phone?

3 A Any time we have a crime that we think that cell phone
4 information will assist us further into our investigation,
5 we will try to obtain the records from the cell phone.

6 Q How do you go about doing that?

7 A Well, first of all, I called to find out who the
8 carrier is, in which -- after finding out who the carrier
9 is, then I will obtain the search warrant based on what we
10 knew as far as the investigation.

11 Q Who do you call to get the information about the
12 carrier?

13 A First of all I find out -- usually I go through SLED.
14 I have a friend that works with the cell phones.

15 Q And what is that person's name?

16 A Tommy Hines. I believe his name is George, but it's
17 Tommy. We call him Tommy Hines. He was the cell phone
18 expert. I called him and give him the number and asked him
19 to inform me of who the carrier was, and I believe this time
20 it was AT&T. And then at that time I would call AT&T myself
21 and verify -- verified that that phone number was connected
22 to AT&T. They won't give you any information. They'll just
23 tell you if it's one of theirs. They won't tell you who
24 owns it or anything.

25 Q Right. But based on what they told you, what did you

1 do?

2 A I obtained search warrants for -- for the cell phone.

3 Q What was the purpose of getting a search warrant? What
4 specifically were you looking for with regard to the cell
5 phone?

6 A Well, you look for incoming, outgoing calls, you look
7 for incoming, outgoing text messages, Facebook posts,
8 images, Instagram, if they used that. The cell phone tower
9 locations when the person uses the phone. What cell phone
10 -- what cell phone tower was it hitting off of.

11 Q Do you have to go through AT&T to get most of that
12 information?

13 A You would have to do a combination. In order to get
14 cell phone tower information you have to go through the
15 carrier. If you're just looking for text messages or
16 images, incoming or outgoing calls, you can go through SLED
17 and Agent Tommy Hines, and he is able to do what we call
18 dump a phone.

19 Q So the phone dump that you're talking about, all you
20 really need is the handset; is that right?

21 A Yes, sir.

22 Q The phone itself?

23 A Yes, sir.

24 Q The information about tower locations and everything,
25 how do you get -- how do you go about getting that?

1 A Well, you always use a search warrant to get that. And
2 I tell them in the search warrant what I'm looking for, and
3 always specify cell phone location, text, things of that
4 nature, and they will send you back the information that
5 they obtain.

6 MS. MCNEILL: Objection. Withdrawn, Your Honor.

7 THE COURT: Okay. You may proceed.

8 MR. MOWRY: Your Honor, I'm going to ask to approach at
9 this point.

10 THE COURT: Okay.

11 (Whereupon, a sidebar was held in the presence of, but
12 out of the hearing of the jury.)

13 MR. MOWRY: Your Honor, I've had a brief conversation
14 with the Defense, and we would offer State's Exhibit No. 102
15 into evidence at this time.

16 MS. MCNEILL: 102 is -

17 MR. MOWRY: The phone.

18 MS. MCNEILL: -- the cell phone. We have no objection.

19 THE COURT: All right. Without objection, 102 into
20 evidence for the State.

21 (Whereupon, State's Exhibit No. 102 was admitted into
22 evidence.)

23 Q So to summarize, I guess, a little bit. How many
24 search warrants did you need to get in order to get the
25 information that you were talking about?

Keith McIntosh-Direct Examination

21

1 A On his phone, two. I needed one for SLED and I need
2 one for AT&T.

3 Q One to get the information off the handset? The phone
4 dump that you were talking about --

5 A Yes, sir.

6 Q -- is that right?

7 A Yes, sir.

8 Q And who did that for you?

9 A Agent Tommy Hines.

10 Q And the other was for what?

11 A With AT&T carrier themselves to obtain cell phone tower
12 locations. Of course, everybody knows when you make a cell
13 phone call it hits off of a cell phone tower.

14 MS. MCNEILL: Objection.

15 THE COURT: The nature of your objection?

16 MR. SHAFFER: Can we approach?

17 THE COURT: Sure.

18 (Whereupon, a sidebar was held in the presence of, but
19 outside of the hearing of the jury.)

20 Q Lieutenant McIntosh, let me hand you what's been marked
21 as State's Exhibit No. 4 for identification and ask you if
22 you can identify that.

23 A Yes, sir. This is the search warrant I obtained for
24 AT&T.

25 Q And what is this, number 105?

1 A This -- excuse me. The search warrant that I obtained
2 to have SLED to dump the phone.

3 Q So 105 is the search warrant to dump the phone, the
4 information that was held on the handset; is that right?

5 A Yes, sir.

6 Q And 104 was the search warrant for AT&T to get the
7 tower information; is that right?

8 A Yes. Yes, sir.

9 MR. MOWRY: I would offer the search warrants into
10 evidence at this time, Your Honor.

11 MS. MCNEILL: No objection.

12 THE COURT: All right. Without objection 104 and 105
13 into evidence for the State.

14 (Whereupon, State's Exhibit Numbers 104 and 105 were
15 admitted into evidence.)

16 Q Let me hand you State's Exhibit number 84 and ask you
17 if you can identify that.

18 A Yes, sir. This is -- this is the cell phone belonging
19 to the -- we recovered at the incident location.

20 Q Okay. And did you -- as part of your investigation,
21 did you determine who it belonged to?

22 A Yes, sir. We determined it belonged to the victim.

23 Q Did you also attempt to do a cell phone dump on that
24 phone?

25 A Yes, sir. We did.

1 Q Were you able to accomplish that?

2 A We was able to get into the SIM card -- the SLED Agent
3 was, and it -- you get limited information from it.

4 Q All right. Why couldn't you get more?

5 A Due to the condition of the phone.

6 Q Okay.

7 MS. MCNEILL: Judge, we have a matter of law.

8 THE COURT: All right. Madam Forelady, ladies and
9 gentlemen of the jury, we have an issue that I need to
10 discuss with the lawyers and we need to do it outside of
11 your presence. So if you'll go back to the jury room. And I
12 hope it won't be long and we can get you back out and we can
13 proceed forward.

14 (Whereupon, the jury exited the courtroom at 9:45 a.m.)

15 THE COURT: Okay, Mr. Shaffer.

16 MR. SHAFFER: Your Honor, I think the State's going to
17 try to -- maybe not introduce, but try to get identification
18 through this witness on the historical data from -- from
19 AT&T that we're objecting to, and it's subject to the
20 expert's -- our expert and the other expert which is coming
21 at 12:00 today to discuss that matter. This is related to
22 the pretrial objection to the cell phone records. I don't
23 know they necessarily need to ID it. If they are going to
24 ID it, I would ask that they not identify exactly what it
25 was and just say this are some of the documents that were

1 returned through AT&T.

2 MR. MOWRY: Your Honor, I've got to get it identified
3 somehow, because he's the officer that submitted the search
4 warrant. He's the officer that received the information.
5 And then he can testify as to what he did with the
6 information. You know, getting it to Dan Kelly for -- us
7 and to Dan Kelly for -- for his purposes.

8 THE COURT: Well, haven't I already ruled that under
9 19-5-510 that those documents from AT&T that we have
10 discussed quite extensively are admissible under that
11 statute?

12 MR. MOWRY: I thought we had, Your Honor. I thought
13 that's what the two days of pretrial was about.

14 MR. SHAFFER: Your Honor -- I didn't mean to interrupt.

15 THE COURT: No, you're not. You're fine.

16 MR. SHAFFER: Your Honor, related to that, first of
17 all, obviously that was a pretrial ruling, and this is a
18 ruling that actually matters. The one thing I wanted to do
19 before that, before they tried to introduce any of this
20 stuff and what a lot of emails were about, is actually
21 present expert testimony on that point, because what I'm
22 willing to do is introduce expert testimony that would have
23 a bearing on whether or not -- whether or not these are
24 business records. I believe that last time one of the
25 things you had said to me is you haven't shown me anything

Keith McIntosh-Direct Examination

25

1 that says that they're not reliable. What I was going to do
2 through my expert, who's coming at 12:00 today, is actually
3 present evidence that these are not reliable. Some of the
4 data points are -- verge on being impossible to being
5 accurate with each other.

6 THE COURT: And, of course, I assume that your expert
7 --

8 MR. MOWRY: That's going --

9 THE COURT: -- that your expert is going to say that
10 they are reliable. For purposes of right now, why can't
11 they be marked for identification, okay, and just say are
12 these -- without going into any of the contents, are these
13 the records obtained from AT&T, and leave it at that?

14 MR. SHAFFER: And, Your Honor, one of the things -- one
15 of the other things is that -- and I was planning on
16 introducing this later because I needed the expert to sort
17 of explain it. The records obtained from AT&T, that stuff
18 called the NELOS data or data from NELOS. It depends on how
19 you pronounce it, N-E-L-O-S. The -- some of that data is
20 actually incomplete. You know, he was making phone calls,
21 and AT&T apparently has big gaps where he was making phone
22 calls, and his phone was obviously on, that their -- that
23 some of that data is just completely incomplete. One of the
24 things I may very well do later on is actually introduce
25 that -- that larger packet, which was actually the documents

1 that were obtained. This is about 10 pages of the documents
2 out of that big packet that were actually obtained. I was
3 going to make an argument under the Doctrine of Completeness
4 basically that some of those on the record should be allowed
5 into this to show that it -- it's not that he was missing
6 during this time period. He was actually making calls
7 during this time period. So I think that there's going to
8 be a little bit of an issue if they try to introduce a small
9 -- get that ID'd as a small packet, and then later on I'm
10 going to present 200 pages and say isn't this the document
11 you actually received.

12 THE COURT: Right, okay. But for purposes of right
13 now, where we are right now, is there an issue with the
14 documents, understanding that you believe that the whole
15 packet needs to come in as opposed to 10 pages, but just
16 having them marked for identification and for McIntosh to
17 say yes, this is what I got from AT&T, period, and then
18 we'll just deal with the other issues related to the
19 documents later?

20 MR. SHAFFER: And I'm fine with that, as long as he
21 doesn't read what's actually on the document.

22 THE COURT: Right.

23 MR. MOWRY: I have no intention of going into that,
24 Your Honor.

25 THE COURT: Right.

1 MR. SHAFFER: And what's on top of the page says
2 Historical Location Data, and that's --

3 MR. MOWRY: Actually, Historical Precision Location
4 Information.

5 MR. SHAFFER: Yes. And the "Precision" part is a
6 misnomer. And actually, I think that that's part of what my
7 expert is going to talk about is that the precision part
8 doesn't actually mean precision, Your Honor.

9 THE COURT: Well, let's do this. For purposes right
10 now, just have it marked for identification. You can
11 identify it, this is -- I got this from AT&T, period, and
12 then don't do anything else with it as far as this witness
13 goes.

14 MR. MOWRY: That was pretty much where I was going.

15 MR. SHAFFER: And, Your Honor, can he be subject to be
16 recalled later, so that we can go back through --

17 THE COURT: Sure.

18 MR. SHAFFER: -- and say this is the packet?

19 THE COURT: Sure, right. Officer McIntosh -- or
20 retired Officer McIntosh, once your testimony right now is
21 concluded, and if you're not planning to stay in the
22 courtroom, which is fine, just make sure that these lawyers
23 can get a hold of you. Okay?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay, thank you. Well, let's -- while we

1 got the jury out, let's take a real short break.

2 MR. MOWRY: Good. Thank you, Your Honor.

3 (Whereupon, a recess was held from 9:52 a.m. to 10:06
4 a.m.)

5 (Whereupon, State's Exhibit numbers 106 and 107 were
6 marked for identification.)

7 THE COURT: Anything on the record before I bring the
8 jury out? You're good? Okay. Let's bring the jury out,
9 please.

10 (Whereupon, the jury entered the courtroom at 10:06
11 a.m.)

12 THE COURT: Solicitor, you may proceed.

13 MR. MOWRY: Thank you, Your Honor.

14 DIRECT EXAMINATION RESUMED

15 BY MR. MOWRY:

16 Q Lieutenant McIntosh, let me show you what have been
17 marked as State's Exhibit Numbers 106 and 107. Do you
18 recognize that? Those documents?

19 A Yes, sir. I do.

20 Q What are those, please, sir?

21 A This is the historical information that I got from AT&T
22 concerning Mr. Davis' phone.

23 Q Okay. This was the information that you received as
24 part of your search warrant; is that right?

25 A Yes, sir.

1 Q Okay. Were you informed as to any details of the
2 service of the search warrant at the Defendant's residence
3 in Newberry?

4 A Yes, sir. I was communicating with Lieutenant Blackman
5 as he was on scene.

6 Q Okay. And I believe he testified yesterday that a box
7 of bullets, State's Exhibit Number 103, was found at the
8 scene; is that right?

9 A Yes, sir.

10 Q Was there any kind of test for evidence that was
11 ordered as with regard to that box of bullets?

12 A No, sir.

13 Q Could there have been anything done?

14 A Yes, sir.

15 Q What could have been done?

16 A Latent prints.

17 Q Why did you choose not to do that?

18 A It was in his house and in his possession of the house.

19 Q Would it have surprised you one way or another if his
20 prints were -- were or were not on the box?

21 A No, sir. I wouldn't have been surprised either way.

22 Q Okay. When Mr. Davis was arrested did you all recover
23 any firearms from him?

24 A No, sir.

25 Q Did you speak with him later about that?

1 A During the second interview at the Detention Center.

2 Q And what did he tell you he had done with the gun?

3 A That on his way to the Johnson Detention Center he
4 asked Marlana Davis, his ex-wife, to pull over on the side
5 of the interstate, that he needed to relieve himself. And
6 he said when he got out to do that he threw the gun away.

7 Q Okay. What steps did y'all take to try to retrieve the
8 gun?

9 A Well, I got in touch with Marlana Davis, asked her
10 about it. She confirmed that this had taken place. She was
11 in Newberry at the time, and I asked her would she be
12 willing to come out to the interstate on I-26 going towards
13 Laurens and Spartanburg and Newberry. She said she would.
14 She met us out there, pulled over on the side of the
15 interstate to where she thought that -- as far as she could
16 remember is where she pulled over that night, or early that
17 morning, and he got out of the car.

18 Q What -- how did you all go about searching? Who all
19 was there? Let me ask you that.

20 A Myself, Lieutenant Blackman, and Lieutenant Cheek.
21 Bryant Cheek.

22 Q What did you all do to try to find the gun?

23 A We divided up in segments. We didn't go in a cluster,
24 and we -- we combed that area for quite a while. We would
25 start closer to the guardrail and work our way down. And,

1 of course, there was a ravine there, one thing or another,
2 and we would -- not knowing if he tossed it or whatever, we
3 just -- we searched to the best of our ability and according
4 to what she had told us.

5 Q And this was within a matter of several hours --

6 A Yes, sir. We --

7 Q -- after the incident?

8 A Yes, sir. We spent some time out there.

9 Q Were you all able to find anything?

10 A No, sir.

11 Q And again, whose information were you relying on that
12 the gun was out there?

13 A The Defendant, and also Ms. Davis.

14 Q Well, did Ms. Davis know about the gun?

15 A No, sir.

16 Q All right. So whose information were you relying on
17 that the gun was there?

18 A The Defendant. His.

19 Q All right. You talked about a second interview. When
20 did that take place?

21 A I believe it was the 5th of November. Excuse me, July.

22 Q 5th of July.

23 A Yes.

24 Q Who was present when that took place?

25 A Myself, Lieutenant Blackman, and Lieutenant Cheek.

1 Q Where did that take place?

2 A In the Magistrate's courtroom.

3 Q And was it videotaped?

4 A Yes, sir. It was video/audio.

5 Q With regard to the phone, the Defendant's phone,
6 State's Exhibit Number 102, during this interview did you
7 ask the Defendant about any protective information with
8 regard to his phone?

9 A I don't recall if I did.

10 Q Did you ask him about how to get into the phone?

11 A Yes, sir.

12 Q Was it password protected? That's what I'm getting at.

13 A Yes, sir. It was password protected.

14 Q And did he give you the password?

15 A I can't say definitive. But I know we got into the
16 phone, so he would have had to give it to us.

17 MS. MCNEILL: Your Honor, I'm fine if they want to play
18 the video now. I don't know if that's --

19 MR. MOWRY: No, sir. I'm not planning on doing that.

20 THE COURT: At this stage?

21 MR. MOWRY: No, sir. I am planning on doing that.

22 Yes, sir.

23 THE COURT: Right, I understand that.

24 MR. MOWRY: Just not -- not right now.

25 THE COURT: That's fine.

1 Q We've heard talk about the green Crown Royal bags. Are
2 you familiar with Crown Royal?

3 A Vaguely, but I am familiar with the Crown Royal bags.

4 Q I'm not asking you if you drink it, just aware of it,
5 right?

6 A Yes, sir.

7 Q In your experience, what color have Crown Royal bags
8 been?

9 A Purple.

10 Q Purple. When you saw the green Crown Royal bag, did
11 that inspire any curiosity in you?

12 A Not a whole lot, because I just thought it was a Crown
13 Royal bag and it was green.

14 Q Since that time have you -- have you found out what --
15 what the liquor is?

16 A Yes, sir. It's -- I did find out that they do produce
17 a green Crown Royal bag. It's some kind of apple or
18 something.

19 Q Apple?

20 A Apple.

21 MR. MOWRY: Thank you, Lieutenant. I believe that's
22 all I have.

23 THE WITNESS: Yes, sir.

24 THE COURT: Any cross-examination?

25 MS. MCNEILL: Yes, sir.

1 CROSS-EXAMINATION

2 BY MS. MCNEILL:

3 Q Lieutenant McIntosh, you arrived on scene at what time
4 -- or you got the call to arrive at the Fountain Inn
5 location at what time?

6 A Dispatch was giving out the call. Dispatch time was
7 1:32. I believe I got the call in that timeframe. I
8 arrived on scene after two o'clock.

9 Q Okay. And when you arrived on scene you were briefed
10 by the officers that had arrived before you, correct?

11 A Yes, ma'am.

12 Q And they had given you information that the Defendant
13 in this case, Ronald Davis, called 911 and reported this
14 incident?

15 A Yes, ma'am. That's true.

16 Q And you also received information that the Defendant
17 had explained to the dispatcher that he had shot his
18 girlfriend?

19 A Yes, ma'am.

20 Q Okay. And that he had shot his girlfriend after a
21 struggle had ensued?

22 A That's what he said.

23 Q And he had also said that the struggle started when he
24 walked into the house and Shana Prophet, the now deceased
25 girlfriend, had pulled a gun out of a green Crown Royal bag

1 and shot at him first, right?

2 A That's what -- that's what he told dispatch.

3 Q Okay. And you've been in this courtroom listening to
4 testimony all week, right?

5 A Except for Monday.

6 Q Except for Monday?

7 A Yes, ma'am.

8 Q So you've heard testimony Tuesday and today is
9 Wednesday?

10 A Yes, ma'am.

11 Q Okay. The days are starting to get mixed up.

12 A Yes, ma'am.

13 Q And Mr. Mowry was asking you about if you're familiar
14 with Crown Royal, and you stated that you've become familiar
15 with it, right?

16 A Only recently, ma'am.

17 Q So this Crown Royal, for demonstrative evidence
18 purposes, comes in a green box, right?

19 A I'll assume it does. It's there.

20 Q Will it help you if you looked at it?

21 A Well, yes, ma'am. It comes in a green box. It's got a
22 green bag.

23 Q Right.

24 MR. MOWRY: Your Honor, I ask her not to leave that on
25 the jury rail.

1 MS. MCNEILL: I'm just going to take it out of the box
2 and I'll move it.

3 THE COURT: That's fine.

4 Q And then inside this green box comes this green bag,
5 right?

6 A Yes, ma'am.

7 Q And inside the green bag comes the Crown Royal -- green
8 apple Crown Royal liquor?

9 A Yes, ma'am.

10 Q And so, this is the green bag that looks like the green
11 bag that you all saw at the incident location in Fountain
12 Inn?

13 A Yes, ma'am.

14 Q And it also looks like the green bags that you found,
15 or that Lieutenant Ben Blackman found at the incident
16 location -- or at the Newberry C.R. Koon house?

17 A Yes, ma'am.

18 Q Now, you remember yesterday you heard Mr. Shaffer
19 saying that he thought Crown Royal came in a purple bag?

20 A That's what I thought, too.

21 Q Right. So it comes in both green and purple?

22 A Yes, ma'am. I believe you can buy the bags off Amazon.

23 Q Pretty much anywhere?

24 A Yeah.

25 Q So some people might collect them?

1 A Right.

2 Q And so, when you got to the scene and you had received
3 all this information about a possible struggle, you also
4 heard testimony throughout the week of your other law
5 enforcement agent counterparts, such as Laurens County
6 Sheriff's Office, as -- along with SLED agents about their
7 perception of what the room looked like -- master bedroom
8 looked like upon arrival, right?

9 A Yes, ma'am.

10 Q And so, you heard them all say that it was in -- the
11 room was in disarray, or disheveled. Would you agree with
12 them?

13 A Yes, ma'am. I've seen worse, but -- on a normal house.
14 But, yes, ma'am, it did have some issues with it.

15 Q And so, you saw in the bedroom that the bed had been
16 made, right?

17 A Yes, ma'am.

18 Q Suggesting that there was some type of order perhaps in
19 the room with a made bed, right?

20 A Yes, ma'am.

21 Q And then you also observed the mattress to be kind of
22 pushed over from the box spring?

23 A I'm not a hundred percent sure on that, ma'am.

24 Q Okay. I can show you a photograph. I believe it would
25 be State's Exhibit 16 that we have been referring to

1 throughout the trial. So State's Exhibit 16. I'm going to
2 show you that photograph.

3 A Yes, ma'am.

4 Q So in that photograph you can see the mattress pushed
5 aside from the box spring, correct?

6 A Yes, ma'am.

7 Q And then there is also, I believe, testimony that three
8 -- that the deceased had braided hair?

9 A Yes, ma'am. That's true.

10 Q And you had -- you had attended the autopsy at the
11 Greenville Memorial, right?

12 A Yes, ma'am. I did.

13 Q All right. And that was just the day after this --
14 that you had responded out to the Fountain Inn location?

15 A Yes, ma'am. It was July the 4th --

16 Q July the --

17 A -- when I went to the autopsy.

18 Q And so, she had long braided hair, the deceased?

19 A Yes, ma'am.

20 Q And also in the pictures it documents that, I think, at
21 least three different hair strands of braided hair strung
22 throughout the room?

23 A She did have some hair.

24 Q Okay. I'll take that photo.

25 A Yes, ma'am.

1 Q Thank you. And then when you received information of
2 an incident that may have gone down in kind of a chaotic
3 struggle and you walk into the room here the incident
4 allegedly occurred and you see a disarray --, a room in
5 disarray, you're looking for certain pieces of evidence to
6 suggest what happened during that night, right?

7 A I would be looking for anything that's out of place or
8 something of that nature.

9 Q And in this case you found things that were out of
10 place?

11 A Or it might be the bed and also the hair extensions.

12 Q So with your experience in law enforcement, is it safe
13 to say that upon reviewing the room -- scanning the room
14 with your own eyes, it looked like a struggle had ensued?

15 A There was -- something had took place that could very
16 well have been a struggle.

17 Q All right. And as a law enforcement officer you listen
18 to the evidence in order to evaluate the evidence as an
19 investigator, right?

20 A Yes, ma'am.

21 Q And when you listen to the evidence to try to determine
22 answering questions that we may have, as officers, as a
23 community, as jurors, you make sure that you document things
24 properly, right?

25 A To the best of my ability I would try.

1 Q Sure. And you're a lead -- you're the lead
2 investigator on this case?

3 A Yes, ma'am.

4 Q And you have how many years of experience?

5 A When I retired I had 15 years total and about nine or
6 10, or maybe 11 in investigations.

7 Q Okay. And how many murder crime scenes have you
8 worked, or homicide crime scenes I should say?

9 A That I actually signed warrants for, probably four.

10 Q Four, okay. And also as an investigator you oftentimes
11 will take a statement from your suspect, right, if they're
12 willing to talk to you?

13 A Yes, ma'am.

14 Q All right. And so, you advise them of their Miranda
15 rights and let them know that they have the right not to
16 talk to you if they decide to invoke their rights to have a
17 lawyer present, right?

18 A Yes, ma'am.

19 Q And in this case, Mr. Davis did sign away all his
20 rights and was cooperative in speaking with you?

21 A Yes, ma'am. Lieutenant Cheek is -- spoke to him. Yes,
22 ma'am.

23 Q And so, when you learned that Mr. Davis had turned
24 himself in, you also learned that Mr. Davis gave Lieutenant
25 Cheek a voluntary statement that Lieutenant Cheek typed out

1 for him and that he signed?

2 A Yes, ma'am.

3 Q And that was shortly after he turned himself in,
4 correct?

5 A Yes, ma'am.

6 Q All right. And so, instead of just taking that initial
7 statement at face value of the complete story, you, of
8 course, as a -- your investigation was ongoing and
9 continuing, right?

10 A Yes, ma'am.

11 Q And so, you decided to go out to the jail and interview
12 him yourself, right?

13 A Not at that time. It was the second interview.

14 Q And how far apart was his voluntary statement to
15 Lieutenant Cheek and the video recorded statement that you
16 were a part of?

17 A I believe we went out there on the 6th or 7th that we
18 interviewed him at the Detention Center.

19 Q So a couple days later?

20 A Yes, ma'am.

21 Q And you had also, as lead investigator, instructed
22 other officers or law enforcement agents, to do other things
23 in the course of the investigation of this case, right?

24 A Yes, ma'am. It's a fair assessment.

25 Q And one of the things you instructed some of your

1 officers to do is to go talk to any sort of witnesses in the
2 neighborhood about what they may or may not have heard, may
3 or may not have seen, right?

4 A They'd already done that before I got there.
5 Lieutenant Crain, they went to the neighbors.

6 Q And how many witnesses would you say they were able to
7 talk to?

8 A I believe they just talked to one or two. I know they
9 talked to the one across on Gentry Road.

10 Q Okay. And that would have been Julie Smith, I think
11 her name is?

12 A I believe that's the name.

13 Q All right. And then they also talked to her boyfriend,
14 John Green maybe?

15 A I don't remember his last name.

16 Q Okay. But they also talked to her boyfriend?

17 A Right. yes, ma'am.

18 Q And the reason that you would have gone out a couple
19 days after Mr. Davis had already given a voluntary typed
20 statement would have been to get further information from
21 him about the night of the incident -- of the shooting
22 incident, right?

23 A Yes, ma'am. That would be part of it.

24 Q And you asked him some very specific questions, didn't
25 you?

1 A Yes, ma'am. I did.

2 Q You asked him things like how close in proximity to her
3 was he when he shot her, right?

4 A Yes, ma'am.

5 Q And that would be important to know that, right?

6 A It would be important. Yes, ma'am. Due to the nature
7 where both she was at and him.

8 Q Okay. Yeah, and you also asked him questions about
9 where he was standing versus where she was standing during
10 the struggle and during any bullets that were fired either
11 by her towards him and also by him towards her, right?

12 A Yes, ma'am.

13 Q So you wanted to know where they were standing in the
14 room, right?

15 A Yes, ma'am.

16 Q And you wanted to know how close they were to each
17 other where bullets were fired, right?

18 A Yes, ma'am.

19 Q And getting answers to that would have been important
20 for things like, I don't know, stippling or soot from
21 gunpowder on clothing or hands perhaps?

22 A It could be.

23 Q Okay. And if -- and you were hoping to get answers to
24 those questions so that you could answer questions you had
25 yourself, perhaps, about what went down that night?

1 A Yes, ma'am. That would be part of the goal is to find
2 out a little bit more.

3 Q Right. And you also testified that you -- when Mr.
4 Mowry asked you about the cell phone information, you
5 testified that it was important for you to get Mr. Davis'
6 cell phone for any possible communications that he may or
7 may not have had with the deceased in this case leading up
8 to the shooting event, right?

9 A Yes, ma'am.

10 Q And that would have been important to understand
11 perhaps maybe the state of mind the two of them were in
12 before the shooting occurred, right?

13 A Yes, ma'am.

14 Q Okay. And that would have also answered some questions
15 for you about what happened that night; right?

16 A Yes, ma'am.

17 Q So you're asking all these questions because you're
18 listening to the evidence or trying to listen to the
19 evidence; correct?

20 A Yes, ma'am. All of it.

21 Q Okay. It would have also -- and Mr. Davis was
22 cooperative throughout this entire process, was he not?

23 A Yes, ma'am.

24 Q He's the one that called 911 to report it. Right?

25 A Yes, ma'am.

Keith McIntosh-Cross Examination

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1 Q He's the one that kept in touch with either 911
2 dispatch or Lieutenant Bryant Cheek on his personal cell
3 phone; right?

4 A Yes, ma'am.

5 Q So there was a lot of communication back and forth
6 between law enforcement, whether it was from dispatch or one
7 of your lieutenants, and Mr. Davis?

8 A There was.

9 Q Okay. And you also stated that you had received
10 information from Lieutenant Cheek that -- I believe you
11 testified that the Defendant, Mr. Davis, was frantic and
12 contemplating suicide, right?

13 A The latter part. He was contemplating suicide.

14 Q Okay. And you also testified that he was pretty
15 frantic?

16 A Well, he was upset, frantic. Yes, ma'am.

17 Q And you stated that you overheard some of the
18 conversation that Lieutenant Cheek was having with Mr. Davis
19 while on the phone, but you only heard Mr. Cheek's side of
20 that conversation?

21 A Yes, ma'am. He wasn't on speaker.

22 Q Okay. And is it fair to say that you did not take over
23 that phone call, even though you're lead investigator,
24 because of the situation and the potential threat of him
25 committing suicide and his emotional state of mind, and

1 Lieutenant Cheek had the training that you were more
2 comfortable with to deal with that situation?

3 A He was more qualified than I was, and he was part of
4 the team to assist, and I felt more comfortable with him.
5 He had already developed a rapport with him and I felt it
6 was important to let them two talk than me interrupt and not
7 say the right thing. Lieutenant Cheek was able to
8 communicate.

9 Q Right, because you wanted the whole situation to remain
10 as calm as possible?

11 A Yes, ma'am.

12 Q And do you feel that in this case you listened to all
13 of the evidence before you to answer as many questions you
14 possibly could?

15 A To the best of my ability.

16 Q Would you also say -- would you agree with me that to
17 answer even more questions, since the burden is on the
18 State, that to answer even more questions about what
19 happened that night, it would have been proper for a bullet
20 trajectory analysis to be requested by you of SLED?

21 A Our normal procedure is, when SLED arrives on scene,
22 that we -- we do let them process the crime scene. I have
23 been in other times which they -- they do that.

24 Q When they do what?

25 A Do the projector type -- what you're speaking about.

1 Q The bullet trajectory analysis?

2 A Yes. Yes, ma'am.

3 Q What's the significance of a bullet trajectory
4 analysis?

5 A Well, I'm not an expert on it, but from what my
6 knowledge is, it allows to where the bullet left the gun and
7 to where the bullet ended up.

8 Q Okay. And it's not in dispute that Shana was shot five
9 times, correct?

10 A No, ma'am. It's not.

11 Q And it's not in dispute that those bullets went through
12 and through, meaning they never got lodged in her body?

13 A That's correct.

14 Q Okay. But it's also correct that seven cartridge
15 casings were found at the location, right?

16 A That's correct.

17 Q Suggesting that seven bullets had been fired?

18 A Yes, ma'am.

19 Q All right. And no biological analogy of those bullets
20 was requested, right?

21 A No, I don't -- to my knowledge, SLED doesn't do that
22 anymore.

23 Q Okay. But perhaps if it had been done we could have
24 determined which of those seven bullets -- or which five out
25 of the seven bullets actually hit Shana, correct?

1 A What are you referring to as far as --

2 Q What I'm trying to refer to is -- we don't know which
3 bullets out of the seven that were fired, actually hit her
4 and went somewhere else, correct?

5 A That would be correct. Yes, ma'am.

6 Q And so, if you're really listening to the evidence
7 presented to you and you have questions, a huge question
8 would have been answered if bullet trajectory analysis had
9 been done?

10 A It would have helped. I would assume it would.

11 Q And there was enough information at the scene when you
12 arrived to suggest that that probably should have been done,
13 since the room was in disarray, and the information that Mr.
14 Davis had given about the struggle?

15 A It's possible.

16 Q And going back to the video recorded statement that I
17 believe the State's going to play for the jury, all those
18 specific questions that you asked him about where he was
19 standing when he shot her, where she was standing when she
20 shot him, that was your attempt at trying to put together
21 some sort of bullet trajectory analysis in your own mind,
22 right?

23 A I don't think necessarily. I think they were just
24 trying to get a good feel of where bullet parts were at. in
25 That didn't enter in my mind the projectory, (SIC) what

1 you're referring to, at that time.

2 Q Did it --

3 A It just -- no, ma'am. It just referred to where both
4 parties were at. Was she in the bathroom? Was she coming
5 out? That was my goal there.

6 Q Right. And that was important to determine, or to
7 either possibly rule in or rule out a self-defense theory?

8 A It's possible.

9 Q The box of bullets that Mr. Mowry asked you about that
10 were recovered from the C.R. Koon Newberry house, those were
11 nine millimeter bullets, right?

12 A Yes, ma'am.

13 Q Those are pretty common bullets, right?

14 A Yes, ma'am.

15 Q You can buy them pretty much anywhere?

16 A Anywhere just about you want to.

17 Q Anywhere you want to. And they're pretty cheap?

18 A Well, they -- I don't think none of them are cheap, but
19 they -- you can afford to buy them.

20 Q And Mr. Mowry asked you if you had done any sort of --
21 or requested any sort of testing to be done on those box of
22 bullets, right?

23 A Yes, ma'am.

24 Q And you answered that, no, you didn't request any
25 tests, correct?

1 A No, ma'am. They were -- no.

2 Q And you said it wouldn't have surprised you either way
3 if his fingerprints had or had not been on that box of
4 bullets?

5 A No, ma'am. He -- he'd already told us that this was
6 his house. His residence.

7 Q Right. And you had also got information that he was
8 moving out of that residence, correct?

9 A Well, I knew that they had moved in to Allen Bridge
10 residence together. It was through the course of our
11 investigation that -- because I didn't even know he still
12 owned the place in Newberry. I knew that they were moving
13 in together on Allen Bridge.

14 Q Right. And you also had, through the course of your
15 investigation, received information that Shana Prophet
16 frequently stayed at that house in Newberry with him, right?

17 A There may have been a cordial thing that -- I'm not --
18 I can't say that definitive that they -- I do know that they
19 had a relationship and I do know that they had moved to
20 Allen Bridge location.

21 Q But if it's on the video that he stated to y'all that
22 they frequently stayed at that house together, you wouldn't
23 dispute that?

24 A No, ma'am.

25 Q All right. And were you aware that his ex-wife was in

1 the process of moving in that C.R. Koon house in Newberry?

2 A No, ma'am. I don't -- I don't believe I do.

3 Q But you did talk to Marlana Davis, his ex-wife, right?

4 A Yes, ma'am.

5 Q And you stated she was very cooperative as well?

6 A Yes, ma'am. She was -- she was.

7 Q All right. And she's the one that turned Mr. Davis in,
8 correct?

9 A She's the one that -- according to what she said, she
10 didn't know what had happened, but he asked her and she took
11 him to Johnson Detention Center. She drove him there.

12 Q And then Mr. Davis had left his cell phone fully intact
13 with her, right?

14 A Yes, ma'am.

15 Q He didn't try to destroy it from what you could tell?

16 A No, ma'am.

17 Q It was fully workable?

18 A Yes, ma'am.

19 Q And he even gave you the pass code to access his phone,
20 correct?

21 A I believe he did.

22 Q Right. And you retrieved that cell phone how soon
23 after meeting Ronald? Was it after you had interviewed him
24 at the jail you went and retrieved that phone?

25 A No, ma'am. I retrieved the cell phone the same day of

1 the incident.

2 Q After she turned him in?

3 A Yes, ma'am.

4 Q And where did you meet up with her to get that phone?

5 A At McDonald's parking lot in Newberry. I believe it's
6 off 76 and whatever is where I met her at.

7 Q Okay. So you got the cell phone to answer some
8 questions, right?

9 A Yes, ma'am.

10 Q So you could further listen to the evidence, right?

11 A Yes, ma'am.

12 Q Do you know who was the service provider of Shana's
13 phone that State has admitted as State's Exhibit --

14 MR. MOWRY: I believe it's 84.

15 MS. MCNEILL: Which one?

16 MR. MOWRY: 84, I think.

17 MS. MCNEILL: State's Exhibit 84. Thank you.

18 Q I'm going to show you this phone. Do you recognize
19 that phone?

20 A Yes, ma'am.

21 Q And that phone was found partially underneath a night
22 stand at the Fountain Inn location where the shooting
23 occurred?

24 A Yes, ma'am. On this side. Yes, ma'am.

25 Q Okay. And this is the condition y'all found it in?

Keith McIntosh-Cross Examination

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1 A Yes, ma'am.

2 Q And you can't tell how long that phone had been there,
3 right?

4 A No, ma'am.

5 Q And you can't tell when it got in this condition,
6 right?

7 A No. No, ma'am.

8 Q You also can't tell who put it in this condition?

9 A No, ma'am.

10 Q So it could have been there -- it could have gotten
11 crushed during the move in to that house perhaps?

12 A I can only speculate as what it would be.

13 Q It's a possibility?

14 A Yes, ma'am.

15 Q Certainly the fact that it was found partially under a
16 night stand and crushed like that, it could also go as an
17 additional evidence that there had been a struggle?

18 A One could assume that. Yes, ma'am.

19 Q All right.

20 MS. MCNEILL: Beg the Court's indulgence.

21 THE COURT: Sure.

22 Q So, Lieutenant McIntosh, you couldn't also tell us
23 State's Exhibit 103, this box of Blazer brass ammunition,
24 nine millimeter bullets, we could not -- the jury's never
25 gone to know if Shana Prophet's prints are on this box,

1 right?

2 A Yes, ma'am. It was in his house.

3 Q Right.

4 A (Non-verbal response.)

5 Q Sorry. Can you answer that again?

6 A Yes, ma'am. I'm trying. No, ma'am.

7 Q Okay. Even though we know that she frequently stayed
8 at that house in Newberry with him?

9 A She had stayed there some. Yes, ma'am.

10 Q So we don't know if Shana's fingerprints are on these
11 bullets. We also don't know if Marlana Davis' prints would
12 be on these bullets, right?

13 A I don't know. I assume it could be anybody's.

14 Q It could be anybody's. But we don't know --

15 A No.

16 Q -- because no test was asked for?

17 A Right. That's correct.

18 Q But you did collect -- or Shana Prophet's fingerprints
19 actually were collected by her, because they're on the
20 return of the incident location search warrant, right?

21 A Yes, ma'am. SLED does a postmortem fingerprint.

22 Q Okay. Just out of curiosity, why do they take
23 postmortem fingerprints?

24 A Well, to the best of my knowledge, this is something
25 they started. I don't think it's been that long. But they

1 do it for identification. To make sure it is the person.

2 MR. MOWRY: And I believe that's probably beyond his
3 area of expertise and perhaps even knowledge, Your Honor.

4 THE COURT: Well, based upon his law enforcement
5 experience, if he knows without speculating, he can -- he
6 can say. But if he doesn't know, he can say that as well.

7 Q And we also heard testimony, I believe, yesterday while
8 you were in the courtroom from Mr. Walter Bentley with the
9 Eighth Circuit Solicitor's Office sitting right here at the
10 table, that he had received information from myself and Mr.
11 Tristan Shaffer, my co-counsel, about where the gun may be
12 located on I-26.

13 A Yes, ma'am.

14 Q And he testified also that the best time to have
15 located that gun would have been when the incident had just
16 occurred, which would have been July 3, 2016, correct?

17 A I don't recall him saying that, but that's possibly
18 true.

19 Q Well, if you don't recall him saying that, you would
20 agree with me that it would be the best opportunity -- the
21 best opportunity would exist to find a gun in the woods as
22 soon as you received information that it would have been in
23 the woods, right?

24 A Yes, ma'am.

25 Q All right. And it's been quite a while since this

1 incident happened, right?

2 A Yes, ma'am.

3 Q Mr. Davis, in his video recorded statement to you and
4 to Lieutenant Ben Blackman and Bryant Cheek, was trying to
5 give y'all information about where the gun was located,
6 right?

7 A Yes, ma'am.

8 Q And then I believe that in y'all's interview with him
9 you actually stated that you're going to try to find the
10 gun, and if you get the gun, you're going to test the gun.
11 Do you recall that being said?

12 A I believe would say that. Yes, ma'am.

13 Q Okay. And why would that have been important to test
14 the gun?

15 A It would match up the gun to the bullets, the
16 projectiles.

17 Q It would match the bullets to the projectiles?

18 A No. The projectile is the bullet. Match it up to the
19 -- to the weapon, or the gun. If it was fired -- fired from
20 that weapon.

21 Q And that would have answered some more questions when
22 you listened to that evidence, right?

23 A It would have. Yeah, it would have.

24 Q And Mr. Davis was trying to give you this information,
25 and I believe you all also said to him that if you couldn't

1 find the gun you were going to come back and get him and
2 take him with y'all to try to find the gun, and I believe
3 that he said that he was willing to do that; isn't that
4 true?

5 A I believe he -- yes, ma'am.

6 Q Did y'all ever go back and get Mr. Davis and drive him
7 out to where he says he tossed the gun?

8 A No, ma'am. Not after I met with Mr. Davis, Marlana. I
9 felt confident that she was the one that drove him there,
10 and she's the one that pulled over on the side of
11 interstate. And her recollection was probably be as
12 accurate as his as far as where they stopped at, because it
13 was still dark when they were going to the Detention Center.
14 And I felt confident that she was telling us where -- where
15 she remembered she stopped. And I believe she said it was
16 around mile marker 61, 62, and that's where we proceeded to
17 check a large area.

18 Q But you didn't find the gun --

19 A No.

20 Q -- when you looked for it?

21 A Right.

22 Q Was it too much trouble to go to the jail and bring Mr.
23 Davis with you to try to locate that gun?

24 A No, ma'am. It wouldn't have been any trouble. Again,
25 I felt confident that she was cooperating with us, and she

1 had nothing to hide, and she was accurate as far as where
2 she knew -- she's the one driving. She's the one that
3 pulled over.

4 Q So --

5 A We felt if she was not able to give us a general idea,
6 or just say I don't know, then, of course, we would have
7 proceeded further. But I felt like between her testimony to
8 me, that she knew where she stopped.

9 Q So you thought that that search, based on her knowledge
10 alone, was good enough?

11 A I didn't have any reason to doubt that she was telling
12 me the truth. I don't think she was hiding anything at that
13 time.

14 Q So you just felt it was unnecessary to bring Ronald?

15 A I didn't think that he would be able to tell us any
16 more. She did. She told us where she pulled over. She was
17 driving. And we searched a large area.

18 Q Okay. Do you feel like you really listened to all the
19 evidence in this case?

20 A To the best of my ability. Yes, ma'am.

21 Q And you feel that your best of your -- best of your
22 ability in listening to the evidence of this case, you feel
23 that that answers a lot of questions for this jury?

24 A To the best of my ability, yes, ma'am, that -- what we
25 presented.

1 MS. MCNEILL: No further questions.

2 THE COURT: Redirect?

3 MR. MOWRY: Just a few questions, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. MOWRY:

6 Q Ms. McNeill asked you about the gun. You were
7 satisfied with the -- with the search that you had done?

8 A Yes, sir. Due to the length of time we was there and
9 the location we was given.

10 Q You were convinced that that was the accurate location
11 that Ms. Davis had stopped the car; is that right?

12 A Yes, ma'am -- yes, sir.

13 Q Where did the information that the gun might be located
14 there come from?

15 A Well, from Marlana.

16 Q What information did she have about the gun?

17 A She didn't have any.

18 Q She just knew that she had stopped there; is that
19 right?

20 A Yes, ma'am -- yes, sir.

21 Q Who told you that the gun was going to be located
22 there?

23 A The Defendant.

24 Q Okay. He was charged with murder and possession of a
25 pistol during the commission of a violent crime, right?

1 A Yes, sir.

2 Q What security concerns might there have been taking a
3 person with those charges out to that scene?

4 A Well, there's always some type of security problem that
5 can occur from that.

6 Q Did you kind of do a cost benefit analysis to try to
7 figure out if anything was to be gained --

8 MS. MCNEILL: Objection to the leading.

9 THE COURT: Wait a minute. We've got an objection.

10 MS. MCNEILL: Leading.

11 THE COURT: I don't think that was leading. I'll
12 overrule. Go ahead.

13 Q Okay. Did you determine whether or not there would be
14 any benefit to take him out there?

15 A No, sir. We discussed it myself -- the three of us.

16 Q And you determined what?

17 A That he -- he couldn't have told us anymore. Like I
18 said, I felt confident that Ms. Davis was telling us the
19 truth.

20 Q And you -- how thorough do you believe your search was?

21 A Well, it was -- it was very thorough. I can still
22 recall some of the holes I stepped in.

23 Q And it was only the Defendant's information that told
24 you that gun was there; is that right?

25 A Yes, sir.

Keith McIntosh-Redirect Examination

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1 Q All right. Not only -- Ms. McNeill asked you about the
2 projectiles from the gun, but in your training and
3 experience, the shell casings might also have been matched
4 up to a particular gun, right?

5 A Yes, sir.

6 Q Now, Ms. McNeill asked you about whether or not the
7 Defendant was frantic. You hadn't spoken with the
8 Defendant, right?

9 A No, sir. Only what I had heard through Lieutenant
10 Cheek.

11 Q You don't have any knowledge of his state of mind; is
12 that right?

13 A Personally, no. No, sir. Only the communication that
14 him and Cheek had.

15 Q You only heard --

16 A Heard.

17 Q -- that he was threatening to commit suicide; is that
18 right?

19 A Yes, sir. But I believe Lieutenant Cheek said he was
20 calm most of the time he talked to him.

21 Q So that's not frantic, is it?

22 A No, sir.

23 Q And again, who -- who provided the information that the
24 Defendant was contemplating suicide? Where did that come
25 from?

1 A That came from him.

2 Q From the Defendant?

3 A From the Defendant.

4 Q And Ms. McNeill talked about seven shell casings at the
5 scene; is that right?

6 A Yes, sir.

7 Q And there were seven shots. Would that -- was that
8 your conclusion?

9 A Yes, sir.

10 Q How many times was Shana Prophet hit -- Shana Prophet
11 hit?

12 A Five.

13 Q Including one through her heart; is that right?

14 A Yes, sir.

15 Q Who admitted to you that she had -- that he had shot
16 Shana Prophet?

17 A The Defendant, Ronald Davis.

18 MR. MOWRY: Thank you, sir.

19 THE COURT: Recross?

20 RECROSS-EXAMINATION

21 BY MS. MCNEILL:

22 Q Lieutenant McIntosh, Mr. Mowry is trying to say you
23 only had -- you didn't have any personal knowledge of what
24 was going on in the conversation between Lieutenant Cheek
25 and Ronald Davis, right?

1 A The only information I had was what Lieutenant Cheek
2 was feeding me.

3 Q Okay. And you testified that you felt more comfortable
4 with Lieutenant Cheek maintaining that phone call to keep
5 everything calm, as calm as possible, right?

6 A Yes, ma'am. I was concerned, and I felt like
7 Lieutenant Cheek, with his experience, was more qualified
8 than myself.

9 Q And you would agree with me that you did use the word
10 frantic, that the Defendant was frantic and contemplating
11 suicide on direct examination initially with Mr. Mowry?

12 A Well, that he was upset.

13 Q Yes. And you stated that you were confident that
14 Marlena Davis was telling you an accurate area to search for
15 the gun, right?

16 A Yes, ma'am. Yes, ma'am.

17 Q And then you just testified on redirect with Mr. Mowry
18 that she didn't have any knowledge that a gun was thrown in
19 that area.

20 A She did not at that time.

21 Q All right. She just knew that Mr. Davis had to
22 urinate, and so she pulled over at that specific area of
23 highway for him to relieve himself?

24 A Yes, ma'am.

25 Q So she didn't have knowledge of what direction the gun

1 could possibly have been thrown?

2 A I don't think so.

3 Q All right. So wouldn't you say that when you testified
4 earlier that you were confident that she was giving you the
5 accurate position of where the gun could possibly be, turns
6 out Mr. Davis would have been more accurate in his direction
7 of where that gun would have been, correct?

8 A Well, there's two people in the car and both of them --
9 and she was the one that pulled over. And I still feel like
10 she -- she knew.

11 Q What mile marker did you search?

12 A We started around 62. 61, 62. I believe that's before
13 the Newberry exit -- I mean, the Newberry rest area. And we
14 just had limited ourselves to 62, up and down it.

15 Q And Mr. Mowry also asked you, you know, about security
16 concerns of taking somebody charged with murder and
17 possession of a weapon during a violent crime out to an area
18 to search for a gun, didn't he?

19 A Yes, ma'am.

20 Q In your experience as a law enforcement officer, has
21 law enforcement ever taken a Defendant out to locate a
22 weapon?

23 A I cannot tell you I have ever took a murder suspect out
24 of the Johnson Detention Center. I've never done that.

25 Q Do you know if any of your staff has?

1 A I can't testify to what they may have done, ma'am. I
2 -- I've took others out that's not charged with this type of
3 crime, but not for -- those that I've ever charged with
4 homicide, murder, I've never taken them out of the Detention
5 Center.

6 Q But you would agree with me that if it's on that video
7 that's going to be published to the jury, that y'all told
8 him if they can't -- if you all can't find the gun, you're
9 going to come back and get him to assist y'all, you wouldn't
10 dispute that?

11 A No, ma'am. I wouldn't dispute that.

12 Q And you wouldn't have said that just for, you know,
13 empty -- empty words, meaningless words to him?

14 A No, ma'am. I would not do that. I wouldn't.

15 Q So you would have said it because you probably meant it
16 at that time?

17 A At that time. Yes, ma'am.

18 MS. MCNEILL: Thank you. No further questions.

19 THE COURT: Thank you, sir. You can step down.

20 (Whereupon, the witness stepped down from the witness
21 stand.)

22 MR. MOWRY: We'd ask -- well, I guess they've asked
23 that he be retained.

24 THE COURT: Now, if Mr. McIntosh needs to leave, just
25 so long as he -- you know, everybody knows how to get a hold

Jennifer Nates-Direct Examination

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1 of him, that's fine. Whatever he needs to do.

2 JENNIFER NATES, having been first
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MOWRY:

6 Q You are Jennifer Nates, I believe?

7 A Yes, sir.

8 Q And, Ms. Nates, by whom are you employed?

9 A I'm employed by the South Carolina Law Enforcement
10 division in the trace evidence section.

11 Q And that's the organization known as SLED, right?

12 A It is.

13 Q And were -- are you employed in the same area as
14 Jovania Kelly was back in July of 2016?

15 A I believe she was in the crime scene section.

16 Q Well, what I mean is the crime lab?

17 A Yes.

18 Q Yes. What is your function with SLED? What kind of
19 work do you do?

20 A I'm a lieutenant of the trace evidence section. This
21 means that I'm responsible for the day-to-day activities of
22 the department, in addition to performing case work,
23 reviewing cases, and just providing overall guidance to the
24 department.

