

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Honorable Jocelyn Newman, Circuit Court Judge

App. Case No.: 2025-000560

Terry Catoe, 216913,

Petitioner,

vs.

State of South Carolina,

Respondent.

APPENDIX
VOLUME II OF II

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CLOSING ARGUMENTS

1 You know he didn't pay her. You know he produced blunt
2 force trauma on her face, her neck and her head. You know
3 there was an injury to her mouth that was consistent with
4 someone placing their hand over her mouth to keep her from
5 screaming. You know she screamed for help. You know she
6 struggled, she had a broken nail, she had bruises all over
7 her body. You know he had scratches which are consistent
8 with her fighting back, her defending herself. You know he
9 strangled her. You know he had sex with her, his DNA is
10 all over her. You know there was trauma in her anal and
11 vaginal area. You put all of this together folks, and you
12 know beyond a reasonable doubt that Terry Catoe is guilty
13 of murder. He says he put that couch up to hide his
14 bicycle. Really? Who drags a couch, old rotten, worn out
15 couch out of the yard and puts it up to cover the door of a
16 house to hide his bike? Why don't he just take his bike
17 inside the house with him? Only a desperate man does that,
18 a man that's trying to hide the murder that he just
19 committed. You heard from the defense a bunch of smoke and
20 mirrors, a bunch of distractions. They want to harp on
21 recordings. "Why didn't you record these statements? Why
22 is it not on tape?" Folks, that don't matter. You had I
23 don't know how many officers put their hand on that Bible
24 right there and they swore that that was the truth. If
25 they had those recordings they would find something wrong

CLOSING ARGUMENTS

1 with those, too. They wanted you to know that Ms. Gaymon
2 had cocaine in her system, they asked about it at least
3 four times and they said it in their closing. Folks, I
4 submit to you, Mr. Catoe called the drug dealer that night
5 and he provided that cocaine that was in her system. Mr.
6 Lee said that Ms. Cauthen got up there and when she talked
7 to the police officer she didn't tell them everything the
8 first time. Well, apparently nobody did. Mr. Lee also
9 said, "Well, Mr. Catoe, he showed up on his own and he gave
10 them a statement, it wasn't a true statement but he gave it
11 to them," he told you that on his own. He gave three
12 different statements, each of them different. First time
13 he didn't know anything about that death, nothing but what
14 he saw on the news. By the time he finally got around to
15 putting himself there, "Yeah, but it was an accident. I
16 didn't mean to do it, she wanted rough sex." She got it
17 rough, all right, she got blunt force trauma. And Mr. Lee
18 says, "Well, blunt force trauma, that's not that bad, it
19 just means one thing comes in contact with the nother, it
20 doesn't mean you get beat up." But if it's a fist coming
21 in contact with your face, that means you're getting beat
22 up. Ladies and gentlemen, Mr. Catoe beat Linda Gaymon, he
23 beat her. He had brutal, painful sex with her, he brutally
24 strangled her. And I don't care if it was his forearm
25 pushed up against her throat or if it was both hands

CLOSING ARGUMENTS

1 squeezing around her neck, he did it with force and he did
2 it with more force -- Dr. Ross you told you he did it with
3 more force than what would happen if somebody would hang
4 themselves. When you hang yourself that's your whole body
5 weight on your neck, she had more force than that on her
6 neck. We're dealing with malice, folks. Folks, he does
7 cut off her air until she couldn't struggle anymore, and
8 when she stopped struggling she was dead, and at that time,
9 like he said, the damage was done. You've got three
10 statements by Mr. Catoe. In the first statement on
11 2/29/12 -- and you will have these back in the room -- he
12 says, "I could tell by the way she was dressed she was a
13 prostitute. Well, how was she dressed? She had on jogging
14 pants and Sperrys." That's typical for this area, jogging
15 pants and Sperrys, that don't mean she's a prostitute.
16 First he said it was no more than 15 or 20 minutes and it
17 was at 8:00 at night, and he said when he left she was
18 standing there with a dark colored car with tinted windows.
19 It wasn't until they called him on it and they said, "Look,
20 we know you were there in the early morning hours," and he
21 told them, yeah, he was there at a different time. They
22 asked him about the bike, "Why didn't you just take the
23 bike in the house with you? I just didn't. I just
24 didn't." When they asked him about the scratch on the arm
25 he said, "Well, it was dark, she fell, I caught her and she