25 Q And you talked about trace evidence. What exactly is

1 trace evidence?

2 A Trace evidence varies from different states. In our
3 state the trace evidence section includes different types of
4 analysis. We analyze for gunshot residue, fibers, paint,
5 explosives, tape, bank dye, physical fit examinations, and I
6 think that is it.

7 Q What was the last one, physical --

8 A Physical fit examinations.

9 Q What is that?

10 A The ones that I have worked were a hit and run with a
11 light assembly was left at the scene that I then physically
12 fit back to the vehicle to place that vehicle at the scene.
13 I have done knife blades. One was a butcher knife was used
14 to murder a victim. A piece of the blade was found embedded
15 in the skull. We were able to physically fit it back to the
16 knife. They're basically jigsaw puzzles to put pieces back
17 together.

18 Q Okay. I was thinking you were talking physical fit --
19 physical fitness, you know.

20 A No.

21 Q You know, so being in physical shape. Sorry about
22 that. Let me just ask you this. On any test that you do,
23 any examination that you perform, is there a process called
24 peer review?

25 A There is in our laboratory. When I perform an

1 examination I will perform -- inventory my evidence, perform
2 my analysis, generate all the data that is needed to come to
3 the conclusion that I am coming to. I then generate the
4 report. The report states what I found and what my opinions
5 are. That whole packet, which in this case would be this
6 entire case file, would then be routed to another examiner
7 that's qualified in that area of analyses. They will review
8 all the data, make certain that I then followed the correct
9 policy and procedure for that analysis, and that I reported
10 correctly, and that I followed all the parameters that are
11 set in place for the instrumentation used or the different
12 tests that we perform.

13 Q Even you, the head of the department, has to go through
14 this process?

15 A We do. Each of our cases is technically and
16 administratively reviewed. The technical review
17 encompasses, like I said, the policy and procedure. What we
18 did technically in the case, and the administrative review
19 is to check for spelling errors which we do make if we have
20 the incorrect case number on the case, or we put -- just
21 spelled something incorrectly. So they perform both of
22 those reviews. Then they will sign off in the case file to
23 state that they have reviewed it, they agreed with it, and
24 then the report can be published.

25 Q So not only editorial examination, but also a review of

1 the content of the report; is that right?

2 A It is. And in GSR data -- gunshot residue data, which
3 is what I performed in this case, a lot of the data is on a
4 computer. So in these cases the analyst will actually go
5 back and physically review the data on the computer that I
6 saw to verify that I did everything correctly in that
7 instrumentation.

8 Q Okay. Now, you've talked a couple of times, mentioned
9 gunshot residue. Can you explain to us what that is?

10 A Gunshot residue is the name of one of the examinations
11 that we perform in the trace lab. A gunshot residue is a
12 general term. It's abbreviated as GSR, that applies to
13 anything that is produced when a firearm is discharged. It
14 includes residue from the primer, from the cartridge case,
15 from the barrel of the gun, and from the gun itself. Our
16 lab specifically looks for what is called primer gunshot
17 residue. It's a specific component of gunshot residue. This
18 is residue that is produced from the primer composition in
19 the cartridge. It contains three elements, and that is what
20 our laboratory analyzes for to determine if gunshot residue
21 is present on a person.

22 Q What kind of specialized education and training do you
23 have to be able to perform these functions?

24 A When I was hired at SLED we had to have a degree in
25 chemistry. So I had a Bachelor of Science degree in

1 chemistry that I obtained in 1997 from a state school in
2 Pennsylvania called California University of Pennsylvania.
3 Once I was hired in the trace department -- I was trained in
4 the drug analysis department first. I worked there for a
5 year. Went through the Police Academy and received all the
6 basic SLED training. After a year of performing drug
7 testing and poison testing, I transferred into trace
8 evidence. And then I began a three to four year pretty much
9 internship, apprenticeship program under the senior analyst
10 and the lieutenant of the department. This included a lot
11 of job shadowing, reading the protocols, becoming familiar
12 with the instrumentation, taking classes offered by outside
13 agencies on the testing that we did and the instrumentation
14 that we used. At the completion of each module, I would go
15 through each section at a time, I would then be responsible
16 for a competency test, which was a test that was provided to
17 me by my training officer that I had to analyze on my own,
18 go through and show that I could use the policy and
19 procedure correctly, utilize the instruments correctly, and
20 come to the correct conclusions on that type of evidence. I
21 was then deemed competent in each area. So each area of
22 testing would have the training, the classes, and then the
23 competency test.

24 Q And do you have any other training in this area that
25 would --

1 THE COURT: Solicitor, hold that question. I've got
2 Mr. Shaffer standing.

3 MR. SHAFFER: Your Honor, I stipulate to a lot of
4 expertise. I'm not sure what he's putting her in as, but
5 I'd probably stipulate to her expertise in what he's
6 contemplating putting her in as.

7 MR. MOWRY: It is expertise in gunshot residue and
8 gunshot residue analysis.

9 MR. SHAFFER: And, Your Honor, I would definitely
10 stipulate to that. I mean, obviously --

11 MR. MOWRY: That's fine, Your Honor. That was what I
12 was getting at.

13 THE COURT: All right. The Court does find Ms. Nates
14 as an expert in those two areas. You may proceed.

15 MR. MOWRY: Thank you, Your Honor.

16 Q Lieutenant Nates, tell us about gunshot residue, if you
17 will. That is what you were asked to do in this particular
18 case; is that right?

19 A That is correct.

20 Q The analysis for that. Tell us about it in some
21 detail, if you would.

22 A Like I stated prior, gunshot residue is the residue
23 that is produced when a firearm is discharged. When we are
24 asked to analyze for gunshot residue, usually we are
25 supplied with gunshot residue collection kits that have been

1 taken from the suspect, or the victim, or a witness to the
2 crime. We also receive clothing in some instances.
3 Sometimes this can aid in the investigation where we will
4 actually physically collect samples from the clothing to
5 then analyze for GSR. A GSR kit is -- consists of what we
6 call particle lifts. They come in a sealed envelope that we
7 provide to the agencies. May I look at one of these, just
8 --

9 Q Oh, absolutely. And just -- you are referring to right
10 now State's Exhibit number 88.

11 A This is the outer packaging for the kits that we
12 provide, and we provide these kits so that we're able to
13 provide a quality control check on the adhesive that is used
14 for the collection. We want to make sure the adhesive is
15 clean before the officers are using it for any type of
16 collection. Inside of here would be what are called
17 particle lifts. It's about this big (indicating). It's a
18 little round sample area that has a light adhesive on it.

19 MR. MOWRY: If you wish to open that packet, if the
20 Defense doesn't have any objection.

21 MR. SHAFFER: No, Your Honor, I have no objection.
22 Your Honor, can I approach just for a moment?

23 THE COURT: Sure.

24 MR. MOWRY: All right. Your Honor, at this time, based
25 on the Defense stipulation, we would move into evidence

1 State's Exhibit Numbers 101 and 88.

2 THE COURT: Okay. Without objection, 88 and 101 are
3 into evidence.

4 (Whereupon, State's Exhibit Numbers 88 and 101 were
5 admitted into evidence.)

6 MR. MOWRY: And for the record, I have cut open the
7 inner envelope, the white envelope for State's Exhibit No.
8 88 for Lieutenant Nates.

9 THE COURT: Okay. And for purposes of the record, 88
10 relates to the Defendant, and 101 relates to Ms. Prophet.

11 MR. MOWRY: Yes, sir. Just one moment, Your Honor.

12 THE COURT: Sure.

13 Q Go ahead. I'm sorry.

14 A So each of the kits, it will be -- it is sealed when
15 the officer received it. They'll open it up and there is
16 what is called a GSR information sheet inside. This
17 includes -- it's a sheet for them to collect information on
18 who they are taking the GSR kit from. This comes into play
19 because gunshot residue is considered very fragile evidence,
20 and once a person has been near a gun that was fired, or
21 fired a weapon, six hours after that incident we have no
22 expectation to find any gunshot on their hands. So if
23 someone collects a GSR kit from a person that is six hours
24 after this expected shooting, we don't perform an analysis
25 on it. So that's information that we need is the time and

1 date of the shooting and the time and date of the
2 collection. And it also has the name on the kit so that we
3 can make certain it matches what the evidence was submitted
4 as. So that's in every kit.

5 Q So time is critical then?

6 A Time is critical on living suspects GSR kits, or a
7 living subjects. So there would be four of these in the old
8 kits. We've recently changed the kits, so there's only two.
9 But in this case there were four of these, what we call,
10 particle lift. They're labeled right palm, right back, left
11 palm and left back. This refers to the areas of the hands.
12 The officer or the coroner or the investigator will then
13 take the top off and just dab it over each area of the hands
14 to collect any evidence that may be present on the hands.
15 They then enclose it and seal it back into the container for
16 us to perform the analysis.

17 Q And what are you looking for in the analysis?

18 A When we analyze for gunshot residue we are specifically
19 looking for the primer gunshot residue. We are looking for
20 microscopic molten particles that contain three elements
21 that are found in the primer composition. They contain
22 barium, antimony and lead. In combination, a particle that
23 is molten that contains these elements is considered
24 characteristic of primer gunshot residue.

25 Q Okay. I know your expertise is not necessarily in

1 firearms, but you've talked about primer residue. What is
2 primer?

3 A The primer is the portion of the cartridge that is
4 considered the ignition point. It is what the firing pin
5 hits, it ignites, burns, and then the powder catches on fire
6 and it forces the bullet out of the weapon. So it is just
7 the tiny part of the cartridge that contains the barium,
8 antimony, and lead.

9 Q And we're talking this process of the -- again, you're
10 not -- this is not your area of expertise. But the firing
11 pin hitting the primer, the primer causing the gunpowder to
12 ignite and expelling the projectile. This is in
13 microseconds, isn't it?

14 A It is.

15 Q So you're looking for what three elements?

16 A We're looking for barium, antimony, and lead.

17 Q And you talked about molten elements; is that right?

18 A It is.

19 Q How can you tell that they're molten?

20 A When we analyze gunshot residue samples using what is
21 called a scanning electron microscope. It is a very high
22 powered -- very high powered microscope that will scan over
23 each sample, take an x-ray of any particles it finds, and
24 then we can determine what elements are present. It also
25 does imagining. A scanning electron microscope without an

1 EDX detector only does imaging. So a lot of microscopes
2 will look -- they look at pollen particles or bacteria. In
3 this case we're looking at the morphology of the particle.
4 So we have to focus the particles and present a picture of
5 the particles.

6 Q Excuse me ignorance, but what is an EDX?

7 A It is an x-ray detector. So it is -- it will hit your
8 particle and every element will give off what they call
9 x-rays, which are then recorded, and they're specific to
10 each element. So antimony will give off, when it's hit with
11 this light beam, a specific x-ray pattern. So then we look
12 for that pattern to determine what's present.

13 Q And from your experience you're able to recognize those
14 various patterns; is that right?

15 A We're able to recognize them, and the software aids us
16 as well because it goes through an identification procedure
17 that we then have to go and verify.

18 Q Did you go through that process in this case with both
19 State's Exhibits 88 and 101?

20 A I did.

21 Q Were you able to render any determinations in this
22 case?

23 A I was.

24 Q Can you tell us what those findings were?

25 A Would you like me to read the result?

1 Q Yes, if you would.

2 A Item 13 was a GSR kit from Ronald Duyane Davis. And on
3 this GSR kit, which I analyzed with the scan electron
4 microscope, I found particles characteristic of gunshot
5 primer residue. Now, part of the results, we have to
6 explain what it could mean. In general, particles
7 characteristic of gunshot primer residue are microscopic
8 molten particles that contain elements lead, barium and
9 antimony. We specify in general, because there are cases
10 when you can have particles that are not molten that are
11 associated with GSR. As an analyst, we have to look at the
12 entire population of what we find on hands to come to that
13 determination. And the rest of the result is gunshot powder
14 residue can come from discharging a firearm, being in the
15 vicinity to the discharge of a firearm, or coming into
16 contact with a surface that has gunshot primer residue on
17 it.

18 Q Now, it would be important to know what sort of
19 environment this evidence was taken from; is that right?

20 A Normally with gunshot residue, if it is -- if a gun is
21 discharged within a small area, say a bathroom, a small
22 bedroom, a vehicle, anyone in that close vicinity will
23 potentially have GSR on their hands, and we're not able to
24 determine if they have it on their hands from firing or from
25 being near it. If you fire outside, a lot of times the

1 wind, rain, any of the outside forces can affect the
2 deposition of the GSR.

3 Q Okay. And if the firearm was discharged several times,
4 that would multiply the conditions that you're talking about
5 there; is that right?

6 A Each time you fire a gun it produces more GSR, so it
7 can add more to it, but it doesn't necessarily mean you're
8 going to have 50 percent more, 100 percent more. It varies.

9 Q Right. And if it was discharged seven times perhaps in
10 a small area, what -- what effect would that have?

11 A If it's discharged in a small area multiple times I
12 would expect anybody in that small area to have GSR on them.

13 Q So what was your finding on the first test that you
14 were referring to?

15 A On item 13, the GSR kit from Ronald Davis, I found
16 multiple particles characteristic of gunshot powder residue.

17 Q And what would be -- within a reasonable degree of
18 scientific certainty, what would be your conclusion -- what
19 conclusion would you be able to reach from that finding?

20 A From this finding I can tell you that he was near a
21 weapon when it was fired, or if he fired a weapon, or
22 handled an object that had gunshot residue on it.

23 Q And you don't know which?

24 A I do not.

25 Q Is there any other way to determine whether or not he

1 fired a gun?

2 A No. In most of the papers that is the problem. The
3 GSR test has been here for a long time, but it's the
4 interpretation. You really can't say because it's so
5 fragile. If someone fires a gun and then washes their hands
6 and I have no evidence to support they fired, or I have a
7 bystander that may have GSR deposited on them. I can't tell
8 you if it was from firing or handling, or being near the
9 weapon.

10 Q So Abby from NCIS, or the folks from CSI or anything
11 else, any of the TV shows, is that real --

12 MR. SHAFFER: Objection.

13 Q -- or is it drama?

14 THE COURT: Wait a minute. Do I have an objection?

15 MR. SHAFFER: Yeah, leading, Your Honor.

16 THE COURT: I didn't find it to be leading. Answer the
17 question, Lieutenant Nates, please.

18 A Most of those shows are loosely based on science, but
19 they do have a lot of storyline behind it, and a lot of it
20 is not plausible.

21 Q How much of an affect has that had on your job as far
22 as education is concerned?

23 A As far as education or testifying?

24 Q Both.

25 A Surprisingly, we have some issues with it, because a

1 lot of people do believe those shows, and they believe that
2 if I didn't find something on someone's hands, then that
3 definitely means they didn't fire a gun. They do a lot of
4 things that we wish we could do. But it is frustrating when
5 people believe that to the point where they think we should
6 have done more when we couldn't have.

7 Q So with regard to Mr. Davis again, what were your
8 findings?

9 A I found particles characteristic of gunshot primer
10 residue on his hands.

11 Q And your conclusion, just to sum up on him?

12 A Was that he was near a weapon when it was fired, fired
13 a weapon, or handled something with gunshot residue on it.

14 Q And you're not able to tell which?

15 A No.

16 Q What about with Ms. Prophet with regard to State's
17 Exhibit number 101?

18 A Item 14, which if you were wondering, this is all of
19 our evidence we mark with the lab number and the item
20 number. The lab number is the unique identifying number
21 that is assigned to each case when it comes in the
22 laboratory, and then sequential items of evidence will be
23 given a different item number. In this case, her kit was
24 item number 14. Item number 14 was analyzed in the same
25 manner as item number 13, and I also found particles

1 characteristic of gunshot primer residue on her hands.

2 Q And your conclusion based on those findings?

3 A She was near a weapon when it was fired, which we know
4 she was shot, so I do expect to find GSR on a shooting
5 victim. She could have fired a weapon, or handled something
6 with gunshot residue on it, prior to becoming deceased.

7 Q So based on your education, training, or experience,
8 can you tell in either of these cases, do you have an
9 opinion based on reasonable -- to a reasonable degree of
10 scientific certainty that the victim fired a gun, Shana
11 Prophet?

12 A It is one of the scenarios, but I cannot exclude it, or
13 I cannot say that is the only one.

14 Q There's been talk of clothing and GSR. Can you give us
15 a little bit of an idea what kind of tests might be
16 available for that?

17 A On a person who is suspected of firing a weapon we can
18 analyze their clothing. Potentially if you fire a weapon,
19 gunshot residue can be deposited on the sleeves, your pant
20 legs or the chest area of their clothing. We can perform
21 that analysis. Usually we do it if the GSR kit was
22 collected beyond the six hours and we can't look at the
23 hands. We also -- prior, when I worked at -- probably prior
24 to 2010 we would perform an examination on victim's
25 clothing, but it was for a different type of test. It was

1 for a distance determination to see if we were able to
2 determine how far the victim was from the muzzle of the gun
3 when they were shot. That is a test that we no longer
4 perform at the laboratory.

5 Q And why is that?

6 A It was an administrative decision that was -- they came
7 to that decision because -- the firearms department was not
8 doing the testing. The trace department was. And the trace
9 department, we were no longer considered Class 1 officers,
10 so we no longer went through the Police Academy and received
11 any firearms training. So most of our people coming in were
12 not familiar with weapons, so it was more of a safety issue
13 to have us doing all this test firing and testing. And due
14 to the small amount of cases that we did receive, and the
15 limited results we were able to provide, we decided we were
16 no longer going to perform that test.

17 Q So that wouldn't have been available even if, for
18 example, Lieutenant McIntosh had wanted it?

19 A Not in 2016, no.

20 Q Okay. What kind of distances from a firearm can
21 gunshot residue and primer residue spread?

22 A It depends on the firearm and the conditions and even
23 the type of ammunition. There's been recent testing that
24 has shown that a person who is standing to the sides or to
25 the back of a shooter up to three feet can have residue

1 deposited on their hands from that firing, and also they
2 have done testing from the muzzle of the gun outward and
3 found it to approximately 60 feet.

4 Q Six zero feet?

5 A Yes.

6 Q So again, if we're talking within the confines of a
7 small room -- I believe this is listed on here about 12 by
8 -- 12x14, let's call it. If a gun is discharged in that
9 room, what would be your expectation for anybody that was in
10 that room? Would that person have gunshot residue on them?

11 A I would expect to find gunshot residue on people in
12 that room if they were near that weapon.

13 MR. MOWRY: Thank you, ma'am. I believe that's all I
14 have.

15 THE COURT: Cross-examination.

16 MR. SHAFFER: Yes, Your Honor, may we approach just for
17 a moment?

18 THE COURT: Sure.

19 (Whereupon, a sidebar was held in the presence of, but
20 out of the hearing of the jury.)

21 THE COURT: Madam Forelady, ladies and gentlemen of the
22 jury, I think before we go into cross-examination of this
23 witness we're going to take a short break. So if you'll go
24 back to the jury room and we'll get you back out shortly.
25 Again, remind you no discussions about this case among

1 yourselves.

2 (Whereupon, the jury exited the courtroom at 11:19
3 a.m.)

4 THE COURT: We'll be in recess about 10 minutes. .
5 You're free to move around. You just can't talk to anybody
6 about your testimony, but you're certainly free to move
7 around, take a break, whatever you need.

8 (Whereupon, the witness stepped down from the witness
9 stand.)

10 (Whereupon, a recess was held from 11:20 a.m. to 11:34
11 a.m.)

12 THE COURT: Let's bring the jury out please. Oh, wait
13 a minute.

14 MR. SHAFFER: Your Honor, my client has said that he
15 had talked to some family member that said that they
16 couldn't be in here because they were witnesses. I don't
17 think we have a sequester -- we didn't move to sequester the
18 witnesses.

19 MR. MOWRY: We haven't told that to anybody either.

20 MR. SHAFFER: And I'm sure they didn't. I'm not saying
21 they did.

22 MR. MOWRY: Right.

23 MR. SHAFFER: I'm just saying -- I just wanted to
24 clarify and make sure that that's on the record.

25 THE COURT: Right. We did not deal with sequestration.

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1 So, is the family member currently out here somewhere?

2 MR. SHAFFER: No, Your Honor. We'll get them here
3 tomorrow.

4 THE COURT: Okay.

5 MR. SHAFFER: Thank you.

6 THE COURT: Yeah, certainly they're free to be in the
7 courtroom. Anybody that wants to be.

8 MR. MOWRY: Just for the record, Your Honor, I don't
9 even like sequestration. I think it's a silly exercise.

10 THE COURT: All right. Now let's bring the jury out.

11 (Whereupon, the jury entered the courtroom at 11:34
12 a.m.)

13 THE COURT: Mr. Shaffer, are you ready for your cross-
14 examination?

15 MR. SHAFFER: Yes, Your Honor.

16 CROSS-EXAMINATION

17 Q Ms. Nates, so you're the lieutenant in charge of trace
18 evidence, correct?

19 A Yes.

20 Q And trace evidence would include paint, fiber and
21 textiles, glass, fire debris, gunshot residue, explosives,
22 general and physical and chemical analysis, and unknown
23 identification comparisons, correct?

24 A Yes.

25 Q And you work for SLED, correct?

1 A Yes.

2 Q And through SLED, basically they keep track of your CV,
3 correct?

4 A They do. We're supposed to update it yearly.

5 Q Okay. So they keep track of all your certifications
6 and qualifications and things like that, correct?

7 A Yes.

8 MR. SHAFFER: I'm going to have that one. Do you want
9 me to have her ID it or just --

10 MR. MOWRY: I assume she can do that.

11 (Whereupon, Defendant's Exhibit No. 4 was marked for
12 identification.)

13 Q Ms. Nates, I'm showing you what's been marked
14 Defendant's Exhibit 4, which I think the State's going to
15 stipulate into evidence.

16 THE COURT: That's 4?

17 MR. SHAFFER: That's correct, Your Honor.

18 THE COURT: Come up here a minute.

19 (Whereupon, a sidebar was held.)

20 (Whereupon, Defendant's Exhibit No. 4 was re-marked as
21 Defendant's Exhibit No. 3 for identification.)

22 Q Ms. Nates, I'm showing you Defendant's Exhibit 3, which
23 I believe is going to be submitted into evidence. What does
24 that appear to be?

25 A A copy of my SOQ, which is a Statement of

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1 Qualifications that is provided through our admin
2 department.

3 Q And that's the document we were talking about just a
4 minute ago, right?

5 A Yes.

6 Q Where they keep track of everything you're qualified
7 in, correct?

8 A Yes. But it was not there when I started, so it was
9 kind of -- they had to fill in...

10 Q Okay. Are you qualified in other things that aren't on
11 there?

12 A No. I'm pretty sure everything is on there.

13 Q Okay. So one of the things you mentioned in here is
14 fiber and textiles. Explain what that is.

15 A Fiber and textile examination, normally what we receive
16 is usually in cases for a burglary, or potentially a
17 homicide or a hit and run. Anytime a -- for example, a hit
18 and run. If someone is hit by a vehicle, there is enough
19 force and pressure from that incident to possibly embed
20 fibers in that vehicle. If the investigating agency can
21 find a vehicle and they have the victim's clothing, we can
22 perform what is called a fiber comparison between the two
23 items of evidence. We also receive in burglary cases, if
24 someone breaks into a building and possibly fibers will get
25 caught up in glass they broke or in a door jam, or they can

1 leave fibers somehow during a struggle if we can then
2 compare it to the clothing to see if they are a match.

3 Q So if you had something that's made out of fibers and
4 it's in contact with something else, it's possible to maybe
5 say that the two objects were touching each other at some
6 point?

7 A With a fiber examination, like I explained earlier, we
8 have physical fit examinations.

9 Q Uh-huh.

10 A Some of our fiber examinations may be a tear or a piece
11 of fiber that has been physically removed from an object, we
12 can physically fit it back to that object and state it was
13 at one time a single item. With a fiber comparison, if
14 Walmart sells, say, 100 of a certain type of purple shirt,
15 and this is the shirt in the question, those fibers that are
16 found at the scene potentially could have come from that
17 shirt, or any other shirt that was made at the same time.
18 So our fiber examinations, unless it is a physical fit,
19 never go -- say exclusively it came from that single item
20 only.

21 Q So you can't exclusively say anything from the fiber
22 examination, but it -- or you might not be able to
23 exclusively say anything. But it's a piece of a puzzle,
24 right?

25 A It is a piece of the puzzle. Like I said, it's usually

1 in burglaries. A lot of times fiber evidence has no bearing
2 if a -- the items in question, if the people live together,
3 or say that person was known to have ridden in that car
4 where the fibers were found, or the fibers were found in a
5 house they stayed in a lot, because you would expect to find
6 them there. Finding them there doesn't mean they should not
7 have been there.

8 Q Okay. And gunshot residue is a piece of the puzzle,
9 right?

10 A It is.

11 Q Now, I know that you all talked a little bit about CSI,
12 and obviously some of that stuff is fake, right?

13 A Yes, a lot of it.

14 Q But what you do is basically you don't necessarily
15 determine exactly what happened, correct?

16 A No.

17 Q In most situations you're just adding pieces of the
18 puzzle that help investigators figure out exactly what
19 happened, right?

20 A Yes.

21 Q Help juries figure out exactly what happened, right?

22 A Hopefully.

23 Q Now, specifically related to this fiber analysis
24 question. If I had, say, one of these bags right here, and
25 I said -- and you heard from investigators that it was

1 stored underneath a pillow possibly. Could you maybe test
2 the pillow and figure out if that's correct?

3 A There possibly would be fiber transfer. I could not
4 guarantee it, because there's no force or a violent act ,
5 taking place with a bag being placed under a pillow. But we
6 could look at the bag for fibers from the pillow and the
7 pillow for potential green fiber transfer.

8 Q Okay. And that might end up being a piece of the
9 puzzle, right?

10 A It could be.

11 Q Okay. Did you do that in this case?

12 A I did not.

13 Q Now, I think you had talked about --

14 MR. MOWRY: Your Honor, I would ask Mr. Shaffer to
15 remove that from the evidence table, please.

16 MR. SHAFFER: I apologize, Your Honor.

17 MR. MOWRY: And I would ask him to put it out of sight.
18 It's not a piece of evidence.

19 MR. SHAFFER: It's a demonstrative exhibit, but I'll
20 move it.

21 Q So you said the physical fit thing. Is that something
22 relatively new? I don't think I've ever heard that before
23 now.

24 A No. It's been there prior to my being hired. It was
25 fracture match examination. They've changed the name to fit

1 the categories of testing for our lab accreditation.

2 Q Oh, okay. Okay. Now, you did do a gunshot analysis of
3 this test, correct -- I mean, in this case, right?

4 A I did a gunshot residue analysis test.

5 Q Residue analysis, yeah. And the gunshot residue test
6 --

7 MR. SHAFFER: I'll go ahead and --

8 MR. MOWRY: Your Honor, approach for just one moment?

9 THE COURT: Sure.

10 (Whereupon, a sidebar was held in the presence of, but
11 outside of the hearing of the jury.)

12 THE COURT: Show it to Solicitor Mowry first. Just
13 make sure he's good with whatever you've done.

14 (Whereupon, Defendant's Exhibit No. 4 and 5 were marked
15 for identification.)

16 Q I'm going to show you what's been marked Defendant's
17 Exhibit 4 and Defendant's Exhibit 5. Do you recognize those
18 documents?

19 A Four is a portion of the stage holder setup for the
20 SEM, and five appears to be a copy of the report that I
21 generated for this case.

22 Q Okay. So you generated a --

23 MR. SHAFFER: I'd like to move both of those into
24 evidence at this time, Your Honor.

25 THE COURT: Okay. Does the State have any objection?

1 MR. MOWRY: With --

2 MR. SHAFFER: Moving 4 and 5 into evidence.

3 MR. MOWRY: Okay. Her report?

4 MR. SHAFFER: Yeah.

5 MR. MOWRY: That's fine.

6 THE COURT: Into evidence for the Defense, 4 and 5.

7 (Whereupon, Defendant's Exhibit Numbers 4 and 5 were
8 admitted)

9 Q So Defendant's Exhibit 5 is like a summary of what you
10 found, correct?

11 A That is the official report that I generated to convey
12 my findings and my results.

13 Q And the data that you used to get those findings comes
14 in a big -- big stack, right?

15 A That would be my case file.

16 Q Your case file is actually fairly extensive, correct?

17 A Depending on the case. Some can run from 10 pages,
18 some can be over 300 pages.

19 Q In this case it --

20 A This one was 64 pages.

21 Q So a stack of paper maybe approximately the size of
22 that over there?

23 A Of what?

24 Q Of that pile.

25 A Yeah, this is --

Jennifer Nates-Cross Examination

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1 Q Okay. And Defendant's Exhibit 4 came from that pile,
2 correct?

3 A That was page -- a portion of page nine.

4 Q So a portion of page nine. And there's other cases
5 that are referenced in -- on page nine, correct?

6 A Yes.

7 Q So we're obviously not here to talk about other cases,
8 right?

9 A Correct.

10 Q Okay. And those are other cases with completely
11 different individuals, correct?

12 A Probably a completely different county or police
13 agency.

14 Q Okay. Nothing referencing Ronald Davis, right?

15 A No. The only thing on the bottom that you cut off was
16 where our blank QA is for that line, which is on the bottom
17 with the other case.

18 Q What I'm asking -- okay. So when they -- they do the
19 gunshot residue -- and I'm going to ask you to dumb this
20 down as much as possible. Gunshot residue is basically
21 powder, right?

22 A It is particulate matter. It's not powder because you
23 cannot see it.

24 Q Okay. Very, very tiny pieces, particles, right?

25 A Microscopic, yes.

1 Q Microscopic particles. They come out, in this case, of
2 an ejection port and out the barrel, right?

3 A Any opening in the gun it will come out of.

4 Q And if it's a semiautomatic gun it's out the ejection
5 port and out the barrel, right?

6 A And the trigger.

7 Q And the trigger?

8 A Yes.

9 Q So some of it will go through the trigger?

10 A Yes.

11 Q Okay. And you end up testing -- you provide kits for
12 SLED to test, correct?

13 A We provide kits for the agencies to use for collection.

14 Q Okay, yeah. So SLED sends out to all the agencies in
15 South Carolina the kits that are supposed to be used for
16 testing this -- or collecting the gunshot residue, right?

17 A We provide them and they pick them up. We don't send
18 them.

19 Q And you're saying that gunshot residue can be from
20 being around a gun when it's fired, it can be from firing a
21 gun, or from handling a gun, right?

22 A Handling an object with gunshot residue present on it.

23 Q And a -- would you expect someone who handled a gun who
24 had been fired to have gunshot residue on them?

25 A As in a victim of a shooting?

1 Q Or in any case. I mean, if I -- say Chelsea went to
2 the -- my co-counsel went to the firing range and shot a gun
3 and I -- I picked up the gun and I held it before she
4 cleaned it, would I have gunshot residue probably on my
5 hands?

6 A More than likely, yes.

7 Q Okay. If I fired a gun and then put it inside a green
8 bag, could you test the inside of the bag maybe for gunshot
9 residue?

10 A We could try to.

11 Q So if that gun had been fired, maybe the bag might
12 actually have gunshot residue in it?

13 A It would, but I would not be able to give you any
14 timeframe on when it was deposited. If that bag was used to
15 store that gun for years, the gunshot residue could be in it
16 from five years prior.

17 Q Of course, because it's just a piece of the puzzle,
18 right?

19 A Right.

20 Q It's not everything, it's just a piece of the puzzle,
21 right?

22 A Yes.

23 Q So when the -- when you test it, and the kits you
24 provide, it says to test the front of a hand, then test the
25 back of a hand with a different swab, right?

- 1 A A particle lift. We no longer --
- 2 Q Particle lift.
- 3 A -- analyze swabs. We used to have swabs. We no longer
- 4 test those.
- 5 Q And I'm sorry. I'm probably about five years behind
- 6 everything you all are talking about. Okay? So you do a
- 7 particle lift on the front of the hand. Then you do a
- 8 separate particle -- then you put it in a container and seal
- 9 it, right?
- 10 A Yes.
- 11 Q Then you put a separate particle lift on the back of
- 12 the back of the hand?
- 13 A Yes.
- 14 Q You put in a container and seal it, right?
- 15 A Well, you put the cap on the container, and then when
- 16 you've collected all the samples you then seal the envelope
- 17 they are contained in.
- 18 Q You -- why do you put the cap on the container? To
- 19 keep them separate, right?
- 20 A To keep them separate, and so they don't touch anything
- 21 else.
- 22 Q Okay. And you do it -- you actually do -- in the kit
- 23 would have four different particle lifts, correct?
- 24 A The older kits we provided did have four particle
- 25 lifts.

1 Q So it would have front --

2 A Back.

3 Q -- back, front and back?

4 A Yes.

5 Q And you test each of those particle lifts separately,
6 correct?

7 A We do.

8 Q What is the purpose of testing them separately?

9 A In the past, it was just for a collection procedure,
10 because one particle lift would lose its stickiness before
11 it would get to the other hand, so there would be -- it
12 would not pick up any evidence after the sticky had gone off
13 of that particle lift. So we had -- it was a four particle
14 lift kit. Currently with other agencies and ourselves we
15 have moved to a two particle lift kit. So we have one for
16 the right hand, one for the left hand now. We no longer do
17 the four.

18 Q Okay. So you no longer test front and back?

19 A We do on the current kits that are still in-house, but
20 the new kits that are being distributed only contain two
21 particle lifts per person.

22 Q Now, obviously this is somewhat of an evolving area of
23 science, right -- or the interpretation is evolving right?

24 A The interpretation is evolving. The science behind the
25 SEM has been there for -- I think the first SEM was in the

1 1930s. So the Scanning Electron Microscope has been around
2 for a very long time, but the interpretation continually
3 evolves.

4 Q Okay. So the interpretation is evolving. In the past
5 wasn't it true that, you might say, there might be a
6 different interpretation for having gunshot residue on the
7 palms as it would be on the back of the hand?

8 A Some people did do that interpretation. One of the
9 prior tests that we used to analyze for GSR was called an
10 ICPMS. It's an inductively coupled plasma mass
11 spectrometer. It was using a liquid sample to analyze for
12 levels of metals. And some laboratories would look at those
13 levels and determine if they were very high levels, but that
14 is a test we no longer perform.

15 Q Okay. And the theory -- or the interpretation at least
16 used to be that if you had gunshot residue on the back of
17 your hand and not on the front, it's more likely that you
18 were holding a gun when it went off, right?

19 A Normally when you -- when you look at gunshot residue,
20 it's so fragile. So if you make an interpretation -- if I
21 find GSR on the back of my hands, more than likely, in my
22 opinion, with all the cases I've done and all the
23 testimonies I've done, if I find it on the back of the
24 hands, more than likely that person was near a weapon when
25 it was fired or fired a weapon, because I'm not going to

1 walk around like this and touch the back the my hands with
2 things. I'm not going to pick up a gun with the back of my
3 hands. So if you find it on the back, normally it's more
4 consistent with being near firing as opposed to handling. .
5 But you have to be careful because the palm of your hands
6 you can contaminate them from handling and then transfer to
7 the back, which is why we've evolved and changed our
8 interpretation that if -- we're looking for the presence of
9 GSR. If we find it, here are the things I can tell you. If
10 there are additional circumstances with that case, maybe the
11 victim was a football field away when he was shot, I may be
12 able to rule out transfer as opposed to the other two. But
13 when I find GSR I can tell you that person handled a weapon,
14 was near a weapon when it was fired, or fired a weapon.

15 Q Okay. And you're saying -- but you're saying that in
16 some -- based off of some expert interpretation, the back of
17 the hand is more consistent with firing a gun than handling
18 a gun, correct?

19 A That can be assumed, yes.

20 Q Okay. And in this particular case, you actually tested
21 the front and back separately, correct?

22 A I did.

23 Q So, and you tested each -- each hand's palm, each
24 hand's back separately, correct?

25 A I analyzed all of them, but I did not -- for Shana

1 Prophet I did not completely process the left back because I
2 had already found enough GSR to make the positive call. She
3 was a shooting victim, so we expect to find GSR on a
4 shooting victim. We are, 99.9 percent of the time, not ever
5 to able tell you the victim fired a weapon as opposed to
6 having gunshot residue on them from being shot.

7 Q Okay.

8 A So that is why it is our policy now, once we find GSR,
9 we can cease analysis of the other particle lifts.

10 Q But you did find it -- and specifically on the right
11 hand, you did find GSR on the back of the hand, correct?

12 A I found it on her right palm, her right back, and her
13 left palm.

14 Q So right palm, right back, and the left palm you didn't
15 test the back?

16 A I did not test the left back. I analyzed it, but I did
17 not test it.

18 Q And the GSR comes out basically like a big cloud out of
19 the barrel, correct?

20 A It depends on the gun. It does come out like a cloud.
21 There's testing out there that some guns will deposit GSR
22 with one shot and not with another. It's very fragile and
23 it depends on the gun and the caliber. That's why we can't
24 -- when we test these, the main reason to have these
25 particle lifts is for surface area for collection. If I

1 wanted to use one to collect from all areas, it would
2 probably have to be about this big (indicating) which
3 doesn't fit in our instrument. So we no longer report the
4 areas we find it. We keep this for our tracking purposes
5 just so we have it documented, so we know which sample it
6 came off of. If it has to go to retesting, I don't want to
7 say I found it on -- don't tell you where I found it, and
8 then have to test all four particle lifts.

9 Q Okay.

10 A So since it is so fragile, we look for the presence or
11 absence. That is what we look for. I can't tell you if
12 there's none on their palms that means they were holding a
13 gun and therefore it wasn't deposited on their hands. I
14 can't tell you what position they were in. If they had the
15 gun behind their head and fired this way (indicating).
16 That's not something we're able to because of how fragile it
17 is. I would be making assumptions off of something that may
18 have been removed after the act.

19 Q And it's just basically one piece of the puzzle, right?

20 A Obviously -- yes, it's one piece of evidence.

21 Q Okay. So, now I'm going to talk about something a
22 little bit different. You had -- you had said that y'all
23 had previously done some sort of GSR test and y'all don't do
24 that anymore?

25 A Are you talking about a distance determination test?

1 Q Yeah. You said you -- you named some sort of --

2 A The ICPMS?

3 Q Yeah, there you go.

4 A Yes.

5 Q If you wanted to have that done, would SLED be able to
6 send it out now for somebody else to do it?

7 A We do not send anything out for that, and you have to
8 collect the evidence in a different manner. You have to use
9 a nitric acid solution that you wet the swabs with and then
10 swab the areas of the hands.

11 Q So SLED doesn't send anything out to any other crime
12 labs?

13 A Not for that test. No, we don't.

14 Q But they do for other tests, right?

15 A I know DNA sends some things out. And our lab doesn't
16 -- the trace department is a little different from, say,
17 DNA. They do outsourcing. Our department does not. If we
18 have a test that we can't perform, we will let the
19 submitting agency know, hey, the FBI may be able to do this
20 test. You need to send the evidence to them. But they have
21 to be the ones to initiate it.

22 Q So the clothing, you all used to test whether there was
23 something -- where there was stippling -- well, excuse me.
24 Explain the difference between stippling and gunshot
25 residue?

1 A Stippling and tattooing are two things that the
2 pathologist looks for. We don't look for that, because
3 usually it is on skin. That is specific to skin. If it is
4 embedded in the skin. Tattooing is when the gunpowder
5 particle is embedded in the skin. Tattooing is when it
6 embeds and then comes out and you can see the marks from it.
7 We would not analyze for that. What we performed was a
8 bullet hole examination on a shooting victim's clothing. If
9 we had the firearm that was used in the shooting and if we
10 had enough submitted ammunition, because ammunition can
11 vary. And what we did at that time was shoot test patterns
12 if there was a pattern on the clothing that we could
13 discern, and then do a comparison and give you a range of
14 the possible distance they were from the muzzle of the gun
15 when they were shot. But if we didn't have the weapon, if
16 we didn't have submitted ammunition, or if the clothing was
17 very bloody, a lot of times we could not do that test.

18 Q Okay. And are you saying that there's no crime lab you
19 call can send it to that would be able to do that test on
20 bloody clothes?

21 A The FBI does do distance determination, but I believe
22 they require the weapon and the ammunition, in addition to
23 the clothing.

24 Q So there's no testing that would be available without
25 the weapon; is that what you're saying?

- 1 A Not to my knowledge.
- 2 Q Okay. Are fingerprints part of the trace evidence?
- 3 A No, sir.
- 4 Q That's a separate unit?
- 5 A That's in the latent print department.
- 6 Q That's in the same building though, right?
- 7 A It's on the second floor and we're on the third floor,
- 8 yes.
- 9 Q So if I wanted something tested for fingerprints I
- 10 could send them to your office, but on the second floor and
- 11 not the third floor?
- 12 A If you want to test for latent prints when the evidence
- 13 is submitted, it needs to be specified what they want
- 14 tested, because a lot of times with evidence latents and,
- 15 say, trace may conflict with each other, so they have to
- 16 pick which one they want done. But it is an exam that is
- 17 requested for evidence that can be done.
- 18 Q Who requests it?
- 19 A The investigating officer would request it. However
- 20 submits the evidence.
- 21 Q So the lead investigator on a case would request it,
- 22 right?
- 23 A I'm assuming. I don't do that.
- 24 Q Did you all do any sort of analysis whatsoever on this
- 25 box of bullets?

1 MR. MOWRY: Your Honor, this is outside the scope.

2 MR. SHAFFER: It's cross.

3 THE COURT: It's cross-examination

4 MR. MOWRY: She didn't have anything to do with that.

5 That's already been testified to. It's outside her scope of
6 knowledge --

7 MR. SHAFFER: I'm just asking her --

8 MR. MOWRY: -- as far as this case is concerned.

9 THE COURT: Well, I think he can ask did she have any
10 -- did she do any testing in her field of expertise as it
11 relates to the box of bullets.

12 A I did not. This is not showing any of my initials on
13 it or dates when I received it, and there's no mention of it
14 in my report. So I -- that is not anything I can identify I
15 did anything with.

16 Q Okay. So you never seen the box of bullets?

17 A Not that box of bullets.

18 Q Okay.

19 MR. SHAFFER: Court's indulgence.

20 THE COURT: Sure.

21 MR. SHAFFER: No further questions.

22 THE COURT: Redirect?

23 MR. MOWRY: Just a couple.

24 REDIRECT EXAMINATION

25 BY MR. MOWRY:

1 Q I wanted to ask you, is the SLED lab accredited?

2 A It is.

3 Q What does that mean?

4 A We have an accreditation through ASCLD/LAB-
5 International, which means that an outside body accredits us
6 we have to follow specific procedures and policies and
7 things that are put in place to show that we are conforming
8 to scientifically accepted methods and testifying
9 appropriately in Court. It covers all aspects of our
10 department and of the laboratory. It goes from the evidence
11 log-in, to the evidence storage, to how the analyses is
12 performed and how the Court testimony is handled.

13 Q Is that a national organization that does the
14 accrediting?

15 A It is considered internal. It's an ISO 17025. But it
16 is located in the United States for the ASCLD portion.

17 Q And I wanted to ask you -- Mr. Shaffer asked you in
18 cross-examination about the distance from clothing. Not
19 from powder -- not from powder stippling or tattooing or
20 damage to the skin or anything like that, but as far as
21 clothing was concerned. And what did you say were factors
22 that -- you said you do not do those anymore; is that right?

23 A We do not. I was trained in it and I did competency
24 testing in it, but we -- and I performed that analysis from
25 approximately 2000 to 2006.

1 Q What is one of the important factors that you need
2 before you can even do that test?

3 A The things that you need to do that test are the weapon
4 that was used in the shooting, submitted ammunition, which
5 means ammunition that was used in the shooting, because
6 ammunition can vary, and you also need the clothing.

7 Q Okay. And you said if the clothing was blood soaked,
8 what effect would that have on your ability even to do the
9 testing?

10 A What we -- what we did in the past for that test is you
11 would do a physical examination of that clothing. You take
12 the clothing out, lay it out. You would look for the bullet
13 holes and document where the bullet holes were. The purpose
14 of that test is to see if there's a pattern around that
15 bullet hole that you can then reproduce at a certain
16 distance and then make a determination that, say, the
17 shooting was between contact and three feet, three feet and
18 12 feet. So if it is blood soaked when you do the test, you
19 use an acidic acid soaked piece of photographic paper and an
20 iron. You have to heat it. So if it's very blood soaked, a
21 lot of times you're not able to see the particles if they
22 are present to form that pattern. So they may not have any
23 evidence there to see if there's a pattern. So that's why
24 if it's very blood soaked sometimes we would not be able to
25 even perform the analysis.

1 Q But if the gun was not available it would be a moot
2 point then, wouldn't it?

3 A We would not accept it if there was no gun submitted
4 with it, because different guns can vary so much. And if I
5 would look at this and say, oh, that's a pretty big hole,
6 but I don't have a gun, I can't do -- I can't make any
7 determination on what caused that hole.

8 Q And if the clothing was blood soaked that would make it
9 problematic; is that right?

10 A It makes it more difficult to try to perform the
11 analysis.

12 Q But without the gun it's impossible?

13 A You cannot get any distance determination.

14 MR. MOWRY: Thank you very much.

15 THE COURT: Recross?

16 MR. SHAFFER: None, Your Honor.

17 THE COURT: Thank you, ma'am. You can step down.

18 (Whereupon, the witness stepped down from the witness
19 stand.)

20 MR. SIMMONS: The State calls Michelle Eichenmiller.

21 MICHELLE EICHENMILLER, having first
22 been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SIMMONS:

25 Q Can you state your name for the jury?

1 A Michelle Eichenmiller.

2 Q Where do you work, Ms. Eichenmiller?

3 A I work for the South Carolina Law Enforcement Division.
4 I work in the firearms department in the forensic lab.

5 Q And in the forensic lab what -- what do you do in the
6 forensic lab?

7 A I'm in the firearms department, so my job is to analyze
8 any firearms-related evidence that is submitted to the lab.
9 So any fired bullets, fired cartridge cases, firearms, or
10 anything related to that.

11 Q And what kind of training and experience do you have in
12 that field?

13 A I have a bachelor's degree in biology. I also have a
14 Master of Science in forensic science. In order to be a
15 firearms examiner, though, we go through an apprenticeship
16 program. It's about three to four years where I follow the
17 senior examiner to the lab. I learn how they do the job. I
18 do a lot of reading on my own and analysis of practicals.
19 At the end I take a competency, and then they deem me
20 competent to do work on my own.

21 Q And how long have you been working on your own?

22 A Since 2010.

23 MR. SHAFFER: Your I will stipulate that she's an
24 expert in firearms and tool mark analysis.

25 THE COURT: Do you accept the stipulation, Solicitor?

1 MR. SIMMONS: Yes, Your Honor.

2 THE COURT: Okay. She is found to be an expert in that
3 area. You may proceed.

4 MR. SIMMONS: Thank you, Your Honor.

5 Q For this specific case, what pieces of evidence did you
6 receive to do your tests?

7 A I received seven fired cartridge cases and five fired
8 bullets.

9 Q I'm handing you what has been introduced as State's
10 Exhibits 96, 97, 94, 95, 100, 99 and 98. What are those?

11 A Whenever I receive evidence in a case, I would mark it
12 with the case number, the item number, and my initials so I
13 can identify it later.

14 Q And are those the cartridges?

15 A These are the cartridge cases.

16 Q And can you explain to the jury what a cartridge casing
17 is?

18 A The cartridge case is the part of the cartridge that
19 holds everything together. Basically the packaging. So it
20 holds the primer, it holds the gunpowder, it holds the
21 bullet altogether. After firing the cartridge cases, what's
22 left, it's missing the bullet and the gunpowder and then the
23 primer has been fired.

24 Q And what kind of test do you perform on the cartridge
25 casing to determine identification of all the casings?

1 A When we get cartridge cases in the lab, do a worksheet
2 on each one to identify the caliber, any marks that I see,
3 and then I put it in my microscope, which is a comparison
4 microscope. It has two stages and what looks like
5 binoculars, so I can see one stage in one eye and one in the
6 other. I put them up there using magnification. I look at
7 the microscopic marks on them and then make a determination
8 if they were fired by the same firearm.

9 Q And what millimeter is these -- are these cartridge
10 casings?

11 A These are nine millimeter Luger.

12 Q And what brand?

13 A They're Blazer brand.

14 Q And do you have -- did you bring anything with you?
15 Some kind of demonstrative shell casing that we can use?
16 These shell casings are very small, so this might be a
17 little bit bigger for the jury to see.

18 A I did. This is a larger version of this little
19 cartridge case here. It shows you where the primer is, what
20 it looks like after it's been fired, and then that it's
21 empty. There's nothing in it, so...

22 Q And for these seven cartridge casings, did you come to
23 any conclusion if they were fired from the same weapon?

24 A I did.

25 Q And how did you come to that conclusion?

1 A I examined them under my microscope. I compared them
2 each to each other, and then made my determination.

3 Q And you said you also received the projectiles, too,
4 correct?

5 A Correct.

6 Q I'm handing you State's Exhibit 89, 90, 91, 92 and 93.
7 What are those?

8 A These are the fired bullets I examined in this case.

9 Q Okay. And when you get projectiles what's the process
10 that you start with those to identify any markings?

11 A I'll analyze each one. I'll look at it, basically take
12 down caliber, any kind of rifling that I see. The number of
13 rifling on the impressions that I see, the width of those
14 rifling impressions, the direction of twist. Those are all
15 what we call general rifling characteristics. That means
16 that's specific to a lot of different firearms. But you can
17 then use those to narrow down how many different -- from
18 thousands to like hundreds to, you know, just a couple. So
19 those are general, though. And then after that I always put
20 it on my microscope. I'll compare the individual marks that
21 I see and try to determine if they were fired by the same
22 firearm.

23 Q And were you able to determine if all those projectiles
24 were fired by the same firearm?

25 A I was. In my opinion, they were all fired by -- I'm

1 sorry. I misspoke. The cartridge cases. The bullets were
2 actually inconclusive. They had insufficient marks for me
3 to be able to tell if they were all by one firearm. They
4 had the same general characteristics, but the microscopic
5 individual marks that I usually look for, I couldn't find
6 enough of them to make a determination.

7 Q So in your opinion, the seven cartridge casings were
8 fired from the same firearm, correct?

9 A Correct.

10 Q But -- and the five separate projectiles, you said that
11 you could not figure out if those were fired from the same
12 firearm; is that right?

13 A Correct.

14 Q However, in your opinion, what were these nine -- or
15 these five projectiles fired from? What kind of firearm?

16 A After I got those general rifling characteristics, in
17 the absence of the firearm, we could put those numbers into
18 a database, and the database is a list of all the
19 manufacturers and their specifications. So once I put the
20 bullets that I have specifications in the database it will
21 tell me what kind of firearm manufacturers make firearms
22 with those specifications. Generally the list is long, but
23 it could be really short. It could be one firearm
24 manufacturer. It could be up to 100. So in this case I
25 came back with only one firearm manufacturer.

1 Q And how did you determine that?

2 A The database after I put in the rifling of the bullets
3 and the measurements only one manufacturer came back with
4 those specifications.

5 Q And what was that manufacturer?

6 A Hi-Point Firearms.

7 Q And any particular Hi-Point Firearm in this specific
8 case that you could determine?

9 A I didn't receive a firearm in this case.

10 Q And do you have a demonstrative barrel?

11 A I do.

12 Q And a projectile. So explain to the jury about barrel
13 rifling.

14 A So this is a cutout of a barrel. The rifling is a
15 series of spiral groves that are placed in the barrel. It
16 helps aid in our accuracy and stability for the bullet as it
17 leaves the barrel. Think of like a football went the
18 quarterback throws it. He wants a good spiral on it so that
19 it goes to its target. So that's the idea of rifling in a
20 barrel. As the bullet goes down the barrel though it will
21 be marks from that rifling on it, and this is what I'm
22 looking at under the microscope.

23 Q And you found these markings on the projectiles in this
24 case?

25 A I did.

1 Q And you said those were nine; is that correct?

2 A Correct. There's nine land-and-grooves on these
3 bullets.

4 Q And a Hi-Point nine millimeter has nine grooves in
5 their barrel?

6 A it does. They have nine grooves and they have a left
7 twist.

8 Q Okay. Whenever you receive projectiles, is it your job
9 to determine whether or not there's any biological matter on
10 those?

11 A In my initial analysis I'll look at the bullets to see
12 if there's any trace evidence on there, either biological or
13 any other trace. And then if there is, I will take either a
14 swab or talk to the submitter and see if it's important to
15 them to have it analyzed. Either way, if I see biological I
16 will swab it just in case it's needed later, but generally
17 we send it back without analysis.

18 Q And did you note any biological matter on the shell
19 casings or the projectiles?

20 A I didn't note any on either.

21 Q And is all of your reports and testing peer reviewed
22 also?

23 A It is. We have 100 percent micro verification. So
24 that means that one of my coworkers will look at the bullets
25 and the cartridge cases on the microscope, like the actual

1 evidence. They'll look -- either agree or disagree with me,
2 sign their signature, and then they'll also do a tech review
3 and admin review of my case file.

4 Q And again, the nine groove left twist pattern, that's
5 only from a Hi-Point nine millimeter?

6 A Currently the only known manufacturer is Hi-Point.

7 Q And there was no firearm for you to test in this case;
8 is that correct?

9 A Correct.

10 MR. SIMMONS: Thank you. Answer any questions the
11 Defense has.

12 CROSS-EXAMINATION

13 BY MR. SHAFFER:

14 Q Ms. Eichenmiller, is it a fair summary of what you
15 testified to so far to say that those bullets that they
16 introduced and those cartridges that they introduced are
17 consistent with being shot from a Hi-Point nine millimeter?

18 A I can't say that definitively for the cartridge cases,
19 but for the bullets.

20 Q Yeah. And Hi-Points have like a distinctive mark, so
21 you know it's a Hi-Point, right?

22 A In my experience, I believe that's a Hi-Point.

23 Q You see a lot of Hi-Points, don't you?

24 A Correct.

25 Q Hi-Points are cheap, right?

- 1 A Correct.
- 2 Q They're like the cheapest gun you can buy, right?
- 3 A Not the cheapest, but pretty close.
- 4 Q Are they the cheapest nine millimeter you can buy
- 5 probably?
- 6 A They're at the bottom.
- 7 Q Back in the day they used to be about 130 bucks?
- 8 A I think that's about right.
- 9 Q So, unfortunately you deal with a lot of crime, right?
- 10 A Correct. I work at the crime lab.
- 11 Q So you deal with a lot of -- a lot of people who use
- 12 Hi-Points, right?
- 13 A A fair number.
- 14 Q And what is a brass ammunition? The ammunition you
- 15 have right there. Those shell casings, you didn't test
- 16 those for fingerprints, right?
- 17 A No, I did not.
- 18 Q Is that something that's generally done from fired
- 19 ammunition?
- 20 A It can be done. They would have to request it before
- 21 it got to me, because I will obviously be touching them
- 22 after the fact, so. But generally firearms department gets
- 23 the evidence last. If they would like it tested for latent
- 24 prints or DNA, they would have to go through those
- 25 departments first.

1 Q Okay. So generally, if they had requested DNA, they
2 would have sent it through DNA first, right?

3 A Correct.

4 Q And can you always see DNA? .

5 A Not usually.

6 Q You see biological material and if you -- if you had a
7 fragment -- well, let me get to this. These projectiles
8 right here, they're full metal jackets, correct?

9 A These are actually what we call total metal jackets.
10 They cover the entire bullet, even the base.

11 Q Okay. And honestly I don't know the difference of
12 this. Full metal jacket is just the front; is that right?

13 A It just covers everything but the base. The base,
14 you'll be able to see the inside. The lead core is what
15 you'll see with the full metal jacket.

16 Q Okay. But these are total metal jackets, so they're
17 solid, right?

18 A The lead core is solidly covered by the copper
19 material.

20 Q Okay. And there's other bullets called hollow-points,
21 right?

22 A Correct.

23 Q And hollow-points generally are made to sort of expand
24 whenever they hit something, right?

25 A Correct.

1 Q Is it more common to see biological material in hollow-
2 points than it is in a full metal jacket in bullets?

3 A In my experience, hollow-points generally find -- you
4 find more biological material due to the fact that they open
5 up after firing.

6 Q Okay. So you wouldn't necessarily be able to see
7 biological material on every single bullet that's -- that's
8 a total metal jacket?

9 A Correct.

10 Q Okay. So there may very well be biological material on
11 there, right?

12 A Correct.

13 Q And the process of having that tested would have been
14 an investigator requesting that, right?

15 A Correct.

16 Q You're just sort of -- in case they didn't request it
17 and you see something you request it -- or you tell them?

18 A Correct.

19 Q Okay. Now, I'm looking over your Statement of
20 Qualifications. I don't see anything related to shooting
21 reconstruction. Are you in any way an expert in shooting
22 reconstruction?

23 A I am not. It's not a test we do in the firearms
24 department.

25 Q That would be something that someone else at SLED would

1 do, right?

2 A Correct.

3 Q If you wanted latent prints done, why did you all get
4 it last?

5 A If there were any fingerprints on the cartridge case,
6 the latent print examiner would have to either lift those or
7 photograph them before I put my fingerprints on the
8 cartridge case.

9 Q Okay. And before it gets to you it's generally sealed
10 up, right?

11 A Correct. Evidence that comes into the lab is sealed
12 with initials and dates.

13 Q And you generally -- do you handle them with gloves?

14 A Like I said, by the time it gets to me all the other
15 testing has been done, unless I see obvious biological
16 trace. I don't generally handle things with gloves.

17 Q Okay. In the backs of these bullets -- sometimes you
18 all do test for fingerprints though, right?

19 A The latent print department would.

20 Q Yeah. But that obviously was not done in this case,
21 right?

22 A I don't believe it went to the latent print department
23 first. Let me check. No, it did not.

24 Q How do you know if something went to the latent print
25 department or not?

1 A When evidence is logged in at SLED it receives a bar
2 code. That bar code tracks it's movement throughout the
3 building, whether it goes to a shelf, whether it goes to a
4 person, when it goes back to a shelf, into a closet,
5 wherever it goes it gets a chain of custody, is what we call
6 it, to verify the integrity of the evidence.

7 Q Do you know if these went to the latent print
8 department?

9 A I don't know anything about that box.

10 Q Okay. So Blazer Blast ammunition, do you see that
11 fairly commonly?

12 A I mean, relatively speaking.

13 Q It's a lower end ammunition, right?

14 A Correct.

15 Q And some people may call it range ammunition?

16 A Some people may.

17 MR. SHAFFER: Court's indulgence.

18 THE COURT: Sure.

19 Q So based off the tests you've done you can basically
20 affirmatively say that at least some of those bullets were
21 fired from a Hi-Point?

22 A All the fired -- all the fired bullets I received had
23 nine left rifling. They're all the same caliber. So I
24 could say they were fired by a Hi-Point.

25 Q So -- and it's fair to assume that all the shell

1 casings were also fired by a Hi-Point, right?

2 A That one I can say with certainty that they -- as
3 firearms matching individual identifying characteristics
4 enough for me to say that they were fired by the same
5 firearm.

6 Q So a Hi-Point was used, right?

7 A Correct.

8 MR. SHAFFER: No further questions.

9 THE COURT: Anything in redirect?

10 MR. SIMMONS: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. SIMMONS:

13 Q State's Exhibit 98 is a shell casing; is that correct?

14 A Uh-huh.

15 Q And State's Exhibit 103 is the box of Blazer Brass
16 bullets.

17 MR. SHAFFER: Before you all touch that, can we
18 approach?

19 (Whereupon, a sidebar was held.)

20 Q Can you look at State's 98. That's a shell casing; is
21 that correct? Can you look at the back of that? And what
22 does that say?

23 A It says Blazer nine millimeter Luger.

24 Q Okay. Without touching these cartridges for State's
25 Exhibit 103, can you look at the back of those and read what

1 that says?

2 A These say, Blazer nine millimeter Luger on them.

3 Q And they're similar; is that correct?

4 A From the -- yes.

5 MR. SIMMONS: Beg the Court's indulgence.

6 THE COURT: Sure.

7 MR. SIMMONS: No further questions, Your Honor.

8 MR. SHAFFER: Just probably two questions.

9 RECROSS-EXAMINATION

10 BY MR. SHAFFER:

11 Q All of the shell casings from Blazer nine millimeter
12 115 grain bullets would basically look exactly the same,
13 right?

14 A Correct.

15 Q And they're fairly common, right?

16 A Correct.

17 MR. SHAFFER: Thank you.

18 THE COURT: You can step down, ma'am. Thank you.

19 (Whereupon, the witness stepped down from the witness
20 stand.)

21 MS. MOWRY: Your Honor, we ask that Ms. Eichenmiller
22 and Ms. Nates be excused.

23 MR. SHAFFER: That's fine.

24 THE COURT: Certainly. You're free to leave the
25 courthouse.

1 (Whereupon, a sidebar was held.)

2 THE COURT: All right. Madam Forelady, ladies and
3 gentlemen of the jury, I'm going to go ahead and send you on
4 for lunch. We've got some work to do on some other issues
5 that do not require it being done in your presence, so
6 you're going to get a two hour lunch break today. A little
7 longer than normal. So it's 12:30. 2:30. If you'll be
8 back here at 2:30 and hopefully we'll be ready to bring you
9 back out if we've gotten all that other done. If you sit
10 back there -- it's 2:30 and you're sitting back there,
11 understand we're working. And so, hopefully we'll be ready
12 for you then. Okay?

13 So same -- same rules apply. Wear your badge if you're
14 at a restaurant. Not discussion about this case among
15 yourselves or anyone else. Have a good lunch and we'll see
16 you hopefully around 2:30.

17 (Whereupon, the jury exited the courtroom at 12:35
18 p.m.)

19 THE COURT: Let's everybody go ahead and get some lunch
20 now, and then let's try to -- let's try to be back here by
21 1:30.

22 MR. MOWRY: Excellent.

23 THE COURT: Okay?

24 MR. MOWRY: Thank you, Judge.

25 MR. SHAFFER: Thank you, Judge.

1 (Whereupon, a lunch recess was held from 12:30 p.m. to
2 1:30 p.m.)

3 THE COURT: We're back on the record and it's my
4 understanding that we're going to take some in camera
5 testimony from the State's expert -- Defense expert, and
6 then take some argument concerning those issues related to
7 the AT&T documents and State's expert's testimony.

8 So, Solicitor, you want to -- want to call Mr. Kelly?

9 MR. MOWRY: Well, actually I was going to call Mr.
10 Hines on this one, Your Honor. I can call Mr. Kelly, but I
11 was going to call Mr. Hines first.

12 THE COURT: Right. Now, Mr. Hines, that's related to
13 text messages?

14 MR. MOWRY: That's his testimony, Your Honor, but this
15 is his expertise. This is what he does for SLED is cell
16 phone and cell phone technology.

17 THE COURT: Oh, okay. So we're really -- because text
18 messages may not be an issue. I think, Mr. Shaffer, you had
19 indicated out in the hallway that you were going to
20 stipulate. So we're not going to do anything with text
21 messages in camera, right?

22 MR. SHAFFER: And, Your Honor, here's sort of the -- I
23 may be able to explain this. Mr. Kelly basically took some
24 data that's in that -- that State's exhibit that --

25 THE COURT: 106 and 107?

1 MR. SHAFFER: No -- yeah, 107. He took that, and
2 there's longitude and latitude points. And he basically
3 plugged into a program that mapped it in time.

4 THE COURT: Right.

5 MR. SHAFFER: Okay? It's my understanding, and I
6 seriously doubt that it's changed, or I don't think it's
7 changed. But based off of previous testimony in other
8 trials, I don't that think that he can say whether or not
9 these points are accurate and he's relying on AT&T for that.
10 Okay?

11 THE COURT: Right.

12 MR. SHAFFER: Now, I would imagine -- I'll let Walter
13 say why he's planning on calling the SLED agent. I think I
14 know why. I think -- because there's two types of tracking
15 on cell phones, Your Honor. There's two different ways to
16 do it. And...

17 MR. MOWRY: Well, are we going to have testimony or is
18 Tristan going to testify?

19 MR. SHAFFER: I'll let the experts testify. We'll
20 allow the State to --

21 THE COURT: All right. So I'm clear, that we've got
22 actually two, we've got Mr. Kelly and Mr. Hines that are
23 going to address these issues. And then, Mr. Shaffer, you
24 put up your guy and anybody else and we'll try to plow
25 through this.

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1 MR. MOWRY: Yes, sir. We call Tommy Hines.

2 THE COURT: Since we are in camera I will allow some
3 leading so we can get through this and get to the meat of
4 the issue.

5 TOMMY HINES, having been duly
6 sworn, testified as follows:

7 IN CAMERA

8 DIRECT EXAMINATION

9 BY MR. MOWRY:

10 Q You are Tommy Hines?

11 A Yes, sir.

12 Q I believe you work for SLED?

13 A Yes, sir.

14 Q What do you do for SLED?

15 A I work with the -- in the Fusion Center. Basically
16 what I do is we gather, analyze and interpret intelligence
17 as it relates to criminal cases.

18 Q And does that include cell phone and cell phone
19 technology?

20 A Yes, sir.

21 Q How often -- how long have you been doing that?

22 A Since 2011.

23 Q Have you ever been declared an expert in court?

24 A Yes, sir. I have.

25 Q Where was that?

1 A I've been declared an expert three times. The first
2 one was in Union, the second one was in Lexington, and the
3 third one was in Newberry.

4 Q And on what basis were you declared an expert?

5 A In cell phone records interpretation.

6 MR. MOWRY: Your Honor, I would offer him as an expert
7 in cell phone records interpretation?

8 MR. SHAFFER: Your Honor, no -- we'll stipulate that
9 he's an expert in that.

10 THE COURT: Okay.

11 Q Let me hand you two packets which have been labeled
12 State's Exhibits 106 and 107. What are those, please, sir?

13 A So the first one is what AT&T refers to as a NELOS
14 report, and then the second one is the actual call detail
15 records with the cell site locations.

16 Q And which one is which?

17 A 107 is the NELOS report and --

18 THE COURT: Spell NELOS for me.

19 THE WITNESS: That's N-E-L-O-S.

20 Q That's an acronym for what?

21 A I'm not sure exactly what it stands for, but I can
22 explain what it is.

23 Q If you would.

24 A Basically what it is, is it's a form of per call
25 measurement data, or a round trip delay measurement. So

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1 during the progress of whether it's a call, text message or
2 data usage, the network sends a signal to the device, and
3 depending on the direction and the time it takes for the
4 signal to return to the network, the network is able to
5 generate an estimate of location of the device at the time
6 of that transaction.

7 Q Have you done any independent studies or research on
8 the accuracy of that data?

9 A Yes, sir.

10 Q Tell me about that, please.

11 A As it says on here, it says that the location accuracy
12 is likely better than a given number, whether it's 50
13 meters, 2,500, 25,000. Some people say location accuracy
14 unknown. My experience is that for the most part they're
15 fairly accurate.

16 Q Okay. And when you say fairly accurate, do you mean
17 pretty much on whatever figure they're giving?

18 A Within a rough area around it. So it may not be
19 exactly within 50 meters. It may be slightly outside.

20 Q But it's pretty reliable is what you're getting at?

21 A Yes, sir.

22 Q What -- how did you go about doing those tests or
23 assessing that information?

24 A Through field work and the course of investigations.

25 Q Okay. How many investigations like that do you think

1 you've conducted?

2 A Upwards of a hundred.

3 Q And when we're talking about accuracy of 25 meters or
4 something like that, we're not talking about GPS on a smart
5 bomb or something like that, are we?

6 A No, sir.

7 Q That's within a meter or so, isn't it?

8 A Potentially.

9 Q But as far as this is concerned, do you rely on this
10 evidence in a lot of cases?

11 A Not solely on the NELOS report. We primarily use the
12 call detail records.

13 Q All right. Tell me about the call detail records,
14 please.

15 A So the call detail records list out the date and time
16 of the transactions, the duration of the transaction, where
17 the call originated with, as far as what number the call
18 originated from and the terminating number, as well as the
19 device specific information with serial numbers, and then
20 also lists the location of the tower that the transaction
21 took place on. So in this situation it lists what's called
22 the LAC -- the L-A-C, which stands for location area code.
23 That's basically the switch that the transaction took place
24 on. What a switch is, is just the geographic set of towers.
25 So that covers a specific location. And then the second

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1 number there is the CID, or C-I-D, which is the cell site
2 identification. And basically that is the cell site number.
3 So that's the specific tower number. And then with the last
4 digit of that being what sector it is. And your typical
5 towers are divided into three sectors. And with AT&T, what
6 they do is they have sector one, two, and three. And each
7 tower is going to vary in which direction those face, and
8 then it also -- they have other antennas, so you'll have
9 one, two, three, and then overlapping with that are four,
10 five, six, and then seven, eight, nine.

11 Q Okay.

12 A And then after that it gives you the actual location of
13 the tower, the longitude and latitude.

14 Q Have you ever been able to do any comparison on the
15 accuracy of the data between, say, AT&T and Verizon or
16 Sprint or T-Mobile? Any of the big cell phone providers?

17 A As far as the NELOS and per call measurement?

18 Q Yes.

19 A AT&T actually provides somewhat better information than
20 the other providers. They're able to give more -- more
21 accurate per call measurement data information.

22 Q So you would have more faith in the reliability of AT&T
23 than the others?

24 A Yes, sir.

25 MR. MOWRY: Your Honor, I think that's all I have with

1 Mr. Hines.

2 THE COURT: Okay.

3 MR. MOWRY: As far as the reliability issue is
4 concerned.

5 THE COURT: Right. Let me just ask this before you
6 start, Mr. Shaffer.

7 EXAMINATION BY THE COURT:

8 Q You've had an opportunity to review the AT&T records,
9 correct?

10 A Yes, sir.

11 Q That's Exhibit 106 and 107?

12 A Yes, sir.

13 Q Would you consider those documents to be reliable and
14 trustworthy?

15 A Yes, sir, I would.

16 THE COURT: Okay. Mr. Shaffer, you may proceed.

17 CROSS-EXAMINATION

18 BY MR. SHAFFER:

19 Q So, Mr. Hines, did you do any independent calculation
20 for this case?

21 A No, sir. I did not.

22 Q You're relying solely on AT&T, correct?

23 A Yes, sir.

24 Q Okay. So you said that you -- have you reviewed the
25 animation in this case?

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1 A No, sir. I have not.

2 Q So you don't know about the exhibit that they're trying
3 to introduce and whether that's accurate or not?

4 A I'm just speaking to the records.

5 THE COURT: Well, he just referred to 106 and 107.
6 That's what's been marked for identification.

7 MR. SHAFFER: Your Honor, they were going to try to
8 introduce an animation --

9 THE COURT: Okay.

10 MR. MOWRY: That's on a disc.

11 THE COURT: Right, that's Mr. Kelly?

12 MR. MOWRY: Yes, sir.

13 THE COURT: Okay, all right.

14 MR. SHAFFER: And, Your Honor, can we take a brief
15 second -- it's not a very long animation, but take a brief
16 second at least to pull that up so that this witness can
17 actually see what they're --

18 THE COURT: Okay.

19 (Whereupon, animation is played for the Court.)

20 Q Now, Mr. Hines, is it fair to say that this point right
21 here at 1:28 -- first of all, I'd like to point your
22 attention down here at the time. I think that says 8:43:12.
23 You may not be able to read that.

24 THE COURT: If you want to step down and get close to
25 the screen. And just when you speak, just be sure and speak

1 up louder than normal since you're away from the microphone.

2 (Whereupon, the witness steps down from the witness
3 stand.)

4 Q We'll go back a little bit on this. Now, the time
5 right there says -- and this pinpoint says 1:28:35. What
6 does that say down there?

7 A That says 8:28:59.

8 Q Okay. And is that universal time or is that some other
9 time zone that we don't know what it's from?

10 A I'm not familiar with this program, so I really can't
11 speak to this program.

12 Q Okay. Now, one thing, and I'm sure that the State
13 would admit to this, because it's on the screen. The time
14 clock at the bottom doesn't match up with the time clock on
15 the --

16 MR. MOWRY: One of them is Greenwich Mean Time, Your
17 Honor.

18 MR. SHAFFER: Actually, they're not Greenwich Mean
19 Time, Your Honor, because Greenwich Mean Time --

20 MR. MOWRY: Well, I think that Mr. Kelly can explain
21 it.

22 THE COURT: Yeah, if there's some sort of discrepancy,
23 Mr. Shaffer, that you perceive to be with this animation, I
24 think probably Mr. Kelly would be the one to ask.

25 MR. MOWRY: I will tell, Your Honor, that the date --

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1 or the time and the flag is calculated to local time.

2 THE COURT: Okay.

3 Q So 1:28 a.m. -- 1:28:35 a.m., would Greenwich Mean Time
4 be 8:28:35? .

5 A No. It wouldn't.

6 Q It would be the next day, right. It would be -- or it
7 would be about 5:25, right, if this is in July?

8 A It would be 6:28 a.m.

9 Q Or 5:28 in July?

10 A Well, there's a five hour time difference between the
11 months of March and November.

12 Q I thought there was a four hour.

13 A That's daylight savings time. When you're -- it's
14 outside of daylight savings time it's four hours.

15 Q Okay. We'll get to that later. But -- okay. So 8:28,
16 it indicates that he is at this longitude and latitude point
17 up here (indicating). Is that fair to say?

18 A That's what it seems to indicate.

19 Q Okay. Now, at 1:29:05, about 40 seconds later, it
20 indicates he's at that point right there; is that correct?

21 A That's what it indicates.

22 Q This scale is about 17.4 miles, right?

23 MR. MOWRY: Your Honor, if he's going to ask him about
24 GeoTime --

25 MR. SHAFFER: I'm asking him about mapping.

1 MR. MOWRY: Well, that's what Mr. Kelly is here for. I
2 was putting Mr. Hines up for the accuracy of the records.

3 THE COURT: Right. Well, if Mr. Hines knows. If he
4 doesn't know he can -- he can say he doesn't know.

5 Q Does it seem possible that in 40 seconds a person can
6 travel from there to there based off of this scale that's
7 indicated on that map?

8 A Without having more -- a better understanding of this
9 program, I can't really speak to it.

10 Q Okay. But is it possible that someone can travel from
11 this point -- and I'm not talking about the program. This
12 point to this point. Does that seem possible in a matter of
13 40 seconds?

14 A I can't -- I wouldn't think so. But again, I'm not
15 familiar with the program.

16 Q You don't know the program. That's fair enough. Now,
17 whenever you actually do these -- these tests, and you're
18 mapping out where someone was for the purposes of Court, for
19 example, you said that you use both NELOS and call data
20 records, correct?

21 A Correct.

22 Q Why do you do that?

23 A Well, basically I use the NELOS to -- let me step back
24 up here.

25 (Whereupon, the witness returns to the witness stand.)

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1 A I use the NELOS to further refine the area. So I use
2 the call detail records. That's the most -- the most
3 accurate information possible is from the actual call detail
4 records with the cell site locations. And then I use the
5 NELOS as an additional document.

6 Q Now, but the call detail records are the most accurate
7 to -- say, with some degree of certainty, that someone is in
8 the area or isn't in the area, correct?

9 A Right. And what I'm saying when I say most accurate,
10 because some of the NELOS you'll have -- it'll say location
11 accuracy unknown. Basically that's the tower hit. All it
12 gives you is the tower location roughly. And it doesn't
13 give you the sector. So then the tower -- the call detail
14 records actually give you the tower and the sector. So,
15 that's why we utilize those first, and then the NELOS as a
16 backup and an additional aid.

17 Q Do you have any idea how -- other than a -- well, what
18 is the general concept behind NELOS? What happens?

19 A Well, as I explained earlier, what happens is during
20 the transaction, whether that's a call, a text message or
21 data usage, the network sends a signal to the device.
22 Depending on the direction that signal has to go and how
23 long it takes for that signal to get to the device and
24 return to the network, the network is able to generate a
25 rough location of the device at the time of the transaction.

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- 1 Q How does it generate that?
- 2 A That's above my level of knowledge.
- 3 Q Who would know that?
- 4 A The -- a technician from the phone companies.
- 5 Q From AT&T?
- 6 A Right.
- 7 Q Is there any publication that can tell you how it
- 8 actually works?
- 9 A Not that I know of.
- 10 Q In your experience, you've testified in Court several
- 11 times, correct?
- 12 A Yes, sir.
- 13 Q And whenever you've testified in Court do you rely
- 14 solely on the NELOS records or do you rely on this?
- 15 A I primarily rely on the call detail records.
- 16 Q Okay. Primarily rely on call detail records. And that
- 17 would be the information not contained in that -- that
- 18 historical precision location information, correct?
- 19 A Right.
- 20 Q Have you ever seen AT&T actually come testify to that
- 21 historical precision location data?
- 22 A I haven't seen it, but I've heard that they have.
- 23 Q You've heard that they have?
- 24 A Uh-huh.
- 25 Q Do you know where?

Tommy Hines-Redirect Examination

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1 A I do not know where.

2 Q Now, you have everything you would need to actually do
3 the more reliable method, correct?

4 A Yes, sir. I have everything I need to map the records.

5 Q What's stopping you from mapping the records?

6 A Right now?

7 Q I mean, well, you don't have a computer in front of
8 you. But what's stopping you -- if you would have had these
9 records for two weeks, what would be stopping you from
10 mapping the records?

11 A The request for me to do it.

12 MR. SHAFFER: Okay. Court's indulgence.

13 THE COURT: Sure.

14 MR. SHAFFER: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. MOWRY:

17 Q Mr. Hines, what is your current status?

18 A I'm currently still in the same unit, but I'm on leave
19 from SLED for military. I'm currently on orders with the
20 National Guard.

21 Q And where are you stationed?

22 A Out of McEntire Joint National Guard Base in Eastover.

23 Q Okay. So you wouldn't be available to do this kind of
24 work, would you?

25 A No, sir.

1 Q All right. Now, let me ask you. You said that with
2 regard to 107, that is your preferred method. What is your
3 thought on 106?

4 A The 106 is the preferred method and the 107 --

5 Q Oh, I'm sorry. I'm sorry.

6 A Yes, sir.

7 Q My bad. What is your thought on 107 then?

8 A It is an extremely useful aid, so we utilize that as
9 well.

10 Q Okay. And do you have any problems with its
11 reliability in a court of law?

12 A No, sir.

13 MR. MOWRY: Okay. Thank you, sir. That's all I have.

14 THE COURT: Anything further, Mr. Shaffer, of this
15 witness?

16 MR. SHAFFER: Just -- just a few questions.

17 RE CROSS-EXAMINATION

18 BY MR. SHAFFER:

19 Q Who -- is there somebody else at SLED that can actually
20 do this if the Eighth Circuit Solicitor's Office would have
21 requested it?

22 A Yes, sir. There's other members of my unit.

23 Q Okay. And all it would have taken was a request,
24 correct?

25 A Yes, sir.

1 MR. SHAFFER: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. MOWRY:

4 Q Well, let me ask you this. Do you know Dan Kelly?

5 A Yes, sir.

6 Q Have you worked with Dan Kelly before?

7 A Not prior to today, sir.

8 Q Are you familiar with the kind of work that he does?

9 A Yes, sir.

10 Q Are you familiar with GeoTime?

11 A No, sir. I'm not actually familiar with that program.

12 Q Have you heard of it?

13 A I've heard of it. Yes, sir.

14 Q What is its reputation?

15 A I've heard good things about it.

16 MR. MOWRY: Thank you, sir.

17 MR. SHAFFER: Your Honor, since he went sort of outside
18 the scope of that, can I ask a couple of questions?

19 THE COURT: Sure.

20 RECROSS-EXAMINATION

21 BY MR. SHAFFER:

22 Q So SLED doesn't use GeoTime, does it?

23 A No, sir.

24 Q Why not?

25 A We use a program called Casbiz (PHONETIC) that's

1 utilized by the FBI.

2 Q Who does use GeoTime? What law enforcement agency
3 does?

4 A I don't know specifically. I can't remember exactly
5 which ones, but I know there's several throughout the state
6 that utilize it.

7 Q Local law enforcement does, right?

8 A Yes, sir.

9 Q And on your -- on your program, the program that SLED
10 uses and the FBI uses, does it show a little pinpoint like
11 that (indicating)?

12 A It'll show the tower location.

13 Q It'll show a tower location?

14 A Yes.

15 Q Does it show a circle where you think someone is?

16 A It'll just -- with Casbiz it just shows call detail
17 records. We actually have to use a different program to map
18 the NELOS.

19 Q Okay. And you all introduce the mapping of the NELOS
20 in court?

21 A I include it in my report.

22 Q Have you ever introduced it in a court?

23 A Not -- not yet. I haven't had a case that required it.

24 Q Now, in the program you use though, through the more
25 reliable method, isn't it true that you're essentially

Dan Kelly-Direct Examination (In Camera)

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1 saying that they're within a certain radius, right?

2 A Well, with the call detail records it'll actually cut
3 it down to a sector from the tower.

4 Q So a sector from the tower. So it's an area, not a
5 dot; is that fair to say?

6 A Right.

7 Q Does this appear to be more precise than -- and I'm not
8 saying accurate, but does this appear to be more precise
9 than the program that you use as to where somebody is
10 purportedly at?

11 A Without a better understanding of the program, I really
12 can't speak to that.

13 Q Do you think that if you would have mapped it in your
14 program it would have shown someone jumped from here to here
15 in 40 seconds?

16 A I can't say without actually going through the records
17 and mapping them out.

18 MR. SHAFFER: No further questions.

19 THE COURT: Okay. Thank you, Mr. Hines. You can step
20 down.

21 MR. MOWRY: Dan Kelly.

22 DAN KELLY: having first been duly
23 sworn, testified as follows:

24 IN CAMERA

25 DIRECT EXAMINATION

1 BY MR. MOWRY:

2 Q You are Dan Kelly?

3 A Yes, sir.

4 Q And you are a sergeant with the Greenville County
5 Sheriff's Office; is that right?

6 A That's correct.

7 Q What are your -- what is your function -- what are your
8 duties with the Sheriff's Office?

9 A I'm the sergeant over the technical services unit. We
10 have several areas of responsibility, one of them being the
11 cell phone data analysis that we do.

12 Q And what kind of analysis do you do? What is your job
13 with the -- with that particular function?

14 A One of the areas that I take care of is the use of the
15 GeoTime software, and the call records tool which is a
16 component of that, which analyzes the data from cell phone
17 companies obtaining the cell warrant and plots those on a
18 map in a visually easy to read format so that you can see
19 where the handset was -- or near where the handset was
20 during the calls.

21 Q Now, we've heard testimony from Mr. Hines on 106 and
22 107. Are those the kinds of records that you're talking
23 about?

24 A Yes, sir.

25 Q And how do you come on those? What's the process that

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1 you normally deal with on a criminal case? How do you --
2 how do they come to your attention?

3 A Either the investigator, or the Solicitor, or somebody
4 will bring me those records on disc and we'll import those
5 into the system.

6 Q And that happened in this case; is that right?

7 A That's correct.

8 Q Walter Bentley and I came to you with these records; is
9 that correct?

10 A That's correct.

11 Q Now, have you dealt with AT&T records before?

12 A Yes.

13 Q You've dealt with Verizon, I assume?

14 A Yes.

15 Q T-Mobile?

16 A T-Mobile, Sprint.

17 Q Sprint? All of them?

18 A Yes.

19 Q What do you do? How does GeoTime work? Tell us about
20 that.

21 A GeoTime will take the location data associated with
22 those records and it'll bring it in -- the call records tool
23 will translate it into a format that GeoTime can read. So
24 you first bring it in to the call records tool, then it
25 creates a file and it will provide the NELOS and the cell

1 tower data, the call detail record data, and it'll bring it
2 into a map where you can plug it on the map and it'll show
3 you all the calls for the entire record, and then you can
4 shrink it down and look at just the areas of responsibility
5 that you're looking for.

6 Q So you use both 106 and 107 in this process; is that
7 right?

8 A Yes.

9 Q And the animation that we have here, tell us about
10 that.

11 A So the animation that you're seeing shows where those
12 calls were when -- those are towers that it's hitting when
13 it's on those. So that's how that distance becomes so far
14 apart, because the radius of that sector stretches down, and
15 then the other may stretch up. So it could be very likely
16 that those calls were made when it switched to a different
17 tower within feet.

18 Q So it would not surprise -- I mean, he's not
19 necessarily driving this distance ---

20 A In that time.

21 Q -- in 40 seconds? These are calls that were made from
22 these areas and that's where the tower is picking up the
23 signal?

24 A Correct.

25 Q The data that you received, are you just plugging it

1 into your program; is that right?

2 A Yes.

3 Q You're not manipulating it in any way?

4 A No, sir.

5 Q And have you been declared an expert in court on this
6 program --

7 A Yes, sir.

8 Q -- previously?

9 A Yes, sir.

10 Q How many times?

11 A Twice with the Eighth Circuit and twice with the
12 Thirteenth Circuit.

13 Q So once in this courtroom, is that -- or twice in this
14 courtroom?

15 A Yes. Twice in this courtroom.

16 Q Thank you, sir.

17 THE COURT: Let me ask Mr. Kelly. The AT&T records,
18 106, 107 Exhibits, certainly you reviewed those. You
19 consider those to be reliable and trustworthy?

20 THE WITNESS: Yes, Your Honor, I do.

21 THE COURT: And the software that you use, the GeoTime,
22 do you consider it to be reliable cell phone analysis
23 software? And that may be poorly stated.

24 THE WITNESS: Yes, sir.

25 THE COURT: You consider it reliable?

1 THE WITNESS: Very reliable, yes.

2 THE COURT: All right. Mr. Shaffer, you may proceed,
3 sir.

4 CROSS-EXAMINATION

5 BY MR. SHAFFER:

6 Q Mr. Kelly, what kind of expert -- or what kind of
7 experimentation have you done or studies have you done, to
8 verify the reliability of NELOS data?

9 A We actually try to -- excuse me. I have a cold. We
10 actually try to make sure that we QC it on a regular basis.
11 So we'll take some of the lat/longs that come out of the
12 data and actually plot them using our local area of mapping.
13 And our mapping is done through our GIS department, which
14 they guarantee by USGS standards that the map accuracy is
15 within three feet. So when we see a dot that comes on there
16 and it hits on the tower, we know it's accurate.

17 Q So you go out and you, what, take your own cell phone
18 to certain locations and then call AT&T?

19 A No. I haven't done any of the field mapping on that.

20 Q So you haven't done any field mapping. What kind of
21 mapping do you do to verify the location?

22 A Based on the maps that are provided by our GIS
23 department that are accurate to within three feet.

24 Q Yes, sir.

25 A We match those corresponding points on the map based on

1 the GPS lat/long and match it up to where it shows, and they
2 match it up usually hitting the tower.

3 Q So you're saying that you basically only test it at the
4 tower locations?

5 A Yes.

6 Q You've never -- so if -- are all your dots at tower
7 locations?

8 A Some of those will actually be NELOS locations.
9 They'll actually be their estimation of where that handset
10 is.

11 Q So what have you done to verify the NELOS or NELOS
12 data? What have you done to actually verify that that's
13 accurate?

14 A I haven't done any testimony on that, or any
15 verification.

16 Q Are you qualified to testify about how that works?

17 A The NELOS?

18 Q Yeah.

19 A No. Just the use of the software.

20 Q Have you done any sort of independent calculations to
21 verify anything other than tower locations for this case?

22 A No.

23 Q And many of the points you plot are not tower
24 locations, correct?

25 A Some of them may not be, yes.

1 Q Now, you -- you plot a line.

2 MR. SHAFFER: And if you wouldn't mind pulling up the
3 other one.

4 THE COURT: Are there two animations?

5 MR. SHAFFER: Yeah. This is the zoomed in one. This
6 is what it's taken from.

7 Q And I'm going to skip ahead for the sake of time.
8 Skipping ahead to what you say is 11:53 a.m.

9 (Whereupon, animation is played for the Court)

10 Q All right. Your time down there says 7:54:44 p.m.

11 A That's not the time you're looking for as far as the
12 calls.

13 Q Why is that time five hours behind our time?

14 A When we create a screenshot for the video --

15 Q Uh-huh.

16 A -- basically we're taking a screen grab of an area to
17 pull that out so we can just show that easily for Court.

18 That number -- that bottom number with the date and time, is
19 actually the bottom of the range of the detailed records
20 that you're seeing in the entire map area. So there's a
21 number at the top that's not -- not being shown that's in
22 there as well, and that's the max range. Where the actual
23 call is taking place is usually somewhere closer to the
24 center of the screen. It just doesn't show that on that.
25 This is just for visual representation where the calls are

1 recording.

2 Q Now, this says that -- this point right here with the
3 little arrow says 11:51:59 p.m., right?

4 A I can't see that far, but I think so.

5 THE COURT: Step down, if you would.

6 (Whereupon, the witness stepped down from the witness
7 stand.)

8 A Yes.

9 Q 11:51:59?

10 A That's this dot here (indicating).

11 Q And that dot there goes to what number?

12 A It's between 18:55 and 18:50.

13 Q What time zone is that?

14 A This is going to be GMT. This is --

15 Q GMT is five hours behind us?

16 A Yeah. It's minus five. In the summer -- the summer
17 months it's minus five with daylight savings time. It's
18 minus four in the winter -- in the winter months.

19 Q But GMT should be five hours ahead of this, right -- or
20 four hours ahead of this?

21 A We're minus four.

22 Q We're minus four?

23 A We're minus four or minus five. So --

24 Q But this five minus this number? This is nine minus
25 GMT. Because GMT would be ---

1 A I'd have to look at the call detail records to verify
2 it, but I would imagine -- that call is going to be 11:51:59
3 our time. So it should be --

4 Q Well, go ahead and verify it.

5 A Let me take a look at the records.

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

7 A Was that the 2nd?

8 Q That will be --

9 A July 2nd?

10 Q July 2nd, 11:51:59 local time. That's what it says at
11 least.

12 A Let me make sure it's not on NELOS. Okay. That was a
13 NELOS hit.

14 THE COURT: Wait a minute. These --

15 THE WITNESS: I'm sorry.

16 THE COURT: Wait just a minute, Mr. Kelly -- Sergeant
17 Kelly. Okay, now. Go ahead, Sergeant Kelly.

18 (Whereupon, the witness steps down from the witness
19 stand.)

20 A So 11:51 is going to be local time 'cause the computer
21 automatically converts Greenwich Mean Time to local time.
22 So 11:59 is our local time. So it would be 6:59 -- or 6:51
23 is where that dot's going to show up on here. This is where
24 it's showing.

25 Q So the call detail report is on GMT?

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1 A Yes.

2 Q And you're saying this is in GMT as well, right?

3 A Yes.

4 Q So tell me, based off of those records, where he was at
5 11:51:59, if you don't mind looking at your records.

6 A I can't tell you where he was. I can tell you where
7 the handset was hitting.

8 Q Fair enough.

9 A Either that area or near that tower.

10 Q Fair enough. Tell me where the handset was at 11:51:59
11 based off of your NELOS records?

12 A Wherever that map shows that it was.

13 Q If you wouldn't mind going back to your actual records
14 and look at it and tell me where it is. I'll point you in
15 the right direction. It's right around items three eleven
16 through three thirteen.

17 A On the NELOS:

18 Q Uh-huh.

19 A On the NELOS records?

20 Q Yeah. I mean, you're only plotting NELOS records,
21 correct?

22 A No, we're plotting both. It combines those records.
23 It combines those records. I'm not seeing it on here. I
24 see the 11 on item number 260 where it shows 18:56, and that
25 -- that's the connect time in GMT.

- 1 Q Then where did that point come from?
- 2 A It came from the data in there.
- 3 Q I'm going to give you a little -- another thing to look
- 4 at.
- 5 A Okay.
- 6 Q Item 47, which is 3:51:59 GMT.
- 7 A Okay.
- 8 Q That's the same point that was plotted there.
- 9 A On the 3rd?
- 10 Q That's correct. Item 47.
- 11 A Okay.
- 12 Q That's the same point that's plotted there, correct?
- 13 A I don't know if it's same point that's plotted on
- 14 there. The software does the plotting, not me.
- 15 Q Well, it says the longitude and latitude. Can you look
- 16 at longitude and latitude and tell us if it's the same
- 17 longitude and latitude?
- 18 A Yeah, that's showing the same point.
- 19 Q So it's the point that says GMT 3:51:59 is -- says
- 20 11:51:59 up here, correct?
- 21 A Correct.
- 22 Q So that would be four hours behind GMT for this, right?
- 23 A It should be five hours.
- 24 Q It should be five hours during the summer?
- 25 A Yeah. Five hours during the summer because of daylight

1 savings time.

2 Q So if you -- I guess look at what -- what data point is
3 at five hours ahead and see if he's at that point.

4 A No, that should be the point. 3:51:59 would be 11. So
5 it would be four hours.

6 Q So GMT time -- you converted this to GMT time it would
7 be 3:51:59, right?

8 A Right.

9 Q And so, this timeline over here isn't in GMT, right?

10 A That is GMT. I don't know why it's showing that the way
11 it is. That's the way they have the software set up.

12 That's been addressed with the software is to make it
13 representation -- or representative of the local time, but I
14 think that's in a future fix. A software update.

15 Q So the software says this is GMT over here, and the
16 software -- according to the software, at 18:50 -- a little
17 bit at 18:50, between 18:50 and 18:55, it says that -- and
18 you're saying that's GMT, and it's saying it's at 11:51:59
19 local time?

20 A That's what -- that's what the software shows. And
21 those -- and the data set is inside those -- that data.
22 When you click on that dot it tells you what start date time
23 local is. So it's automatically calculating for New York --
24 New York time zone.

25 Q But you're saying that there's no point -- on GMT,

1 we'll say somewhere between -- somewhere in between 18:50
2 and 18:55 GMT time. Is there any point that corresponds to
3 this longitude and latitude?

4 A Not that I'm seeing on this -- on this paperwork here.

5 Q Then where did it come up with that number?

6 A I don't know. That would have had to -- it would have
7 had to been in the software. This is the -- these are the
8 records, and when it's imported it automatically gets
9 brought into the system and plotted on the map.

10 Q Is it fair to say that every single point in there
11 would match up with a NELOS point and not necessarily some
12 independent call detail record?

13 A No. If there's no location data, it'll have no
14 location data. If there's no location data, it won't show a
15 point on the map --

16 Q Fair enough.

17 A -- or it'll show an interpolated event, which is a
18 triangle.

19 Q Fair enough. Tell me what data point would indicate
20 what NELOS record you have from this time period? Sometime
21 after 11:59 local. Let's try 19:50. And I'm going to give
22 you -- give you an idea that your software is about five
23 hours behind local. It's not on GMT time. It time's not
24 GMT. It's five hours back from local. I tracked it. But -
25 -

Dan Kelly-Cross Examination (In Camera)

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- 1 A You said 17:55 --
- 2 Q Yeah.
- 3 A -- or 19:55.
- 4 Q At 19:55 where does it say he is?
- 5 A I have a 19:54:58.
- 6 Q Where is he at at 19:54:58?
- 7 A Longitude minus 82.068156, latitude 34.654383. That
- 8 shows where the handset recorded the information from the
- 9 tower, not where he is.
- 10 Q Okay. Hold on a second. Let me go back to that,
- 11 because let's -- let's double check that by punching it into
- 12 Google Earth to see if he's about where your program has
- 13 him. What item number is it?
- 14 A Item number 239.
- 15 Q 239. Give me just one minute.
- 16 A Okay.
- 17 Q And I'll type it in and tell you what it is.
- 18 THE COURT: Solicitor, you want Mr. Bentley to kind of
- 19 look and see what Mr. Shaffer is putting in?
- 20 MR. MOWRY: I'm confident he will not try to do
- 21 anything --
- 22 THE COURT: Oh, I'm not -- I'm not suggesting that.
- 23 I'm not suggesting that at all. It may be helpful to you
- 24 possibly.
- 25 MR. MOWRY: Yes, sir.

1 (Whereupon, there was a brief pause in the
2 proceedings.)

3 MR. SHAFFER: Give me one second.

4 Q This says 1:29:05, right? Is that --

5 THE COURT: You can step back down again Mr. Kelly --
6 Sergeant Kelly.

7 (Whereupon, the witness steps down from the witness
8 stand.)

9 MR. MOWRY: Your Honor, I think we're getting to the
10 point that this is maybe fertile ground for cross-
11 examination, but I would submit to you that it goes to the
12 weight, not the admissibility, of the testimony. And the
13 whole purpose is the reliability of the -- the whole purpose
14 of this hearing, I thought, was to deal with the reliability
15 of the AT&T records. I think that has been established,
16 unless he's got something else that would contradict it.

17 MR. SHAFFER: Your Honor --

18 MR. MOWRY: There's been nothing that says that they
19 are unreliable.

20 THE COURT: Right.

21 MR. SHAFFER: Your Honor, there's -- I haven't finished
22 making it. I had a confrontation clause argument. I had
23 the expertise argument. I had additional argument that I
24 hadn't raised which is basically that this is confusing as
25 well. Those are all things I haven't raised. I'm going to

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1 tell the Court that -- I'll represent to the Court that I've
2 gone through this about 10 times, and what happened is
3 basically that the time on this timeline is five hours
4 behind local time, which is not GMT, Your Honor. That's
5 some time way -- that's some time zone in the Pacific Ocean
6 is where the time -- time zone that they're plotting here.
7 The document's confusing. It shows him jumping from one
8 place to another that's miles apart in 40 seconds.

9 WITNESS: May I explain that too?

10 MR. SHAFFER: Yeah. And he's saying that they're tower
11 locations. But the problem is, is that the jury is going to
12 see that. They're not going to see tower locations.
13 They're going to see this is the path he went. There's also
14 a huge problem with the fact that the NELOS data doesn't
15 even have -- has a big gap of over an hour time period, and
16 he's -

17 THE COURT: Well, now, let me -- whether or not
18 something is confusing, that's not -- that's not one of the
19 standards that I look at in allowing an expert --

20 MR. MOWRY: And I want to --

21 THE COURT: -- expert to testify. Basically, as you
22 very well know, for Sergeant Kelly to testify as an expert
23 in this case, I've got to find he's got the requisite
24 knowledge and education and training that it will assist the
25 trier of fact in areas that are not common knowledge for the

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1 jury, and that his testimony, slash, his animation and
2 software program, is reliable. Now, if it's confusing, that
3 goes to the weight and doesn't go to the admissibility.
4 Now, I did anticipate you getting into some of this over and
5 beyond the AT&T records. I had expected some of this. So
6 I'm going to let you continue further, and I'm not cutting
7 anybody off short, but we've got a jury sitting back there,
8 too.

9 MR. MOWRY: Yes, sir.

10 THE COURT: So we just need to be cognizant of that.

11 MR. MOWRY: Your Honor, if I could just report to the
12 Court, Mr. Bentley told me Mr. Shaffer was over there doing
13 his calculations. Mr. Bentley was watching. And the point
14 that Mr. Shaffer calculated Mr. Bentley said was right where
15 Sergeant Kelly had it set up.

16 THE COURT: Do you agree with that?

17 MR. SHAFFER: I disagree with it actually. I think
18 it's about three miles south of there, from what I can tell.
19 But that being said, it doesn't change the fact that the
20 man's bouncing back and forth. Whenever that program --
21 whenever they have him in Aiken County, if you look at the
22 GMT records, I guarantee you that it'll show he's somewhere
23 else.

24 THE COURT: Right.

25 MR. SHAFFER: And that's what I was about to get at.

1 THE COURT: Right. And I'm sure you've got this
2 gentleman here who's your expert in this particular field
3 who's -- I'm assuming he's going to offer some testimony on
4 the issue of reliability of Sergeant Kelly's testimony,
5 so...

6 MR. SHAFFER: And, Your Honor, there's a couple more
7 things I really have to get to because they -- all right.

8 Q Now, if you could, so you're saying that this -- this
9 right here is mapping -- this is -- that all the points that
10 are mapped are the NELOS points, correct?

11 A They're either cell towers or NELOS.

12 Q So they're cell towers or NELOS?

13 A It doesn't differentiate between the two.

14 Q Okay. Isn't it correct, that with the cell tower
15 you're talking about a large area that it could receive at?

16 A Yes.

17 Q How big of an area?

18 A You would have to talk to a cell tower engineer for
19 AT&T to get that exact radius that it would reach, but that
20 just depends on the tower. You can have a very small tower
21 in a congested area like Greenville, South Carolina up on a
22 building and it can hit 600,000 people. You can have one
23 further out in the country that's got to reach further to
24 get that volume.

25 Q So tell me something, there's a missing gap in the

1 NELOS data. Between -- should be between -- it goes from
2 4:09 to 5:28. Do you map those points?

3 A You say they're missing?

4 Q Well, there's no NELOS data between 4:28 and 4:20 --
5 what does your animation do to show that there's missing
6 data?

7 A If there's nothing there, we'll.

8 Q So what --

9 A If there's no data between that call and this call, it
10 won't plot on the map.

11 Q So this man shouldn't be moving between this and that?

12 A No. That motion that he's moving shows that the last
13 place that his call was made, the last time it connected to
14 a tower was here, and the next time it was there. So all it
15 does it draw a straight line down to where it was. It's not
16 showing what road he's taking.

17 Q So that's not actually accurate information between
18 here and here?

19 A It's accurate where it connected with that and where it
20 connected here.

21 Q So it's a straight line? It's not actually where he --
22 where that handset was at?

23 A Right.

24 Q It just demonstrates --

25 A It's a representation.

1 THE COURT: Try not to talk over each other, guys.

2 Q Okay. So it demonstrates -- it draws a straight line,
3 correct?

4 A Right.

5 Q If you could, show us where he's at at local time 7:30.

6 A 7:30 a.m. or p.m.?

7 Q P.m.

8 A I don't know where on the map that shows. We only
9 plotted certain plots that were requested.

10 Q 7:30 p.m.?

11 A So I'm not sure where -- where exactly it would be on
12 here.

13 Q So it's your testimony -- what is 7:20 p.m. in GMT?

14 A I'd have to do the calculation. I'm not exactly sure.
15 I think it's -- 7:20 p.m. would be 3:20. I believe 3:20
16 p.m.

17 Q 3:20 p.m.

18 A It would be minus -- minus four.

19 Q Well, tell me this. So the software, whenever there's
20 not any data, it's still going to show someone moving,
21 right, or it's --

22 A It's going to show direction from one point to the
23 next, I'd say.

24 Q But, and it says Ronald Davis, right? It has a little
25 person?

1 A That's the data.

2 Q So the data is Ronald Davis, a little person, and it
3 shows him moving from one place to another, right?

4 A Uh-huh.

5 MR. SHAFFER: Okay. No further questions at this time.

6 THE COURT: Do you have anything to followup,
7 Solicitor?

8 MR. MOWRY: No, sir, Your Honor.

9 THE COURT: Let me just ask you this, Sergeant Kelly.
10 The information that are in the various boxes that show up
11 and they contain times, that is local time; is that correct?

12 THE WITNESS: Yes. That's why it has the tag start
13 date time local, sir.

14 THE COURT: Okay. And do you believe that those local
15 times are accurate?

16 THE WITNESS: I do.

17 THE COURT: Thank you.

18 THE WITNESS: Thank you, sir.

19 THE COURT: You can step down.

20 MR. SHAFFER: We call Spencer McInville.

21 THE COURT: Come around, please, sir.

22 SPENCER MCINVILLE, having first
23 been duly sworn, testified as follows:

24 IN CAMERA

25 DIRECT EXAMINATION

Spencer McInville-Direct Examination

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1 BY MR. SHAFFER:

2 Q Mr. McInville, please, if you wouldn't mind, tell the
3 court your qualifications.

4 A Yes, sir. My name is Spencer McInville. I work with
5 Envista Forensics. My office is in Raleigh, North Carolina.
6 I've been qualified as an expert in the area of cellular
7 analysis twice.

8 MR. MOWRY: Your Honor, I will stipulate. I've talked
9 with Mr. Hines. He knows him and --

10 THE COURT: Okay.

11 MR. MOWRY: -- I won't question it.

12 MR. SHAFFER: We'll introduce him as an expert in --

13 THE COURT: Sure, okay. For purposes of this in camera
14 hearing the State has already stipulated that Mr. McInville
15 is an expert dealing with cellular analysis, cell phones, et
16 cetera. You may proceed.

17 Q What time is GMT right now?

18 A In GMT right now what time is it?

19 Q According to that clock it says 3:51 -- I mean, 2:51.
20 Sorry.

21 A 2:51. GMT at this point in time -- what's the date,
22 March? What's the date?

23 Q It's March 28th.

24 A March 28th. So we're past that. So Greenwich Mean
25 Time would be four hours ahead of us. So it would be --

1 2:50, it would be 6:50 p.m. Greenwich Mean Time. And -- to
2 help understand Greenwich, Greenwich is an actual location
3 where UTC -- it's also referenced in some of these records.
4 It's not an actual location, but it references the same time
5 location. Greenwich is in the area of Great Britain.
6 That's how we're four hours behind because, of course in
7 Britain, they're ahead of us in time.

8 MR. SHAFFER: And I will reference to the Court that I
9 just Googled GMT and it's four -- it says it's 6:52 p.m.
10 according to Google right now, GMD.

11 MR. MOWRY: I have no contest with that, Your Honor.

12 THE COURT: Okay.

13 Q So have you had a chance to review the animation that
14 was put -- that was used in this case, or that the State
15 plans on using?

16 A Yes.

17 Q Tell us briefly what you think about the animation?

18 A There's several things that I noted as far as the -- as
19 far as the animation. One being, of course, the time that
20 we talked about. The time referenced to the left, which was
21 testified to as Greenwich Mean Time, is -- isn't correct.
22 So it -- the correct local time is displayed in the box.
23 The time reference on the timeline in which GeoTime the
24 software creates is not correct. So there was -- there's a
25 miscalculation in there somewhere that the software did.

1 Q So the software miscalculated?

2 A Yes.

3 Q Now, would you -- would you agree with the fact that
4 all the points plotted on there are essentially the NELOS
5 points?

6 A I saw no call detail records referenced in there. They
7 all seem to be points from the NELOS records themselves.

8 Q So the call detail records, how do you go about -- how
9 would you go about using those?

10 A So call detail records, what they notate is the date,
11 time, phone call -- phone numbers in contact with each
12 other, and then it references the cell tower that was used,
13 and then also the sector of that time that was used. So
14 rather than giving you a geographical point that says -- you
15 know, say the phone is supposed to be in this location, it
16 gives you the location of the tower and the direction in
17 which that antenna is pointing to provide service. And you
18 would -- pretty much it will show you the area that that
19 phone could be.

20 Q And is it fair to say that that's a preferred means of
21 mapping cell phone location?

22 A Yes. Well, it's not -- you know, we're not looking at
23 pinpoint accuracy as far as this street, this address,
24 things like that. It gives you a general area and it shows
25 you -- it kind of -- it cuts down that area that you would

1 kind of understand the phone could possibly be in.

2 Q Okay. Now, with the NELOS records, the locations vary
3 -- or the potential -- it doesn't mean that they're at that
4 specific point, correct?

5 A No. No. It gives you a -- it says location accuracy
6 likely better than, and then it provides a radius for that
7 -- for that estimation.

8 Q Can you tell us how they calculate that?

9 A Yes. It's -- Mr. Hines is correct. The tower sends a
10 single to the phone. That phone returns the signal. The
11 network estimates the location based off the timing of that
12 signal transfer.

13 Q Are you familiar with any studies that -- where AT&T
14 has done to test the accuracy of their estimations?

15 A No, I do not. I do not know of any offhand, no.

16 Q Have you done any studies to test the accuracy of their
17 locations?

18 A No, sir. I haven't needed to try and do, you know,
19 anything. And I don't know of a way to -- you know, because
20 the calculations that are made by the system, of course, are
21 proprietary to AT&T. So that's something that -- I don't
22 know how you would -- what you would reference it to as to
23 whether or not it's accurate.

24 Q Okay. So with the -- with the animation that they're
25 presenting, does it appear that there is a gap in data from

1 the NELOS records?

2 A As you stated before, there is a time period. You
3 know, I don't know what the gap means. But yes, there is a
4 -- there -- you know, there's an hour of timeframe in there
5 where there's not data. I don't think anything's missing.
6 It's just there was no activity took to register the system
7 at the time.

8 Q And if you were able to look at the call detail records
9 could you tell me if there were any phone calls during that
10 time period?

11 A What is the time? What time period are you
12 referencing?

13 Q I'm talking about between around 4:00 GMT, about 4:00
14 a.m. GMT, and 5:20 GMT.

15 A Speaking in -- they reference them as UTC in the call
16 detail records. Same offset.

17 Q Same thing?

18 A Just a -- so on line 139 of this document -- this is
19 marked as State's 106.

20 Q Uh-huh.

21 A On line 139 it's showing a UTC time of 03:09:50. And
22 then the next line 140, again -- 09:03:50, excuse me. You
23 said farther ahead, correct?

24 Q Yeah, between 3:00 and --

25 A Excuse me. I found the correct page now. It's line

1 item 169. It shows 03:53:51 in UTC. The next at 170 is
2 05:29:25 UTC.

3 Q And those are the call detail records that would
4 indicate a call during that time period, correct?

5 A Correct.

6 Q Are there any NELOS data from that time period? That
7 same time period?

8 A So the time -- ask me that again one more time now that
9 I'm --

10 Q So what I'm asking is there -- there appears to be no
11 data between -- in the NELOS records between local time,
12 midnight and 1:20 or so. 1:29, I think.

13 A So there's -- in the NELOS records the gap is between
14 04:09 GMT and 05:28:35 GMT. Those are line items 36 and 37.

15 Q Does it appear to be call detail records during that
16 time period?

17 A No. The call detail records were stopped at 3:53:51
18 until 5:29:25.

19 Q Now, going to after 1:30, let's say --

20 A Local time?

21 Q Local time, yeah. So we're talking about 5:00 -- 5:34
22 GMT, correct?

23 A In the call detail records?

24 Q Yeah. Are there any calls after -- and I'm going to
25 use local time from here right now. Okay?

- 1 A Okay.
- 2 Q Okay. Local time between 1:35.
- 3 A Okay.
- 4 Q Okay? Is there any NELOS data between 1:35 local time
- 5 and -- I mean, and 3:16 local time?
- 6 A No.
- 7 Q Is there call detail records for that time period?
- 8 A Yes, there are. There are forwarded calls.
- 9 Q So there's calls that are being made?
- 10 A There's a receipt that their being forwarded to
- 11 voicemail.
- 12 Q So are any of them actual calls?
- 13 A The next call that has duration to it is on line item
- 14 233 of State's 106.
- 15 Q Uh-huh.
- 16 A That is 7:17 GMT. So --
- 17 Q Okay. So during that time period there actually is --
- 18 the calls are all being forwarded, correct?
- 19 A Yes.
- 20 MR. SHAFFER: Court's indulgence.
- 21 Q So is it fair to say that there's a line right here?
- 22 A That's correct.
- 23 Q Okay. Before 1:28 how long is the most recent -- I
- 24 mean, 1:28 local time --
- 25 A Uh-huh.

1 Q -- immediately before then, when's the last NELOS
2 point, or NELOS hit?

3 A In GMT time that's 04:09:25. So, what, 12:09 a.m.?

4 Q So there's a lot in here immediately beforehand but
5 there's no real data to back it up; is that fair to say?

6 A That's correct. There's no data in between those two
7 to be able to map.

8 Q And I think we've talked about this before. It's not
9 possible to jump from this location to that location that
10 quick, correct?

11 A It's hard to tell just how far that is, but by the
12 scale on the left, the page from top to bottom is 17, it
13 looks like, .4 miles. So looking at that you're looking --
14 that one line in the middle there. Over to your left just a
15 little bit.

16 Q Yeah. This one (indicating)?

17 A Between -- yeah, between those two, it looks to be at
18 least as long as a quarter of a page.

19 MR. MOWRY: Your Honor, I believe that's been explained
20 for this purpose.

21 THE COURT: Right, it has.

22 Q And that was in 40 seconds?

23 A Yes, sir. It appears to be.

24 MR. SHAFFER: No further questions.

25 THE COURT: Anything, Solicitor?

Spencer McInville-Cross Examination

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1 MR. MOWRY: About three questions, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MOWRY:

4 Q Do you have an opinion as to the reliability of data
5 that you have received in the past from AT&T such as State's
6 Exhibit No. 106 and State's Exhibit No. 107? Is it
7 reliable?

8 A In terms of reliable as in they comply to the data that
9 was requested or to the accuracy of the points?

10 Q Reliability of the information.

11 A I think they provide their actual records that they
12 retain. I don't know if I can testify to whether or not the
13 location and general proximity that they give to a GPS point
14 as accurate.

15 Q I don't know what that meant. Was that -- do you
16 believe that they are reliable or not?

17 A I believe that the records that they provide are
18 reliable. What I'm saying is that I can't testify to that
19 accuracy of the data points --

20 Q That's fine.

21 A -- itself.

22 Q That's fine.

23 A That's what --

24 Q That's fine. And you've been retained by the Defense;
25 is that right?

1 A That's correct.

2 MR. MOWRY: Nothing further, Your Honor.

3 THE COURT: You can step down, sir.

4 (Whereupon, the witness stepped down from the witness
5 stand.)

6 MR. SHAFFER: And, Your Honor, really quick on
7 argument.

8 THE COURT: Okay.

9 MR. SHAFFER: Obviously, I have made the reliability
10 argument. There's also an issue related to Confrontation
11 Clause. Your Honor, the expert that they're going to try to
12 introduce this through did no independent investigation --
13 or independent calculations for this case. I think I cited
14 to a case pretrial related to that saying essentially that
15 the expert testifying can't just be a conduit to relay other
16 information or other expert's information. So I think that
17 violates the Sixth Amendment to allow him to testify to
18 this.

19 I also think that there's a problem with his expertise
20 if he can't very well say that what I'm -- the data points
21 that I'm using are actually reliable. I don't think that
22 for him to just say, okay, well, what I'm doing is plotting
23 out points, that's not -- essentially, longitude and
24 latitude do not need an expert to explain. The -- as for
25 the reliability of his information, the third prong, I don't

1 think that you could necessarily say that whenever he's
2 saying, well, I'm just relying on AT&T. You know, basically
3 everyone's saying we don't exactly know how AT&T does all
4 this. We're just assuming that they're correct. And, Your
5 Honor, that's -- that's -- violating his right to
6 confrontation. It's also not expert opinion. I mean,
7 saying so and so said that, AT&T said that, is not -- you
8 don't need an expert to say that. So I don't think he
9 should be qualified as an expert, first of all.

10 Secondly, I don't think that the information is
11 reliable to -- or at least there's any way for us to
12 challenge the reliability.

13 I also want to renew the objection I made related to
14 the timeliness of this, and also to the business records
15 arguments I made pretrial. I would also say that it's
16 unduly prejudicial to allow something that he's saying,
17 yeah, well, there's lines which very well could indicate
18 that -- or the jury could think that there's a line there,
19 that means that's the way he traveled. For them -- for you
20 to introduce something and say there's a line there, that
21 the way he must have traveled, whenever they have no data
22 whatsoever, and he's admitted there's no data to support
23 that line. I think that it is very -- very confusing for a
24 jury. Therefore, I think that it's unduly prejudicial to
25 allow something like this whenever -- the line isn't based

1 off of data. His path here is not based off of actual data
2 points. It's just drawing lines between two points, Your
3 Honor.

4 THE COURT: All right. Thank you, Mr. Shaffer.
5 Solicitor, do you want to respond?

6 MR. MOWRY: Your Honor, his own witness talked about
7 the reliability of those records.

8 THE COURT: All right. Okay.

9 MR. MOWRY: And I think that's the threshold point. If
10 19-5-520 is going to have any affect whatsoever, then we're
11 going to have to go with what they've sent us.

12 THE COURT: Everybody be at ease for just a moment.

13 (Whereupon, there was a brief pause in the proceedings.)

14 THE COURT: Okay. As to the AT&T records, I'm going to
15 allow them in under 19-5-520, and Rule 803. We've got three
16 experts all say that the records are reliable. We've got
17 two that says reliable and using trustworthy, which is the
18 word used in 803, so I'm going to allow those in. And I'm
19 going to allow Sergeant Kelly to testify concerning his --
20 his animation. I find that he possesses certain knowledge,
21 skill, and education, and training to assist the tryer of
22 fact in areas that are not of common knowledge to them, and
23 I believe it meets the reliability factor. Certainly, the
24 arguments that you raised, Mr. Shaffer, would go towards
25 potential weight of that evidence. Certainly, you're

1 skilled at cross-examination and you can -- you can have at
2 it under cross. And certainly if you intend to have Mr.
3 McInville testify before this jury, then certainly he can
4 attack the weight of that evidence. But I'm going to allow
5 Sergeant Kelly to testify.

6 MR. SHAFFER: And, Your Honor, I would just ask that
7 the Court take judicial notice in front of the jury of GMT
8 being four hours ahead, because I don't want to get into an
9 argument over what GMT is whenever Google and everything
10 else, and logic says it's four hours ahead instead of five
11 hours, depending on what time of the year it is.

12 MR. MOWRY: I have no argument with that. In July,
13 Your Honor, that would be accurate.

14 THE COURT: I'll just allow -- instead of necessarily
15 taking judicial notice, I'll just allow counsel to stipulate
16 as to -- as to the GMT versus local time. I'll just allow
17 you to do that at the appropriate time.

18 MR. MOWRY: It's 7:10 in Greenwich right now.

19 THE COURT: All right. Let's take a short break. Let
20 me just ask you, Mr. Shaffer. Is Mr. McInville going to
21 testify? If he is before the jury, then there was something
22 about a scheduling problem, I think?

23 MR. SHAFFER: No, that actually wasn't the expert. I
24 don't think we're going to -- I don't think I'm going to
25 have him testify in front of the jury. Unless the State

1 wants to, in which case --

2 MR. MOWRY: No, that's fine.

3 MR. SHAFFER: -- they're more than welcome to.

4 THE COURT: All right. I was confused then. I thought
5 Mr. McInville had the scheduling issue. Okay.

6 We're going to take a 10 minute break. And, Mr. Bolt,
7 if you'll go back to the jury room and just tell them that
8 we're going to be ready for them in about 10 minutes.

9 THE BAILIFF: I just told them you was working and I'd
10 get back with --

11 THE COURT: Oh, you've already told them we're working?

12 THE BAILIFF: Yeah.

13 THE COURT: Okay, then that's fine. That's good
14 enough.

15 (Whereupon, a 15 minute recess was held.)

16 THE COURT: We'll go back on the record. The lawyers
17 have informed me that Mr. Davis has elected to tender a plea
18 of guilty to manslaughter and to the offense of possession
19 of a weapon during the commission of a violent crime. Madam
20 Clerk, would you swear Mr. Davis in, please.

21 RONALD DUYANE DAVIS, having first
22 been duly sworn, testified as follows:

23 THE COURT: Mr. Davis, I'm going to ask you a series of
24 questions. It is extremely important that you pay very
25 close attention to the questions I ask you. If at any time

1 you don't understand completely the questions I ask or any
2 question, or more than question that I ask, please let me
3 know that, and I'll either try to repeat, rephrase the
4 question, or even give you an opportunity to step back and
5 talk with Mr. Shaffer and Ms. McNeill. Okay? Okay?

6 THE DEFENDANT: Okay.

7 THE COURT: All right. You are Ronald Duyane Davis,
8 correct?

9 THE DEFENDANT: Yes.

10 THE COURT: And you are 42 years of age?

11 THE DEFENDANT: Yes.

12 THE COURT: How far did you go in school, sir?

13 THE DEFENDANT: GED.

14 THE COURT: Okay. What type of work have you normally
15 done?

16 THE DEFENDANT: Truck driver.

17 THE COURT: Truck driver, okay. Now, is it correct
18 that you are pleading guilty to two offenses, voluntary
19 manslaughter, which has been reduced from murder, and
20 possession of a weapon during the commission of a violent
21 crime? Are you pleading guilty to those two offenses?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you pleading guilty because, in fact,
24 you are guilty?

25 MS. MCNEILL: Beg the Court's indulgence. This is

1 emotional for him.

2 THE COURT: I'm sure it is. Mr. Davis, the point I
3 want to emphasize with you, of course, I don't want you to
4 plead guilty to anything that you don't believe you're
5 guilty of. Okay? I would never want that. I would never
6 want you to do that.

7 Also, I need to make sure that your plea is completely
8 voluntary, has been freely made, has been intelligently
9 made. You've got two excellent lawyers, and I know you've
10 been spending a lot of time with them. Well, a lot of time
11 over the course of this whole case, but this afternoon when
12 discussions were being had about maybe a guilty plea being
13 offered in this -- in this case. So that's what I want you
14 to make sure where I'm coming from. Okay? All right?

15 Again, are you pleading guilty today to these two
16 offenses, voluntary manslaughter and possession of a weapon
17 during the commission of a violent crime because, in fact,
18 you are guilty?

19 THE DEFENDANT: Yes.

20 THE COURT: Sir?

21 THE DEFENDANT: Yes.

22 THE COURT: Are you certain of that? Has anyone forced
23 you, coerced you, promised you anything, done anything
24 whatsoever to get you to plead guilty today against your
25 will?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you pleading guilty today to these two
3 offenses freely, voluntarily, and intelligently?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you admit, Mr. Davis, that you committed
6 these two offenses on or about July 3, 2016 as it relates to
7 Shana Prophet?

8 THE DEFENDANT: Would you repeat the question, please,
9 sir?

10 THE COURT: I'll be glad to. Do you admit that on or
11 about July 3rd of 2016 you committed these two offenses, the
12 voluntary manslaughter and the possession of a weapon during
13 the commission of a violent crime, as it relates to Shana
14 Prophet?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you admit that by your actions with a
17 weapon, firearm, that you killed Shana Prophet on or about
18 July 3rd of 2016?

19 THE DEFENDANT: Yes.

20 THE COURT: Now, you understand, Mr. Davis, that the
21 offense of voluntary manslaughter is classified in our law
22 as being a violent offense. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And by virtue of it being classified as a
25 violent offense, the Department of Corrections will use that

1 in determining how much time you have to serve. I cannot
2 tell you how much time you'll have to serve. That's up to
3 the Department of Corrections by the fact that it is a
4 violent offense, and I know you've had discussions with your
5 lawyers about that. Do you understand that will affect how
6 much time -- as determined by the Department of Corrections
7 how much time you'll have to serve in prison? Do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you understand that is the manslaughter
11 -- voluntary manslaughter is also classified as a most
12 serious offense. And, once upon your release, if you were
13 to engage in further criminal activity and commit offenses
14 that have a classification of most serious, or serious, that
15 could end up resulting at some point in time in the future
16 you serving a life sentence without parole if you were
17 convicted of those future charges. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, you understand -- and we've, of
22 course, gone through pretrial that you've been a part of,
23 we've gone through three days of trial, you understand that
24 when you plead guilty you give up your rights that you were
25 exercises during this whole proceeding? Do you understand

1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You understand by pleading guilty you give
4 up your right to further proceed with this trial that we
5 started on Monday. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Is it your desire to stop this trial right
8 now by virtue of this guilty plea?

9 THE DEFENDANT: Yes, sir, but I just --

10 THE COURT: I'm sorry. I can't hear you.

11 THE DEFENDANT: I said, yes, sir. But I just --
12 honestly, I just don't -- yes, sir.

13 THE COURT: You can give me any explanation you wish to
14 give me if you would like to?

15 THE DEFENDANT: I just wish that out of due respect to
16 the State, to you, to the lawyers, to the family, that I
17 just could have had until tomorrow just to pray about it and
18 to think about it. If this offer was still on the table on
19 the table tomorrow. That's what I wish.

20 THE COURT: Let me talk with the lawyers for just a
21 minute.

22 (Whereupon, a brief sidebar was held off the record.)

23 THE COURT: We're back on the record. Mr. Davis, if
24 you are wanting to go forward with your guilty plea then
25 we're going to do it now as opposed to your request to give

1 you overnight and you said to pray about it. But if you
2 want to go forward with this guilty plea, then we're going
3 to do it now. Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So are you prepared to stop this trial and
6 waive your right to further trial proceedings? Jury trial
7 proceedings?

8 THE DEFENDANT: Yes.

9 THE COURT: And you further understand that by stopping
10 this trial that you give up your rights to proceed on any
11 self-defense theory that was -- been argued and offered in
12 this trial? That you give up -- and any other defenses that
13 you may have. You're giving all that up. Do you understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is that what you want to do is give up your
17 right to claim self-defense and any defenses that you have?

18 THE DEFENDANT: Yes.

19 THE COURT: And you further understand that by pleading
20 guilty you give up your rights for your lawyers to make any
21 other legal arguments, file legal motions, make legal
22 challenges concerning any witnesses or evidence that the
23 State may have, as well as give up your right for your
24 lawyers on your behalf to confront and cross examine State's
25 witnesses? Is that what you want to do? You want to give

1 up those rights?

2 THE DEFENDANT: Yes, sir.

3 THE DEFENDANT: You understand, Mr. Davis, that when
4 you were arrested originally on these charges you were
5 automatically presumed to be innocent, and that presumption
6 of innocence has carried with you all the way up until now.
7 But when you offer a plea of guilty you give up that right
8 to be presumed guilty. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you understand that if we were to
11 proceed forward with this trial, I would have instructed --
12 we've already mentioned to the jury that the State has the
13 burden of proof to prove each and every element of the
14 offenses beyond a reasonable doubt standard. That's the
15 highest standard of proof that we have, and I will tell the
16 jury that. But when you plead guilty the State has no
17 burden of proof whatsoever. You understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, are you satisfied with the legal
20 representation afforded you by both Ms. McNeill and Mr.
21 Shaffer?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have they done everything you've asked them
24 to do?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have they done everything that you expected
2 that they would do on their behalf?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you had every opportunity to discuss
5 this case with them, review the discovery file? I think I
6 saw you one day, you had a packet of files or documents. I
7 assume that to be discovery material, but I don't know that.
8 But have you had full opportunity to review the discovery
9 material and all the evidence in this case with your
10 lawyers?

11 MR. SHAFFER: Your Honor, the one thing that we haven't
12 printed out for him is about 1,200 pages of stuff from the
13 cell phone, and that's -- and then the 750 pictures that
14 SLED took. He had a chance to review them. But he
15 requested that he print out all that stuff, and we said
16 that's going to have to wait until after the trial, because
17 it's just too much.

18 THE COURT: Other than the voluminous cell phone
19 documentation and the multiple pictures, as far as actually
20 giving you a copy, you've had a chance to at least review
21 everything if not having an actual copy made for your
22 possession; is that correct?

23 THE DEFENDANT: Yes, sir.

24 MS. MCNEILL: And I also did hand him a copy of the
25 text messages that were pulled off of his cell phone and

1 that the State is presenting in evidence.

2 THE COURT: Have you had any complaints against Ms.
3 McNeill, Mr. Shaffer, anyone in the PD's Office, anyone in
4 the Solicitor's Office, any of the law enforcement personnel
5 that was involved in this case? Do you have any complaints
6 against any of those individuals?

7 THE DEFENDANT: No, sir.

8 THE COURT: Is that a no, sir?

9 THE DEFENDANT: No, sir.

10 THE COURT: Your answer to the question was no, sir?

11 THE DEFENDANT: Yeah.

12 THE COURT: You understand, Mr. Davis, that if you had
13 a legal basis to challenge this guilty plea that you're
14 making today that you only have 10 days to file a notice of
15 intent to appeal with a higher court? Do you understand
16 that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And again, I want to ask you again. Are
19 you pleading guilty to voluntary manslaughter and possession
20 of a weapon during the commission of a violent crime
21 because, in fact, you are guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And are you pleading guilty to these two
24 offenses freely, voluntarily, and intelligently with
25 knowledge of the rights that you have that are afforded to

1 you by the laws of this State and by the US Constitution?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you understood all of the Court's
4 questions?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Have all your answers been truthful?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have all your answers been accurate?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you have any questions of your own, sir?

11 THE DEFENDANT: No, sir.

12 THE COURT: Thank you very much, sir. Let the record
13 reflect that there is a factual basis for this plea. This
14 plea has been made freely, voluntarily, and intelligently by
15 Mr. Davis, and he's done so with competent counsel with
16 whose services he expresses satisfaction with.

17 I don't think it was put on the record, and I just kind
18 of overlooked this for some reason, that there's a
19 recommendation made by the State?

20 MR. MOWRY: Yes, sir. There's a recommendation and
21 that's after consultation with the victim's family, with her
22 mother.

23 THE COURT: Okay. And I'll hear from them in a minute,
24 or at least for Ms. Prophet.

25 MR. MOWRY: Yes, sir.

1 THE COURT: Can you state on the record the
2 recommendation that you -- that the State has made?

3 MR. MOWRY: There's a recommendation, Your Honor, of 25
4 years incarceration on the voluntary manslaughter charge and
5 a concurrent sentence on the pistol charge.

6 THE COURT: Very good. Is that your understanding of
7 the recommendation made by the State, Mr. Davis?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Let me hear Ms. Prophet. I need to have
10 you sworn in, either though you were sworn in Monday or
11 yesterday. Madam Clerk.

12 LATRON PROPHET, having first been
13 duly sworn, testified as follows:

14 THE COURT: You're Latron Prophet?

15 MS. PROPHET: Yes, sir.

16 THE COURT: And you are the mother of Shana Prophet?

17 MS. PROPHET: Yes, sir.

18 THE COURT: And are you in agreement with the
19 recommendation made by the State that I sentence Ms. Davis
20 to a 25 year sentence on the voluntary manslaughter and a
21 concurrent five year sentence on the weapons charge?
22 Concurrent meaning it would run at the same time?

23 MS. PROPHET: Yes.

24 THE COURT: You understand that he will get credit for
25 whatever number of days that he has already been

1 incarcerated presumably since his arrest, I'm guessing? You
2 understand that?

3 MS. PROPHET: Yes.

4 THE COURT: Are you -- are you reasonably satisfied
5 with this recommendation?

6 MS. PROPHET: Yes.

7 THE COURT: All right.

8 MS. MOWRY: I think -- I think she would emphasize
9 reasonably, Your Honor.

10 MS. PROPHET: Right.

11 THE COURT: I understand.

12 MR. MOWRY: It's not perfect by any stretch of the
13 imagination?

14 THE COURT: There's no amount of time that I can give
15 to bring Shana back.

16 MS. PROPHET: Right.

17 THE COURT: If I could, I would, but I can't. So
18 understanding that, do you want me to accept the
19 recommendation from the State?

20 MS. PROPHET: Yes.

21 THE COURT: And I know you've got some family members
22 that have been with you. Do you speak for them?

23 MS. PROPHET: Yes.

24 THE COURT: All right. Anything else you want to tell
25 me, ma'am?

1 MS. PROPHET: I just want to say I thank everybody for
2 their hard work. I know you done been in here plenty,
3 plenty days with this case. I thank the Solicitors for
4 working on the case. And I know this won't bring Shana
5 back. Shana was a good daughter, a good mother, a good
6 sister, a good granddaughter, and I know it won't bring her
7 back. But I just thank everybody for this closure. So I
8 thank you all.

9 THE COURT: Thank you, ma'am, very much.

10 MR. MOWRY: And, Your Honor, if I --

11 THE COURT: And, again, I'm sorry for your loss.

12 MS. PROPHET: Thank you.

13 MR. MOWRY: I'm sorry, Your Honor. If I could just say
14 that Ms. Prophet has been one of the most stoic victims that
15 I've ever been associated with.

16 THE DEFENDANT: Your Honor, may I say something.

17 THE COURT: I'm going to give you an opportunity in
18 just one minute. Does Mr. Davis have any significant prior
19 record?

20 MR. MOWRY: Yes, sir. And that is part of the reason
21 that we recommended 25 years. He has a pointing a firearm
22 and discharging a firearm in Newberry back in '98, petit
23 larceny and CDV in '99. Almost all of these offenses are
24 Newberry. I'll tell you if it's otherwise. Resisting
25 arrest in Newberry inn 2000, CDV in Newberry in 2000, public

1 intoxication 2000, CDV 3rd 2001, trespass and public drunk
2 2001, CDV in 2005. An aggravated assault in 2005. A
3 hindering an officer in 2010, and a CDV in 2011. That was
4 in Laurens.

5 THE COURT: Anything further from the State before I
6 turn it over to the Defense?

7 THE COURT: Your Honor, the only evidence that you did
8 not hear was going to be the text messages. Essentially the
9 victim had sent the Defendant text messages that she didn't
10 want him -- didn't want to be with him anymore and to come
11 and get his clothes. In fact, she said, "I'll have them in
12 your car for you in the morning."

13 THE COURT: Very good. Now, Ms. McNeill, Mr. Shaffer,
14 and then we'll give Mr. Davis an opportunity to speak. You
15 want him to go ahead and speak now or you want to speak
16 first?

17 MS. MCNEILL: I'll go ahead and speak first. I have
18 been representing Ronald -- well, actually, Mr. Tom Adducci
19 was appointed to represent Ronald at his arrest, which he
20 has -- he was arrested on July 3, 2016. By my calculations,
21 that's 633 days jail credit he's entitled to.

22 THE COURT: Okay.

23 MS. MCNEILL: As you heard, Mr. Davis -- you know,
24 obviously there was some sort of struggle in that room that
25 night, and Mr. Davis called 911 almost immediately according

1 to the neighbor's witness statement that we heard testimony
2 from. He was on the phone with law enforcement throughout
3 the night, as we also heard testimony. He was cooperative.
4 He gave law enforcement the addresses that he was associated
5 with. The one address that he gave, it was like Green
6 Meadow in Newberry, that actually was another address he was
7 associated with. I don't know if the State knows that was
8 his ex-wife Marlena Davis' mother's address.

9 MR. MOWRY: We did know that, Your Honor.

10 MS. MCNEILL: Okay. So none of the locations that he
11 gave to law enforcement ever showed that he was trying to
12 necessarily evade law enforcement. I think that no one
13 would be able to say what a reasonable reaction to something
14 like this is or would be. I can't imagine what I would do
15 in this situation. But Ronald first called his mom and then
16 called 911 and stayed on the phone with Bryant Cheek, the
17 lieutenant we heard testimony of. He stayed on the phone
18 with dispatch, 911. He then peacefully turned himself in to
19 Laurens County Jail directly by having his ex-wife take him
20 there. I think that the biggest reason that he went back to
21 Newberry was to say goodbye to his children that he has with
22 Marlena before turning himself in. That was the reason.
23 Certainly we heard that there was a small child located in
24 the house. Luckily, as Your Honor would have heard in the
25 recorded statement, that Lieutenant Cheek, also Ben Blackman

1 and Lieutenant Keith McIntosh had video recorded with Ronald
2 when they interrogated him at the jail. At the end
3 Lieutenant Cheek said, you know, this is all a tragedy. I'm
4 just really glad that that little boy never woke up. He
5 never heard the shots. He never woke up to see his mom.
6 That would have been tragic had he seen her. I can tell
7 Your Honor, in talking with Ronald, he was obviously not
8 thinking about the child after this happened. I think that
9 he went into a state of shock. He talks about blacking out,
10 going into kind of a state of shock with law enforcement
11 during that recorded interview, and I think all he was
12 thinking about was what do I do now. Call his mom, crying
13 hysterically, and then call the law enforcement and reported
14 himself. And then went down to Newberry to say goodbye to
15 his kids, and then Marlana took him and turned him in to the
16 Laurens Jail where he sat outside on a bench, outside of the
17 jail, where he was told to sit until they got the proper
18 officers to come and accept him into the jail and dress him
19 out and put him on suicide watch.

20 Judge, I can tell you that through my conversations
21 with him he has been extremely remorseful about what
22 happened that day. I know that only he and Shana really
23 know what happened that day. I'm just going to say that,
24 you know, I think that voluntary manslaughter is a proper
25 and fair resolution to this. I think that that's really

1 what this was, is voluntary manslaughter.

2 Ronald has seven children. He's got two sets of twins.

3 His youngest boy, Cam Davis, who was listed on some of the

4 text messages -- Cam had his own cell phone. I think he was

5 seven at the time that this happened. And Cam -- Cam and

6 Ronald are the closest, and I know that this is just going

7 to be the hardest part is being away from his family.

8 Tristan and I have done so much -- put in so many man hours

9 in this case, and we are honored to do so. We have met with

10 his first cousin, and like a brother to him, Demarcus

11 Barksdale, and Demarcus' girlfriend, Stevie Cannon. And

12 both of them are incredible people, loving people. We met

13 them at Tristan's office in Chapin. Spent a good amount of

14 time with them. We also met Marlana Davis, Ronald's ex-wife

15 in Charles Verner's private practice office down in Newberry

16 and spent a lot of time with her. He's got quite a lot of

17 support through his family. He's loved by a lot of people.

18 While I know that, you know, Ronald really is having a

19 tough time pleading today, I think that it all boils down

20 to, you know, this will allow him to probably survive his

21 prison sentence and get back to his family and see

22 grandchildren be born. I know he that he already has a

23 couple grandchildren because he's got some older children in

24 their 20s.

25 Ronald was a truck drive. He has a CDL. He is a man

1 of God. He is very strong in his faith. And when Tom
2 Adducci left out office to go to the Greenville Public
3 Defender's Office and I took over the case, I remember our
4 first conversation at the jail and I said, you know, I know
5 that you've been working with Tom and I'm going to take over
6 your case. Is that okay with you? And he just said, I've
7 never been asked if that's okay for me to have a lawyer.
8 And I was like, you're not picking me. I'm appointed to you
9 and I just want to make sure you're comfortable. And we had
10 a very candid conversation that he felt I was placed on his
11 case for a reason, and until I gave him a reason to, you
12 know, not trust me, then we were all good. And Ronald and I
13 have had some tough conversations, but they have all been
14 genuine. They have been emotional. They have been
15 intimate, and very private and personal to him.

16 I am honored that Tristan Shaffer joined our defense
17 team. Tristan met Ronald back in December, I believe, for
18 the first time and the three of us have really formed, you
19 know, a hard working team. All three of us have worked very
20 hard.

21 We appreciate the State allowing this resolution to
22 happen. I would like to say on the behalf of the Defense,
23 which would include myself, Tristan Shaffer, and my client
24 Ronald Davis, to the family of Shana Prophet that we are so
25 sorry for your loss. We really are. And I hope that you

1 know that, you know, we have a job to do and that's the job
2 that we're doing and defending Ronald's constitutional
3 rights. Ronald is extremely sorry, and I believe that he
4 would like to take a moment to express that sincere apology
5 to the family.

6 THE COURT: Okay. Very well. Mr. Davis, be glad to --
7 be glad to hear from you, sir.

8 THE DEFENDANT: First, respect to you, to the State, and
9 to the family. Your Honor, just to give you a little
10 history about me. I did do time in 2005. I changed my -- I
11 changed my life. I went to seminary school to be a pastor.
12 I pastored a church from 2009 to 2014. I stepped down, and
13 I really -- when I went to my bond hearing, when Mr. Mowry
14 used to ready my record he said -- I used to have a problem
15 with it, because I know I had changed my life for the best,
16 and I had no -- I just prayed for that situation. And first
17 I really want to apologize to the family with my deepest
18 heart. I really do. I apologize with all my heart. I
19 never intentionally meant to take your daughter's life.
20 Shana was a good girl. I'm not fixing to take that from
21 her. I can't say nothing bad about her. I would never say
22 nothing bad about her. She was a good good good lady. I
23 hate what happened that night. If I can change that night I
24 would have changed that night, July the 3rd, when it
25 happened, but I really can't change it. I'm sorry from the

1 bottom of my heart. I mean that. I do.

2 THE COURT: All right. Thank you, Mr. Davis. You said
3 you had some strong faith, and that strong faith will get
4 you through the next number of years that you'll be in the
5 Department of Corrections. This is a tragedy both ways. I
6 believe that this is a good, fair, resolution to this case
7 and I will accept the recommendation from the State. And I
8 would commend the lawyers on both sides for their hard work.
9 It's evident that there's been a lot of time put into this
10 case from both sides, along with your respective staffs.
11 And then I always appreciate hard work and I expect nothing
12 less from these lawyers from both sides and their respective
13 staffs.

14 Mr. Davis, the sentence of the Court is on the
15 voluntary manslaughter indictment charge, it will be a 25
16 year commitment to the Department of Corrections, credit for
17 633 days. Concurrent with that sentence is a five year
18 sentence on the weapons charge. Same amount of credit. Good
19 luck to you, sir. Good luck to the family.

20 MR. MOWRY: Thank you, Your Honor.

21 THE COURT: We need to -- go ahead, Sheriff, if you
22 would take -- retain custody of Mr. Davis, and I need to get
23 this jury out so I can get them dismissed.

24 (Whereupon, Defendant was taken into custody.)

25 MS. MCNEILL: Judge, I'm just going to say my apologies

1 to the mom. I'll be right back.

2 THE COURT: Okay.

3 (Whereupon, a brief recess was held.)

4 THE COURT: Let's get the jury out, please. I'm going
5 to tell them the resolution of the case.

6 MR. MOWRY: Yes, sir. Yes, sir.

7 (Whereupon, the jury entered the courtroom.)

8 THE COURT: Ladies and gentlemen, I know that you've
9 been wondering what has been going on for the last two
10 hours, two hours and a half. Well, first of all, this case
11 is over, and I'll explain more about that in a minute. We
12 started at about 1:30 dealing with some legal issues that
13 probably carried over until about 3:00, maybe even 3:30
14 thereabouts. Took a break. The lawyers started having some
15 discussions, as is customarily done a lot of times
16 concerning potential resolution of this case. Mr. Davis
17 entered a plea of guilty to a reduced charge -- when I say
18 reduced, it's voluntary manslaughter from murder. But
19 guilty to that and received a 25 year sentence. He also
20 pled guilty to the other charge, the possession of a weapon
21 during the commission of a violent crime and got a five-year
22 sentence. Those two sentences will run concurrent, meaning
23 they'll run together at the same time. He received a credit
24 of about 633 days because he has been incarcerated since his
25 arrest. So he gets actual credit for that. So he will be

1 transported to the Department of Corrections. So, by virtue
2 of this plea of guilty, this case is over with. And I
3 appreciate very much your patience with us. And it's not --
4 you know, you just never know when cases will get resolved
5 in this fashion. It's not unusual that you go through a
6 part of the trial and the case gets resolved and other times
7 it doesn't and it goes to the jury for the jury to make a
8 determination on the issue of guilt or innocence. So that's
9 where we are. So you are now released from any further jury
10 activity for the remainder of the week.

11 Now, I hope that this has been a good experience for
12 you in that you have learned some things that maybe you
13 didn't already know, and that maybe you made some good
14 friends, folks here on the jury that you didn't know
15 beforehand. And I hope that sometime down the road that
16 you'll have an opportunity to sit on a jury again, whether
17 it's in a criminal arena or in the civil arena.

18 As I told you, I think on Monday, that we have the
19 greatest justice system in the world and I'm very proud of
20 it, and I'm proud of the justice that we have in South
21 Carolina. I'm proud of the lawyers that we have who
22 represent the State and who represent the Defendants in the
23 criminal arena. I can tell you that these lawyers, you
24 couldn't imagine how much time that they have spent, both
25 sides, along with their staff in this case. Investigating

1 it, preparing it, and getting it ready for trial. They
2 worked extremely hard. And I think that the resolution to
3 this case, his plea to voluntary manslaughter, was
4 appropriate. I believe the sentence was appropriate. And
5 so, I do thank these lawyers and their staff for their hard
6 work.

7 I like to shake the hands of my jurors. So I'm going
8 to come down and I'm going to shake your hand, and you'll
9 get an escort and you'll go back to where you are parked in
10 the back of the courthouse. And if you have any questions,
11 I'll certainly -- I'll try to answer questions if you have
12 any. And I'm sure the lawyers hopefully wouldn't mind if
13 they have any. They probably could do a lot better job of
14 answering questions than I can. So if you have a question,
15 just hang around, and we'll try to answer it for you if you
16 have any. Some of you are probably ready to get out of
17 here, and that's fine, too. But I'm going to come on down
18 and shake your hand. Thank you once again for your jury
19 service.

20 (Whereupon, the jury was released from service.)

21 (End of requested transcript of record.)

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth 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/hearing of the captioned case, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 28th day of March, 2018.

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

Tara T. Scott

Tara T. Scott, CVR
Circuit Court Reporter
October 4, 2018

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	2016-GS-30-1382
COUNTY OF LAURENS	)	2016-GS-30-1383
	)	
	)	
	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
RONALD DUYANE DAVIS,	)	
DEFENDANT.	)	
_____	)	

April 19, 2018
Laurens, South Carolina

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE

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

OLIVER WARREN MOWRY, JR., ESQ.
Attorneys for the Plaintiff

CHELSEA BROOKE McNEILL, ESQ.
TRISTAN MICHAEL SHAFFER, ESQ.
Attorneys for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITSNODESCRIPTIONIDEVD

There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 9:35 a.m.)

THE COURT: We're on the record this morning in the matter of State of South Carolina vs. Ronald Davis, a motion having been filed by his attorney Tristan Shaffer seeking to withdraw a plea that he entered on March 28th of this year.

Mr. Shaffer is present, Warren Mowry of the Solicitor's Office is also present representing the State.

Mr. Shaffer, this is your motion. I'll be glad to hear from you, sir.

MR. SHAFFER: Yes, Your Honor. I had received the pro se letter that was on there. In that he said that he felt coerced into pleading. As a result of that, I sort of liberally construed that as him requesting to withdraw his guilty plea because it was still within the ten days. I filed that on, I think, May 6th.

And then, Your Honor, in just full candor to the Court, apparently, he had also prepared a pro se notice of appeal which was mailed off. It was dated the 28th of March. It was notarized on the 5th of March, but according to the Court of Appeals, was not mailed to them. The letter was actually dated, postmarked the 10th of April. So it ended up being that I believe that this --

1 we do actually have jurisdiction. Based off of that, I
2 confirmed it with my client this morning that he mailed
3 out the letter because he was on lockdown, but that that
4 notice of appeal would have been, I guess, a little
5 premature because this motion had been filed. So ---

6 THE COURT: Right. Well, even though maybe his
7 appeal was filed untimely, does not the Court of Appeals
8 have jurisdiction until they make a determination that the
9 appeal was not filed timely?

10 MR. SHAFFER: And, Your Honor, I have had that issue
11 before, and I mentioned it to the clerk's office at the
12 Court of Appeals. In the past, what they have said is,
13 basically, that the appeal is not -- is premature if
14 there's a pending posttrial motion. And I mentioned it to
15 the Court of Appeals whenever I spoke to them. I spoke to
16 them over the phone, the clerk's office there, and they
17 said, basically, just send a letter and we'll just say
18 it's going to be -- we'll hold it in abeyance, basically,
19 until y'all figure out -- have a ruling on the posttrial
20 motion. So ---

21 THE COURT: Okay. All right. So just so I'm clear,
22 of course, I've got a copy of the letter that he wrote the
23 clerk's office here, and it was evidently received
24 April 4th, would have been signed March 27th. Are you
25 saying that the appeal filed with the Court of Appeals was

1 not received until April 10th?

2 MR. SHAFFER: It was received on April the 11th.

3 THE COURT: 11th.

4 MR. SHAFFER: It was mailed on April 10th. The
5 postmark on the envelope -- the clerk's office told me the
6 postmark on the envelope said the 10th because I was
7 asking, because if it had been mailed -- if it had been
8 placed in the mail before I filed that motion, then we
9 would have no -- the General Sessions Court would have no
10 jurisdiction to hear it.

11 THE COURT: All right. Okay. All right. So this
12 motion was filed before the Court of Appeals' appeal was
13 filed. Is that what you're saying?

14 MR. SHAFFER: That's correct. Yes, Your Honor.

15 THE COURT: Okay. All right. I'll be glad to hear
16 from you concerning the merits of your motion.

17 MR. SHAFFER: And, Your Honor, essentially, the
18 motion, what I would like to do is allow my client to
19 actually speak to it because of the fact that he is -- I
20 think in that letter, he said that he felt coerced.
21 Obviously, that's a subjective thing. I personally didn't
22 see objectively anywhere where he was coerced into doing
23 anything.

24 THE COURT: Right.

25 MR. SHAFFER: With that being said, I think it would

1 be appropriate to let him speak to it.

2 THE COURT: Okay. All right. Mr. Davis, I'll allow
3 you to remain where you are, but I'll need to have you
4 sworn in.

5 Madam Clerk, would you swear Mr. Davis in, please.

6 (WHEREUPON, RONALD DUYANE DAVIS is duly sworn.)

7 THE COURT: You can have a seat, sir.

8 You want to examine your client, Mr. Shaffer, or you
9 want him just to ---

10 MR. SHAFFER: I will just ask him an open-ended
11 question, which is, why did you feel like you were coerced
12 into pleading guilty?

13 DEFENDANT DAVIS: Well, Chelsea McNeill, she told me
14 that if I didn't take this plea, that I would receive
15 35 years or life in prison. It had been told by the jury
16 that they would convict me. And I told her that I don't
17 think a jury will convict me. And she told me I had to
18 take this plea. If I didn't take this plea, her and
19 Solicitor Warren Mowry, they dictate who go to prison and
20 who don't go to prison.

21 And I asked her, I said, So what you're saying, this
22 already set up. I said, I told you I ain't feel that I
23 was going to have a fair trial here in Laurens County
24 anyway. And I told you do a change of -- a motion for a
25 change of venue.

1 And she told me that she couldn't do it.

2 I said -- so I said, I don't feel I'm going to have a
3 fair trial because Judge Hocker, he did my bond hearing
4 and he know the facts of the case surrounding the case
5 already. And I just don't feel that he's going to give me
6 a fair trial.

7 And then she told me, she said, You might be right,
8 just like that.

9 And then when she told me that, I said, So you're
10 going to do the change of venue?

11 She told me, No. We're going through with the trial.

12 And then she called my family and told my family that
13 I had to take this plea and all this because the jury is
14 going to convict me on murder and all this. And she
15 called my wife and had my wife get on the phone with me
16 and told my wife to tell me I need to take this plea. And
17 then she called my cousin and told my cousin to tell me to
18 take this plea.

19 And I told Chelsea, I said, No. I'm going to keep
20 rolling the dice. I said, I don't feel that a jury would
21 convict me on this.

22 And she said, No. You've got to take this plea.
23 You've got to take this plea.

24 I said, No. Chelsea, I'm going to keep rolling the
25 dice on this. I said, I want to keep going on with my

1 trial.

2 She told me, No. I can't do nothing else for you,
3 just like that, so you have no choice but to take this
4 plea.

5 I told her, No. I'm not going to take this plea.
6 I'm going forward with my trial.

7 So then when she called me wife -- my cousin and told
8 him to tell me that I need to take this plea. I told my
9 family, No. I'm not going to take this plea, just like
10 that.

11 And then when my wife -- I called my wife, and she --
12 my ex-wife, Marlana, and that when they told me take the
13 plea, I told them, No, no, no, just like that. I said, I
14 feel that I don't want this trial of self-defense, just
15 like that. And that when my wife, Chelsea get back on the
16 phone and tell her, No. You need to tell him to take this
17 plea, take this plea, because we can't help him no more.
18 We can't do nothing for him, just like this.

19 So that when Chelsea leave out the room, and I told
20 her, I said -- I mean, she leave out the room, then when
21 she come back in and tell me, Here, you need to sign this
22 plea, just like that.

23 I told her, No. I still want to go through with my
24 trial.

25 So that's why I feel like she coerced me.

1 And then she told me back in April 2017 when she came
2 and saw me, I told Chelsea, I said, I don't feel that
3 you're doing nothing for me, just like that. So I said, I
4 need you off my case, just like that.

5 . And then she told me she had a trial, I think his
6 name was Lee Evans or something like that, she had his
7 trial to do. And she'll take me up, and if I'm not
8 mistaken, in June or July, the next court term, and she'll
9 be dismissed off my case.

10 And then so the next week she came back, her case
11 calendar, I told Chelsea the same thing. Before she came
12 back, I had her, my wife, call her and tell her I want
13 her off my case because I don't feel like she's doing
14 nothing for me. And then when her case calendar come back
15 the next following week before we had trial, she had, and
16 I told her what was going on. And then she told me she
17 was going to take me up and get off my case, just like
18 that.

19 And then when it never -- it never happened. So she
20 told me, she said, If -- she came and talked to me one
21 day. She said, If the GSR come back on the victim
22 100 percent, she said, Mr. Davis, I promise you,
23 80 percent chance we'll win this trial, just like that.

24 So I told Chelsea, I said, All right. I'm going to
25 give you a chance then, just like that.

1 So the GSR came back, and she -- she told me she'll
2 win this trial. So she lied to me. And then she got me
3 back in the back and told me I need to take this plea.

4 THE COURT: All right.

5 MR. SHAFFER: Your Honor, Ms. McNeill, obviously, is
6 not present. She had called me a few minutes ago saying
7 that she was on her way but running behind. Obviously, we
8 didn't want to hold up the civil jury to have her here.
9 If the Court needed her here, obviously, she'll be here in
10 a little bit and we can take this matter up later. But
11 that's all.

12 Essentially, I was going to let him explain what had
13 happened. I'm not in a position to make any arguments on
14 this case at this time.

15 THE COURT: Right. I mean, for purposes of the
16 record, Mr. Shaffer, if you feel like it would be
17 appropriate for Ms. McNeill to testify concerning this
18 motion, then I'll be glad to allow that to happen. We'll
19 just have to work it in probably this afternoon. I know
20 that Solicitor Mowry, you're in the middle of some other
21 matters, and I understand that and appreciate that, but if
22 you want the Court to hear from Ms. McNeill, I'll be glad
23 to hear from her. I'm going to allow you to make that
24 call.

25 MR. SHAFFER: And, Your Honor, I was actually

1 planning on deferring to the State and the Court on that.

2 THE COURT: Okay.

3 MR. SHAFFER: I would imagine Ms. McNeill, you know,
4 from my dealings whenever I was with her, she didn't do
5 anything inappropriate or anything like that.

6 THE COURT: Right.

7 MR. SHAFFER: Obviously, during part of this
8 conversation we were out here arguing something, he had
9 waived his presence during one of those motion hearings so
10 he could discuss it with ---

11 THE COURT: Right. Yeah.

12 MR. SHAFFER: --- discuss the plea offer while we
13 were doing the pre or in-camera hearing on the cell phone
14 expert.

15 THE COURT: Right.

16 MR. SHAFFER: So I wasn't present during a lot of
17 that. I'm happy to try to work that in if the State would
18 like if the Court thinks it's necessary.

19 THE COURT: Do you have a spare 15, 20 minutes maybe
20 this afternoon?

21 MR. MOWRY: If Your Honor deems that necessary,
22 that's fine.

23 THE COURT: Okay.

24 MR. MOWRY: I was interested to hear from Mr. Davis
25 that I have powers I didn't know I had, but in any

1 event ---

2 THE COURT: Right. Okay. Well, let's -- if the
3 Department of Corrections, I hate to keep you folks
4 hanging around, but since I'm in the middle of a civil
5 trial which, I mean, probably get it to them by 12:00, if
6 y'all could hang around for a couple hours, that would be
7 appreciated. Is that going to be an imposition on the
8 Department of Corrections folks?

9 UNIDENTIFIED: No.

10 THE COURT: You're okay with that?

11 UNIDENTIFIED: We can stay.

12 THE COURT: Okay. All right. Let's plan on around
13 12:00. I think I'll be getting the case to the jury in
14 that time frame.

15 So, Mr. Davis, we're going to just kind of delay
16 this, give Ms. McNeill an opportunity to add whatever she
17 feels like she needs to add, and then I can make a
18 decision. You understand, sir?

19 DEFENDANT DAVIS: Yes, sir.

20 THE COURT: Is there anything else you want to tell
21 me concerning this request to withdraw your plea?

22 DEFENDANT DAVIS: Yes, sir.

23 THE COURT: Okay. If you could speak up a little bit
24 louder, okay?

25 DEFENDANT DAVIS: All right, sir.

1 And yes, sir. I feel that they could have done
2 better during my trial because there was some of these
3 state witness, they could impeach them.

4 I know in the paperwork, my motion, I didn't get my
5 full motion. I -- I feel that I should have been served
6 my indictment, presented with my indictment charging me
7 with this murder from the grand jury, my grand jury
8 indictment. I never received that indictment. I've never
9 seen this indictment. It's not in my Rule 5. I don't
10 have my complete motion. Nothing like this.

11 I -- we really went in this trial kind of blind. The
12 only thing I really had was my statements on the polices,
13 and police . . .

14 MR. SHAFFER: And, Your Honor, which we discussed
15 during the plea hearing, we had not provided him a copy of
16 the 700-some-odd pictures that was provided or the
17 2,000-some-odd pages of cell phone records or the digital
18 stuff. Because of the fact he couldn't see it, we did
19 give him an opportunity to view that. But that being
20 said, I think he had all the other written discovery, was
21 my understanding that he did. So I can add that, too.

22 THE COURT: Okay. All right. Anything else,
23 Mr. Davis?

24 DEFENDANT DAVIS: Yes, sir. I didn't have all that.
25 The GSR results, I didn't have it. I still haven't seen

1 the results of none of this. I don't know if mine came
2 back positive or not. I don't have this in my motion. I
3 didn't see this. I still haven't seen it with my own
4 eyes.

5 THE COURT: Okay. All right.

6 DEFENDANT DAVIS: A lot of this stuff that was
7 brought in this trial, I didn't -- I wasn't aware about
8 this.

9 MR. SHAFFER: Your Honor, in the meantime, I'm happy
10 to go print off a copy of everything we have in the file
11 that's printable so that he has a copy of it.

12 THE COURT: Okay. Whatever you want to do,
13 Mr. Shaffer.

14 Anything else Mr. Davis?

15 What we'll do since we're kind of -- we're going to
16 readjourn this in a couple hours. If there's anything
17 else you think of that you feel like it's important for me
18 to hear, then I'm going to give you that opportunity to do
19 that, okay?

20 DEFENDANT DAVIS: All right, sir.

21 THE COURT: All right. Very good. So we'll continue
22 this until around 12:00 or thereabouts, okay?

23 MR. MOWRY: Thank you, Your Honor.

24 THE COURT: Thank you.

25 (WHEREUPON, proceedings recessed at 9:51 a.m.)

1 (WHEREUPON, proceedings reconvened at 1:34 p.m.)

2 THE COURT: Okay. This is a continuation of the
3 State vs. Ronald Davis, a motion having been filed for a
4 withdrawal of Mr. Davis's plea on March 28th of this year.

5 Earlier today the Court heard briefly from
6 Mr. Shaffer, but primarily from Mr. Davis. And since his,
7 Mr. Davis's comments were pretty much directed towards
8 Ms. McNeill, for purposes of the record, the Court felt
9 like it would be appropriate to hear from Ms. McNeill.

10 And so, Mr. Shaffer, do you want to -- I don't think
11 you need to examine Ms. McNeill. I'm sure you informed
12 her basically what Mr. Davis had indicated today.

13 MR. SHAFFER: Yes, Your Honor. I haven't gone too
14 far into detail about the specific allegations.
15 Essentially, what I informed her is that it's similar to
16 what was placed into the document he sent the Court of
17 Appeals and that, essentially, he's alleging that
18 Ms. McNeill basically coerced him and had some sort of
19 dealings with the Solicitor's Office and was coercing him
20 into . . .

21 THE COURT: Okay. All right.

22 Ms. McNeill, would you like to make any comment
23 concerning Mr. Davis's allegations?

24 MS. MCNEILL: Sure, Judge. I feel like this is more
25 of a PCR type of hearing rather than a withdrawal for -- a

1 motion to withdraw his guilty plea. But I just want to be
2 clear that, no, I, of course, never coerced Mr. Davis into
3 entering a guilty plea.

4 He and I spent extensive time in the holding cell of
5 this courthouse discussing his options. We had very
6 intimate conversations about his life. I allowed him to
7 speak to his ex-wife Marlana Davis at his request, so we
8 called her and spoke with her. And then I also allowed
9 him to call DeMarcus Barksdale, who is his cousin but he
10 considers this guy a brother, so that he could get input
11 from both his ex-wife, who he, you know, obviously
12 respects and cares about her opinion, and along with his
13 first cousin and brother, DeMarcus Barksdale. And, of
14 course, I've met, along with Mr. Shaffer, with both of
15 those individuals face-to-face.

16 You know, I know that Mr. Davis was on the fence
17 about what the right thing to do was. We talked about the
18 fact that he's 42 years old. If he loses the trial on
19 murder, then he cannot get less than 30 years and it's day
20 for day, and he could get up to his natural life. We
21 talked about the fact that if the jury comes back not
22 guilty on murder however guilty on voluntary manslaughter
23 and guilty on possession of a weapon during a violent
24 crime, that he could be sentenced up to 35 years, and that
25 the best-case scenario would be that the jury would come

1 back and unanimously acquit, decide to acquit Mr. Davis
2 and he would walk free.

3 We talked a lot about the evidence that had already
4 been heard at the trial, because, obviously, as Your Honor
5 well knows, the trial started Monday, and the offer from
6 the State was made, I think, on Wednesday around 1:30 p.m.
7 when we were coming back to resume the trial. Mr. Davis
8 waived his presence to be in court during a pretrial --
9 I'm sorry -- a motion in limine that Mr. Shaffer was
10 having with I think it was cell phone geo-mapping time.
11 And so while the trial moved forward, Mr. Davis and I had
12 ample opportunity to discuss all this along with allowing
13 his family to provide their input.

14 And then as Your Honor well knows, he came into the
15 courtroom, and I believe the TV screen was up against this
16 area over here in the courtroom where the clerk staff
17 sits, and we had the sentencing sheets there. Mr. Davis
18 was hesitant to sign them. I told him I'm just going to
19 tell him that this is off so that we can move forward with
20 the trial, because as you know, we had a time issue
21 because it was already Wednesday, and at this point it was
22 Wednesday late afternoon, early evening.

23 When I said, No. I'm just going to tell Mr. Mowry
24 that, you know, we need to just move forward, he stopped
25 me and said, No. And he signed the plea sheets.

1 I said, Are you sure? you know.

2 Mr. Shaffer had come in during part of that
3 conversation, and Mr. Davis decided that he wanted to have
4 a chance to outlive his sentence, and on a 25-year plea to
5 voluntary manslaughter with the credit that he had
6 pretrial, he would have to do about 19 1/2 more years,
7 which would allow him the chance to survive his sentence
8 and to be reunited with his family. And I think that was
9 the ultimate goal for him.

10 Obviously, as Your Honor well knows, we had a couple
11 of pretrial motions in Greenwood and then again here in
12 Laurens before his case was called for trial. We had been
13 working around the clock. Mr. Shaffer and I had met with
14 Mr. Davis numerous hours at the jail, met with his family
15 individually in Chapin and in Newberry. We went to them.
16 We worked around their work schedule meeting them at
17 night. We did an incredible amount of investigation.

18 I understand one of the allegations against my office
19 that he has submitted to the Court of Appeals is that he
20 is claiming that he was having a sexual relationship with
21 my investigator, our investigator in Greenwood, Nicole
22 Hurley, which I was shocked to read that. He had never
23 disclosed that information to me, nor to Mr. Shaffer. And
24 I haven't addressed it with him, but I think that that's
25 in his description of explanation for appeal.

1 Certainly, Mr. Shaffer and I hold ourselves to a very
2 high ethical standard, and I believe that due to the fact
3 that I've been practicing in front of Your Honor for
4 several years now and I've been, you know, Mr. Mowry's
5 adversary, I think he can vouch for this, too, when I'm in
6 trial, I give it my absolute 100 percent all.

7 MR. MOWRY: And I will just echo that, Your Honor. I
8 will say we have an adversarial, not antagonistic, but
9 definitely an adversarial relationship.

10 THE COURT: Right. I understand that.

11 MS. McNEILL: And, you know, as Your Honor knows,
12 Mr. Davis was in those pretrial matters and in the trial
13 of his case, and he saw that adversary nature. He did
14 repeatedly tell us that we were doing a good job, he
15 repeatedly thanked us throughout the trial.

16 I understand that he's having some regrets about
17 entering his plea. I think that he feels he had a better
18 chance to be acquitted on everything. However, you know,
19 I always tell him how big of a gambling man are you. Do
20 you want to roll the dice on 30 to life or potential
21 voluntary where you're facing up to 35 with that
22 possession of a weapon charge in addition to voluntary?

23 We had hard facts against us. You know, the deceased
24 was shot five times. There was a lot of discord in the
25 room. There was testimony about that. Certainly, law

1 enforcement could have done more to listen to the evidence
2 presented before them which we were able to bring out.
3 But the State was obviously not done presenting their
4 case, and we did have a plan to put up a case for his
5 defense. However, this is -- this is where we are.

6 So I am asking Your Honor to consider allowing
7 Mr. Davis to withdraw his guilty plea and to set this case
8 for a new trial.

9 THE COURT: Thank you, Ms. McNeill.

10 Oh, you want to add something, Mr. Shaffer?

11 MR. SHAFFER: Yes, Your Honor. Earlier I didn't
12 mention this, but Ms. McNeill is correct. She actually,
13 during about 10, 15 minutes of that discussion, she
14 actually stepped out, I stepped back in. It was after we
15 did the pretrial stuff. It was right around the time
16 Mr. Mowry actually told me he was going to withdraw the
17 plea offer if they didn't go ahead and -- if he didn't go
18 ahead and accept. I then went back to tell him that.

19 I think immediately after that, I came back to tell
20 Mr. Mowry that he was going to accept, and I went to go
21 initially get him to sign the paperwork. During the
22 course of me getting him to sign the paperwork, I did
23 advise him, without going into attorney-client stuff, I
24 did say, Hey, it's your choice. Whatever you want to do.
25 I mean, like you can either take the risk or not take the

1 risk. And if you don't want to take the risk, then take
2 the plea, you know. I probably did say something like,
3 you know, the plea would probably get you out alive. If
4 we lose at trial, you're probably not going to get out
5 alive. That's probably what I had told him, something to
6 that extent. But I definitely did say it's your choice.
7 Whatever you want to do, you do.

8 And, Your Honor, also, he had indicated, Mr. Davis
9 had indicated that he had not received his discovery.
10 What I am doing now, I condensed about 2,000 pages into
11 this stack of paperwork. I've also given him the option,
12 I've got 12 CDs and a flash drive in here that's the
13 digital stuff from the discovery. I gave him the option.
14 He wanted me to send it to his ex-wife, so that's what
15 we're going to do. We no longer have the file in this
16 case. But he is going to have everything that was readily
17 easily printable, and Marlana Davis, who he designated, is
18 going to have all the other stuff. So they will -- he
19 will have all the discovery.

20 THE COURT: All right. Very good.

21 MS. McNEILL: And I just want to be very clear that
22 this is the only copy of these disks that we have. We are
23 not burning additional copies. So we are, in essence,
24 transferring our possession of his file over to him and to
25 Marlana Davis. So my office will not have another copy

1 available.

2 THE COURT: Okay. All right. Are you in agreement
3 for the discovery materials to be handled in that fashion?

4 DEFENDANT DAVIS: Yes.

5 THE COURT: Okay. Now, is there anything else you
6 would like to tell me?

7 He can keep his seat. I allowed him to earlier.

8 Is there anything else in addition to what you told
9 me earlier this morning concerning this motion to withdraw
10 your plea that you would like to tell me now? Anything in
11 addition?

12 DEFENDANT DAVIS: Yes, sir.

13 THE COURT: Okay.

14 DEFENDANT DAVIS: I can refer to these notes.

15 THE COURT: I need for you to speak up a little
16 louder. I know you're somewhat soft-spoken so I need for
17 you to speak up a little louder.

18 DEFENDANT DAVIS: Before Chelsea took my case, I
19 asked Tom Adducci to subpoena the jail records -- I mean
20 the jail cameras showing that I wasn't charged with the
21 serving the warrants or whatever. Then when Chelsea took
22 over my case, I asked Chelsea numerous time to get the
23 camera footage of the jail, that it can show that I never
24 was charged, served no warrants charging me with this
25 crime because I was on suicide watch. And I had five

1 cameras monitoring me at all times, I had two cameras
2 monitoring my door. They said I had to be on suicide
3 watch because of the nature of my charge.

4 I told -- I asked her to get the camera footage of
5 this that would prove that I never was served any
6 warrants, no one never came to my door, serve me no
7 warrants, nothing like this and everything else. I asked
8 her to get it when Lieutenant Bryant Cheeks, I gave him
9 the written statement from back in attorney-client room,
10 which ain't no camera back there, but it was brought to
11 the front. And he typed off the written statement that I
12 had. If the camera -- if the jail camera footage would
13 have been subpoenaed or they had all this, it would have
14 proved everything I was saying.

15 And then I also asked Ms. McNeill to get a copy of my
16 medical records stating that I have a medical problem with
17 my back. I have back issues. I was on medication when I
18 was on the street, and that I was -- I have short-term
19 memory loss because I had suffered a concussion. I asked
20 her to get my medical records proving all of this. It
21 never was done.

22 And I also asked them to suppress the motion -- I
23 mean to do a motion suppression on the warrants that were
24 issued at C.R. Koon Highway because it was two warrants
25 issued in this case. They served -- they left one warrant

1 with me at my residence. My ex-wife Marlana, she mailed
2 me that warrant. The warrant that they had in the
3 discovery is a whole different warrant. It contained
4 different name -- a different judge name on it, the
5 different -- they taped the name on it that signed off on
6 it, and some of the evidence is -- everything different
7 about these two warrants. I asked them to suppress this
8 issue. They didn't do that.

9 I also was told -- I also did mention to Ms. McNeill
10 one time that me and Nicole Hurley, we was sexually
11 involved. Yes. I told her this.

12 MS. MCNEILL: Judge, I have to say that he is
13 committing perjury at this very -- I mean, I don't know if
14 you swore him in, but ---

15 THE COURT: Well, I think as far as any alleged
16 relationship with somebody else really kind of goes beyond
17 the scope of this hearing, Mr. Davis. I have to determine
18 whether or not to allow you to withdraw your plea. And
19 any allegations concerning a relationship with somebody,
20 that really is not a part of this proceeding here.

21 DEFENDANT DAVIS: Okay. The reason why I said that,
22 Your Honor, because when me or Ms. Hurley was in a
23 relationship, she got mad at me. And I didn't know that
24 Ms. Hurley was the investigator on this case. I met
25 another guy from the beginning on this case as the

1 investigator. At the end of this case when my trial
2 started, that's when Ms. Hurley come in on the end of
3 this. And Ms. McNeill told me she was -- investigate some
4 of the facts already. But I told her that she wasn't
5 going to do a good job because me and her had been
6 sexually involved.

7 MS. MCNEILL: Obviously, Judge, my stance is that
8 conversation absolutely never took place. It was
9 Ms. Nicole Hurley who helped us to locate his guy that he
10 considers his brother, DeMarcus Barksdale, and the girl
11 Stevie, who's DeMarcus's fiancée. And my client would
12 never give me their location, and so Nicole Hurley found
13 these people who are very important defense witnesses.

14 THE COURT: Okay. I understand.

15 Anything further on this motion to withdraw?

16 DEFENDANT DAVIS: I didn't know -- I didn't know
17 their location, sir, because they had moved from the
18 location, and they had moved to Columbia. That's why I
19 didn't never disclose this information to her because I
20 never knew this information.

21 THE COURT: All right. Anything else?

22 DEFENDANT DAVIS: Yes. And I had brought to
23 Ms. McNeill's attention that I was -- had been touched by
24 my roommate in the SC -- I mean in Laurens County
25 Detention Center, and that I had filed a privel [phonetic]

1 on this matter. And the Investigator Honeycutt told me
2 that I was able to press charges because this guy, he had
3 been doing this. And then he told me it had to go to the
4 solicitor. And it was Solicitor Warren Mowry, he referred
5 to that couldn't no charge be brought because it was all
6 no witness there. It was hearsay.

7 THE COURT: Again, what -- I need for you to
8 concentrate on a basis for me to allow you to withdraw the
9 plea. As far as any sort -- a third party and whether or
10 not Solicitor Mowry could bring charges, that doesn't have
11 anything to do with your plea. You're basically saying
12 that your plea was not voluntary because it was coerced,
13 and so that's what I need for you to center on. And I
14 don't need all this other stuff because that's not going
15 to help me. Okay?

16 DEFENDANT DAVIS: All right, sir. That's it, Your
17 Honor.

18 THE COURT: Is that it? Okay. Thank you, Mr. Davis.
19 Anything further from Mr. Shaffer, Ms. McNeill or
20 Solicitor Mowry?

21 MS. MCNEILL: I just am asking that Your Honor
22 consider allowing him to withdraw his guilty plea and
23 schedule a new trial.

24 THE COURT: Okay.

25 MR. MOWRY: Your Honor, it is a cynical attempt to

1 avoid a guilty verdict. He's obviously been down at SCDC,
2 and now, all of a sudden, where he's going to be for the
3 next 20 years has hit home. He had his opportunity. I
4 was ready to go forward, but he determined that he was
5 willing to plead guilty and end the trial, and he does not
6 deserve a second bite of the apple.

7 THE COURT: All right. Well, I do recognize that on
8 March 28th, that Wednesday afternoon, when -- after I was
9 informed that there had been some plea negotiations that,
10 Mr. Davis, there was some hesitancy, some trepidation on
11 your part to proceed forward with a guilty plea.
12 Recognizing that, I think I went to great lengths to make
13 sure that your plea was freely, knowingly, voluntarily and
14 intelligently made, free of any coercion, threats,
15 pressure or anything that would cause you to enter this
16 guilty plea against your will. And after going through
17 all of that, I made the finding, and I would not have if I
18 was concerned, in any way whatsoever, about your plea, but
19 I made the finding that your plea was freely, voluntarily
20 and intelligently made. You answered that there was no
21 coercion, that there was no threats, that there was no
22 pressure, that there was nothing down to cause you to
23 plead guilty against your will. You specifically told me
24 that. And I asked you on more than one occasion were you
25 pleading guilty because, in fact, you were guilty, and you

1 answered in the affirmative. I realize that you hesitated
2 somewhat at times, but I think, without question, that
3 your plea was freely, voluntarily and intelligently made,
4 free of any coercion, pressure or duress.

5 Consequently, Mr. Davis, I'm going to deny your
6 motion to have your plea withdrawn. I will issue an
7 appropriate order and furnish a copy of the same to the
8 attorneys.

9 Thank you very much. The best of luck to you, sir.

10 MR. MOWRY: Thank you, Your Honor.

11 (WHEREUPON, proceedings concluded at 1:58 p.m.)
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for Laurens County, South Carolina, on
the 19th day of April, 2018.

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

July 5, 2018

Cheryl A. Smith

Cheryl A. Smith, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

State of South Carolina)

vs.)

Ronald D. Davis,)

Defendant.)

Court of General Sessions

Case Number 2016A3010200117, 118

BENCH ORDER

THIS MATTER CAME FOR HEARING before the undersigned on April 19, 2018 pursuant to Defendant's Motion to Withdraw Plea, filed on April 6, 2018. He filed this Motion prior to filing an appeal document with the Court of Appeals.

The Defendant plead guilty to Voluntary Manslaughter and Possession of a Weapon during the Commission of a Violent Crime on March 28, 2018. The Defendant claims he was coerced by his attorneys to plead guilty. The Court disagrees and finds the plea to have been freely, voluntarily, and intelligently made, free of any coercion.

Motion denied.

Laurens, SC
April 19, 2018


 Donald B. Hocker
 Circuit Court Judge
RECEIVED

APR 30 2018

SC Court of Appeals

FORM 5

STATE OF SOUTH CAROLINA)

County of Laurens)Ronald Duyane Davis, # 272165)

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

v.)

State of South Carolina)
Its Departments and Agents,)

Alan Wilson, Attorney)

General of South Carolina)

IN THE COURT OF COMMON PLEAS

2020 CP30-643

APPLICATION FOR

POST-CONVICTION RELIEF

LAURENS COUNTY
CLERK OF COURT

2020 JUL 24 AM 11:26

LYNN W. LANCASTER

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 Broad River Correctional Institution 4460
Broad River Rd. Columbia, SC 29210
2. Name and location of Court which imposed sentence Laurens county General
Sessions court
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Indictment 16-GS-30-1382, Murder
 - (b) Indictment 16-GS-30-1383, Possession of a firearm during
the comission of a violent crime

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 28, 2018
- (b) terms of sentence 25 years for murder
- (c) terms of sentence 5 years for possession of a firearm
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (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?
Yes my attorney filed the appeal on my behalf
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Commission on indigent Defense Division of
- ii. Appellat Defense
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denial
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 29, 2020
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Anders Brief that my attorney filed
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My trial attorney filed the appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Prosecutorial misconduct, Self-defense violation
 (a) Ineffective assistance of counsel, Due process, Miranda right
 (b) warning, prior bad act violation, chain of custody, Equal
 (c) protection, Brady violation, Competency hearing violation,
Subject matter Jurisdiction, coercing violation,
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) See Attachments pages 1-48
 (b) _____
 (c) _____
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? At this time this is the only PCR filed
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
 (d) any other petitions, motions or applications in this or any other Court? _____
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. None
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. None
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

i. None

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. None

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. None

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. None

ii. _____

iii. _____

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

i. None

ii. _____

iii. _____

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) None
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
None
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. Chrlsea B. McNeill, Esquire Public Defeder Laurens county
Tristan M. Shaffer, Esquire, Public Defeder Laurens county
- ii. Joanna K. Delany, S.C. commission on indigent defense Division
of Appellate Defnse P.O. Box 11589 Columbia, SC 29211-1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial: Chrlsea B. McNeill, and Tristan M. Shaffer,
Appeal: Counsel Joanna K. Delany,
- ii. _____
- iii. _____

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

Remanded or Reverse

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

None

STATE OF SOUTH CAROLINA)

County of Laurens)

VERIFICATION

I, Ronald Duyane Davis, # 272165, 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.

Ronald Duyane Davis

SWORN to and subscribed before me this 21st
day of July, 2020.

Kassandra Robinson (L.S.)
Notary Public

My Commission Expires: 8/5/2024

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

I, Ronald Duyane Davis, # 272165, 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.

Ronald Duyane Davis
Applicant

SWORN or affirmed to and subscribed before me this
21st day of July, 2020
Kangera Robinson
Notary Public

My Commission Expires: 8/5/2024

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant have suffered a miscarriage of Justice and his conviction only stands due to severe denial of due process and equal protection in the state court, in multiple and gross violation of the United States supreme court precedents and the United States constitution, that constitutes an outrage of mockery of justice that the Federal courts who sworn to uphold the United States constitution should not tolerate.

The applicant suffered prejudice at the hands of trial counsel and the trial court, and the applicant's plead of guilty under North Carolina v. Alford, was entered Involuntarily, Unknowingly, Unwillingly, and Unintelligently, Hill v. Lockhart, 106 S.Ct. 366 (1985). See also Jordan v. State, 374 S.E. 2d 683 (1988).

Applicant's trial counsel's deficiencies prejudiced the applicant in that applicant would have otherwise proceeded to trial as original insisted upon, and under no circumstances would not have plea guilty under Alford otherwise had it not been for trial counsel's advise. Nevertheless, the allegation of the applicant not having plea guilty knowingly, voluntarily and intelligently probably raises questions of fact which may not be conclusively refuted by the record presently before this court.

The trial counsel coerced applicant into entering a guilty plea through deceptive tactics when applicant wished to stand trial by jury. When counsel employs an unreasonable trial strategy and make that decision without a full assessment of the facts and evidence at issue, counsel's performance is considered ineffective. Cave v. Singletary, 971 F. 2d 1513 (11th cir. 1992). Based of the aforementioned matters, counsel has provided ineffective assistance.

DUE PROCESS VIOLATION

Applicant's guilty plea failed to comply with the mandates set forth in Boykin v. Alabama, due process of Law requires that before a guilty plea can be entered voluntarily and intelligently

a defendant must be advised of his privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. A valid waiver of these right cannot be presumed from a silent record. Boykin-v.-Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). In State-v.-Armstrong, 263 S.C. 594, 211 S.E. 2d 889 (1975), this court held the "essence" of Boykin, was to make the requirement of Rule 11 of the Federal Rules of ctiminal procedure applicable to states. In State v.-Batterson, 278 S.C. 319, 295 S.E. 2d 264 (1982), this court held that for there to be a valid waiver under the due process clause of the three constitutional right listed in Boykin, the record must clearly establish it.

In Boykin, Supra, the U.S. supreme court held that trial courts were mandated to use the utmost solicitude when canvassing a guilty plea to insure that the plea was given freely and voluntarily with a full knowledge of the circumstances surrounding the plea and the attendant waiver of right occurring with the guilty plea.

Ineffective assistance of counsel, in violation of the fourteenth and sixth Amendments of the United States constitution and Article 1, section 13 & 14 of the South Carolina constitution. Counsel should be afforded reasonable opportunity to prepare to defend the applicant and to confer as often without undue delay to advise him of his rights and to elicit matters of defense or to ascertain that potential defenses are available applicant contends that his trial counsel failed to investigate both factual and legal matter to determine if defense can be developed. It is a definitive objective description of the competency normally demanded of counsel in certain aspects of their services. And with this discretion the courts should admonish that if the right to counsel guaranteed by the constitution is to serve its purpose, the defendant cannot be left to the mercies of incompetent counsel. Judge should strive to maintain proper standards of performance by attorney who are representing defendant's in criminal cases in their courts. McMann-v.-Richardson, 397 U.S. 759, 90 S.Ct. 4141 25 L.Ed. 2d 736 (1970),

Marzullo-v.-State of M.D. 561 F. R. 2d S. 56 544 Example Coles v. Peyton, 389 F. 2d 224 226 (4th cir. (1968).

Applicant further contends trial counsel was ineffective as trial counsel's representation fell below an objective standard or reasonableness, and had it not been for trial counsel's error of ineffectiveness, there is more than a reasonable probability the outcome, had applicant gone to trial, would have been different trial counsel was ineffective. Glover-v.-State, 458 S.E. 2d 538 (1995). As a direct result of trial counsel's error and ineffectiveness, the applicant was Denied Due process of Law. Denied equal protections of Law. Denied the exclusive right to a fair trial, and Denied effective assistance of trial counsel; thus violating applicant's (5th), (6th) and (14th) Amendments to the United States constitution, and in violation of the South Carolina state constitution Article 1, section 3, and 14. Trial counsel was ineffective. Boykin-v.-Alabama, 89 S.Ct 1709 (1969).

A reading of all three transcripts in this case shows applicant's did not understand the ramifications of pleading guilty. Moreover there applying these principles of Law, it is clear counsel's performance was deficient because applicant did not understand his rights. When criminal defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being warned. Pittman-v.-State, 337-S.C.-597, 524-S.E.-2d-623-(1999).

A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea must be established by a complete record, and may be accomplished by colloquy between the court and the accused, between the court and the accused's counsel, or both Robby-v.-State, 339 S.C. 29, 528 S.E. 2d 418 (2000).

Misrepresentation of counsel.

The court has Ruled that a plea induced by the misrepresentation

of defense counsel may be involuntary, Blackledge-v.-Allison, 431 U.S. 63 (1977). In Blackledge, Supra. Fn. 8 the court indicated that the question of whether or not the defense attorney misinformed his client concerning his plea.

PRIOR BAD ACTS

As set out above, in this case defendant asserts as follows; Did the trial court error in admitting prior crimes of moral turpitude against applicant when their probative value was outweighed the danger of unfair prejudice.

Admissible unless necessary to establish a material fact or element of the crime charged. State-v.-Johnson, 293 S.C. 321, 321, 360 S.E. 2d 317, 319 (1987). As explained by the court in State-v.-Wesley-Smith, 391 S.C. 353, 361, 705 S.E. 2d 491, 495 (2011), in order to introduce evidence of some other act by the defendant under one of the exceptions, the prosecutor must lay a proper foundation. At the outset, the prosecutor must prove by clear and convincing evidence that the defendant committed the other act, Id. (citing State-v.-Fletcher, 379 S.C. 17, 23 664 S.E. 2d 480, 483 (2008)). Next, the prosecutor must articulate the logical connection between the other act and one of the five exceptions listed in Rule 404 (b), SCRE. Id. (citing State-v.-Bagan, 369 S.C. 201, 211, 631 S.E. 2d 262, 267 (2006)). This requires a showing of Law the evidence of the other act will assist the fact-finder in understanding a material issue in the case related to one of the Rule 404 (b), SCRE, exceptions. Id. If the trial judge determines the prosecutor has satisfied both requirements, then the judge must determine whether the probative value outweighs the prejudicial effect pursuant to Rule 403, SCRE. Id. (citing State-v.-Stokes, 381 S.C. 309, 404, 673 S.E. 2d 434, 441 2009)).

Neither the judge nor the prosecutor explained how the evidence of this alleged prior bad act was admissible against defendant under one of the exceptions in Rule 404 (b), SCRE or that the act had been proven by clear and convincing evidence.

Exceptions to Rule 404 (b), SCRE

A defendant alleging that his guilty plea was induced by ineffective assistance of counsel and defendant will prove that counsel's advice was not within the competence demanded of attorney in criminal cases. Because a guilty plea is more than an admission it is a conviction trial judges must discharge the function of ensuring an accused has a full understanding of what the plea can notes and of its consequence. Boykin-v. Alabama, 395 U.S. 242, 242-43 (1969); Pittman-v. State, 337 S.C. 597, involuntary); State-v.-Lambert, 266 S.C. 574, 225 S.E. 2d 340 (1976).

Applicant contends due to his illiteracy to the Law he was entitled to rely upon his counsel to make reasonable decision. Pursuant to U.S.-v.-Dewalt, 92 F. 30 1209 without some authortative guidance, the defendant cannot know whether he understood anything correctly at his trial.

See page 66, lines 17-25. Lt. Cheek, stated that he on cross-examination when Mr. Shaffer, asked Lt. Cheek, now, at what point did you actually get to the Laurens county Detention Center that morning?

A. I'm not sure exactly. let me look back through my notes. looks like about 5:44 a.m. I spoke with him at the detention Center.

Q. Okay, Do you know if you would've been there before that? If you -- do you know if you would've been at the Laurens county Detention Center -- well, let me ask this; were you present whenever Mr. Davis turned himself in?

Go to page 67, lines 1-25.

A. No, Sir.

Q. Okay. so they called you and said he turned himself in?

A. Yes, Sir.

Q. And do you know where you were when you got that call saying that the defendant turned himself in?

A. I was on -- at the incident location.

Q. Okay. So you were in Fountain Inn whenever you heard that the defendant turned himself in, correct?

A. Yes.

Q. And you would've driven back to the Laurens Detention Center at that point, correct?

A. Yes. Yes,

Q. And did you immediately start talking with Mr. Davis when you got there?

A. I don't recall if we immediately started talking. I can't recall. When you said immediately, I don't -- I don't recall immediately.

Q. Okay. But at some point y'all started talking.

A. Yes, Sir.

Q. Correct?

And initially, you were in the booking area, correct?

A. Yes, Sir.

And then you went down that little hallway to the attorney rooms, correct?

See page 68, lines 1-25.

A. Yes, Sir.

Q. Why'd you go down the hallway to the attorney rooms?

A. We just went there to have some privacy.

Q. Okay. Now, there are cameras in the booking area correct?

A. Yes.

Q. And there's cameras in the room where this second statement was taken, correct?

A. Yes.

Q. Why did you go to -- and there's no cameras where the booking room was, correct? I mean --excuse me. There's no cameras where where the attorney room was, correct?

A. I didn't think so.

Q. Okay. why'd you go to the attorney room versus going to the other place?

A. I just went to the attorney -client room.

Q. Okay. How long were you in the booking room before going to the attorney - client room?

A. I'm not sure.

Q. Okay. How long were you in the attorney - client room?

A. I'm not sure.

Q. Okay. whenever you started talking to him in the attorney client room was that where he signed that paper?

A. I think so.

Q. Okay. so he would've signed the advisement of rights

A. Yes, Sir.

Q. And that would've been at what time?

And I apologize that's

A. 5:44 a.m. he would've signed the advisement of rights.

A. Yes.

Q. Now, were you relying -- I mean had you heard the story about what had happened?

See page 69, lines 1-25 or his side of the story before he actually came in an you started talking to him?

like, over the phone, did y'all talk about the actual event?

A. When I was communicating with him?

Q. Yes, Sir.

A. I don't recall. I was concerned about him and he was talking about committing suicide.

Relationship investigator in this case

The Rules of professional conduct generally prohibit a lawyer from engaging in a sexual relationship with a client. Rule 1.7, RPC, Rule 407, SCACR; Rule 1.8, RPC, Rule 407, SCACR; In re Mayer, 396 S.C. 515, 722 S.E. 2d 800 (2012). A lawyer supervising a non - lawyer assistant such as an investigator must "make reasonable efforts to ensure the person's conduct is compatible with the professional obligations of the lawyer" and i. e., because the lawyer may not have a sexual relationship with a client, a sexual relationship between the lawyer's investigator and the client is also improper.

"The long standing test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant. Gustine-v.-State, 325 S.C. 123, 127, 480 S.E. 2d 444, 446 (1997) quoting Hill-v.-Lockhart, 474 U.S. 52, 56 (1985)) Here, whether appellant was coerced to plead guilty by the fear that his former lover, now employed by his attorney would sabotage his trial was relevant to the determination of whether appellant was coerced to plead guilty - and thus should be

allowed to withdraw the plea and whether his decision to plead guilty was a voluntary and intelligent choice.

The court's failure to consider the allegation that appellant's pleas were coerced by an improper sexual relationship with his counsel's investigator was an abdication of discretion and error.

Fontaine-v.-Reitz, 291 S.C. 536, 354, S.E. 2d 565;

Hill-v.-Lockhart, 474 U.S. 52.

CHAIN OF CUSTODY VIOLATION

The defendant contends that the chain of custody proof of chain of custody need not negate all possibility of tampering but must establish a complete chain of evidence as far as practicable. State v. Williams, 297 S.C. 290, 376, S.E. 2d 181 (1990).

The defendant contends that in applying this Rule, we have found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the evidence was not established at least as far as practicable. State v. Cribb, Supra; Benton v. Bellum, Supra; see also State v. Joseph, 328 S.C. 352, 491 S.E. 2d 275 Ct. App. 1997. Chain of custody 460 S.E. 2d 573, 319 S.C. 312 S.C. 1995. party offering evidence must trace possession of evidence and what was done with it from time it was taken until final analysis. State v. Singleton, S.C. 1992, chain of custody requires that where analysed evidence has passed through several hands evidence must not leave it to conjecture as to who had evidence and what was done with it between taking and analysis, State v. Gribb, 426 S.E. 2d 306, 310 S.C. 518. Party offering evidence is required to establish complete chain of evidence, tracing possession from time evidence is taken to final analysis, identity of persons who had handled the evidence must be established Id. S.C. 2001. Proof of chain of custody need not be negate all possibility of tampering so long as the chain of possession is complete. State v. Carter, 544 S.E. 2d 835, 344 S.C. 419. Where there is a weak link in the chain of custody as opposed to a missing link, the question is only one of credibility and not of admissibility. State v. Johnson, 456 S.E. 2d 442, 318 S.C. 1994. Because evidence involving Bullets may easily be tampered with party offering Bullets into evidence must establish that chain of custody as far as practicable but need not negate all possibility of tampering Id. There are some discrepancy in their testimony concerning dates there were not dates that was indicated in the records when agent Keith McIntosh, and Bryant Cheek, turned the evidence over to the South Carolina Law Enforcement Division, more commonly referred to as SLED.

BRADY VIOLATION

Pretrial information see page 18. lines 11- 25. Counsel Ms. McNeill: in previous trials that I've had judge it is very --unusual for there to be no handwritten notes what soever that exist from any Law enforcement agency that was involved in investigations a crime. In this case we have Laurens county Sheriff's office and SLED, who investigated.

- And in a previous trial, it's not proper procedure for them to - be shredding the handwritten notes after -- even after they transcribe or type them into memorialize them electronically. So out of an abundance of caution, that's why we're bringing up this issue as well. Also when I asked repeatedly if there was any more information, any documentation what soever, out of Newberry county weeks ago, I was told that there was not. I was told that because Newberry county did not have a case file on Mr. Davis, that there would be no documentation even though Law enforcement had been communicating with him and Law enforcement.

Apparently sent out officers to the incident location where he said he was where he had moved to -- I'm sorry; not the incident location -- but a location in Newberry.

It's my understanding that through CAD, those documents would be available for seven years, even if there was no filed opened on Mr. Davis for a crime that was committed within Newberry county. I was told repeatedly nothing existed. And then on Wednesday at 4:00 p.m. Mr. Bentley comes over to my office in Laurens county and hands me information that included a Newberry county incident report, documenting their involvement in the case. We were also handed a search warrant that was done in Newberry county, issued by Newberry county magistrate judge for a search of a house that Mr. Davis said that he was at and so out of an abundance of caution, I am just concerned that when I've asked for it repeatedly weeks ago and have been told repeatedly in the negative, that there is nothing that exists, and then two days ago, I get this information, this is why we're

raising these issues.

MR. MOWRY: Your Honor. I believe there is a misapprehension of what she asked for. And I believe MR. Bentley can fill you in on it.

THE COURT: Okay.

Ms. McNeill: I've asked for anything and everything that exists and -- was told that there was nothing that exists because Mr. Bentley was told by those offices, apparently, that nothing exists, which I believed him initially because, you know we're so close to -- I mean, it was -- we were so close to this trial and this incident date is July 3rd of 2016. And then at 4:00 p.m. on -- two day ago, I'm handed this information. So yes. I did believe Mr. Bentley that nothing existed.

THE COURT: Okay. all right. Mr. Bentley?

Mr. Bentley: Judge, I think there might've been a miscommunication with Ms. McNeill. I originally was looking for all and their CAD system reports through Lt. Lominack, Garrett Lominack, and was unable -- he was unable to find those. Reconsideration of withdraw plea transcript of record April 19, 2018.

Reconsideration of withdraw plea transcript of record, April 19, 2018

Testimony from Mr. Davis, page 13, lines 1-25. And yes, sir. I feel that they could have done better during my trial because there was some of these state witness, they could impeach them.

I know in the paperwork, my motion, I didn't get my full motion. I feel that I should have recieved my indictments, presented with them charging me with this murder from the grand jury, I never received that indictment. I've never seen this indictment. It's not in my Rule 5. I don't have my complete motion. Nothing like this. We really went into this trial kind of blind. The only thing I really had was my statements on the polices, and police.

MR. SHAFFER: And, your Honor, which we discussed during the plea hearing we had not provided him a copy of the 700- some odd picture that was provided or the or the digital stuff. Because of the fact he couldn't see it, we did give him an opportunity to view that. But that being said, I think he had all the other written discovery, was my understanding that he did so can add that, too.

THE COURT: Okay. All right. Anything else. Mr. Davis?

Defendant Davis: Yes Sir. I didn't have all that the GSR results, I didn't have it. I still haven't seen the results of none of this materials. I don't know if mine came back positive or not. I don't have this in my motion I don't see this materials. I still haven't seen it with my own eyes.

THE COURT: Okay. All right.

Defendant Davis: A lot of this stuff that was brought in this trial, I didn't -- I wasn't aware about this.

MR. SHAFFER: Your Honor, in the meantime, I'm happy to go print off a copy of everthing we have in the file that's printable so that he has a copy of it.

THE COURT: Okay. what ever you want to do, Mr. Shaffer. Anything else Mr. Davis?

What we'll do since we're kind of --we're going to readjournal this in a couple hours. If ther's anything else you think of that you feel like it's important for me to hear, then I'm going to give you that opportunity to do that, okay?

Defendant Davis: All right, Sir.

THE COURT: Very good. so we'll continue this until around 12:00 or thereabouts, okay?

MR. MOWRY: Thank you, your Honor.

THE COURT: Thank you.

(whereupon, proceedings recessed at 9:51 a.m.

(whereupon, proceedings reconvened at 1:34 p.m.

THE COURT: Okay. This is a continuation of the State v. Ronald Davis, a motion having been filed for a withdrawal of Mr. Davis's plea on March 28,th of the year of 2018. Earlier today the court heard briefly from Mr. Shaffer, but primarily from Mr. Davis, and since Mr. Davis's comments were pretty much directed towards his trial counsel Ms. McNeill, for purposes of the record the court felt like it would be appropriate to hear from Ms. McNeill.

And so, Mr. Shaffer, do you want to -- I don't think you need to examine Ms. McNeill, I'm sure you informed her basically what Mr. Davis had indicated today.

MR. SHAFFER: Yes, your Honor. I haven't gone to far into detail about the specific allegation. Essentially, what I informed her is that it's similar to what was placed into the document he sent the court of Appeals and that, essentially, he's alleging that Ms. McNeill basically pressured Mr. Davis by coerced him and had some sort of dealings with the solicitor's office and was coercing him into pleading guilty.

THE COURT: Okay. All right.

Ms. McNeill, would you like to make any comment concerning Mr. Davis's allegations?

Ms. McNeill: Sure, Judge. I feel like this is more of a PCR type of hearing rather than a withdrawal for --a motion to

withdraw his guilty plea.

THE PROSECUTORS CONSTITUTIONAL DUTY TO DISCLOSE

THE BRADY RULE:

The Supreme court has established that above and beyond the obligations imposed by discovery Rules, the prosecution has a constitution duty to disclose certain information to both defendant and the trial court. The nature of the information required to be disclosed, and the scope of the prosecutor's obligation, are the subjects of this section.

The first case establishing a prosecutor's constitutional obligations in the discovery process was Mooney-v.-Holohan, 294 U.S. 103 (1935). The defendant sought Habeas Corpus relief, claiming "that the sole basis of his conviction was perjured testimony, which was knowingly used by the prosecuting authorities in order to obtain that conviction and also that the prosecution knowingly suppressed evidence that the defense could have used to impeach the perjured testimony. The court said that the Due process clause is violated if the government engages in a deliberate deception of court and jury by the presentation of testimony known to be perjured, :seven years later, in Pyle-v.-Kansas, 317 U.S. 213 (1942), a habeas petitioner charged the prosecution with knowing use of perjured testimony and the deliberate suppression of evidence favorable to the defense by threats made to witnesses. The court cited Mooney and held that the allegations if proven, would entitle petitioner to release from his present custody.

Government's constitutional Disclosure Duties. Fifth and Fourteenth Amendments require the government to disclose specific types of evidence to defendants. For example, in Brady-v.-Maryland, the supreme court held that due process requires the prosecution to disclose upon request evidence favorable to an accused when such evidence is material to guilt or punishment.

A Brady violation occurs when; (1) evidence is favorable to the accused because it is exculpatory or impeaching; (2) evidence was suppressed by the state, either willfully or mandvertently; and (3) prejudice ensured. In United States v. Bagley, the court held that the government duty under Brady arises regardless of whether the defendant specifically requests material or favorable evidence. Favorable evidence is "material" if there is a reasonable probability that disclosure of the evidence would have changed the outcome of the proceeding.

A "reasonable probability" under Bagley is "a probability sufficient to undermine confidence in the outcome. When assessing evidence's materiality, the court must take into account the cumulative effect of the suppressed evidence in light of other evidence, not merely the probative value of the suppressed evidence standing alone. The prosecution's intent behind the suppresseion of evidence does not determine whether evidence is material or whether the proceeding's outcome would have changed. A side from exculpatory evidence the government is also obligated to disclose information that could be used to impeach government witnesses especially where the witnesses testimony is an important part of the government's case. In particular, impeachment evidence includes an agreement witness for testimony in exchange for monetary compensation of favorable treatment in the criminal justice system. The prosecution is not required to disclose material impeachment information prior to the entry of a guilty plea if the defendant pleads guilty. However, it is unclear whether the prosecution must disclose material exculpatory under Brady before a guilty plea is entered. The government's duty to disclose favorable evidence does not compel the government to draw and disclose inferences from the evidence. Nor does the Brady doctrine require that the prosecution make available all evidence in its file. The government need not disclose; (1) neutral irrelevant, speculative or inculpatory evidence; (2) evidence available to the defense from other sources. (3) evidence the defense already possesses; on (4) evidence of which the prosecutor could not reasonably be thought to have imputed knowledge or control. Nevertheless, the prosecutor has an affirmative duty to learn of and disclose any exculpatory or impeachment evidence known to other government

agents, including any agents or officers involved in the investigation. The government's constitutional duty to disclose continues throughout the proceedings. However, tardy disclosure of Brady material does violate due process.

DUE PROCESS CLAUSE

The United States constitution guarantees a criminal defendant the right to present a complete defense through the due process clause of the fourteenth Amendment and the sixth Amendment. Crane-v.-Kentucky, 476 U.S. 683, 690 (1986); State-v.-Schmidt, 288 S.C. 301, 303 , 342 S.E. 2d 401, 402 (1986)(holding the sixth Amendment Constitutionalizes the right to present a defense in a criminal trial). [T]he constitution guarantees criminal defendants a meaningful opportunity to present a complete defense Crane, 476 U.S. 683, 690 (quoting California-v.-Tombetta, 467 U.S. 479, 485 (1984)). South Carolina's constitution provides similarly. "Any person charged with an offense shall enjoy the right ... to be fully heard in his defense ... "S.C. const. Art. 1, § 14; see also S.C. code ANN. § 17-23-60 (:Every person accused shall, at his trial be allowed ... to produce witnesses and proffs in his favor...)).

Few rights are more fundamental than that of an accused to present witnesses in his own defense. Taylor-v.-Illinois, 484 U.S. 400, 408 (1988) (citing Chambers-v.-Mississippi, 410 U.S. 284, 302 (1973)). The need to develop all relevant facts in the adversary system is both fundamental and comprehensive.

The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. Id. at 408-409 (quoting United-States-v.-Nixon, 418 U.S. 683, 709 (1974)). The right to offer the testimony of witnesses ... is in plain terms the right to present a defense the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Id. at 409 (quoting Washington-v.-Texas, 388 U.S. 14, 19 (1967)). Without question or hesitation, the United States supreme court declared [t]his right is a fundamental element of due process of Law. Id. Undermining the "ostensible

integrity of the investigation" is one method by which a defendant may present a defense. See Kyles v. Whitley, 514 U.S. 419, 448 (1995).

"Evidence is relevant if it tends to establish or to upon which it directly or indirectly bears. "Schmidt, 288 S.C. at 303, 342 S.E. 2d at 403 (citing Assoc. Mgmt. v. E.D. Sauls Constr. Co., 279 S.C. 219, 305 S.E. 2d 236 (1983)); see also 401, SCRE (defining relevant evidence). Further, "[e]vidence which assists a jury at arriving at the truth of an issue is relevant and - admissible unless otherwise incompetent. " Id. citing Toole v. Salter, 249 S.C. 354 S.E. 2d 434 (1967)); see also Rule 402, SCRE ("All relevant evidence is admissible, except as otherwise provided Evidence which is not relevant is not admissible).

In State v. Page, 406 S.C. 272, 287, 750 S.E. 2d 623, 631 (Ct. App. 2013), this court held the trial judge abused his discretion by finding the proffered testimony offered by the defendant - was not relevant. page sought to introduce a text message and testimony by a witness that the alleged victim had admitted to the witness that she had lied to the police. Id. at 288, 750 S.E. 2d at 632.

PROSECUTORIAL MISCONDUCT

The prosecutor's duty in a criminal prosecution is to seek justice. Although the prosecutor should "prosecute with earnestness and vigor," he or she may not use "improper methods calculated to produce a wrongful conviction. " 1742 Generally, the use of such methods is grounds for mistrial or reversal of a conviction if it results in an unfair trial violating the due process. If the prosecutorial misconduct is intended to cause a mistrial, the double jeopardy clause may bar further prosecution.

Improper comments to justify reversal of a conviction, it is not enough that the prosecutor's remarks or conduct were improper [t]he relevant question is whether the prosecutor's comments

so infected the trial with unfairness as to make the resulting conviction a denial of due process.

CONFESSIONS VIOLATION

When individual is taken into custody or otherwise deprived of his freedom by authorities in any significant way and is subjected to questioning, privilege against self-incrimination is jeopardized and procedural safeguards must be employed to protect privilege U.S.C.A. const. Amend. 5. 110 xv11 (M) statements confession, and admissions by or on behalf of accused 110 xv11 (M) warnings 110 xv11 (M) 16 invocation of rights. Unless other fully effective means are adopted to notify accused in custody or otherwise deprived of freedom of his rights of silence and to assure that exercise of right will be scrupulously honored, he must be warned before questioning that he has the right to remain silent, that any thing he says can be used against him in court, and that he has right to presence of attorney and to have attorney appointed before questioning if he cannot afford one; opportunity to exercise these rights must be afforded to him throughout the interrogation; after such warning have been given and opportunity afforded accused may knowingly and intelligently waive his rights and agree to answer questions or make statement, but unless and until such warnings and waiver are demonstrated by prosecution at trial, no evidence obtained as a result of interrogation can be used against him. U.S.C. const. Amend. 5.6.

Statement taken by police in incommunicado interrogation were inadmissible in state prosecution where defendant had not been in any way apprised of his rights to consent with attorney or to have one present during interrogation, and his fifth Amendment right not to be compelled to incriminate himself was not effectively protected in any other manner, even though he did signed a statement which contained typed in clause that he has no knowledge of his legal rights. U.S.C.A. const. Amend. 5. 6.

Mere fact that interrogated defendant signed statement which contained type in clause stating that he had full knowledge of the legal rights did not approach knowing and intelligent waiver required to relinquish constitutional rights to counsel

and privilege against self-incrimination. Fifth Amendment
 -provisioj that individual cannot be compelled to be witness
 against himself cannot be abridged. U.S.C.A. Amend. 5.

In fulfilling responsibility to protect rights of client attorney
 plays vital role in administration of criminal justice. U.S.C.A.
 const. Amend. 6.

Interviewing agent must exercise his judgment in determining
 whether individual waives right to counsel, but standard for
 waiver is high and ultimate responsibility for resolving
 constitutional question lies with courts.

Constitution does not require any specific code of procedures
 for protecting privilege against self-incrimination during
 custodial interrogation, and congress and states are free to
 develop their own safeguards for privilege, so long as they
 are full as effective as those required by court. U.S.C.A. const.
 const. Amend. 5. Defendant's oral confession obtained during
 incommunicado interrogation was inadmissible when he had not
 been warned of any of his rights before questioning and thus
 was not effectively apprised of his fifth Amendment privilege
 or right to have counsel present. U.S.C.A. Amend. 5.6.

In absence of intelligent waiver of the constitutional rights
 involved confessions and other statements obtained by custodial
 police interrogation held provision... in evidence, where suspect
 was not informed of his rights to counsel, or of his right to
 be silent, or of the possible use of his statements as evidence
 against him.

S U M M A R Y

The instant cases deal with the admissibility of statements
 obtained from an individual who is subjected to custodial police
 interrogation, and the necessity for procedures which assure
 that the individual is accorded his privilege against
 self-incrimination.

Without specific concentration on the facts of these cases, the supreme court of the United States, in an opinion by Warren, Ch. J., expressing the views of five members of the court, laid down the governing principles, the most important of which is that, as a constitutional prerequisite to the admissibility of such statements, the suspect must in the absence of a clear, intelligent waiver of the constitutional rights involved, be warned prior to questioning that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights under Miranda v. Arizona, 384 U.S. 436 (1966). The voluntariness of a statement is determined from the totality of the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Furthermore, the conclusion of the trial judge or issues of fact as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Kennedy, 333 S.C. 426, 429, 510 S.E. 2d 714, 715 (1998). When a suspect invokes his right to remain silent, Law enforcement officers must scrupulously honor it. Michigan v. Mosley, 423 U.S. 96 (1975). However, before Law enforcement officers are required to discontinue questioning the suspect must clearly articulate his desire to end the interrogation. Davis v. United States, 512 U.S. 452 (1994); State v. Reed, 332 S.C. 35, 42 503 S.E. 2d 742, 750 (1999).

The United States supreme court has recently recognized that defense counsel must conduct a reasonable investigation to discover all reasonably available mitigation evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor. Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527, 2537, 156 L.Ed. 2d 471 (2003), citation omitted).

Tr. p. 229, lines 17-25.

A. It says, I, Ronald Duyane Davis, am not under arrest for nor am I being detained for any criminal offenses concerning the events I am about to make known to Lieutenant Bryant Cheek.

confession while in custodial interrogation

A statement is inadmissible unless the suspect was advised of and voluntarily waived his rights under Miranda-v.-Arizona, 384 U.S. 436 (1966). The voluntariness of a statement is determined from the totality of the circumstances. Schneckloth v.-Bustamonte, 412 U.S. 218 (1973). Furthermore, the conclusion of the trial judge on issues of facts as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State-v.-Kennedy, 333 S.C. 426, 429, 510 S.E. 2d 714, 715 (1998). When a suspect invokes his right to remain silent, Law enforcement officers must scrupulously honor it. Michigan-v. Mosley, 423 U.S. 96 (1975).

However, before Law enforcement officers are required to discontinue questioning the suspect the suspect must clearly articulate his desire to end the interrogation. Davis-v.-United States, 512 U.S. 452 (1994); 742, 750 (1998).

MIRANDA V. ARIZONA

In Miranda-v.-Arizona, 384 U.S. 436, 444 (1966), the supreme court of the United States held. "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." The court defined "custodial interrogation" as "questioning initiated by Law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Id. The court announced what are now commonly referred to as a suspect's Miranda rights: "prior to any questioning

the person must be warned that he had a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. Id. Miranda warnings are required only where has been such a restriction on a perosn's freedom as to render him in custody. Oregon-v.-Mathiason, 429 U.S. 492, 495 (1977). In determining whether a suspect is in custody, the subjective view of the suspect and the officers are irrelevant. Stansbury-v.-California, 511 U.S. 318, 323 (1994). The relevant inquiry is whether a reasonable person in the suspect's position would have felt that he was free to leave. Berkemer-v.-McCarty, 468 U.S. 420, 442 (1987). _

If a suspect is determined to be in "custody," the next inquiry is whether he is being interrogated. In Rhode Island v. Innis, 446 U.S. 291, 300-301 (1980), the supreme court held that "interrogation for Miranda purposes included questioning or its functional equivalent. The court elaborated [T]he term interrogation under Miranda refers not only to express questioning, but also to any words or actions on the part of police ... that the police should know are reasonably likely to elicit an incriminating response from the suspect.

STATEMENT OF THE CASE

On September 16, 2016, a Laurens county Grand jury indicted appellant for the offense of murder and possession of a weapon during the commission of a violent crime. R. 54-57. Appellant proceeded to trial before the Honorable Donald B. Hocker and a jury. R. 1. Appellant was represented by Chelsea McNeill and Tristan Shaffer; the state was represented by Warren Mowry and Jared Simmons. R. 1.

On March 28, 2018, the third day of his trial, appellant pleaded guilty to the lesser offense of voluntary manslaughter and to possession of a weapon during the commission of a violent crime. R. 2, 11, 17-19; R. 6, 11. 21-23. The court sentenced appellant to concurrent terms of twenty-five years for voluntary manslaughter and five years for the weapons charge. R. 22, 11. 14-18; R. 58-59.

On April 19, 2018, the parties appeared before the court for a motion to withdraw appellant's guilty plea. R. 24-25. The court denied the motion R. 51, 11. 1-6; R. 53.

What we have in this case is a failure to investigate. Without investigations no real defendant strategy can be prepared. In Ard v. Catoe, 372 S.E. 318, 642 S.E. 2d 590 (2007) the court wrote:

Without a doubt "[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation "Thompson v. Wainwright, 787 F. 2d 1447, 1450 (11th cir. 1986); see also Strickland v. Washington, 466 U.S. at 691, 104 S.Ct. 2052. When evaluating the reasonableness of counsel's conduct, "the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case. Strickland v. Washington, 466 U.S. at 690, 104 S.Ct. 2052. Moreover, while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has a duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Trodel v. Wainwright, 667 F. Supp. 1456, 1461 (S.D. Fla, 1986), aff'd 828 F. 2d 670 (11th cir. 1987).

The American Bar Association (ABA) has specifically provided guidelines for defense counsel's performance regarding investigation of a capital case. "Counsel at every stage have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty. "American Bar Association guidelines for the appointment and performance of defense counsel in death penalty cause reprinted in 31 Hofstra L. Rev. 913, 1015 (2003) (hereinafter "ABA guideline"). With respect to forensic evidence, the ABA directs the following: with respect to forensic evidence, the ABA directs the following: "with the assistance of appropriate experts, counsel should aggressively reexamine all of the government's forensic evidence, and conduct appropriate analyses of all other available forensic evidence. "Id. at 1020, 372 S.Ct. at 331-332, 642 S.E. 2d at 597.

PRIOR BAD ACTS VIOLATION

One of the exceptions contained within Rule 404(b), SCRE is when the evidence is offered to show a common scheme or plan. Evidence of other crimes or bad acts is

Due to the danger this type of evidence poses, "[e]vidence of other crimes must be put to a rather severe test before admission, State-v.-Catro, 332 S.C. 100, 103, 504 S.E. 2d 324, 325 (1998). Admissible to show a common scheme or plan when there is "a connection between the prior bad act and the present crime. "State-v.-Parker, 315 S.C. 230, 233, 433 S.E. 2d 831, 832 (1993) (citing State-v.-Rivers, 273 S.C. 75, 254 S.E. 2d 299 (1972)). The connection "must be more than just a general similarity. "Id. (citing State-v.-Stokes, 279 S.C. 191, 304 S.E. 2d 814 (1983)). The prior had act evidence must have a "close degree of similarity" to the crimes charged. State-v.-Glasby, 385 S.C. 148, 155, 682 S.E. 2d 892, 896 (2009). The evidence must be logically relevant to the particular purpose or purposes for which it is sought to be indroduce. "State-v.-Bell, 302 S.C. 18, 27, 393 S.E. 2d 364, 369 (1990)).

Due to the danger this type of evidence poses, "[e]vidence of other crimes must be put to a rather severe test before admission. State-v.-Gutro, 332 S.C. 100, 103, 504 S.E. 2d 32d, 325 (1998).

State-v.-Scott,

This case differed sharply from other cases where this court has found clear and convincing evidence of the prior bad act. See State-v.-Scott, 405 S.C. 489, 748 S.E. 2d (Ct. App. 2013).

A defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing (1) counsel's representation fell below an objective standard of reasonable and (2) there is a reasonable probability that, but for counsel's errors the defendant would not have plead guilty, but would have gone to trial. Turning first to evidence of prior bad acts, the South Carolina Rules of evidence and case Law preclude the introduction of evidence of a defendant other crimes, wrongs, or acts to prove the defendant's guilt for the crime charged except to establish (1) motive, (2) identity, (3) a common scheme or plan (4) the absence of mistake or accident, or (5) intent, Rule 404(b), SCRE; State-v.-Lyle, 125 S.C. 406, 118 S.E. 803 (1923). In fact "[e]vidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged.

State-v.-Johnson, 293 S.C. 321, 324, 360 S.E. 2d 317 319 (1987). As explained by the court in State-v.-Weslry-Smith, 391 S.C. 353,361, 705 S.E. 2d 491, 495 (2011), in order to introduce evidence of some other act by the defendant under one of the exceptions, the prosecutor must lay a proper foundation. At the outset, the prosector must prove by clear and convincing evidence that defendant committed the other act, if the defendant was not convicted of the act Id. (citing State-v.-Fletcher, 379 S.C. 17, 23, 664 S.E. 2d 480, 483 (2008). Next, the prosecutor must articulate the logical connection between the other act and one of the five exceptions listed in Rule 404(b), SCRE. Id. (citing State-v.-Pagan, 369 S.C. 201, 211 631 S.E. 2d 262, 267 (2006). This requires a showing of how the evidence of the other act will assist the facts-finder in understanding a material issue in the case related to one of the Rule 404(b), SCRE, exceptions. Id. If the trial judge determines the prosecutor has satisfied both requirements then the judge must determine whether the probative value outweighs the prejudicial effect pursuant to Rule 403, SCRE. Id. (citing State-v.-Stokes, 387 S.C. 390, 404, 673 S.E. 2d 434, 441 (2009).

Neither the judge nor the prosecutor explained how the evidence of this alleged prior bad act was admissible against appellant under one of the exceptions in Rule 404(b), SCRE or that the act had been proven by clear and convincing evidence.

WITHDRAW OF PLEA

The court abused its discretion when it refused to consider appellant's assertion when moving to withdraw his guilty plea, that he was coerced into pleading guilty in part due to a prior sexual relationship with his counsel's private investigator and he believed the investigator "wasn't going to do a good job" because "she got mad at him. Since the failure to exercise discretion was an abuse of discretion.

Relevant facts

On the third day of appellant's murder trial the state extended a plea offer of a recommended twenty - five year term on the reduced offense of voluntary manslaughter and a concurrent five year term on the weapon charge. R. 6, 11, 21-23; R. 13, 11. 3-5. The judge recognized that appellant was "hesitant" to plead guilty and showed "trepidation." R. 50, 11. 10-11. However, appellant ultimately did plead guilty and during the colloquy he said he was satisfied with his attorneys and had no complaints against the Public Defender's office. R. 1, 11. 19-22; R. 11, 11. 2-7.

The parties reconvened on a motion to withdraw the guilty plea based on appellant's communication to defense counsel shaffer that "he felt coerced into pleading." R. 26, 11. 13-18. At the hearing, appellant told the court that defense counsel McNeill told him he must take the plea offer, R. 29, 11. 17-18. McNeill denied coercing appellant into pleading guilty R. 39, 11. 1-3. McNeill said she was "shocked" to learn appellant alleged that he was having asexual relationship with McNeill investigator, Nicole Hurley. R. 41, 11. 18-22.

Appellant explained to the court that he told McNeill "that he and Nicole Hurley, we was sexually involved." R. 47, 11. 9-11. Appellant said "[W]hen me or Ms. Hurley was in a relationship, she got mad at him. And I didn't know that Ms. Hurley was the investigator on this case. R. 47, 11. 22-24. Appellant explained that he became aware Hurley was involved in his case "when my trial started " and that he told Ms. McNeill that she wasn't going to do a good job because of me and her had been sexually involved. R. 48, 11. 1-6.

The Rules of professional conduct generally prohibit a lawyer from engaging in a sexual relationship with a client. Rule 1.7, RPC, Rule 407, SCACR; Rule 1.8, RPC, Rule 407, SCACR; In re mayer, 396 S.C. 515, 722 S.E. 2d 800 (2012). A lawyer supervising a non-lawyer assistant such as an investigator must "make reasonable efforts to ensure the person's conduct is compatible with the professional obligations of the lawyer" i.e., because the lawyer may not have a sexual relationship with a client, a sexual relationship between the lawyer's investigator and the client is also improper.

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." Gustine v. State, 325 S.C. 123, 127, 480 S.E. 2d 444, 446 (1997) (quoting Hill v. Lockhart, 474 U.S. 52, 56 (1985)). Here, whether appellant was coerced to plead guilty by the fear that his former lover, now employed by his attorney, would sabotage his trial was relevant to the determination of whether appellant was coerced to plead guilty - and thus should be allowed to withdraw the plea - and whether his decision to plead guilty was a voluntary and intelligent choice.

The court's failure to consider the allegation that appellant's pleas were coerced by an improper sexual relationship with his counsel's investigator was an abdication of discretion and error. Fontaine v. Reitz, 291 S.C. 536, 354 S.E. 2d 565; Hill v. Lockhart, 474 U.S. 52.

MIRANDA WARNING VIOLATION

Tr. p. 214, lines 19-25. Officer Bryant:

So you -- again, state your -- what your purpose was.

A. My purpose, at the time, I was following a lead of Lieutenant Keith McIntosh, I was just trying to communicate with defendant to keep him from committing suicide. See p. 217, lines 13-25. When officer Bryant Cheek, meet defendant at the Laurens county Detention center. He stated his purpose for meeting with

defendant was to go check on him to make sure he was all right, and to talk with him.

MR. SHAFFER: Your Honor. there's two different miranda forms up there. The defendant argues that he was under the influence of alcohol, and drugs, and also he was taking his medication, when he was force to talk with the police officers. After: been in the investigation room for hours by officer Bryant Cheek, from the Laurens county Sheriff's office.

See Page 17. lines 18-25.

I think we dealt with at least, one of those earlier. And we just renew previous --

THE COURT: Good.

(Whereupon, state's Exhibi Nos. 85, 86, and 87 were marked for identification only.)

BY MR. MOWRY:

Q. When you got to the Detention center, did you see the defendant?

A. Yes, Sir.

Q. Prior to his -- your meeting him there, had he reported that he was going to go anywhere else, or that he was at somewhere else?

A. Yes, Sir. He went to Newberry county, a location in Newberry county.

Q. Okay, Do you know what that location was?

A. It was 13347 C.R. Core Highway in Newberry county.

Q. And what was that place? I mean, what significance did that have to with defendant?

A. I think that was his residence.

Q. Okay, Do you know whether or not officers were supposed to go there? Did they in fact go there?

A. Yes, Sir. officers did go there.

Q. Did they find the defendant there?

A. No, Sir.

- Q. All right when you got to the detention center, did you see Mr. Davis,

A. Yes, Sir. I did.

Q. How was he attired at that time? How was he dressed?

A. At that time, the detention center had removed his clothes and dressed him out at the detention center.

Q. was he under arrest at that time?

A. Not at that time.

Q. was he in detention --

A. well, I mean, he was in detention, Yes, Sir.

Q. or in custody?

A. in custody.

Q. Had he been arrested on anything?

A. no, Sir.

Q. what was the purpose in changing out the clothes then?

A. At the time, he had contemplated suicide, and any time a person contemplates suicide, the detention center will dress you out and take your clothes away from you.

Q. So there's no weapon or anything that you might do to yourself

A. Right.

Q. Did you speak with the defendant?

A. Yes, Sir.

Q. Where did you speak with him?

A. I spoke with him -- our initial contact was when we first came into the detention center. And then he and I walked back to the attorney - client room.

Q. And describe the attorney room, if you would.

A. The attorney - client room is a small room. It has a table and a chair on one side and a chair on the other side.

Q. So just a couple of chairs and a table is that right?

A. Yes, Sir.

Q. Can you close the door?

A. Yes, Sir.

Q. So there is some privacy?

A. Yes, Sir.

Q. All right. What was your purpose in going in there?

A. to go in there to talk with defendant about himself and the incident location.

See Page 225, lines 9-15. Did he appear to be under the influence of anything.

No, Sir.

Was defendant tested for any alcohol or drugs when he was interviewed by investigator Bryant Cheek, at the Laurens county detention center.

See page 225, lines 9-15.

The defendant argues that he was under the influence of alcohol, drugs, and he was taken his medication when he were force to talk with investigator Bryant Cheek. After been in the investigation room for hours, it was obvious that the defendant was under the influence of something.

Defendant was intoxicated when he met with investigator Bryant Cheek, in the interview room.

SUPPRESSED STATEMENT VIOLATION

Defendant contends that the statement should have been suppressed as being the fruit of the poisonous "tree" in violation of Wong-Sun-v.-United-States, 371 U.S. 471, 83 S.Ct. 407 (1963). In Wong-Sun-v.-United-States, the supreme court held not that the evidence obtained through unconstitutional police conduct must be suppressed. But also that the fruits of the illegally obtained evidence must be suppressed. Illegal fruits include not merely physical objects statements or identifications, but witnesses at trial who are discovered because of illegal police misconduct not all evidence discovered after the police have acted in an unconstitutional manner must be suppressed. If the fruits of the illegally obtained evidence would have been inevitably discovered or if an independent source for the evidence can be shown the evidence need not be suppressed. In Oregon v.-Elsiad, for example, the supreme court held that the first statement obtained before the miranda wraning had been given had to be suppressed but the second statement after the miranda warnings had been given was not pre se inadmissible, since the chain of illegality had been broken.

The defendant would just move to suppress based on any statement made by defendant on the basis of the fact that he was for all practical purposes detained which as far as any individual would be concerned, he was as the investigator Cheek, testified he was dressed out in detention clothes at the Laurens county detention center but he was under arrest at that time.

COMPETENCY Hearing violation

Criminal defendant's failure to request competency hearing did not waive right to such hearing where defendant's sanity was crucial issue throughout the plea. Code 1976, §§ 44-23-410, 44-23-430.

The word "shall" may be construed as permissive to effect legislative intent, particularly when statute directs courts to determine certain matter. Code 1976, § 44-23-430, a statutory provision is generally regarded as mandatory where power or duty to which it relates is for security of protection of private rights. Statute providing that upon receiving report of designated examiners, the court shall set a date for competency hearing is designed to protect accused's right to fair trial by due process, determination of his competency and fitness to stand trial. Code 1976, § 44-23-430, U.S.C.A. const. Amend. 14.

The applicant asserts upon information and belief the court should not have sentence defendant for the crime. Under the Blair-Hearing the due process the conviction of a person who is mentally incompetent and this right cannot be waived by a guilty plea. U.S.C.A. const. Amend. 14. Godinez v. Moran, 509 U.S. 389, 113 S.Ct. 2680 (1993). Jeter v. State, 308 S.C. 230, 232, 417, S.E. 2d 594, 594, 595 (1992). The accused must have sufficient capability to consult with his counsel with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him Jeter, 308 S.C. at 232, 417 S.E. 2d at 596. Petitioner bears the burden of showing by a preponderance of the evidence that he was incompetent at the time of his plea trial. The trial judge erred by finding defendant could comprehend the seriousness of the trial before a competent hearing could be properly prepared.

When ever a judge of the circuit court, or county court, or family court has reason to believe that a person on trial before him charged with the commission of a criminal offense, is not fit to stand trial because such person lacks the capacity to understand the proceedings against him or to assist in his own

defense a result of a lack of mental capacity the judge shall; order examination of such person by two examiners designated by the Department of mental Health or the mental retardation Department or both, such examination shall be made within fifteen days after the court's order such person committed for examination and observation to an appropriate facility for a period not to exceed fifteen (15) days, the report to such examination shall be admissible as evidence in subsequent hearing pursuant to § 44-23-430. The records does not reflects any report from the appointment of defendant from the mental Health Department of South Carolina.

In Dasky-v.-United-States, 362 U.S. 402 (1960), the court held that the standard for competence to stand trial is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings against him. See Drope-v.-Missouri, Supra a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may be subjected to a trial.

The defendant was placed on "suicide Watch" see page 213, lines 24-25 where officer Bryant Cheek, stated that his purpose in talking to the defendant?

A. I was trying to make contact with him, communicate with him we was concerned about him and what he had shared with dispatch that he was contemplating "suicide".

Q. Did you get a name for the individual?

A. Yes, Sir.

Q. And what was that name, please, Sir.?

A. Mr. Ronald Davis.

Tr. p. 46, lines 15-25. Defendant asked his trial counsel to get a copy of his medical records stating that he had a medical problem with his back and also he was on medication when the incident occurred on July 3, 2016, he also was incapacituted by a large quantities of drugs and alcohol mix. The defendant turn himself in to the Laurens county Detention center. The

(Whereupon, a bench conference was held.)

THE COURT: Okay, you may want to start him back where you were.

BY MR. MOWRY:

Q. So tell us again how many times you called.

A. I called him on multiple occasions.

Q. count up how many times you called, you've get your list there right?

A. Yes, Sir. At least, 12.

Lieutenant Bryant Cheek, indicated Davis was on suicide watch when he had this conversation with him? Didn't that cause you some concern about Mr. Davis on suicide watch.

What were the indication that caused him to be place on a suicide watch? Had he exhibited behavior that caused them to put him on suicide watch?

Mentally Ill statute § 17-24-70, of the South Carolina code of Laws. If counsel's service fails below a minimum level, clients guilty plea will not represent an informed choice and can't be considered knowing and voluntary. The defendant's counsel was not familiar with the facts and law relevant to defendant's case showing that his counsel did not meet the required minimum level of effective assistance, now since counsel did not assist client to the facts of his constitutional right, should be considered the time counsel spent in preparation. If defendant's counsel was to poorly prepared, then defendant was denied effective assistance in deciding on guilty plea in light of facts Wilbert Herring v. W. J. Estelle, F. reporter 2d 491 125 (2) criminal Law 641, 13 (5); (3) criminal Law 264; (4) criminal Law 641, 13 (1); (5) criminal Law 641 13 (1); (6) criminal Law 273. 1 (4) counsel should be afforded reasonable opportunity to prepare to defend the defendant and to confer as often without undue delay to advise him of his rights and to elicit matter of defense or to ascertain that potential defense are available.

SELF - DEFENSE

The court of Appeals did not notice that petitioner he had disarmed Ms. Prophet, and had taken possession of the weapon when the shot was fired under those fact, the court held Ms. Prophet, no longer posed any threat to petitioner and he could not have reasonably believed she did. The court held the evidence demonstrated petitioner did not have the right to use deadly force in self - defense and the trial judge correctly refused to charge the jury on self - defense.

A self - defense charge is not required unless it is supported by the evidence. State-v.-Goodson, 312 S.C. 278, 440 S.E. 2d 370 (1994). To establish self - defense in South Carolina, four elements must be present (1)

of determining whether he was engaged in a lawful act, i.e. was lawfully armed and not whether he actually acted in self defense when the shooting occurred.

The defendant must be without fault in bringing on the difficulty (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief or imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger. State-v.-Slater, 373 S.C. 66, 644 S.E. 2d 50 (2007). If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self - defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error. Id.

We find petitioner was entitled to a self - defense charge. In a statement to police, petitioner indicated he took the gun from Ms. Prophet, and that it was "either her or me. This statement indicates he believed he was in imminent danger of losing his life. Ms. Prophet had been acting jealous, following him, and had told him that if she ever caught him with another woman it was going to be messy. This evidence suggested that petitioner was reasonable in his belief that it was either Ms. Prophet or his life at stake when the struggle for the gun began. Accordingly, the trial court erred by failing to charge self - defense given there was evidence to support the charge. See State-v.-Burkhart, 350 S.C. 252, 565 S.E. 2d 298 (2002) (if there is any evidence in the record to support self - defense, the issue should be submitted to the judge).

A past holding of this court seems to indicate that where a defendant is claiming self - defense, as petitioner is here, involuntary manslaughter may not be charged. In State-v.-Rickens 320 S.C. 528, 466 S.E. 2d 364 (1996). We held that where a defendant admits he intentionally shot the gun, but that he did so while acting lawfully but recklessly in defending himself, he is not entitled to a charge of involuntary manslaughter.

However, a self - defense charge and involuntary manslaughter charge are not mutually exclusive, as long as there is any evidence to support both charges. See Grosby-v.-State, 355 S.C. 47, 584 S.E. 2d 110 (2003) (improper to hold that any evidence of an intentional shooting negates evidence from which any other inference may be drawn); Casey-v.-State, 305 S.C. 445, 409 S.E. 2d 391 (1991) (error by trial court in not charging involuntary manslaughter, even though the trial court charged murder, voluntary manslaughter, accident, and self - defense); State-v.-Turbeville, 275 S.C. 534, 273 S.E. 2d 764 (1981) (defendant charged with involuntary manslaughter was not entitled to self - defense charge because there was no testimony concerning self - defense in the trial record; indicating the charge would be appropriate if there was testimony concerning self - defense). When there is a factual issue as to whether

the shooting was committed intentionally in self - defense or was committed unintentionally, then the defendant is entitled to both charges as there is "any evidence" to support each charge. When there is evidence of both, as in this case, we find the jury is entitled to resolve the question of how the shooting actually occurred.

BRADY MOTION VIOLATED

Brady v. Maryland, 373 U.S. 83 (1963), prohibits the state from withholding evidence that is material and exculpatory of an accused. Where a specific request for exculpatory evidence is made reversal is required if the evidence might have affected the outcome of the trial. United States v. Agurs, 427 U.S. 97 (1976).

The proper standard of materiality must reflect our overriding concern with the justice of the finding of guilt. Such a finding is permissible only if supported by evidence establishing guilt beyond a reasonable doubt. It necessarily follows that if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error, has been committed. This means that the omission must be evaluated in the context of the entire record. If there is no reasonable doubt about guilt whether or not the additional evidence is discovered, there is justification for a new trial.

Here, defendant cannot ask this court to evaluate the strength of the additional evidence because the solicitor's conduct precluded counsel from investigating the exculpatory information. He would point out, however, that the case against defendant was entirely circumstantial. Had he discovered the fact of the when counsel asked the court for a continuance to subpoena from AT&T, we were not able to get the information, they couldn't really provide us an exact timetable of when they were going to do it. Counsel Mr. Shaffer, requested by putting in an affidavit to submit, based off of that Janna Nelson, heard, which I can submit once we, actually, knew the hearing.

See page 9, lines 10-25. Where counsel requested: But we would ask for a continuance so that we have more time to prepare that issue. The court: Okay. motion denied.

If counsel would have discovered the fact of this information prior to trial and investigated the persons Janna Nelson, could affect the outcome of the case.

SELF - DEFENSE

The final element of self - defense is that the defendant had no other probable way to avoid the situation danger of death or serious bodily injury other than to act as he did in the particular circumstances. The defendant had no duty to retreat before acting in self - defense.

Now, a person in a self - defense case is not required to make an exact calculation as to the degree or the amount of force which may be needed to avoid death or serious bodily injury. Therefore, in self - defense, the defendant has a right to use the force needed to avoid death or serious bodily harm. The force used in self - defense does not have to be limited to the degree or amount of force use by the victim.

The defendant has the right to use so much force as appeared to be necessary for complete self protection, and which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily injury. If the defendant is justified in defending himself or others, and in firing the first shot, then the defendant is also justified in continuing to shoot until it is apparent that the danger of death or serious bodily injury has completely ended.

Under the Law of self - defense, the defendant may take another's life in the defense of other. The right to intervene to protect another person is subject to the same rights and limitations as the right of self-defense. The defendant may take the life of a person who assaults a friend, relative, or bystander if that friend, relative or bystander would have had the right of self-defense.

To show that the person being defended had the right of self-defense, it must first be shown that the person being defended, and the defendant, were both without fault in bringing on the difficulty. If the conduct of the person defending or the defendant was the type which was reasonably calculated to and did provoke a deadly assault, the person would be at fault in bringing on the difficulty and would not have the right of self-defense.

Now, a person in a self-defense case is not required to make an exact calculation as to the degree or the amount of force which may be needed to avoid death or serious bodily injury. Therefore, in self-defense, the defendant has a right to use the force needed to avoid death or serious bodily harm. The force used in self-defense does not have to be limited to the degree or amount of force use by the victim. The defendant has the right to use so much force as appeared to be necessary for complete self protection, and which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily injury.

If the defendant is justified in defending himself or other, and in firing the first shot, then the defendant is also justified in continuing to shoot until it is apparent that the danger of death or serious bodily injury has completely ended.

State.v.-Day, 341 S.C. 410, 416-17, 535 S.E. 2d 431, 434 (2000) (quoting State.v.-Muller, 282 S.C. 10, 316 S.E. 2d 409 (1984)). "[W]hen a defendant claims self-defense, the state is required to disprove the elements of self-defense beyond a reasonable doubt. State.v.-Dickey, 394 S.C. 491, 716 S.E. 2d 97, 101 (2011) (citing State.v.-Wiggins, 330 S.C. 538, 544-45, 500 S.E. 2d 489, 492-93 (1998)). A person is justified in using deadly force in self-defense when:

- (1) The defendant was without fault in bringing on the difficulty
- (2) The defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save him self from serious bodily harm or losing his own life; and (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

One of our South Carolina court's primary functions in the interpreting of a statute is to ascertain the direct intention of the Legislative intent and apply the statute according its literal meaning. In construing such a statute, the words or its language must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the state's operation, statutes 24(1). The literal meaning and Legislative intent of our common Law statute, section 17-19-30 (1976) is quite clear cut by it's language. The common Law requirements in South Carolina remain the same in every particular as they stood at common Law of olden times State v. Judge, 208 S.C. 497, 38 S.E. 2d 715, 7119 (1946), and it's progeny. The Legislative intent is clearly written into the language of statute, section 17-19-30 (1976), and (1985). For an accused to be Lawfully convicted of murder within the state of South Carolina, not only must the time and place of the death of deceased be proved at trial; it must be alleged in the bill of indictment returned against the defendant by the grand jury, in accordance to the clear, and well established constitutional rights of the accused. S.C. const. Art. 1, section 11; U.S. const. Amend. Five, S.C. statute, section 17-19-30 and 17-19-20 (1985). To do otherwise, would violate the due process clause U.S. const. Amend. Fourteen and the bill of rights.

It is absolutely necessary in the state of South Carolina, that "both" the time and place of the assault of the victim and the time and place of the death of the deceased be alleged in a murder indictment returned by the grand jury before an accused can be Lawfully convicted for the offense of murder in this state. Both these essential elements must be passed upon by the grand jury as provided by the grand jury clause. Citing State-v.-Rector, 158 S.C. 212, 155 S.E. 383 (1930); State-v. Blatt, 154 S.C. 1, 151 S.E. 206 (1930); State-v.-Blakeney, 33 S.C. 111, 11 S.E. 637 (1990). General reference to the statute is insufficient. U.S.-v.-Hooker, 841 F. 2d 1225, 1228 (4th cir. 1988), quoting Hale-v.-U.S., 89 F. 2d 578-79 (4th cir. 1937).

Defendant argues subject matter jurisdiction in this case. Because the true billed indictment were not stamped. On the face of the indictment, consequently, the unlawful and illegal acts committed by state require this court to hold defendant's indictment illegal and invalidate all judicial proceedings taken in this case. The matter presented below for review is not a challenge to the court's general grant of authority to hear and determine cases. That authority is rightfully granted by our constitution. State-v.-Gentry, 363 S.C. 93, 610 S.E. 2d 494 (2005), and will not be at issue here. Instead petitioner contends that the court of General Sessions failed to comply with statutory Law jurisdiction in nature, specifying the manner and for Lawful return of true billed indictment.

The primary question before the court are whether S.C. code Ann. § 14-9-210 is jurisdictional in nature and whether it requires that all criminal indictments must be issued through a grand jury impaneled before the court of General Sessions, and whether state's non compliance with mandatory indictment procedures, and willful acts of perjury have rendered all judicial proceedings invalid and its indictment.

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the Legislature. Hodges-v.-Rainey, 341 S.C. 79, 85, 533 S.E. 2d 578, 181 (2000). state-v.-Martin, 293 S.C. 46, 358 S.E. 2d 697 (1987). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina-Power-&-Light-Co.-v.-City-of-Bennettsville, 314 S.C. 137, 139, 442 S.E. 2d 177, 179 (1994).

An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown-v.-State, 343 S.C. 342, 540 S.E. 2d 846 (2001), overruled in part by Gentry, Supra. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters "Gentry, Supra, 610 S.E. 2d at 499; see also S.C. const. Art. v. § 7. Thus, the applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The applicant's conviction involved a criminal charge in General Sessions court. Thus, the circuit court had subject matter jurisdiction. In other words, rather than saying that the circuit court lacked jurisdiction to try the defendant for a particular offense you would now say that trial counsel was ineffective for failing to make a motion to quash an indictment that was infirm because of some particular deficiency.

Under the South Carolina constitution, no person may be tried for any crime in circuit court except on a presentment of an indictment of a grand jury of the county where the crime has been committed or unless he waives presentment or is tried for an offense whose elements are included within a properly indicted S.C. const. Art. I § 11. Joseph-v.-State, 351 S.C. 571 S.E. 2d 280 (2002).

Additionally, a person may not be convicted with irrelevant prejudicial evidence of uncharged had act. Rule 404 (6) SCRE. State-v.-Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Without a proper indictment, the court lack subject matter jurisdiction to enter conviction or impose sentence for a crime. S.C. code of Laws Ann. § 17-19-10, S.C. const. This may raise cruel and unusual punishment issues in some cases. See Davis-v.-Davis, 601 F. 2d 153 (4th cir. 1979), cert. granted, judgment vacated on other grounds, 445 U.S. 947, 100 S.Ct. 1593, 63 L.Ed. 2d 782 (1980). Analogy to related offenses continues to be the best sentencing guideline in the absence of Legislative specification.

Without a proper indictment, the court lacks subject matter jurisdiction to enter conviction or impose sentence for a crime. S.C. code of Laws Ann. § 17-19-10, S.C. const. Art. I, § 11. an indictment is proper if it is sufficient in charging the elements of the offense and is returned true billed by the grand jury, or presentment is waived. State-v.-Beachum, 342 S.E. 2d 597 (1986). An indictment is suufficient in the charge if it contains the necessary elements of the offense, and gives notice to the defendant of what he must be prepared to meet. State-Smallis, 519 S.E. 2d 793 (1999). Hence, if the indictment fails to allege the necessary elements of the offense charged, the indictment is not sfficient and the court lacks authority to enter a conviction or impose sentence. Beachum, Supra. A criminal defendant is entitled to effective representation. Erasier-v.-State, 306 S.C. 158, 410 S.E. 2d 572 (1991). In order to prove ineffective assistance of counsel, an applicant must show that his attorney's performance was deficient and that he was prejudiced thereby. Strickland-v.-Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

Mr. Ronald Duyane Davis, # 272165
 Broad River Correctional Institution
 Marion Unit - 230
 4460 Broad River Rd.
 Columbia, SC 29210

Date: JULY 21, 2020

2020 CP90-643

Lynn W. Lancaster
 clerk of court Laurens
 P.O. Box 287
 Laurens, South Carolina 29360

LAURENS COUNTY
 CLERK OF COURT
 2020 JUL 24 AM 11:09
 LYNN W. LANCASTER

Enclosed please find the original copy of an Application, Post-Conviction-Relief, for filing with the Laurens county clerk of court office. After you have filed the Application with clerk of court please return the clocked stamped copy to me with date thereof.

Sincerely,

s/ Ronald D. Davis
 Ronald D. Davis, # 272165

I'm supplying my own papers to have a copy sent
 Back to me please

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Ronald Duyane Davis, #272165,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No. 2020-CP-30-643

**RETURN, MOTION FOR A MORE
DEFINITE STATEMENT AND
PARTIAL MOTION TO DISMISS**

In response to the post-conviction relief application filed on July 29, 2020, by Applicant Ronald Duyane Davis, Respondent the State of South Carolina, makes the following return motion for more definite statement, and partial motion to dismiss.

I. Procedural History

Applicant is presently incarcerated within the South Carolina Department of Corrections. During its September 2018 term, the Laurens County Grand Jury indicted Applicant for murder (2016-GS-30-1382) and possession of a firearm during the commission of a violent crime (2016-GS-30-1383). Chelsea McNeill, and Tristan Shaffer, represented Applicant. Deputy Solicitor O. Warren Mowry Jr. and Assistant Solicitor Jared Simmons of the Eight Circuit Solicitor's Office prosecuted the case. On March 28, 2018, Applicant appeared before the Honorable Donald B. Hocker, circuit court judge, for a jury trial. Following three days of the trial, Applicant elected to forgo his jury trial and enter guilty pleas to the lesser-included offense of voluntary manslaughter and possession of a firearm during the commission of a violent crime. Judge Hocker sentenced Applicant to imprisonment for twenty-five years for voluntary manslaughter and five years for possession of a firearm during the commission of a violent crime, with both sentences to be served concurrently.

Thereafter, Applicant filed a motion to withdraw his guilty plea on April 4, 2018. Following a hearing on the motion on April 19, 2018, Judge Hocker denied Applicant's motion and issued a formal order on April 30, 2018.

Meanwhile, Applicant filed a notice of appeal on April 11, 2018. Applicant was represented on appeal by Joanna K. Delany, who submitted an Anders brief and petition to be relieved as counsel on June 6, 2019. On April 29, 2020, the South Carolina Court of Appeals dismissed the appeal and granted appellate counsel's petition to be relieved. The Remittitur was issued on June 10, 2020.

II. Summary of Facts Giving Rise to the Convictions

On July, 3, 2016, Applicant returned to the home he shared with his girlfriend Shana Prophet. (Tr. 230). Applicant alleges an altercation occurred between the victim and Applicant. Applicant alleges that the victim pulled a handgun out and fired at Applicant. (Tr. 231). Applicant claims that he then disarmed the victim. (Tr. 231). Around 1:30am neighbors claim to have heard multiple gunshots in rapid succession. (Tr. 151). Applicant shot the victim fivetimes including a fatal wound that went through the victim's heart. (Tr. 195-196). The victim died at the scene. (Tr. 196). Applicant fled the scene after calling 911. (Tr. 232). Applicant fled to Newberry County. (Tr. 218).

Applicant was contacted by police following his 911 call and claimed that he was contemplating suicide. (Tr. 213-214). Applicant disposed of the gun on the side of I-26. (Tr. 254). Applicant eventually turned himself in at the Laurens County Detention Center. (Tr. 218). Applicant was placed on suicide watch and dressed in prison attire. (Tr. 218-219, 246). While at the Detention Center, Applicant was placed in police custody and advised of his rights. (Tr. 219-225). Applicant provided police with a voluntary statement of the events that lead to the shooting.

(Tr. 225-226).

III. Allegations in Application and Relief Sought

On July 29, 2020, Applicant filed this PCR application, bringing various allegations, which Respondent interprets as the following:

1. "Prosecutorial Misconduct"
 - a. "The Solicitor failed disclose possible exculpatory evidence, including handwritten investigation notes, and incident reports."
 - b. "The Solicitor used evidence without establishing the chain of custody because there are discrepancies surrounding the dates that are indicated in the record."
2. "Ineffective Assistance of Counsel"
 - a. "Defense Counsel failed to investigate the case."
 - b. "Defense Counsel did not request a competency hearing prior to trial."
 - c. "Defense Counsel failed to object to the trial judge's denial of his motion to withdraw his plea."
 - d. "Defense Counsel's performance denied defendant of his due process rights."
 - e. "Defense Counsel failed to object to the prosecutor's use of prior bad act evidence."
 - f. "Defense Counsel failed to object to the use of Defendants voluntary statements to the police, because the defendant was not properly informed of his Miranda rights prior to giving the statement."
3. "Involuntary Plea"
 - a. "Defendant did not plea freely, knowingly, and voluntarily."
 - b. "Defendant's plea was coerced by his trial counsel."
 - c. "Defendant alleges he had a sexual relationship with the investigator on his case, and plead guilty because he feared retribution by his trial counsel."
4. "Trial Court Errors"
 - a. "The trial judge erred by not giving a self-defense charge to the jury."
5. "Lack of Subject Matter Jurisdiction"
 - a. "The indictment was not stamped and therefore the indictment is illegal and the court should invalidate all judicial proceedings taken in this case."

As requested relief, Applicant states he is seeking his case be remanded back to the circuit court, or that his conviction be reversed.

For the purpose of this Return, Respondent attaches as exhibits and incorporates the Laurens County Clerk of Court records regarding the subject convictions, Applicant's records from

the South Carolina Department of Corrections, the pre-trial, trial and plea transcript, and the records from Applicant's direct appeal. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegations of Prosecutorial Misconduct

Applicant asserts he is entitled to post-conviction relief based on prosecutorial misconduct. Specifically, Applicant asserts the prosecutor withheld possible exculpatory evidence including handwritten notes from Law Enforcement, and an incident report from Newberry County.

Applicant alleges a Brady¹ violation. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) that the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

Respondent submits Applicant's allegations of prosecutorial misconduct are without merit. Here, Applicant alleges the prosecution withheld an incident report from Newberry County. In the record there is no evidence that any incident reports were withheld. The Uniform Post-Conviction Procedure Act requires that the Applicant 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) (emphasis

¹ Brady v. Maryland, 373 U.S. 83 (1963).

added). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch, 246 S.C. at 258. Applicant stated at his hearing to withdraw his plea that he was served a copy of the search warrant for his house in Newberry. (R. on Appeal 46-47). There is no evidence on the record to suggest that Applicant did not receive all of the evidence from Newberry County. Respondent would request a more definite statement from Applicant regarding the incident report that he alleges he did not receive.

Applicant also asserts that the prosecutor withheld handwritten notes from the Law Enforcement agencies that handled this case. The Uniform Post-Conviction Procedure Act requires that the Applicant 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) (emphasis added). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch, 246 S.C. at 258. Applicant alleges that it is unusual for there to not be any handwritten notes that exist from any Law Enforcement agency involved in the investigation, however Applicant has not stated who would have created these notes. Applicant has failed to explain with any specificity what evidence was withheld from him and his counsel, therefore it is impossible for Respondent to properly respond to this claim. Respondent would request a more definite statement from Applicant regarding the handwritten notes.

V. Response to Allegations of Ineffective Assistance of Counsel

Applicant alleges that his counsel was ineffective for multiple reasons, these include: failing to investigate, failing to request a competency hearing, failing to object to the court’s denial of Applicant’s motion to withdraw his plea, failing to object to introduction of prior bad acts, and

failing to object to use of Applicant's statement at trial because Applicant was not informed of his Miranda² rights. Additionally, Applicant alleges that his counsel's deficient performance denied Applicant of his due process rights.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. The Respondent also asserts the Applicant's attorney rendered effective assistance well within the standard of reasonableness under professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the attorney's performance is measured by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625, (1989), (citing Strickland v. Washington, 466 U.S. 668, 690 (1984)). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume, that counsel tendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. Applicant must overcome this presumption in order to receive relief. Cherry 300 S.C. at 118, 386 S.E.2d at 625. Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's

² Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602 (1966).

alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Strickland, 466 U.S. at 689. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id. As stated in Butler v. State, the applicant has the burden of proof in post-conviction proceedings to prove the allegations in his application. Butler, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

Failure to Investigate

Applicant alleges Counsel was ineffective for failing to investigate. So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). Applicant has not produced any evidence to support

his allegations that his counsel did not undertake a reasonable investigation of this case.

The Uniform Post-Conviction Procedure Act requires that the Applicant 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) (emphasis added). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch, 246 S.C. at 258.

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include a “short and plain statement of the facts showing that the pleader is entitled to relief.”

Applicant has failed to state with any specificity the facts giving rise to his claims. Applicant has not stated with any specificity how Counsel failed to investigate this case, he has merely stated that Counsel was ineffective for failure to investigate. Therefore the Respondent would seek a more definite statement from Applicant regarding the claims that Applicant’s counsel failed to properly investigate.

Failure to Request a Competency Hearing

Applicant claims Counsel was ineffective for failing to challenge his competency to stand trial and asserts he was not competent to stand trial. When later asserting he was not competent to stand trial, a defendant must prove he was incompetent by a preponderance of the evidence. Hall v. Catoe, 360 S.C. 353, 358, 601 S.E.2d 335, 338 (2004) (citing State v. Reed, 332 S.C. 35, 39, 503 S.E.2d 747, 749 (1998)). A defendant is competent to stand trial if they have “‘a rational, as well as factual, understanding of the proceedings against him’ and the ‘ability to consult with his lawyer with a reasonable degree of rational understanding.’” Id. at 359, 601 S.E.2d at 338 (quoting State v. Bell, 293 S.C. 391, 395-96, 360 S.E.2d 706, 708 (1987)).

Applicant alleges Counsel was ineffective for failing request a competency hearing that

would have shown Applicant was not fit to stand trial. Applicant alleges he was entitled to a competency hearing because on the night of his arrest, he was placed on suicide watch. Applicant also alleges at the time of his first statement to police he was on medication for an injury. (R. on Appeal 46). Applicant also alleges he was incapacitated by a combination of drugs and alcohol at the time of his first statement. (Application Supp. 36). There is no evidence in the record to support these allegations. Additionally, Applicant has not provided any evidence that he was not able to understand the proceedings against him, nor that he was unable to consult with his lawyer with a reasonable degree of rational understanding. Therefore, Applicant has failed to establish he was incompetent to stand trial.

However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. at 266, 305 S.E.2d at 249.

Failure to Object to Denial of Plea Withdrawal

After reading Applicant's application for post-conviction relief, Respondent has interpreted Applicants allegation to say that Counsel was ineffective for failing to object to the trial court's denial of his motion to withdraw his plea.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume, that counsel tendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. Cherry 300 S.C. at 118. Additionally, the applicant has the burden of proof in post-conviction proceedings to prove the allegations in his application. Butler, 286 S.C. at 442.

Counsel in this case made all possible efforts to allow for Applicant to withdraw his guilty plea. Counsel requested a hearing for a motion to withdraw a guilty plea in response to a *pro se* letter from Applicant. (R. on Appeal 26, 28). Additionally, during the hearing, Counsel requested the trial court allow Applicant to withdraw his plea and have his guilt established at trial. (R. on Appeal 49). Through the record, Applicant is unable to demonstrate deficiency by Counsel. Additionally, the record would indicate that Counsel's actions or inactions did not prejudice Applicant. Counsel requested Applicant be allowed to withdraw his plea, however the trial judge denied the motion stating that he felt Applicant's plea was freely, voluntarily, and intelligently made. (R. on Appeal 50-51). Therefore Applicant has failed to meet his burden of proof in establishing that Counsel was ineffective.

Violation of Due Process Rights

Applicant alleges his due process rights have been violated pursuant to the Fourteenth and Sixth Amendments to the United States Constitution. Though Applicant alleges his rights have been violated, Applicant has not provided any factual basis for this allegation. As previously stated, the applicant has the burden of proof in post-conviction proceedings to prove the allegations in his application. Butler, 286 S.C. at 442, 334 S.E.2d at 814. Applicant has failed to state with any specificity the specific facts giving rise to this allegation. Additionally, this allegation is not supported by any other additional information in the application. Therefore the Respondent would seek a more definite statement from Applicant regarding the claims that counsel's performance resulted in Applicant's due process rights being violated.

Miranda Rights Violation

Respondent has interpreted Applicant's claim as a matter of ineffective assistance of counsel alleging that Counsel should have requested Applicant's statements to the police be

suppressed at trial. Applicant alleges he was not properly read and informed of his constitutional rights to remain silent and to the assistance of counsel prior to giving a voluntary statement to the police. Applicant alleges his voluntary statement was taken in violation of his Miranda rights. Applicant further claims his statement should not have been used at trial and Counsel should have had the statement suppressed. Respondent submits that Applicants claim is without merit.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the attorney's performance is measured by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625, (1989), (citing Strickland v. Washington, 466 U.S. 668, 690 (1984)). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Supreme Court in Miranda v. Arizona, held that "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently." Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966).

Based on the record in this case, Applicant was read his rights prior to giving a statement to police. Detective Cheek's testimony demonstrates that prior to obtaining a statement from Applicant at the Laurens County Detention Center, Applicant was read a statement of his rights.

(Tr. 220-222). Additionally, Applicant signed a waiver of his rights following the reading of his rights. (Tr. 222-224). Applicant was also made aware that he was not currently under arrest and he had the right to leave the Detention Center at any time if he chose to. (Tr. 229). The record also contradicts Applicants assertion that he was under the influence at the time. During testimony from Detective Cheeks, he states that Applicant did not appear to be under the influence of anything. (Tr. 225).

Applicant was also provided another statement of his rights when he was interviewed by police on July 5th. The record reflects that Applicant signed another waiver of his rights prior to the video interview that took place at the Johnson Detention Center. (Tr. 235-237).

Applicant has failed to show through the record he was not informed of his rights prior to interrogation or questioning by police. Additionally, Applicant has not shown his waiver of his rights was involuntary or that he was unable to understand the rights he was waiving at that time. Based on the record from trial, Applicant was informed of his rights, and properly waived them before giving a statement to police. Since Applicant waived his rights the statement Applicant gave to the police was admissible at trial. Applicant has not proven Counsel was deficient by not objecting to the admission of the statements, since Applicant waived his right to remain silent and his right to counsel before giving the statements. Therefore, based on the record Applicant has failed to prove his counsel was ineffective for failing to object to the admission of these statements at trial.

VI. Response to Allegations of Involuntary Guilty Plea

Applicant alleges his plea was involuntary because he coerced by trial counsel, specifically alleging he was having a sexual relationship with his investigator and was afraid of retribution. Additionally, Applicant alleges he did not understand the ramifications of his guilty plea and relied

on the insufficient advice of his counsel while pleading.

Respondent submits Applicant's allegations of an involuntary plea are without merit. In a PCR action, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 1 30, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Bovkin v. Alabama, 395 U.S. 238, 242 (1969)). 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. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137-38 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v.

Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

During the plea, Applicant did not express any duress while speaking with the judge. In fact, the judge directly asked Applicant if he was being coerced, and Applicant stated his plea was not coerced. (R. on Appeal 4-6, 11-12). Applicant expressed hesitations about pleading, but never made reference to coercion, he merely stated he wanted to think about it, and pray over it overnight. (R. on Appeal 7-8). However, after the judge stated he would have to plead that day or proceed with the trial, Applicant voluntarily plead at that time. (R. on Appeal 7-8). At no time during his plea did Applicant state that there was any coercion or that there was an improper relationship between him and his investigator.

There is nothing on the record to suggest counsel was ineffective. Trial counsel took the necessary steps to safeguard Applicant's rights, including requesting a hearing for a motion to withdraw his plea. During this hearing, Applicant alleges his counsel told him the state wanted to sentence him to thirty five years, to life in prison. (R. on Appeal 29). Applicant alleges his counsel was working in concert with the prosecution to get him convicted. (R. on Appeal 29-31). However, this allegation was rebutted by trial counsel during the hearing. (R. on Appeal 38-42). Additionally, Applicant alleges he wanted to continue the trial during a motion to withdraw. (R. on Appeal 30-31). However, when asked during his plea, Applicant stated he wanted to stop his trial and plead guilty at that time. (R. on Appeal 7-8, 11-12).

Based on the record, there is no indication that the plea was not voluntary. Applicant has

failed to demonstrate that he was coerced into agreeing to plea, and the record clearly demonstrates Applicant knowingly waived his rights in proceeding with the plea. Applicant understood and did not object to pleading to a violent crime which would possibly result in him facing a life sentence if charged with future violent offenses. (R. on Appeal 6). Applicant was read his rights to proceed with the current trial, speak in court or remain silent, to call witnesses, and to cross examine witnesses. (R. on Appeal 6, 8-9, 11-12). Applicant admitted to the crime he was charged with on multiple occasions. (R. on Appeal 5, 11). Applicant also affirmed he was not threatened or bribed or coerced into pleading. (R. on Appeal 4, 11-12). The record clearly indicates Applicant had a full understanding of the law and his rights at the time of his plea. Additionally, it can be demonstrated through the record that Applicant freely and voluntarily plead guilty at trial.

However, the allegation of an involuntary plea agreement probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue.

VII. Response to Allegations of Lack of Subject Matter Jurisdiction

Applicant's allegation that the plea court lacked subject matter jurisdiction is without merit. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003). Additionally, a presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See Pringle v. State, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986) ("In the absence of evidence to the contrary, the regularity of the proceedings of a court of general jurisdiction will be assumed.").

Here, Applicant was indicted by the Laurens County Grand Jury, and these indictment was true-billed and signed by the foreman of the grand jury. The indictment contains all the necessary elements of the offense, and further cites the applicable statute. Applicant cannot show any irregularity because the indictment in question is sufficient on its face; therefore, the trial court had subject matter jurisdiction.

VIII. Motion for a Partial Dismissal as a Matter of Law

I. Chain of Custody

Applicant alleges the state failed to establish the chain of custody of ballistic evidence in this case. This allegation is without merit and should be summarily dismissed. In South Carolina, a guilty plea is regarded as a waiver of non-jurisdictional defects and claims of violation of constitutional rights. State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013). In regards to challenges to evidence that are brought up after a guilty plea, the Supreme Court has stated:

A guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea

Tollett v. Henderson, 411 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973). Applicant presents no evidence to support his assertion that the chain of custody was broken in regards to the ballistic evidence presented in this case. Additionally, by entering a guilty plea, Applicant waived his right to present any and all defenses he may have had, and he certainly cannot raise them now in his PCR application. Before the Court will hold an evidentiary hearing, Applicant must make a prima facie showing he is entitled to relief. 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). Applicant has failed to make such showing he is entitled to relief based on the information set forth above; therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, the State submits this matter should be summarily dismissed with prejudice.

II. Trial Court Errors

Respondent also moves to summarily dismiss Applicant's allegations of trial court error, as they should have been raised on direct appeal and are improper for post-conviction relief. Direct appeal issues are procedurally barred in a post-conviction relief proceeding by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). An application for post-conviction relief cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant's failure to raise this issues in one of those proper forums has waived this allegation as a ground for relief. Therefore the Court should summarily dismiss this allegation

IX. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant's allegations. Applicant fails to set forth with specificity the facts and circumstances upon which his claims are based. Applicant alleges the trial court erred in admitting prior crimes of moral turpitude against the applicant, however he has not provided any examples of prior crimes being introduced against him. Applicant also has made a blanket allegation that his due process rights have been violated pursuant to the Fourteenth Amendment and Sixth Amendment without further explanation of how his rights have been violated. Applicant also alleges his counsel failed to investigate, but has not provided any further explanation of this allegation. Additionally, Applicant has alleged the

prosecution has withheld incident reports from Newberry County, and handwritten notes from law enforcement. There is not enough information provided in this application to permit Respondent to adequately address and respond to the allegations.

The Uniform Post-Conviction Procedure Act requires that the Applicant 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) (emphasis added). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch, 246 S.C. at 258.

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include a “short and plain statement of the facts showing that the pleader is entitled to relief.”

Applicant has failed to state with any specificity the facts giving rise to his claims. Additionally, his claims are not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended or supplemental application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended or supplemental application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the claims in this application.

X. Any Future Amendments and Invocation of the Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing.

The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. See Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

XI. General Denial

Respondent denies each allegation not expressly admitted, qualified, or explained.

XII. Conclusion

WHEREFORE, the Respondent requests an evidentiary hearing for the purpose of determining whether prosecutorial misconduct exists, whether the Applicant's trial counsel was ineffective, and whether the Applicant involuntarily entered into a plea agreement.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG

Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL JACOB NEUBAUER
Assistant Attorney General

By: s/ Michael J. Neubauer
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

November 3, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

2020-CP-30-643

RONALD DUYANE DAVIS, #272165,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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, Motion for a More Definite Statement, and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Don A. Thompson, Esquire
107 Smithwood Court
Simpsonville, South Carolina 29381

DATED this the 3rd day of November, 2020.


Kaitlyn S. Slice, Legal Assistant
For Respondent

LAURENS COUNTY
CLERK OF COURT
NOV 10 PM 12:00
LYNN W. LANCASTER

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

Ronald Duyane Davis, #272165)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent)

AMENDED/SUPPLEMENTAL
 APPLICATION FOR
 POST-CONVICTION RELIEF

2020-CP-30-00643

LAURENS COUNTY
 CLERK OF COURT

2022 JUL 15 AM 11:42

K. MICHELLE SIMMONS

After discussions with the applicant, the applicant, by and through his attorney, Don A. Thompson, would amend/supplement his application for post-conviction relief filed on July 24, 2020, by adding the following specific allegations to his original allegation of ineffective assistance of counsel:

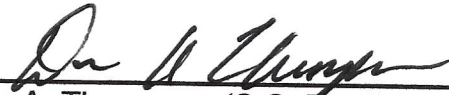
1. Applicant's guilty plea was not freely and voluntarily entered as it was the result of coercion and deception by trial counsel, McNeil, in that:
 - a. Trial counsel advised applicant that "they" had spoken to the trial jury during a break in the trial and the trial jury had indicated that applicant would be convicted of murder if he did not take the plea offer;
 - b. Even though applicant wanted to continue with the trial and present a defense of self-defense, and advised trial counsel of this, trial counsel did not seem to be prepared to present a defense of self-defense and advised applicant that if he did not take the plea offer there was nothing further she could do for him;

- c. Trial counsel contacted applicant's ex-wife and applicant's cousin to get them to pressure applicant in to pleading guilty;
 - d. Trial counsel told applicant that if he did not plead guilty that she would "get applicant for sexual harassment".
2. Trial counsel was ineffective during the trial by allowing the introduction, without objection, of shell casings and projectiles without establishing a chain of custody for the same.
3. Trial counsel did not take seriously and was not prepared to present a defense of self-defense. Applicant believes that trial counsel did not investigate the facts and/or witnesses surrounding the event to develop the defense of self-defense. Applicant believes that trial counsel's actions denied him the right to present a complete defense. Further, trial counsel advised a witness, Stevie Cannon Barksdale, that she was not needed at trial. Ms. Barksdale would have testified that the victim regularly carried a gun, which testimony applicant believes would have been beneficial to applicant's defense of self-defense.
4. Trial counsel did not fully review and explain discovery with applicant. Applicant was never advised of the results of the gun shot residue tests performed on both he and the victim – which tests applicant believes would show the victim had fired a gun and which would have supported his defense of self-defense.
5. Applicant believes that a conflict existed, which applicant did not discover until the beginning of the trial. At the beginning of trial applicant discovered that

trial counsel's investigator was Nicole Hurley. Applicant and Ms. Hurley had been in a sexual relationship that had ended shortly before the incident, for which applicant was on trial, occurred. Applicant would allege that this break-up was not amicable and he believes that said investigator would be against him and should not have been involved in the defense of his case.

6. Applicant believes that trial counsel was ineffective in not contesting the admission of his statement to law enforcement. Applicant alleges that he was detained and in custody at the time of the statement but was not given Miranda warnings prior to giving the statement. Applicant believes this ineffective assistance of counsel on the part of trial counsel played a part in coercing applicant's guilty plea.
7. Applicant told law enforcement that he was suicidal at the time of his arrest and was placed on suicide watch in the detention center, but trial counsel never explored applicant's mental health and did not request a mental health evaluation.
8. During applicant's jury trial, trial counsel kept applicant's family out of the courtroom thereby isolating applicant and increasing pressure on him to enter a guilty plea.
9. Pending trial, applicant was assaulted in the detention center by another inmate, Aaron Sanders. He reported this assault and a report was filed, but applicant was advised that the prosecutor, Warren Mowry, refused to bring charges against the inmate. Applicant believes that this created a conflict on the part of the prosecutor and that trial counsel should have raised this issue

and attempted to have Mowry removed from the prosecution of applicant's case.

A handwritten signature in cursive script, appearing to read "Don A. Thompson", is written over a horizontal line.

Don A. Thompson (S.C. Bar # 5545)
Attorney for the Applicant
2131 Woodruff Road
Suite 2100, #292
Greenville, S.C. 29607

Greenville, S.C.

July 14, 2022

1
2 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
3) 2020-CP-30-00643
4)
5 COUNTY OF LAURENS)

6 RONALD DUYANE DAVIS,)
7)
8 Applicant,)
9)
10 vs.) TRANSCRIPT OF RECORD
11)
12 STATE OF SOUTH CAROLINA,)
13)
14 Respondent)

15
16 August 2, 2022

17 Newberry, South Carolina

18 B E F O R E:

19 HONORABLE LETITIA H. VERDIN, JUDGE

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

21 Don A. Thompson, Esquire
22 Attorney for the Applicant

23 Zachary W. Jones, Esquire
24 Attorney for the State

25
Lisa G. Amick
Official Court Reporter

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EXHIBITS

(NO EXHIBITS INTRODUCED.)

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1 THE COURT: Yes, sir?

2 MR. JONES: Thank you, Your Honor, may it please the
3 Court.

4 THE COURT: Yes, sir.

5 MR. JONES: Zachary Jones representing the State of
6 South Carolina in this matter. This is the matter of Ronald
7 Duyane Davis versus State of South Carolina. That's case
8 number 2020-CP-30-643.

9 THE COURT: Mr. Davis isn't out here.

10 MR. JONES: I can start over.

11 THE COURT: He heard it all. I apologize for that,
12 Your Honor.

13 THE COURT: Oh, no, no, I'm sorry, I didn't even
14 notice. We're not trying to start without you. It's just I'm
15 short and I can't see, it's hard for me to see. But go ahead.

16 MR. JONES: During the September 2018 term, the
17 Laurens County Grand Jury indicted applicant for murder, and
18 that indictment number is 2016-GS-30-1382, and possession of a
19 firearm during a commission of a violent crime, and that number
20 is 2016-GS-30-1383. Chelsea McNeil and Tristan Shaffer
21 represented applicant and Deputy Solicitor Oliver Mowry, Jr.,
22 and Assistant Solicitor, Jared Simmons of the Eighth Circuit
23 Solicitor's Office prosecuted the case. On March 28th, 2018,
24 Applicant appeared before the Honorable Donald B. Hocker,
25 Circuit Court Judge, for a jury trial. After three days of the

1 trial applicant elected to forgo the jury trial and enter
2 guilty pleas for the lesser included offense of voluntary
3 manslaughter and possession of a firearm during the commission
4 of a crime. Judge Hocker sentenced applicant to 25 years
5 imprisonment for voluntary manslaughter, and five years for
6 possession of a firearm with both sentences to be served
7 concurrently. Applicant subsequently filed a motion to
8 withdraw his guilty plea on April 4th, 2018, by way of a
9 hearing on the motion held on April 19th, 2018. Judge Hocker
10 denied the motion and issued a formal order on April 30th,
11 2018. Meanwhile, Applicant filed a notice of appeal on April
12 11th, 2018, he was represented on appeal by Joanna K. Delaney
13 who submitted an Ander's brief and petitioned to be relieved as
14 counsel on June 6th, 2019. On April 29th, 2020, the South
15 Carolina Court of Appeals dismissed the appeal and granted the
16 public counsel's petition to be relieved. This matter is
17 currently before the Court by way of Mr. Davis's application
18 for post-conviction relief filed on June 29th, 2020, and
19 subsequently amended on July 15th, 2022.

20 THE COURT: Okay.

21 MR. JONES: I'll turn it over to Mr. Thompson.

22 THE COURT: Alright. Very well. Mr. Thompson?

23 MR. THOMPSON: Thank you, Your Honor. Judge, our
24 issue today, Mr. Davis believes that his guilty plea or states
25 his guilty plea was involuntary. He's basing that on some

1 perceived errors that he believes counsel made during the
2 course of his trial and some coercion by counsel according to
3 him.

4 THE COURT: Okay. Okay. Very well. Ready to
5 proceed?

6 MR. THOMPSON: We are.

7 THE COURT: Okay.

8 MR. THOMPSON: Mr. Davis?

9 THE COURT: Will you raise your right hand for me,
10 please. Do you swear to tell the truth, the whole truth, and
11 nothing but the truth under penalty or perjury?

12 MR. DAVIS: Yes, ma'am.

13 THE COURT: Okay. You may have a seat. Yes, sir?

14 DIRECT EXAMINATION

15 BY MR. THOMPSON:

16 Q Mr. Davis?

17 A Yes.

18 Q Can you give us your full name, please?

19 A Ronald Duyane Davis.

20 Q And you're incarcerated right now, correct?

21 A Yes.

22 Q And where are you incarcerated at?

23 A Allendale Correctional Institution.

24 Q And what's the charges you're incarcerated for?

25 A Manslaughter, possession of a weapon.

1 Q You were initially charged with murder, correct?

2 A Yes, sir.

3 Q And you chose a jury trial, is that correct?

4 A Yes, sir.

5 Q And the jury trial went for two or three days?

6 A Yes, sir.

7 Q Now, before the jury trial ended, you pled guilty, is that
8 correct?

9 A Yes, sir.

10 Q Who was your attorney in that trial?

11 A Chelsea McNeil and Tristan Shaffer.

12 Q Alright. And did they meet with you prior to the trial?

13 A Sir?

14 Q Did they meet with you prior to trial?

15 A Yes.

16 Q Why did you enter a guilty plea?

17 A Because I was forced to by my attorneys.

18 Q Well, let's, let's go into some detail.

19 A Yes, sir.

20 Q You made some allegations concerning the actions of your
21 trial counsel?

22 A Yes, sir.

23 Q Now, did the, the guilty plea itself, how was that
24 decided? Were you in a separate room with counsel or both
25 counsel or one counsel or what?

1 A I was in a separate room; I was in a room with both of
2 them at one time. And then one of them left and I was in the
3 room with Ms. McNeil alone.

4 THE COURT: I'm going to have to ask you, can you
5 bend that microphone down just a little bit? Thank you so
6 much, I sure do appreciate it.

7 Q Now, in order to, prior to your guilty plea, were you told
8 anything concerning what the jury might do?

9 A Yes. I was told by my attorneys that they had spoken with
10 the jury and that they was going to find me guilty.

11 Q Who told you that?

12 A Chelsea and Tristan.

13 Q Was anybody else there when you were told that?

14 A No, sir.

15 Q And did she specifically say she had spoken to the jury?

16 A She told me while I was on break that, when we had
17 recessed for lunch and we came back in, you know, there was, I
18 thought we was going back to trial. So they came in and said
19 that the solicitor had offered something or something like that
20 and I told him that I wasn't going to plead guilty, I was going
21 to continue to roll the dice and let the jury find me guilty.
22 So by that time, she came in, her and Tristan came in and me
23 and Tristan had done talked, so Chelsea told me that I need to
24 plead guilty because she couldn't do nothing else for me, and
25 that the jury would have found me guilty, if I were to plead

1 guilty then, I told her no, I wasn't going to plead guilty, I
2 was going to keep rolling the dice. By that time is when she
3 pick up her cell phone and she called I think Marlana Coleman,
4 she was a Davis at the time, so by then, you know, Marlana
5 answered the phone and Chelsea told Marlana that she needed to
6 get me to plead guilty because if I don't the jury going to
7 give me 30 to life and I told Marlana that I wasn't going to
8 plead guilty, I'm going to continue to go to trial and roll the
9 dice, the jury would have to find me guilty. So Marlana
10 convinced me to plead guilty so by that time, that's when she
11 called my cousin, I say he my brother, Demarcus Smith, so she,
12 she came on the phone and tell him that he need to convince me
13 to plead guilty because if I don't, I would be found guilty and
14 given 30 years to life. But I told him, no, I'm not going to
15 plead guilty, I'm going to continue to roll the dice.

16 Q Now, you said, roll the dice, do you think you had a
17 defense in this case?

18 A Sir?

19 Q Do you believe you had a defense in this case?

20 A No, sir.

21 Q You didn't have a defense of self-defense?

22 A Yes, sir.

23 Q Okay. Did you discuss that with trial counsel?

24 A Yes, sir. At one point in time.

25 Q Did she indicate whether or not she's

1 prepared to go forward with a defense of self-defense?

2 A No, sir.

3 Q You need to expand on that, did, did she say you did not
4 have a defense, or she wasn't prepared to call you?

5 A No. She told me she was going to claim self-defense on
6 this case. That the Judge will give, I don't know the name,
7 she said the Judge will instruct the jury on self-defense.

8 Q Okay. So she did say the Judge will give the jury
9 instruction on self-defense?

10 A Yes, sir.

11 Q If you felt you had a defense of self-defense, why did you
12 not go forward with the trial?

13 A Why did I not go through with it?

14 Q Yes, sir.

15 A Because, I did not go through with it because I had been,
16 I had told Chelsea that I was going to continue my trial, but
17 at that point in time, Tristan had left out, first she asked me
18 if I wanted to go in camera, in camera with something about the
19 phones, and again, she asked me, do you want to stay and talk
20 with Chelsea, so you go ahead on and I'll do that alone myself.
21 So me and Chelsea stayed in the room after she had notified
22 Marlana and Demarcus.

23 Q And is this when she called your ex-wife and your cousin?

24 A Yes, sir.

25 Q Okay. Continue.

1 A And she had notified them and told them for me to plead
2 guilty and I told them no. So by that time, when I went to
3 plead guilty, when I stood up, when I stood up against the wall
4 that's when Chelsea came up to me and when she came up to me
5 she told me that, I told, I said Chelsea, you're too close to
6 me, I said it been something like a year and a half to, a year
7 and a half, something like that since I been close to a woman.
8 I said, so you invading my space, I need some space, and she
9 told me, she said everything will be alright. So I told her, I
10 said, give me a little bit of space, so by that time she told
11 me everything will be alright, she came up close to me and I
12 said, Chelsea, it been too long since I been close to a woman,
13 just like that, so she pulled my hands down and told me to hug
14 her, I told her, no, I'm not going to do that. So I raised my
15 hands up and I backed up against the wall and when I backed up
16 against the wall, that's when she came on up and pulled my
17 hands down and put my hands on her back leg and told me to
18 squeeze it hard, I told her no, no, I'm not going to do that,
19 squeeze it hard, hard, I said, no, she kept on insisting, so
20 when she pulled my hands down on her I started squeezing her
21 just like that. And then that's when Tristan tried to come
22 back in the room and by that time, that's when she jumped off,
23 she stepped back off me, that when she opened the door for
24 Tristan. Tristan came on in, he told us that the solicitor
25 said that we don't come to an agreement in the next five

1 minutes, he's going to withdraw the guilty plea, going to take
2 it off the table. So by that time, she told me they going to
3 take it off the table, she told me to sign the paper, I said,
4 no, I'm not going to sign it, sign the paper. So by that time
5 she told me if I don't plead guilty, I'd get charged sexual
6 harassment charge, I didn't do nothing like that, so when she
7 said that, that when me and her go out in front of the, go back
8 into the Courtroom. So I had to sign the papers at that time,
9 so when I get in the Courtroom, she said, are you going to sign
10 the papers, just like that. So when I got ready to go in front
11 of the Judge, that's when I went on ahead and signed the
12 papers. At the same time, when I got to SCDC the next day,
13 that's when I filed sexual harassment, that's when filed ---

14 Q We don't need to go into that.

15 A Okay.

16 Q Now, during the course of the trial, one of the things you
17 say is she was ineffective by not allowing, without objection
18 to the introduction of shell casings and projectiles. So did
19 that play in to your decision to plead guilty?

20 A Would you repeat that, please, sir?

21 Q Well, you say that during the trial, one of the things
22 that she was ineffective for was she failed to object to the
23 introduction of some shell casings and projectiles?

24 A Yes, sir.

25 Q Did that play into your decision to plead guilty?

1 A Yes, sir.

2 Q Alright. What about gunshot residue? Are you aware of
3 gunshot residue tests?

4 A No, sir. I never seen, they had two or three motions to
5 ask for the GSR and everything that pertained to my rule 5
6 because I never got a rule 5.

7 Q So there was never any discussion of gunshot residue?

8 A No, sir.

9 Q And why would that be important?

10 A Because it was important to me because if the gunshot came
11 back on me and the victim had came back positive that could
12 have proved that the victim fired a gun at me.

13 Q Let's go back a minute. Tell us what happened that night.
14 Why would you have a self-defense case? Why would gunshot
15 residue be important? What happened to the deceased? What,
16 what, before she was shot and killed, what happened?

17 A From the beginning of that night, I had, me and my cousin,
18 Demarcus, we had went to a cookout. So right before the
19 cookout, the victim wanted me to come down to her house, but I
20 never was aware of this, so I went up and told the victim that
21 I wasn't going, so I went on with my cousin to a cookout in
22 Anderson. So by that time, on the way to Anderson, the victim
23 had called me, so I couldn't pick up the phone because I'm
24 driving at the time. So when I got to a place that I can
25 answer my phone, I called back, when I called back, she ain't

1 answered the phone. So I called back two or three times, that
2 when she picked the phone up. So we got into a little argument
3 and I heard a guy telling her to drive the car, you ain't
4 fixing to drive that car because I be on that car just like
5 that.

6 Q Let's get over to your house. What happened at your
7 house?

8 A When I got to my house after the cookout, from the cookout
9 I had went to, I had came from Anderson to my house because I
10 wanted to show my cousin where I'm staying because I just had
11 bought that trailer. So we went by there, I showed him. And
12 then I went on to Clinton to get my truck, my truck was parked
13 at his house, so I went and got the truck. When I got the
14 truck I went over to Newberry because I supposed to meet
15 somebody in Newberry, but they never showed up. So by that
16 time, I realized I had been drunk and drinking, I was
17 intoxicated, so I called Marlana and asked her where she was,
18 she told me that she was at the house that I had just moved out
19 of in Newberry. So I go down there and I asked her to drive me
20 home, so she drive me home and she dropped me off before we get
21 to the house and then I walk on down the road going to the
22 driveway where I stayed. I found, when I get there, I could
23 see my car parked where I had left it, so I walked on around
24 the house, I saw my car backed into the back porch, when I got
25 to the back porch, I saw my clothes. I saw the back sliding

1 door that was open, so I go into the house and start calling
2 the victim, she didn't answer, so when I go into the house
3 through the screen door, I look into the master bedroom, the
4 lights out, I didn't see nobody in there, so I kept calling and
5 I go on through the den, into the kitchen, into the living
6 room, didn't see nobody. I go into the steps of the bedroom,
7 didn't see nobody, then I go to the other bedroom, wasn't
8 nobody in there, so I come back through the house. When I come
9 back through the house and I go back into the master bedroom, I
10 turned the light on, so when I turned the light on, that's when
11 I see the victim standing to the right, once I see the victim
12 standing to the right, she tell me to get out, I tell her, no,
13 I'm not getting out because we paid for this house together, I
14 have a right to be here. So by that time she tell me to get
15 out again, I say no, so she going to reach up under the pillow,
16 while she reach up under the pillow, she pull out a green bag
17 under the pillow. Once she pulled out the green bag, she
18 reached into the green bag and I see her come out with a gun.
19 So by that time, she pulled the gun out of the green bag and
20 pointed it at me and told me to get out, I told her, no, I'm
21 not going anywhere, I told her, I said, please put the gun away
22 before somebody gonna get hurt. So I get ready, go around to
23 my side of the bed to get in bed because I had to go to church
24 the next morning. So by the time I get around to the other
25 side, go around to the other side of the bed, that's when she

1 point the gun and tell me to get out, I told her no, so that's
2 when she fired the gun at my foot and I step out the way. So I
3 backed into the bathroom door and when I get to the bathroom
4 door, that's when she fired again. So by that time that was
5 when I, I approach her and me and her get into a scuffle with
6 the gun, so me and her fall on the bed tussling for the gun.
7 And so when I fall back on the bed, she over me still got the
8 gun pointed in my face trying to pull the trigger again, so by
9 this time, I take one of my hands and I pull her finger off the
10 trigger, and by that time that's when I take her other hand and
11 twist her arm, I heard her arm pop, and then that's when I
12 grabbed the gun. So by that time, I grabbed the gun, I turned
13 around heading back out the door. By that time when I'm
14 heading out the door, she come at me, I see something in her
15 hand so when I see it in her hand, that when I turn around and
16 I fired the shot, I fired the gun.

17 Q So your claim of self-defense is based on the fact that
18 she shot twice at you?

19 A Yes, sir.

20 Q Okay. Now, one of the things that you alleged, and would
21 that be the gun shot residue because of that?

22 A Yes, sir.

23 Q To show that she had fired the gun?

24 A Yes, sir.

25 Q Alright. One of the things that you allege

1 is that you believe there was a conflict that existed because
2 of the investigator that your attorney had, tell us about that
3 please.

4 A The investigator my attorney had when I first was aware
5 that Chelsea was my investigator, my attorney, she came up, I
6 had Marlana to call first to find out who my attorney was. So
7 Marlana called Chelsea to tell her that she was my attorney,
8 something like that, so I tell her to call her and tell her
9 that I need to talk to her just like that. So Chelsea came up
10 to the Laurens County Detention Center and we talked, and then
11 by that time she said she was going to represent me ---

12 MR. JONES: Briefly, Your Honor? Can I ask the
13 witness to speak up?

14 THE COURT: Alright. Sir, if you can just speak
15 closer to the microphone?

16 MR. JONES: Yes. Thank you.

17 A So by that time when she come up to the detention center
18 and talk to me, that's when me and her talked initially, and
19 then I tell Marlana to tell her I need to talk to her again, so
20 she come to the detention center again and by this time she
21 bring someone, a man that I never seen before. So he tell me
22 that he was the lead investigator on my case, so he, he asked
23 me what happened and all that, I explained to him what
24 happened, and then after I explained it to him, that's when
25 they leave. So when the trial started, when the trial started

1 we was all sitting in the Courtroom and I saw Ms. Nicole
2 Hurley, and that when I became aware that she was my
3 investigator. So I tell Chelsea that I can't have her because
4 me and her was in a sexual relation, and we broke up on bad
5 terms, like that. And then, so Chelsea tell me everything's
6 going to be alright.

7 Q So you feel like Ms. Hurley would have been against you?

8 A Yes, sir.

9 Q And you told your attorney that?

10 A Yes, sir.

11 Q Now, at the time of your arrest, were you in your right
12 mind? You were on suicide watch, right?

13 A Yes, sir.

14 Q Okay. Did trial counsel ever explore your mental health
15 any?

16 A No, sir.

17 Q You never had a mental health exam?

18 A No, sir.

19 Q Have you ever had mental health problems in the past?

20 A When, in 1996, I had a head trauma, and I was in a coma
21 for about two or three weeks. So by that being, that took
22 effect on me.

23 Q Now, during the jury trial, was your family in the
24 Courtroom?

25 A No, sir. They weren't allowed to be in. they

1 tried to come in and then Chelsea text Marlana that you can't
2 come into the Courtroom until trial unless they need them at
3 trial. But I was never told about sequestering them, I had
4 wanted my family in the Courtroom. So my mom went, and my
5 cousin Demarcus came up here the day of the trial but when they
6 tried to come in they was turned around at the door, they told
7 them they couldn't come in.

8 Q You're not aware of any sequestration?

9 A No, sir, I'm not aware of that.

10 Q Did the fact that they were not allowed to come
11 in, did that weigh into a decision to enter a guilty
12 plea?

13 A Yes, sir.

14 Q And you also claim that Mr. Mowry had a conflict, he was
15 the prosecutor. Can you tell us what, how that arose?

16 A Yes, sir. I would say when I was incarcerated and I was
17 down at the detention center, one of the inmates had assaulted
18 me, so I brought that to my attorney attention when she came
19 and saw me. So I told her that I needed help then I filed a
20 grievance on this guy and I filed for assault and when I filed
21 for assault, Detective Honeycutt came up there and he told me
22 that he was going to take this to the solicitor to press
23 charges. So when I got the paperwork back from the solicitor
24 it say that he wasn't going to press charges because there was
25 no witness and it was hearsay.

1 Q So your, your issue with Mr. Mowry is he did not prosecute
2 the person who assaulted you, is that correct?

3 A Right. And if he had not prosecuted the person that
4 assaulted me, he wasn't going to give me a fair trial.

5 Q Is there anything that we did not cover that we need to
6 cover?

7 A Yes.

8 Q What's that?

9 A There were some search warrants that I had asked my lawyer
10 to suppress at, at my pretrial because the search warrants that
11 were issued was two different search warrants. One of them, it
12 had two different times on it and because that search warrant
13 they got evidence ---

14 Q You and I talked about that didn't we?

15 A Yes, sir.

16 Q And did we discuss that was an issue to be raised had you
17 continued at trial, but not an issue for a guilty plea?

18 A Yes, sir.

19 Q Anything else?

20 A Not right now that I can think of, sir.

21 THE COURT: Alright.

22 MR. THOMPSON: Answer any questions the attorney
23 general may have for you.

24 THE COURT: Yes, sir?

25 CROSS EXAMINATION

1 BY MR. JONES:

2 Q Thank you, Mr. Davis. I only have a few questions for
3 you.

4 A Yes.

5 Q First of all, when you, when your trial counsel called
6 your ex-wife and cousin, I believe, to inquire about the guilty
7 plea ---

8 A Yes.

9 Q --- did they have your permission to make that call?

10 A No, sir.

11 Q Next, could you explain how the failure to challenge chain
12 of custody witnesses regarding the, the shells and shell
13 casings from the firearm influenced your decision to pursue a
14 guilty plea?

15 A A chain of custody because there was no, I didn't see none
16 of that, never find that there was no specific analysis showing
17 that the bullets were fingerprinted or something like that, so
18 if I had been, find out chain of custody, that's, that's
19 violating my rights.

20 Q Well, isn't it the case that you acknowledge that, like
21 your self-defense claim would have been that you took the gun
22 from her and fired it at her, so there would have been no
23 question that the bullets came out of that gun, isn't that
24 correct?

25 A Yes, sir.

1 Q Was there, as I understand your self-defense claim, and
2 correct me if I'm wrong, it was that you took the firearm away
3 from the victim and fired it at her in self-defense?

4 A Yes.

5 Q So there wouldn't have been any question, I'm just trying
6 to understand why would the, why would there be any question
7 about which shell casings, whether they came from the gun or
8 not since you admitted that you, that you did use that gun?
9 How could that have changed your opinion about going to trial
10 or proceeding to a guilty plea?

11 A Because if the bullets would have been tested
12 by SLED or someone, it could have proved that my handprints
13 wasn't never on the bullets, it could have been her handprints
14 on the bullets.

15 Q Alright. Thank you.

16 MR. JONES: And that's all the questions I have of
17 this witness.

18 THE COURT: Thank you. Mr. Thompson, anything else?

19 MR. THOMPSON: Nothing further.

20 THE COURT: Sir, you can step down. Anything else
21 from the Applicant?

22 MR. THOMPSON: Applicant rests.

23 THE COURT: Thank you. Alright.

24 MR. JONES: Thank you, Your Honor. The State would
25 call Tristan Shaffer.

1 THE COURT: Alright. Raise your right hand, please.
2 Do you swear to tell the truth, the whole truth, and nothing
3 but the truth under penalty of perjury?

4 MR. SHAFFER: Yes, ma'am.

5 THE COURT: Thank you.

6 DIRECT EXAMINATION

7 BY MR. JONES:

8 Q Thank you, Mr. Shaffer. Could you tell the Court how long
9 you've been practicing law?

10 A I have been practicing law since November of 2009.

11 Q Alright. And how much of your experience has been in
12 criminal law?

13 A The vast majority.

14 Q Thank you. Could you remember how you were, how you began
15 representing Mr. Davis?

16 A Yeah. Chelsea brought me in, it would have been late
17 2017. At the time I was contractor for the public defender's
18 office in the eighth circuit. It would have been, I think it
19 was around November of 2017 is when I got involved and you
20 know, it, I did various roles at the public defender's office
21 since then, so I was a contractor initially and I then think I
22 was an employee at the time of trial.

23 Q Did you ever indicate that Mr. Davis would be convicted if
24 he did not agree to a guilty plea?

25 A No, I did not. I actually thought we were doing

1 really, really well given the fact that the evidence against
2 him was he shot his girlfriend five times and then maybe,
3 according to the State, called 911 a mile down the road and he
4 had absconded for several hours. I mean, I thought we were
5 doing really well at the trial. I did say to him that, you
6 know, I thought most likely what would happen is he would get
7 convicted of voluntary manslaughter. I thought that that was
8 actually a lot more plausible than him getting convicted of
9 murder, but I said, you know, you could get convicted of
10 murder, you could be found not guilty based on self-defense.

11 Q Alright. Did you speak to the jury at any point during
12 the trial or before Mr. Davis's plea?

13 A Absolutely not during the trial. I did talk to two of
14 them after the guilty plea, I ran outside the parking lot
15 and talked to them as they were getting into their cars.
16 But I did not speak to them prior to him entering the guilty
17 plea.

18 Q Alright. And at that point, the guilty plea had already
19 been entered?

20 A That's correct.

21 Q Alright. Do you feel that you were prepared to present a
22 defense of self-defense?

23 A Yeah. I mean, we were two days into the trial arguing
24 self-defense from the opening until the time that he had
25 entered the guilty plea.

1 Q Right. And did you have Mr. Davis's permission to call
2 his ex-wife and cousin to discuss the guilty plea?

3 A I would think so, I think that he actually requested that
4 we call them. I can't, I don't have a independent
5 recollection, I know we talked to them a bunch of times
6 beforehand about the case. He wanted us to talk to them about
7 the case prior to that and I think he requested us to actually
8 call them, but he was sitting right there ---

9 Q Right.

10 A --- bear minimum, implicitly was okay with it.

11 Q Alright. So now you heard Mr. Davis's claim regarding his
12 allegations against Chelsea McNeal. Did you, when you returned
13 to the attorney client room following the time he claims this
14 occurred, notice any indication of anything improper?

15 A No, I didn't notice that. I did, you know, I went
16 independently over his rights to plead guilty after,
17 afterwards, and I said, hey, you don't have to do this, we can
18 go forward, I think it's your best option but, you know, you
19 can go forward if you want to go forward. He never mentioned
20 anything to me, he just never appeared like he was afraid of
21 Ms. McNeil, you know, he didn't seem like he was like upset.
22 At one point, and I may be imagining this, because it was much
23 later, I think he, like, as he was getting in the van to leave,
24 he may have tried to give her a hug or gave her a hug or
25 something, after the guilty plea on the way back to the jail.

1 I think that that was the case, but no, he didn't seem like he
2 was afraid of her.

3 Q Alright. Can you explain the, any decisions you made
4 regarding the chain of custody issues?

5 A Yeah. I think I gave you not the greatest answer talking
6 about this previously and I didn't object to the chain of
7 custody because I didn't think it was objectionable, honestly.
8 I mean, maybe I'm wrong, maybe I'm wrong, but I think that
9 there's case law saying that shell casings are, you know, non-
10 punishable [sic], I believe that that's correct, I mean, I may
11 be wrong in that, but even so there was really no reason to
12 object.

13 THE COURT: You're correct.

14 Q From a strategic point of view, you mean?

15 A Yeah. I mean, it wouldn't have advanced our case at all.
16 I mean, sometimes I'll object to something just to object to
17 something in hopes that maybe to raise an appellate issue, but
18 he never, he also never mentioned the fact that that had
19 anything to do with him pleading guilty.

20 Q I see. Could you describe the investigation that was done
21 in this case?

22 A It was substantial. I would say that outside of a death
23 case that I've been involved in and possibly one other case,
24 this was about the most involved investigation I did. Maybe it
25 was just because I was involved in it in a short period of

1 time, but we did a lot of stuff. We talked to a bunch of
2 witnesses, we went to the scene, we subpoenaed, we tried to
3 subpoena, like, life insurance policies, we tried to subpoena
4 phone records, we tracked down purchases of handguns from pawn
5 shops from long ago. We subpoenaed other documents which would
6 establish that the gun that they may have used, one of the guns
7 was actually like seized by Defense. I mean, we went on the
8 side of the road and looked for a gun up and down the
9 interstate. Yeah, we did a ton of work on this case.

10 Q And specifically as relates to the, Mr. Davis's self-
11 defense claim, you mentioned looking for the gun, was that to
12 indicated who owned the gun?

13 A Yeah. And so he needed to prove, so he had bullets that
14 were inside a dresser drawer in a house that was in Newberry,
15 okay? The, the dresser drawer, there were 9-millimeter bullets
16 which were consistent with, with the same general type of gun
17 that would have been used, I think it was a 9-millimeter that
18 was used. So the State's theory was that he drove there with
19 the gun and shot her which is a lot worse for self-defense,
20 obviously, than her pulling a gun and then him taking it from
21 her and shooting her. We really needed, it would have been
22 really handy had he not disposed of the weapon for purposes of
23 actually planning self-defense, assuming that the weapon
24 wouldn't have come back to her, to the victim because that
25 would have been bad. It was already mentioned that the, you

1 know, I mean, assuming the weapon -- sorry. Assuming it didn't
2 come back to the client's child's mother who would have had the
3 ties to the Newberry house which is, basically the bullets in
4 the Newberry house, that happened up in Laurens, the bullets in
5 the Newberry house we were saying basically belonged to Mr.
6 Davis's child's mother who had the gun, I think it's Marlana, I
7 think that's correct, but she had the gun and, you know,
8 previously owned it, the same type of gun, we said that she
9 essentially left the bullets there in the Newberry house and
10 that the victim had a separate gun that was pulled out and that
11 would have been the gun. Had we'd been able to tie that gun to
12 the victim, that would have been great as a self-defense claim.

13 Q Had you made efforts to do so?

14 A Yeah. I mean, we, we video taped a stretch of the
15 interstate, I think I drove down the interstate, maybe on the
16 shoulder really, really slow with the camera, viewed the,
17 viewed a long stretch of the interstate, then took that video
18 to Mr. Davis, showed it to him, said, hey, where do you think
19 you left it, he told us some spots that he thought he did. We
20 went out there and looked ourselves, we then told Walter
21 Bentley who was the investigator at the solicitor's office
22 generally where it was at because it would have been in our
23 interest had he found the gun. We told him generally where it
24 was at. He went out there, he borrowed some sort of, some sort
25 of metal detector that was basically from the national guard,

1 like he borrowed it from somebody, he'd go out there and
2 basically have like, you know, military equipment out there
3 looking for this gun. We, but yeah, like, we did everything
4 that I could think of to actually find the gun.

5 Q Alright. Regarding witnesses, did you plan to call
6 witnesses had the case, had the Defense proceeded at trial?

7 A Yeah. We had, we had three, actually we had four experts
8 but one was consulting only, we had, if it would have proceeded
9 forward, I read a note right afterwards that we would have
10 called, and this is the day after the guilty plea, I wrote
11 that, I would have thought that we would have called Marlana
12 which is his ex-wife which basically drove him around the night
13 afterwards to talk about his demeanor and how torn up he was
14 after the shooting. His, I guess, his mother would have talked
15 about the same stuff. Demarcus, which is his cousin, would
16 talk about where he was prior to the shooting, we wanted to
17 present a holistic picture of where he was that day. And then
18 Stevie which is his cousin's wife which would have talked about
19 him before the shooting and also says that previously had seen
20 the victim with the gun.

21 Q Is that Stevie Barksdale?

22 A I'm assuming so, yeah, because I think Demarcus's last
23 name is Barksdale.

24 Q Okay. So it was always the plan to call her as far as you
25 recall?

1 A Yeah. And there was also, I think we were trying to track
2 down, at one point he gave us a statement saying he was with
3 some girl who worked at DSS. I think we hired an investigator
4 in the middle of the trial basically because we were, Jimmy,
5 our normal investigator was not available for the trial and
6 Nicole was helping us out, but I think we hired somebody to go
7 down to the lower part of the state to try to track somebody
8 down mid trial, in fact. So there may have been another one
9 had we actually located this person that he told us about like
10 during the trial.

11 Q Thank you. Alright. So you mentioned Jimmy
12 was your normal investigator, did he conduct most of
13 the investigation in this case?

14 A That's correct, yeah. He would have, he was on vacation
15 the week it was scheduled for trial. And Nicole got involved a
16 little bit before Jimmy, yeah, she wasn't there just for the
17 trial, she was there a little bit beforehand because she was
18 familiar with some witnesses that we couldn't find, someone
19 that's his family member, something like that.

20 Q Alright. Did you provide a copy of the discovery to Mr.
21 Davis?

22 A I don't recall if we did prior to the plea, I know we did
23 afterwards, like, I know we would have gone over, I mean,
24 there's multiple times that, yeah, like, I reviewed those
25 yesterday in preparation of this. There were multiple times

1 during that period of time that I was representing him that
2 there was notes saying that we went and saw him, we saw him for
3 like hours at a time, you know. It's always a bad idea
4 whenever you have a murder client who waived discovery because
5 something can come up and they come up with a convincing story
6 when they have discovery, so as a general practice we
7 discourage, or I personally discourage people from having
8 discovery at the jail, you know, if they demand it, we give it
9 to them. I really don't recall if he had it or not.

10 Q Alright. Did you discuss the gunshot residue test
11 results?

12 A I'm sure we did, but I don't really have a real
13 clear independent recollection of discussing the gunshot
14 residue. In this case it really doesn't matter a whole
15 lot, they were inside of a room, a gun was fired, in my
16 view, obviously, gunshot residue, you know, doesn't
17 matter in many cases because ultimately it matters
18 whenever you have someone who denies being around a
19 firearm and the firearm, you know, has, they have gunshot
20 residue on them. Outside of that, gunshot residue
21 ---

22 THE COURT: Stop one second. To our folks in the
23 gallery, I'm happy for you to be here, we're not going to have
24 any comments. If we've got comments, then I'm, you're going to
25 have to leave, alright? Go ahead.

1 A You know, if, if gunshot residue is present on the victim,
2 a lot of times the State would say it doesn't really matter
3 because of course they were in a room where a gun got shot.
4 And whenever it's not present on the victim, it's present on
5 the Defendant, I mean, it really, it's a double-edged sword
6 outside of rare situations that don't apply to this case. This
7 was a shooting inside of a room where my client has admitted to
8 being with the person shooting and it would have been a close-
9 range shooting, it would have been a self-defense case.
10 Honestly, the GSR doesn't really matter.

11 Q I see. Do you recall there being a Jackson v. Denno
12 hearing?

13 A Yeah. I didn't recall it, but there actually was a
14 Jackson versus Denno hearing, I didn't recall it a while back.
15 I looked over my notes yesterday and found that there was one.
16 There were multiple pretrial hearings that took up a
17 substantial amount of time and I don't think they ever got
18 transcribed, but with that being said there was definitely a
19 Jackson versus Denno hearing, I'll try to find the date for
20 you. It was either in Greenwood County or it was in the
21 Probate Courtroom in Laurens because we were following Judge
22 Hocker around doing stuff. Judge Hocker denied the suppression
23 of the statement, I think that we were just, honestly, it would
24 have been, I think that the date would have been the 16th, he
25 denied the suppression of the statement. I actually personally

1 even if he would have granted the hearing, I probably would
2 have waived it afterwards. You know, we did the hearing
3 probably for appeal reasons more so than anything else, you
4 know, to be able to argue something. There was a statement
5 where I had signed, the thing is is that his statement wasn't
6 great, but his statement also introduced the fact that he was
7 remorseful and he was a pastor, it would have been, the State
8 would have been letting some good character stuff in by
9 introducing the statement.

10 Q Alright. Do you have any idea why, or could you inform
11 the Court why the, Mr. Davis's family members were kept out of
12 the Courtroom at some points?

13 A I suspect it was because they were sequestered.. I mean,
14 it's pretty standard that witnesses are sequestered and I'm
15 relatively certain that we would have asked for witnesses to be
16 sequestered in this case.

17 Q Alright.

18 A Actually, I'm positive because I know one of our witnesses
19 was in the hallway for a long time, the witnesses were under
20 sequestration.

21 Q Okay. And those family members were witnesses, I believe
22 you already mentioned that?

23 A Yeah.

24 Q Okay. Did you have any concerns about the
25 prosecutor's impartiality due to his, due to his failure

1 to, alleged failure to investigate the incident at the jail?

2 A I mean, the prosecutor was definitely partial ---

3 Q Well, yeah.

4 A --- you know, but no, I don't think that that played in, I
5 mean, you know, here's, here's my recollection of it, maybe I'm
6 wrong because I never actually looked at the SLED documents or
7 anything like that because I think SLED was called in for that.
8 My recollection is is that they thought that he was just making
9 something up, that was generally the impression that everyone
10 got. I don't think it plays in on this to whether or not how
11 hard a prosecutor went after him for the murder charge. I
12 mean, you know, it was a murder charge, he's not going to be on
13 your side no matter what.

14 Q Right. So you didn't have any conflict of interest
15 problems with him?

16 A No.

17 Q Alright. Thank you, Mr. Shaffer.

18 MR. JONES: That's all the questions I have at this
19 time.

20 THE COURT: Alright. Mr. Thompson?

21 CROSS EXAMINATION

22

23 BY MR. THOMPSON:

24 Q Were you in the room when the telephone call was made to
25 his relatives about the guilty plea?

1 A I was in the room during one of the phone calls. I do
2 recall a phone call being made; I don't know if I was in the
3 room for every single one of them. During this, a large part
4 of this was, I mean, we, we probably had at least an hour-long
5 hearing while they were in the back room together.

6 Q So there was an hour that you were not in the room with
7 them?

8 A Probably, yes.

9 Q And what was going on when you came into the room?

10 A They were talking about whether or not he was going to
11 accept the guilty plea, and he was back, he was basically
12 sitting there trying to figure out if he was going to accept
13 it. He kept saying, you know, basically, I said, hey, are you
14 going to accept it and he'd say, I don't know, and then I'd
15 say, are you going to reject it, I don't know.

16 Q Was there any phone calls made after you came in the room?

17 A There was definitely a phone call made while I was in the
18 room, yes. Then I left the room, came back, you know, I was in
19 another room as well, so I can't a hundred percent say that I
20 recall the phone call actually being made.

21 Q Was there any pressure put on him while you were in the
22 room to plead guilty?

23 A No. I mean, I think that Chelsea was suggesting that he
24 should, I was suggesting that he should, too. I mean, but our
25 suggestions obviously is not, I told him since the very

1 beginning, this is probably one of the first things I said to
2 him, ultimately, you know, and this is the first thing I say to
3 pretty much everyone, you know, you can accept my advice, not
4 accept my advice, I don't know what's going to happen, you
5 know, related to whether or not a jury's going to do something
6 or not, I can't tell you what's going to happen, anything I say
7 is just a suggestion. And I say that to pretty much everyone
8 just because, at least over the last five or six years because
9 I have done a lot of PCRs before, you know.

10 Q The investigator, Nicole Hurley, when did she become
11 involved with the case, do you know?

12 A Probably a couple of weeks beforehand. I think it was
13 when we were trying to find Mr. Barksdale, I think that's
14 correct.

15 Q When she became involved, were you aware of the fact that
16 she had a relationship with Mr. Davis?

17 A No. I think that that came up when he filed a posttrial
18 motion, he filed a posttrial motion against her, and I can't
19 remember if he filed it himself or we filed it on his behalf,
20 it was a letter that he mailed to us. But he filed a posttrial
21 motion asking essentially for a new trial based off of the
22 Nicole Hurley situation. At that time, he didn't mention
23 anything to us about the allegations against Ms. McNeil.

24 Q He didn't mention it when he showed up in the Courtroom
25 for trial?

1 A No, no, he didn't mention that he had a relationship with
2 her. Now, I went back through notes and apparently before I
3 was involved and maybe this was when Mr. Adducci was involved
4 in the case before I got involved, there may have been some
5 involvement by Nicole, but that being said, you know, she
6 wasn't substantially involved until a couple of weeks before
7 the trial.

8 Q Had you been advised there had been a relationship
9 between Mr. Davis and Ms. Hurley and that that
10 relationship had gone sour, would you have continued to use her
11 in the case?

12 A Not if he objected to it. We probably would have kicked
13 her out just because of the fact it's the path of least
14 resistance. Now, according to Ms. Hurley, they were involved
15 like when they were in high school, you know, like, she was
16 like 15 and like, I don't think that like it was like, she said
17 it wasn't anything sexual or anything like that, but they were
18 like 15 or something like that. So I mean, would I have used
19 it if he didn't have an objection? Absolutely, I don't think
20 that's a conflict of interest to any degree. With that being
21 said, if he objected, I would have taken the path of least
22 resistance and not had her involved in the case.

23 Q Now, when you became involved in the case, was Mr. Davis
24 still on suicide watch at the jail?

25 A No.

1 Q Did you have any reason to suspect there might be some
2 mental issues with this?

3 A No. I mean, I think he was on suicide watch because he
4 was thinking about killing himself because he was so
5 remorseful.

6 Q Now, I believe you testified that as to him being
7 assaulted at the jail by another inmate, SLED was involved in
8 that investigation?

9 A I'm pretty sure that they were, but this is all a rumor,
10 I didn't really, you know, I got touched by another inmate,
11 that doesn't really have much to do with trying the case
12 in my view, so I didn't really, like, dig into it or
13 anything.

14 Q Was there ever any discussion or consideration asking Mr.
15 Mowry to recuse himself or have the Court recuse him?

16 A No. I would have, well, let me say this. I don't recall
17 that, but there definitely wasn't for that reason. I have
18 moved for Warren to recuse himself in a case, I believe, and I
19 can't remember if it was, it was in, it may have been during
20 the Greenwood hearing, but I doubt it. I don't think that I
21 ever actually did that in this case, that would have been the
22 reason why. The only reason I would have moved for a
23 solicitor to recuse himself is if, especially in murder
24 cases if it's going to trial, so I probably really would have
25 done that if a solicitor made themselves a witness in the case,

1 in which case I'd be more than happy to jump on that and try to
2 get the solicitor to recuse himself.

3 Q Okay. And had he gone forward with the trial, were you
4 prepared to present self-defense?

5 A Yeah. I mean, absolutely, I mean, we started it as a
6 self-defense, so I think I said in my opening that he did shoot
7 her, that we're not here because of the fact that he shot her,
8 we're here because of why, and you know, he was defending
9 himself.

10 MR. THOMPSON: Thank you.

11 THE COURT: Anything else for this witness?

12 MR. JONES: A few questions, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. JONES:

15 Q Just to clarify Mr. Shaffer, the, were you interested, or
16 did you have any reason to think that you could pursue a mental
17 health related defense in this claim?

18 A No. I mean, he, like, he didn't give me any sort of idea
19 that he was mentally ill. He was presenting self-defense which
20 I think that certain people would argue that that makes you
21 conscious of what you're doing being wrong and therefore, and
22 I'm not saying I, I agree with this opinion, I think this is
23 relevant but basically you have an excuse. DMH a lot of times
24 will find you not guilty by reason of insanity because they'll
25 say essentially you knew what you were doing was wrong. And I

1 adamantly disagree with that, I would have pursued one if I
2 thought it was a good choice, but, I mean, it was a self-
3 defense case ---

4 Q Alright.

5 A --- I mean, it was, yeah, you, the only reason he was on
6 suicide watch was because he felt bad because he didn't want to
7 kill somebody he loved.

8 Q Alright. And just ultimately whose decision was it to
9 plead guilty?

10 A It was ultimately his. I mean, we stood there, I went
11 back in the room and said you know, the solicitor's going to
12 pull that off if you don't say something right now, you know,
13 tell us something right now, he said, yeah, I want to plead
14 then we go out to the Courtroom and he sat there for, like,
15 maybe 10 minutes before he actually signed the document.
16 And it was in front of Judge Hocker, Judge Hocker was watching
17 the entire exchange here, and I was, like, hey man, you
18 don't have to, we can keep going. And ultimately, he
19 said he wanted to, you know. I was about done with trying
20 to get him to do anything even though I thought it was
21 the best option, but I said you really don't have to,
22 let's just go forward if that's what you want to do and
23 he said he wanted to go forward.

24 Q Alright. Thank you.

25 MR. JONES: No further question.

1 THE COURT: Alright. Anything else? Sir, you can
2 step down, thank you. Anything else?

3 MR. JONES: Beg the Court's indulgence.

4 THE COURT: Certainly.

5 MR. JONES: Your Honor, can we have a recess for five
6 minutes?

7 THE COURT: Certainly. We'll be in recess for five
8 minutes.

9 (Off the record.)

10 MR. JONES: Thank you, Your Honor. The State would
11 call Chelsea McNeil.

12 THE COURT: Raise your right hand, please.
13 Do you swear to tell the truth, the whole truth, and nothing
14 but the truth under penalty of perjury?

15 MS. MCNEIL: Yes, ma'am.

16 THE COURT: Thank you.

17 DIRECT EXAMINATION

18 BY MR. JONES:

19 Q Thank you, Ms. McNeil. Did you ever indicate to Mr. Davis
20 that he would be convicted if he did not take the plea
21 offer?

22 A I never guarantee any outcome whether it's guaranteed
23 acquittal or guaranteed guilty convictions. I always say, you
24 know what, I'm not a future predictor, I have no idea what the
25 jury's going to do. Now, what I do do is assess the strengths

1 and the weaknesses of the case, potential defenses, I go over
2 that very thoroughly, and give my legal opinion.

3 Q And did you at any time during the trial prior to the
4 guilty plea speak to the jury about the likelihood of acquittal
5 or anything else?

6 A I have never in my entire career ever spoken to the jury
7 during a trial. The only time I've ever spoken to a jury
8 member is posttrial.

9 Q Do you recall the circumstances around applicant, calling
10 applicant's ex-wife and cousin to discuss the guilty plea? Was
11 that applicant's idea?

12 A Yes, sir. So when we secured an offer from Solicitor
13 Mowry who was the lead deputy solicitor in the prosecution of
14 this case, we did go back and discussed it very thoroughly with
15 Mr. Davis. He wanted, his family was extremely involved in the
16 preparation of this case for his defense. They were also very
17 involved in giving us kind of historical background on Mr.
18 Davis so that I could learn who he is as a person. Because
19 they were so involved, Mr. Davis did wish to speak with them
20 and engage them in his decision making and ultimately what to
21 do with his life. And so he did use my personal cell phone to
22 call his own family members. I wouldn't have had their actual
23 phone numbers.

24 Q Right. And so, now regarding the, Mr. Davis's claim about
25 what transpired while Tristan Shaffer was out of the attorney

1 client room. Just right off the bat, is there any truth at all
2 to those allegations of sexual misconduct?

3 A Absolutely not. And it was also investigated by SLED, I
4 had to get a lawyer, I had my rights read to me, I gave a audio
5 statement, I gave a written statement. I believe Courthouse
6 personnel was interviewed by SLED, they obtained video footage
7 from the Courthouse particularly in the secured area where the
8 attorney client room is in the Laurens County Courthouse. They
9 also interviewed the transport officers who were right outside
10 of the attorney client room. They usually stand nearby when
11 lawyers are in there, particularly during serious cases because
12 apparently the camera in the actual attorney client room, which
13 I didn't learn until after the SLED investigation was launched
14 against me, that that camera in the room itself was inoperable,
15 the one right outside of the door, however, was operating. And
16 so SLED was able to pull that footage.

17 Q Alright. And at any point did you attempt to coerce Mr.
18 Davis into pleading guilty when he wanted to go to trial?

19 A No. I'm not, Mr. Davis is much larger than me, I mean, I
20 think he's around maybe, between 6'3, 6'5, I'm 5 foot 5, half
21 his size, he could snap me in two if he wanted to.

22 Q Alright. So moving on to the chain of custody issue.
23 Did you view the identity of the shell casings as being a
24 major part of the State's case, or the Defense's self-defense
25 claim?

1 A No, I don't. I will say this, I don't specifically
2 remember any sort of, you know, motions that were made against
3 the admissibility of shell casings or whatever. But I will say
4 this, you know, Tristan Shaffer and myself have a really good
5 reputation of being good trial attorneys and we always discuss
6 strategy amongst ourselves and we are very, we have an approach
7 of a holistic representation, and we involve our clients
8 extremely early in all strategy and preparation for a defense
9 before trial, during trial, and then we provide, you know,
10 counseling posttrial as well. But the issue in this case was
11 always going to be self-defense, it wasn't like, you know, we
12 pulled that out of thin air on day two or three of the trial.
13 We came out in pretrial motions making claims of self-defense,
14 so obviously, in opening, Tristan Shaffer also mentioned it, so
15 it wasn't about, you know, whether or not our client, Mr.
16 Davis, shot the weapon, it was about he admitted to shooting
17 the weapon, he just was saying he did so in self-defense.

18 Q Alright. So could you describe the investigation that you
19 and Mr. Shaffer conducted?

20 A Yes, sir. So a former lawyer in our office at the time, I
21 was the chief public defender for Laurens County and currently
22 the circuit public defender for the eighth judicial circuit.
23 But before I got involved in the case, it was assigned to Tom
24 Adducci, Tom Adducci left the Laurens County Public Defender's
25 Office and went to work for the Greenville County Public

1 Defender's Office and is currently in private practice in
2 Greenville. When he left the Laurens office, I took over Mr.
3 Davis's case. I think that when I evaluate thousands of people
4 that I have represented in my career and the dozens of cases
5 that I've tried to jury verdict, Mr. Davis's case stands out as
6 one of the top 10 most investigated cases I have ever been
7 involved on and I have represented a death penalty client. Mr.
8 Davis was extremely active in his defense, I was constantly
9 getting requests from the jail that he wanted to see me, or he
10 would have his, the mother of his children, Marlana Davis,
11 contact me very frequently. I believe Marlana had my cell, my
12 personal cell phone number. It was a very heavily investigated
13 case.

14 Q Thank you. And so did you believe that you would be
15 prepared to present a defense of self-defense if the trial had
16 proceeded instead of going to a guilty plea?

17 A I mean, we were already actively doing that, we already
18 had had numerous pretrial motions, and one of them was
19 Held in the Probate Courtroom of the Laurens County
20 Courthouse because the main Courtroom was being taken up.
21 We had numerous pretrial motions, you know, it was always
22 based on self-defense, that was always our strategy. And
23 opening statements, first day of trial testimony, second
24 day of trial testimony, I mean, we were in the thick
25 of it.

1 Q Regarding the investigation, could you go into more of
2 what the role was of your primary investigator, Mr. Powers?

3 A Mr. Jimmy Powers, yes, sir.

4 Q Yes. And as opposed to the role of Nicole Hurley?

5 A Sure. So like I said at the time, I was the chief public
6 defender for Laurens County. And obviously the eighth judicial
7 circuit is comprised of Newberry, Greenwood, Laurens, and
8 Abbeville Counties. I did not work in Greenwood County Public
9 Defender's Office at all, I only worked in Laurens at the time
10 aside from taking a few cases due to conflicts here and there.
11 Nicole Hurley and I didn't work together often at all, I didn't
12 even really know her. Jimmy Powers is someone that I have held
13 an amazing professional relationship with, and I trust him, and
14 he and I have worked cases together regularly. As far as
15 Nicole Hurley goes, she was never a licensed investigator,
16 Mr. Powers is. Nicole Hurley was more of an administrative
17 assistant to the Greenwood County Public Defender's Office, and
18 she liked to call herself an investigator, and other people in
19 the office would refer to her as part-time investigator because
20 she was really good at finding people in the community,
21 specifically in more indigent areas of our community, Nicole is
22 very plugged in. This was a Newberry family that we were
23 dealing with with Mr. Davis's family, I believe they mostly
24 lived over in Newberry or Whitmire. And Nicole, I do have a
25 note that I reviewed earlier today that said Nicole had

1 contacted either me or Martha Curington who is my paralegal in
2 Laurens and said that, something about Mr. Davis wanted a bond
3 hearing after the case was transferred to me from Tom Adducci
4 and that I believe, his family wanted to meet with me, and so
5 she put a note in the file and it said she is familiar with the
6 family so if I needed her to contact the family and set up a
7 meeting to discuss anything, that she would be willing to
8 assist. I did not utilize Nicole I don't think on this case
9 except for maybe twice. One of those times I do recall her
10 driving to Newberry County from Greenwood County where she
11 resides and works to meet with some people in Charles Verner's
12 private practice office that he had at the time here in
13 downtown Newberry. So I did meet, Nicole was there and helped
14 make introductions to the family for me.

15 Q Alright. Do you recall the Jackson v. Denno
16 hearing at all?

17 A Yes.

18 Q Alright. And can you remember, though, what the result
19 was, what did Judge Hocker, I believe, what was his, the
20 outcome of that proceeding?

21 A Judge Hocker ruled that the statements were admissible,
22 that Miranda was followed and that there was no special
23 circumstances that would allow for the statement to be
24 suppressed, so it was admissible.

25 Q Did you have any concerns about Mr. Davis's mental

1 health that might relate to a potential defense for competency
2 or criminal responsibility?

3 A No, sir. Mr. Davis suffered from depression at times,
4 and I'd probably say also anxiety, but under his circumstances
5 that he found himself in, it was a traumatic event that he
6 obviously engaged in with the multiple gunshot wounds and a
7 two-year-old child that was left in the bedroom next to the
8 mother. I mean, he was depressed about that, he was sad, he
9 was remorseful, I think he was in shock, but as far as being
10 able to communicate with me, I have no, he, he, I really had no
11 question about his competency, he was fully engaged in
12 conversing with me, he was able to reiterate information that I
13 was teaching him such as his rights to trial and the process
14 and all of that. So the only reason I would have gotten an
15 evaluation for his mental capabilities is if I had any question
16 or concern whatsoever about his competency, and I did not in
17 this case.

18 Q Did you have any concerns about a conflict of interest on
19 the part of the prosecutor?

20 A No, sir. In our rural counties in the eighth circuit,
21 specifically in Laurens, there are three full-time public
22 defenders in Laurens, there's one paralegal and one
23 investigator, and the prosecutors currently have six full-time
24 prosecutors right now. And so often times we find ourselves, I
25 find myself representing people that are both Defendants in

1 some cases as well as victims in some cases, same with the
2 prosecutor, sometimes they prosecute Defendants and then they
3 find themselves prosecuting their own victims. And that's just
4 the nature of the beast when you have a small rural county. If
5 I had thought for a hot second that any sort of funny business
6 was going on within the judicial system in regards to one of my
7 clients, not only Mr. Davis, but any of my clients, I am one of
8 those lawyers that's quick to file a motion to have it heard on
9 the record so that there is a record of it.

10 Q Thank you. And just one final question, I believe. Whose
11 decision ultimately was it for Mr. Davis to plead guilty?

12 A It was him, I mean, I'm sorry, it was his decision. I
13 believe that, if I'm recalling correctly, he was hesitant to go
14 forward with the plea, he said he would do it, and then he
15 walked up to the bench, Judge Hocker went through the colloquy
16 and Mr. Davis started to hesitate during it. When that
17 happened, Judge Hocker said, you know, step back and talk to
18 your lawyers. Mr. Shaffer and I were there to talk to him. He
19 asked some questions, I don't remember what kind of questions,
20 but it would have been somewhere, it's typical of Defendants to
21 say, hold on I have a question about X, Y, and Z of what the
22 Judge is discussing. But I do think that at the time when Mr.
23 Mowry offered Mr. Davis to plead guilty to the reduced charge
24 of voluntary manslaughter for 25 years, I think that Mr. Mowry
25 originally said that offer would expire by the end of the day.

1 And I do remember when Mr. Davis appeared to feel, appeared to
2 seem uncomfortable about pleading, I stopped the process, I
3 talked to Mr. Mowry and Judge Hocker, and I believe that Judge
4 Hocker kind of strongly encouraged Mr. Mowry to leave that plea
5 offer open overnight so that Mr. Davis had an opportunity to
6 sleep on it and think about it some more, talk to anybody else
7 that he may want to talk to and then the next day, that's when
8 he came back and entered the guilty plea.

9 Q Thank you.

10 MR. JONES: Please answer any questions Mr. Thompson
11 may have.

12 THE COURT: Mr. Thompson?

13 CROSS EXAMINATION

14 BY MR. THOMPSON:

15 Q Just a follow up to that last series of questions.

16 Was Mr. Davis told that, did Mr. Davis ask to keep the plea
17 offer overnight so he could think about it?

18 A Yes, sir. He would have asked, yes, sir.

19 Q Mr. Davis asked?

20 A Yes, sir.

21 Q And what was he told?

22 A What was he told about the plea offer being open?

23 Q Yes.

24 A That, that the plea offer would remain open so that he
25 would have time to go back to the jail, sleep on it, think on

1 it, and he could talk to whomever he wanted to at the jail.
2 The jail is really good about allowing people to make phone
3 calls to families when things are serious like that.

4 Q Now, the room that you were in with Mr. Davis to discuss
5 the plea offer. You said there was a camera in the room that
6 was inoperable?

7 A I found out that it was inoperable once SLED watched their
8 investigation, yes, sir.

9 Q And there was a camera outside the room?

10 A Yes.

11 Q How long were y'all in the room?

12 A A good amount of time because Judge Hocker was getting
13 impatient, he was still on the bench waiting for us to come
14 out. And so then, I believe that's when we discussed Mr.
15 Shaffer going back out into the Courtroom to proceed with
16 motions that we had raised during trial. And so then I was
17 left with Mr. Davis in the room. As far as how long we were in
18 there, probably a couple of hours, but I cannot be for certain.

19 Q Okay. And Mr. Shaffer was present during some of that
20 time, correct?

21 A Yes, sir.

22 Q Forgive me for this question, I'm not making accusations,
23 I'm just asking a question. At any point in time in that room
24 when you and Mr. Davis were alone, did you put your hands on
25 him?

1 A No, sir.

2 Q At any point in time, did he put his hands on you?

3 A No, sir.

4 Q Was there any flirting going on between the two of you?

5 A No, sir. And you know, that door to the attorney client
6 room does not actually close all the way and there are, there
7 was at minimum two other transport officers who were nearby and
8 you can hear if something is going on in one of the attorney
9 clients rooms. I can't tell you how many times that transport
10 officers have come and knocked on the door and asked if
11 everything's okay because voices get loud and they can easily
12 hear it.

13 Q That week of trial, y'all were prepared to go forward on
14 self-defense?

15 A Yes, sir.

16 Q How strong do you believe the self-defense case would have
17 been?

18 A Honestly, I believe that I was the one that cross examined
19 the crime scene expert from SLED. And I believe it was a
20 female agent, I cannot recall her name, but they did not do a
21 very great job with analyzing the crime scene. For example, we
22 made a lot of hay about the fact that there was no dow rods
23 used to show a bullet path trajectory, especially because Mr.
24 Davis is so tall and he's larger in stature and so we were
25 trying to, and the bed was disheveled, there's furniture that

1 was moved around, and so we were trying to establish the scene
2 as really messy, there was a struggle that had obviously
3 occurred, and the trajectory, had they done it properly would
4 have been able to show maybe like where Mr. Davis had been
5 positioned versus where the deceased was positioned which could
6 have given us a little bit more insight into where they were
7 positioned during the struggle, how they were positioned during
8 the struggle which could have given us an argument in closing
9 to make a stronger self-defense case.

10 Q I believe there was several different bullet holes found
11 in the room, furniture, walls, floor?

12 A From my recollection, there was numerous bullets that were
13 shot, and I can't recall for certain, but I think that five
14 bullets, maybe, were shot into her torso area.

15 Q Now, in the, in the room, attorney client room when you're
16 making phone calls, I believe it was testified that when he
17 called his ex-wife and his cousin, he used your phone, but you
18 didn't have the phone number, is that correct?

19 A I don't know if, if I said his ex-wife, Marlana Davis,
20 she and I kept in regular communication, and she was very
21 involved, and she was a huge support for Mr. Ronald Davis
22 during this time. I did, would not have had numbers
23 memorized or stored in my cell phone, I don't store
24 client's family's numbers in my cell phone. So what
25 I meant, to clarify, I wouldn't have, you know, been

1 able to dial it up on my cell without the assistance of Mr.
2 Davis.

3 Q But you had talked with her prior to that day?

4 A Ms. Marlana Davis?

5 Q Yes.

6 A Yes. Numerous times.

7 Q Had you talked to his cousin also, prior to that?

8 A I talked to any witness that Mr. Davis wanted me to talk
9 to.

10 Q Mr. Davis explained to you that he had a head injury years
11 before?

12 A I don't recall.

13 Q Did he ask you to get medical records?

14 A I don't recall. However, if I had suspected that any sort
15 of issue that Mr. Davis had would have contributed to something
16 like criminal responsibility, I most certainly would have
17 looked into that.

18 MR. THOMPSON: Thank you.

19 THE COURT: Anything else?

20 MR. JONES: No further questions, Your Honor.

21 THE COURT: Alright. Ms. McNeil, thank you so much
22 for your testimony. You can certainly step down.

23 MR. JONES: Your Honor, I'd just like to sort of
24 correct the record here. Mr. Shaffer brought this to my
25 attention. I'm not sure what the confusion is about whether

1 the guilty plea was allowed overnight, whether Mr. Davis was
2 allowed to consider it overnight or not. I have one, a
3 transcript of the, of the plea proceeding. Mr. Shaffer does
4 not remember it going down exactly the same way that, that Ms.
5 McNeil said. I think the transcript speaks for itself.

6 THE COURT: Okay.

7 MR. JONES: So ---

8 MR. THOMPSON: I was going to say, we stipulate to
9 the transcript.

10 MR. JONES: Okay.

11 THE COURT: Alright. Thank you very much.

12 MR. JONES: Thank you.

13 THE COURT: Alright. Well, I certainly appreciate
14 the testimony in this case, I'm going to take this matter
15 under advisement, but I would anticipate issuing a
16 decision very shortly. Thank you.

17 (Whereupon the hearing ended at 2:58 pm.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

)

COUNTY OF LAURENS)

I, the undersigned Lisa G. Amick, Official Court Reporter for the Eighth 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 proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Newberry, South Carolina, on the 2nd day of August 2023.

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

October 3, 2023

Lisa Amick

Lisa G. Amick

Court Reporter

My commission expires: June 30th, 2025

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

Ronald Duyane Davis, #272165

Applicant,

 $\mathbf{y}_i$

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No.: 2020-CP-30-00643

RECEIVED

JUL 17 2023

ORDER OF DISMISSAL

S.C. SUPREME COURT

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Ronald Duyane Davis (“Applicant”) on June 24, 2020, and amended on July 15, 2022. The Court convened an evidentiary hearing into the matter on August 2, 2022, at the Newberry County Courthouse. Applicant was present at the hearing and represented by Don A. Thompson, Esq. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Chelsea McNeill, Esq., and Tristan Shaffer, Esq., also testified. After reviewing all records and evidence before the 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. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. During its September 2016 term, the Laurens County Grand Jury indicted Applicant for murder (2016-GS-30-1382) and possession of a firearm during the commission of a violent crime (2016-GS-30-

1383). On March 26, 2018, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker. Applicant was represented by Chelsea McNeill, Esq., and Tristan Shaffer, Esq. The case was prosecuted by Deputy Solicitor O. Warren Mowry, Jr., and Assistant Solicitor Jared Simmons of the Eighth Circuit Solicitor's Office. On March 28, 2018, Applicant elected to forego his jury trial and enter guilty pleas to the lesser-included offense of voluntary manslaughter and possession of a firearm during the commission of a violent crime. Pursuant to the State's recommendation, Judge Hocker sentenced Applicant to twenty-five years' imprisonment for voluntary manslaughter and a concurrent term of five years for possession of a firearm during the commission of a violent crime.

Thereafter, Applicant filed a motion to withdraw his guilty plea on April 4, 2018. Following a hearing on the motion on April 19, 2018, Judge Hocker denied Applicant's motion and issued a formal order on April 30, 2018.

Applicant filed a notice of appeal on April 11, 2018. On appeal, Applicant was represented by Appellate Defender Joanna K. Delaney, who filed an *Anders* brief and petition to be relieved as counsel on June 6, 2019. On April 29, 2020, the South Carolina Court of Appeals dismissed the appeal and granted appellate counsel's petition to be relieved. *State v. Davis*, 2020-UP-112 (S.C. Ct. App. filed April 29, 2020). The Remittitur was issued on June 10, 2020.

Factual Summary

On July 3, 2016, Applicant returned to the home he shared with his girlfriend, Shana Prophet. (Tr. 230). In his police statement, Applicant alleged that an altercation occurred between the victim and Applicant and that the victim pulled out a handgun and fired at Applicant. (Tr. 231). Applicant claimed he took the handgun from the victim and then shot her with it. (Tr. 231). Around 1:30 a.m., neighbors heard multiple gunshots in rapid succession. (Tr. 151). Applicant

shot the victim five times, fatally piercing the victim's heart. (Tr. 195–96). The victim died at the scene. (Tr. 196). Applicant fled the scene after calling 911. (Tr. 232). Applicant fled to Newberry County. (Tr. 218).

Applicant was contacted by police following his 911 call and claimed that he was contemplating suicide. (Tr. 213–14). He claimed he disposed of the gun on the side of I-26. (Tr. 254). Applicant eventually turned himself in at the Laurens County Detention Center, where he was taken into police custody and advised of his rights. (Tr. 218–25). Applicant provided police with a voluntary statement of the events that lead to the shooting. (Tr. 225–26).

Present Application

On July 29, 2020, Applicant filed his initial PCR application, raising the following allegations:

1. "Prosecutorial Misconduct"
 - a. "The Solicitor failed disclose possible exculpatory evidence, including handwritten investigation notes, and incident reports."
 - b. "The Solicitor used evidence without establishing the chain of custody because there are discrepancies surrounding the dates that are indicated in the record."
2. "Ineffective Assistance of Counsel"
 - a. "Defense Counsel failed to investigate the case."
 - b. "Defense Counsel did not request a competency hearing prior to trial."
 - c. "Defense Counsel failed to object to the trial judge's denial of his motion to withdraw his plea."
 - d. "Defense Counsel's performance denied defendant of his due process rights."
 - e. "Defense Counsel failed to object to the prosecutor's use of prior bad act evidence."
 - f. "Defense Counsel failed to object to the use of Defendants voluntary statements to the police, because the defendant was not properly informed of his Miranda rights prior to giving the statement."
3. "Involuntary Plea"
 - a. "Defendant did not plea freely, knowingly, and voluntarily."
 - b. "Defendant's plea was coerced by his trial counsel."
 - c. "Defendant alleges he had a sexual relationship with the investigator on his case, and plead guilty because he feared retribution by his trial counsel."

4. "Trial Court Errors"
 - a. "The trial judge erred by not giving a self-defense charge to the jury."
5. "Lack of Subject Matter Jurisdiction".
 - a. "The indictment was not stamped and therefore the indictment is illegal and the court should invalidate all judicial proceedings taken in this case."

As relief, Applicant requested that his case be remanded back to the circuit court or that his conviction be reversed.

On July 15, 2022, Applicant amended his application to include the following allegations of ineffective assistance of counsel:

1. "Applicant's plea was not freely and voluntarily entered as it was the result of coercion and deception by trial counsel, McNeil [sic] in that:"
 - a. "Trial counsel advised applicant that 'they' had spoken to the trial jury during a break in the trial and the trial jury had indicated that applicant would be convicted of murder if he did not take the plea offer;"
 - b. "Even though applicant wanted to continue with the trial and present a defense of self-defense, and advised trial counsel of this, trial counsel did not seem to be prepared to present a defense of self-defense and advised applicant that if he did not take the plea offer there was nothing further she could do for him;"
 - c. "Trial counsel contacted applicant's ex-wife and applicant's cousin to get them to pressure applicant in to pleading guilty;"
 - d. "Trial counsel told applicant that if he did not plead guilty that she would 'get applicant for sexual harassment.'"
2. "Trial counsel was ineffective during the trial by allowing the introduction, without objection, of shell casings and projectiles without establishing a chain of custody for the same."
3. "Trial counsel did not take seriously and was not prepared to present a defense of self-defense. Applicant believes that trial counsel did not investigate the facts and/or witnesses surrounding the event to develop the defense of self-defense. Applicant believes that trial counsel's actions denied him the right to present a complete defense. Further, trial counsel advised a witness, Stevie Cannon Barksdale, that she was not needed at trial. Ms. Barksdale would have testified that the victim regularly carried a gun, which testimony applicant believes would have been beneficial to applicant's defense of self-defense."
4. "Trial counsel did not fully review and explain discovery with applicant. Applicant was never advised of the results of the gun shot residue tests performed on both he and the victim—which tests applicant believes would show the victim had fired a gun and which would have supported his defense of self-defense."
5. "Applicant believes that a conflict existed, which applicant did not discover until the beginning of the trial. At the beginning of trial applicant discovered that trial counsel's investigator was Nicole Hurley. Applicant and Ms. Hurley had been in a sexual relationship that had ended shortly before the incident, for which applicant was on trial,

occurred. Applicant would allege that his break-up was not amicable and he believes that said investigator would be against him and should not have been involved in the defense of his case.”

6. “Applicant believes that trial counsel was ineffective in not contesting the admission of his statements to law enforcement. Applicant alleges that he was detained and in custody at the time of the statement but was not given Miranda warnings prior to giving the statement. Applicant believes this ineffective assistance of counsel on the part of trial counsel played a part in coercing applicant’s guilty plea.”
7. “Applicant told law enforcement that he was suicidal at the time of his arrest and was placed on suicide watch in the detention center, but trial counsel never explored applicant’s mental health and did not request a mental health evaluation.”
8. “During applicant’s jury trial, trial counsel kept applicant’s family out of the courtroom thereby isolating applicant and increasing pressure on him to enter a guilty plea.”
9. “Pending trial, applicant was assaulted in the detention center by another inmate, Aaron Sanders. He reported this assault and a report was filed, but applicant was advised that the prosecutor, Warren Mowry, refused to bring charges against the inmate. Applicant believes that this created a conflict on the part of the prosecutor and that trial counsel should have raised this issue and attempted to have Mowry removed from the prosecution of applicant’s case.”

At the evidentiary hearing, Applicant proceeded on the allegations raised in his amended application.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant’s records from the South Carolina Department of Corrections, the transcripts of Applicant’s trial and plea proceedings, the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant’s appellate records, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Trial Counsel

Applicant’s allegations of ineffective assistance of trial counsel are without merit. In a

PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “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.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees

reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. *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.”). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *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)).

Allegation 1: Trial Counsel coerced Applicant into pleading guilty

Applicant argues Trial Counsel coerced him into pleading guilty. The Court finds this allegation is meritless. The record includes the transcript of Judge Hocker’s thorough plea colloquy with Applicant, including the following exchange:

THE COURT: Has anyone forced you, coerced you, promised you anything, done anything whatsoever to get you to plead guilty today against your will?

THE DEFENDANT: No, sir.

THE COURT: Are you pleading guilty today to these two offenses freely, voluntarily, and intelligently?

THE DEFENDANT: Yes.

(Plea Tr. p.4, line 22–p.5, line 4). The court also asked Applicant if he had any complaints against Ms. McNeill, Mr. Shaffer, or anyone in the public defender’s office, and Applicant answered, “No, sir.” (Plea Tr. p.11, lines 2–7). The court again asked if Applicant was pleading guilty freely, voluntarily, and intelligently, and Applicant replied, “Yes, sir.” (Plea Tr. p.11, line 23–p.12, line 2).

Applicant’s sworn statements during the plea colloquy “carry a strong presumption of verity,” and he bears the burden to show valid reasons why he should now be permitted to depart from the truth of those statements. *Blackledge*, 431 U.S. at 73–74; *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874. With this in mind, the Court examines the specific issues raised by Applicant in support of this claim:

A. Purported discussion with jurors during trial

Applicant claims that, at some point during his trial, Mr. Shaffer told him he had spoken to the jurors during a break in the trial and learned that Applicant would be found guilty of murder if

he proceeded with the trial. Applicant claims he decided to accept the State's plea offer based on this information. At the evidentiary hearing, however, both Mr. Shaffer and Ms. McNeill denied having any discussions with jurors during the progress of the trial: Mr. Shaffer testified he never spoke to any jurors until after the plea proceeding, and Ms. McNeill testified she had never in her entire career spoken to jurors during a trial. In addition, both attorneys denied telling Applicant that he would be convicted if he did not take the plea offer: Mr. Shaffer testified he felt optimistic about how the murder trial was going, and he told Applicant that the jury might find him not guilty or guilty of voluntary manslaughter rather than murder; Ms. McNeill testified she explained the strengths and weaknesses of the case to Applicant and told there were no guarantees as to what the jury would do.

The Court finds Trial Counsel credible, and Applicant not credible, as to this issue. Mr. Shaffer and Ms. McNeill gave consistent testimony that they never spoke to jurors during the trial and never told Applicant he was certain to be convicted of murder if he did not plead guilty. Applicant, however, presented no evidence apart from his own self-serving testimony in support of this accusation. Therefore, the Court finds Applicant has failed to meet his burden of proof as to this allegation, and this claim is denied and dismissed with prejudice. *See Butler*, 286 S.C. 441, 334 S.E.2d 813 (holding the burden of proof is on the applicant to establish the claims in his PCR application).

B. Advising Applicant to plead guilty because Trial Counsel was unprepared to argue self-defense

Applicant claims he told Trial Counsel that he wanted to proceed with the trial and present a defense of self-defense, but Ms. McNeill was not prepared to present self-defense and advised him to plead guilty because "there was nothing further she could do for him." The Court finds this allegation is without merit.

Applicant was already two days into his trial when he decided to accept the State's plea offer; the transcript of the trial clearly shows that Ms. McNeill raised the self-defense claim in her opening statement to the jury and argued that the State could not disprove self-defense based on the facts of the case. (Trial Tr. pp.119–21). Ms. McNeill explained Applicant's version of the confrontation between him and the victim: that she had attacked him first and tried to shoot him, that he had taken the gun away from her, and that he shot her when she "came back at him" a second time. (Trial Tr. p.116, lines 2–16). She pointed out that the room in which the shooting took place bore signs of a scuffle, and she argued against the State's theory that the presence of nine-millimeter ammunition at Applicant's house meant he had planned the shooting in advance. (Trial Tr. p.116, lines 7–12; p.118, line 12–p.119, line 8). This record establishes that, at the time of trial, Ms. McNeill was well-prepared to present Applicant's theory of self-defense. In addition, both Ms. McNeill and Mr. Shaffer testified at the evidentiary hearing that their trial strategy, from the very beginning, was to pursue a defense of self-defense.

The Court finds Applicant has not met his burden of proving this allegation. *See Butler*, 286 S.C. 441, 334 S.E.2d 813; Rule 71.1(e), SCRPC. Accordingly, this allegation is denied and dismissed with prejudice.

C. Having Applicant's family pressure Applicant into pleading guilty

Applicant argues he was coerced into pleading guilty against his will when Trial Counsel arranged for his ex-wife and his cousin to speak to him over the phone and pressure him into pleading guilty. He claims Trial Counsel told his family the jury would convict him if he did not plead guilty. The Court finds this allegation is without merit. Trial Counsel and Applicant testified that Applicant spoke to his family over the phone while he was deliberating over whether to enter a guilty plea, but both Mr. Shaffer and Ms. McNeill testified that Applicant was willing to talk to

his family about the decision because his family had been significantly involved in the preparation of his case. In addition, Ms. McNeill testified that Applicant was the one who wanted to talk to his family, and that he used her cell phone to call them because she did not have their numbers.

The Court finds Ms. McNeill and Mr. Shaffer credible, and Applicant not credible, as to this issue. Both attorneys testified consistently that Applicant was a willing participant in the conversation with his family and that no improper influence was brought to bear upon him. The Court finds Applicant has not met his burden of proof as to this allegation. *See Butler*, 286 S.C. 441, 334 S.E.2d 813; Rule 71.1(e), SCRCP. Accordingly, this allegation is denied and dismissed with prejudice.

D. Alleged threat to frame Applicant for sexual harassment if he did not plead guilty

Finally, Applicant argues Ms. McNeill coerced him into pleading guilty by threatening to falsely accuse him of sexual harassment if he did not accept the plea. Applicant also claims that, while Mr. Shaffer was temporarily absent from the attorney-client room during Applicant's trial, Ms. McNeill approached Applicant in a sexually provocative way but was interrupted by Mr. Shaffer's return. The Court finds this allegation to be completely without merit.

Ms. McNeill testified that there was no truth whatsoever to Applicant's story. She pointed out that Applicant had raised this accusation against her in the past, resulting in a thorough investigation by SLED. SLED interviewed transport officers who were stationed nearby and obtained video footage from the camera outside the attorney-client room at the time Applicant claimed the incident occurred, finding no evidence to corroborate Applicant's claim. Ms. McNeill testified the door to the attorney-client room was not completely closed so that the nearby transport officers would have been able to hear and investigate any kind of disturbance. In addition, Mr.

Shaffer testified that when he returned to the attorney-client room, he did not notice anything amiss, and Applicant did not appear to be upset.

Based on the testimony presented at the evidentiary hearing, the Court finds Ms. McNeill highly credible and Applicant not credible at all. Applicant has not met his burden of proving this facially implausible allegation. *See Butler*, 286 S.C. 441, 334 S.E.2d 813; Rule 71.1(e), SCRPC. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 2: Failure to object to shell casings and projectiles

Applicant argues Trial Counsel was ineffective for failing to object to the introduction of shell casings and projectiles without establishing a chain of custody. The Court finds this allegation is meritless. At trial, Applicant relied upon the theory of self-defense. At the evidentiary hearing, Applicant explained his version of the incident: the victim took a gun out of a green bag and told Applicant to get out of her bedroom, he refused, she fired at him, he wrestled the gun away from her, and then he fired at her when she came at him with something in her hand. There was no dispute as to where the bullets or ejected shell casings came from; Applicant never denied that the shell casings and bullets found at the scene came from the gun he used to kill the victim. The State's evidence concerning the shell casings and projectiles was consistent with Applicant's own story about what happened. Trial Counsel could not have been deficient for failing to object to the introduction of evidence that was consistent with Applicant's defense, and Applicant could not have been prejudiced thereby. The Court finds Applicant has not met his burden of proof as to this allegation. *See Butler*, 286 S.C. 441, 334 S.E.2d 813; Rule 71.1(e), SCRPC. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 3: Failure to "take seriously" Applicant's claim of self-defense

Applicant argues Trial Counsel failed to take his claim of self-defense seriously and was, consequently, unprepared to present a defense of self-defense. The Court finds this allegation is meritless; as already discussed in response to Applicant's Allegation 1(b), the record establishes that Trial Counsel was prepared to present a case of self-defense had Applicant elected to continue his trial.

Applicant also claims Trial Counsel did not investigate the facts or witnesses surrounding the event to develop a defense of self-defense. Specifically, Applicant contends Trial Counsel erroneously told one witness, Stevie Barksdale, that she did not need to testify, although Applicant claims that witness would have testified the victim was known to carry a gun. However, at the evidentiary hearing, both Mr. Shaffer and Ms. McNeill testified that they performed extensive investigations. Mr. Shaffer testified that they tried to subpoena life insurance policies, tried to track down gun purchases from a long time ago, used a metal detector to search for the discarded gun on the side of the interstate where Applicant claimed he disposed of it, and prepared to call multiple experts. He also testified that the defense planned to call multiple witnesses, including Applicant's ex-wife, mother, and cousin, and Stevie Barksdale. Ms. McNeill agreed that this was one of the most heavily investigated cases she had ever worked on. Based on this credible testimony, the Court finds Trial Counsel was not deficient in investigating Applicant's self-defense claim.

In addition, Applicant failed to introduce any evidence at the evidentiary hearing that purportedly would have been discovered by a more thorough investigation. Therefore, he has failed to meet his burden of proof. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing); *Taylor*

v. State, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972) (holding a PCR applicant's allegation that his trial counsel failed to adequately investigate his case was unsupported where the applicant failed to point out any beneficial evidence which could have been discovered by further investigation). Therefore, this allegation is denied and dismissed with prejudice.

Allegation 4: Failure to review discovery with Applicant

Applicant alleges Trial Counsel failed to review and explain discovery with him; specifically, Applicant claims he was never advised of the results of the gunshot residue (GSR) tests, which could have proved that the victim fired a gun. The Court finds this allegation is meritless. Trial Counsel credibly testified that they did go over the discovery with Applicant.

In addition, to prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. *Id.* (citing *David v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Here, Applicant did not present any new evidence or defenses that purportedly could have been discovered by further review of the discovery. Applicant did not introduce the results of the GSR tests to show that they would have supported his defense. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 5: Conflict with regard to Nicole Hurley

Applicant alleges the investigator employed by Trial Counsel—Nicole Hurley—was in a relationship with him prior to the shooting of victim that ended less-than-amicably. Applicant believes this created a conflict of interest because Ms. Hurley was biased against him. The Court finds this allegation is meritless.

First of all, Applicant is entitled to the effective assistance of counsel, not the effective assistance of an investigator. Second, the mere fact that Applicant was on bad terms with an investigator does not establish prejudice, and Applicant has failed to offer any explanation as to how Ms. Hurley's disposition toward him materially affected his case. Third, Trial Counsel consistently and credibly testified that Ms. Hurley's involvement in the investigation was minimal; the primary investigator on the case was Jimmy Powers, while Ms. Hurley only became involved shortly before trial. Finally, Mr. Shaffer testified that Applicant never told them about his relationship with Ms. Hurley until after his conviction.

For these reasons, the Court finds Applicant has not show he is entitled to post-conviction relief on this ground. Therefore, this allegation is denied and dismissed with prejudice.

Allegation 6: Failure to contest admission of Applicant's statement

Applicant alleges Trial Counsel was ineffective for failing to object to the introduction of Applicant's statement to police, which Applicant contends was given while he was in custody but without *Miranda* warnings. The Court finds this allegation is meritless.

In his statement to police, Applicant claims he discovered the victim in the master bedroom of their house, and she told him to get out. When he refused, she took a gun from a green bag under a pillow and fired it at him. He wrestled the gun away from her. She came toward him, and he shot her with the gun. (Trial Tr.pp.230–31).

This account of the incident is not materially different from the account Applicant gave at the evidentiary hearing. Therefore, it is not clear how Applicant could have been prejudiced by the admission of this statement. In addition, Applicant has provided no evidence to substantiate his claim that the statement was taken in violation of *Miranda*. To the contrary, the testimony at Applicant's trial was that law enforcement carefully explained the *Miranda* rights to Applicant and obtained a signed waiver before taking his statement. (Trial Tr.pp.220-25).

Furthermore, Trial Counsel consistently testified they had unsuccessfully moved to exclude Applicant's statement at a *Jackson v. Denno* hearing before Judge Hocker prior to trial. The Court finds Trial Counsel's testimony credible on this issue. Because Trial Counsel did what Applicant claims they failed to do, and because Applicant has not established that his statement was inadmissible or prejudicial to his case, this allegation must be denied and dismissed with prejudice.

Allegation 7: Failure to request mental health evaluation

Applicant alleges Trial Counsel was ineffective for failing to request a mental health evaluation despite Applicant telling law enforcement that he was suicidal. The Court finds this allegation is meritless.

Both Mr. Shaffer and Ms. McNeill testified Applicant was depressed and traumatized in the aftermath of the shooting; however, neither attorney had any concerns as to his competency to stand trial or his criminal responsibility at the time of the shooting. In addition, Applicant has failed to prove prejudice because he did not present any evidence showing what the result of a mental health evaluation would have been. *See, e.g., Taylor*, 258 S.C. at 378, 188 S.E.2d at 854. Accordingly, the Court finds Applicant has failed to prove Trial Counsel was ineffective as to this issue, and this allegation is denied and dismissed with prejudice.

Allegation 8: Isolating Applicant by keeping family out of courtroom

Applicant alleges Trial Counsel kept his family out of the courtroom during his trial, isolating him and pressuring him to plead guilty. The Court finds this allegation is meritless.

Trial Counsel testified witnesses were sequestered during the trial, which prevented them from coming into the courtroom while other witnesses were testifying. Therefore, the Court finds that the absence of Applicant's family from the courtroom was not due to any deficient act or omission of Trial Counsel. In addition, the Court finds it is not likely Applicant was pressured to plead guilty merely because his family was absent from the courtroom—especially since Applicant also complains, in Allegation 1(c) above, that his family was urging him to plead guilty.

Because Applicant has not met his burden of proof as to this claim, the Court finds this allegation must be denied and dismissed with prejudice.

Allegation 9: Failure to remove solicitor from Applicant's case

Applicant alleges Trial Counsel was ineffective for failing to have Warren Mowry removed as prosecutor on Applicant's case. Applicant claims there was a conflict of interest on the part of Mr. Mowry because Mr. Mowry did not bring charges against another inmate who allegedly assaulted Applicant in the detention center. The Court finds this allegation is meritless.

At the evidentiary hearing, Applicant testified he was assaulted by his cellmate in the detention center, but the solicitor would not prosecute the alleged assailant due to a lack of evidence. Neither Mr. Shaffer nor Ms. McNeill believed this constituted a conflict of interest or required Mr. Mowry to recuse himself. The Court is not aware of any authority stating that a prosecutor must recuse himself in circumstances of this kind, and Applicant has not provided any authority to support this position. Accordingly, this allegation is denied and dismissed with prejudice.

III. CONCLUSION

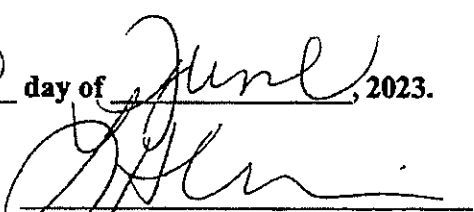
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 20 day of June, 2023.


 LETITIA H. VERDIN
 Presiding Judge
 Eighth Judicial Circuit

Dawens, South Carolina

WITNESSES

Keith McIntosh
Laurens County Sheriff

WARRANT NUMBER

2016A3010200117

True Bill

Lorine Clark

Foreman of the Grand Jury

Date: 9/16/16

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

September Term, 2016

Indictment # 16GS30- 1382

THE STATE

vs.

Ronald Dwayne Davis

INDICTMENT FOR

Murder
§16-03-0010
CDR: 0116

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

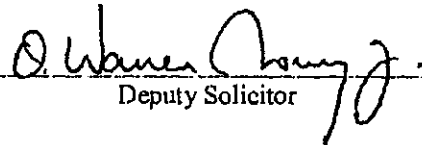
INDICTMENT FOR

Murder
§16-03-0010

At a Court of General Sessions, convened on the 16th day of September, 2016, the Grand Jurors of Laurens County present upon their oath:

That Ronald Duyane Davis did, on or about July 3, 2016, in Laurens County, willfully, feloniously, and with malice aforethought kill one Shana Prophet by means of shooting her with a firearm, and that the said Shana Prophet did die in Laurens County as a proximate result thereof on or about July 3, 2016, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Deputy Solicitor

WITNESSES

Keith McIntosh
Laurens County Sheriff

WARRANT NUMBER

2016A3010200118

True Bill
Louis Childs
Foreman of the Grand Jury
Date: *9/16/16*

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

September Term, 2016

Indictment # 16GS30-1383

THE STATE

vs.

Ronald Dwayne Davis

INDICTMENT FOR

Possession of a Firearm during the
Commission of a Violent Crime
§16-23-0490

CDR: 0549

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

Possession of a Firearm during the
Commission of a Violent Crime
§16-23-0490

At a Court of General Sessions, convened on the 16th day of September, 2016, the Grand Jurors of Laurens County present upon their oath:

That Ronald Duyane Davis did, on or about July 3, 2016, in Laurens County, possess a firearm or visibly displayed what appeared to be a firearm during the commission of a violent offense, to wit: Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Deputy Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

STATE VS.

RONALD DUYANE DAVIS

AKA: _____
 Race: Black Sex: M Age: 42
 DOB: [REDACTED] SS#: [REDACTED]
 Address: Allen Bridge Rd.
 City, State, Zip: Fountain Inn, SC 29644
 DL# [REDACTED] SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Voluntary Manslaughter

In violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 16GS30-1382
 A/W: 2016A3010200117
 Date of Offense: 07/03/2016
 S.C. Code §: 16-03-0010
 CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or

☒ PLEADS

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

O. Warren Mowry, Jr. 4124
 O. Warren Mowry, Jr., Deputy Solicitor SC Bar #

Rome
 Defendant

Chad D. Hobbins 78940
 Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 25 ~~days/months/years~~ or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
 are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections. Credit 633 Days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

☐ Set by SCDPPPS _____

Recipient: PD App Fee \$ 40.5

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 169.95

Clerk of Court/Deputy Clerk: Lyn W. Lancaster
 Court Reporter: Iara Scott

SCCA/217 (07/2016)

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso §61.6 requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge: [Signature]

Judge Bar ID: 2535 Judge Code: 2167

Sentence Date: 3/28/18

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

STATE VS.

RONALD DUYANE DAVIS

AKA:

Race: Black Sex: M Age: 42

DOB: SS#:

Address: Allen Bridge Rd.

City, State, Zip: Fountain Inn, SC 29644

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☒ PLEADS

TO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

 The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

O. Warren Mowry, Jr., Deputy Solicitor 4124 SC Bar #

Defendant

Attorney for Defendant 78940 SC Bar #

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
 are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 16-65-30-1382
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections. Credit 633 days
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

 Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: _____ Obtain GED ☐
☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: Lyn W LancasterCourt Reporter: Lara Scott

SCCA/217 (07/2016)

 INDICTMENT/CASE#: 16GS30-1383
 A/W: 2016A3010200118
 Date of Offense: 07/03/2016
 S.C. Code §: 16-23-0490
 CDR Code #: 0549

SENTENCE SHEET

 Presiding Judge: 2535 Judge Code: 2167
 Sentence Date: 3/28/18