CLOSING ARGUMENTS

1 scratched me." And they said, "Okay. Well, demonstrate
2 that for us. It was dark, I can't, I don't know how to
3 demonstrate it." Yeah, he gave statements, he just didn't
4 give true statements. On the third statement he told them,
5 they asked him again about the couch and he finally
6 admitted, "Yeah, I used the couch to block the door. I
7 told the previous officer I was hiding my bike." The one
8 thing that stuck out to me in his final statement, he
9 says -- when they were asking about his sexual position and
10 he said, "Well, she wanted it anal." And then on the next
11 page in the same statement, "Why did she scream? Well, I
12 surprised her when I put it in her ass. She didn't know it
13 was coming." If she didn't know it was coming how did she
14 ask for it? Ladies and gentlemen, again, I thank you for
15 your service. I ask you to go back there in that jury room
16 and take your time, look at those photos, look at those
17 statements, look at all of that stuff, look at it real
18 good, talk it over, and I want you to send a message when
19 you come back out here, I want you to send a message. I
20 want you to send a message to Mr. Catoe and tell him that
21 the damage is done and find him guilty of murder. Thank
22 you.

23 THE COURT: Thank you, Solicitor. Ladies and
24 gentlemen, my charge to you is going to take about 20 or 25
25 minutes, why don't we take just a brief comfort break

JURY CHARGE

1 before then. I want to make sure you're fresh, get
2 something to drink, run to the restroom, because what I
3 tell you is very important concerning the law that you need
4 to apply to the facts as you find them to be. Again, don't
5 talk about the case, we'll get you back in here in about
6 seven minutes. Okay. Thank you.

7 (The jury left the courtroom and a recess was taken.)

8 THE COURT: Bring the jury in.

9 (The jury returned to the courtroom.)

10 THE COURT: Ladies and gentlemen, normally when I
11 can -- I hold court all over the state in other courtrooms
12 which allow me to come on. Some of the older benches are
13 closed off where the Judge can't come down to charge the
14 law. I like to come down and face you the way the trial
15 lawyers do because I think you pay better attention than if
16 I were sitting way back over there talking to you. Okay.
17 So please pay particular attention to you (sic) while I
18 charge you on the law that's applicable to this case. And
19 if you -- I'll look down from time to time and read what I
20 have typed up, I'm going to try not to do that as much as
21 possible because I know it's horrible to stand there and
22 look at a talking head just reading something, but what I
23 tell you is very important and I want to make sure I get it
24 absolutely correct, so I apologize if I look down from time
25 to time. Now, Mr. Foreman, members of the jury, you've

JURY CHARGE

1 heard the testimony, the evidence and the arguments of both
2 the State and the defense, I will now explain to you the
3 law that applies to this case. Now, under the
4 constitutional laws of South Carolina you are the finders
5 of facts in the case. I do not have the right to pass upon
6 the facts or even to express an opinion I may have as to
7 the facts because that's solely for you, the jury, to
8 determine. As jurors then it is your duty to determine the
9 effect, the value, the weight, and the truth of the
10 evidence presented during this trial. Now, as the trial
11 judge it has been my responsibility to preside over the
12 trial of the case and to rule upon the admissibility of
13 various evidence offered during the trial. You are to
14 consider only the testimony which has been presented from
15 that witness stand together with the any exhibits which
16 have been made part of the record, and you'll have those
17 back there for your view. I'm now charging you the law
18 applicable to this case, and as the presiding judge I am
19 the sole judge of the law of the case. It is your duty as
20 jurors to accept as correct and to apply the law as I now
21 state it to you and use that to reach your verdict. Now,
22 the fact that I may instruct you on various subjects in
23 this case must not be taken by you as indicating what my
24 opinion of what the facts should be, or what your verdict
25 should be. And finally, I charge you that you should not

JURY CHARGE

1 be concerned with what you think the law ought to be, but
2 rather what I charge you the law is. Now, the fact that
3 the defendant was arrested, charged and indicted is not
4 evidence in this case and cannot be considered by you as
5 evidence of guilt in this case, nor does it create any
6 presumption or inference of guilt. The indictment, as I
7 told you before, is simply the formal written instrument
8 which contains the charge made against the defendant. An
9 indictment is merely the formal written document by which a
10 case comes to court. You are also the judges, the sole
11 judges of the credibility, that is the believability of the
12 witnesses who have testified, and of the evidence which has
13 been presented during this trial. In passing upon
14 credibility you may take into consideration many things
15 such as the demeanor or manner in which the witness
16 testified, and whether or not a witness had reason to be
17 biased or prejudiced, or whether or not a witness'
18 testimony was contradicted on the one hand, or supported
19 and corroborated on the other hand. All of these things
20 you will consider bearing in mind that you should give the
21 defendant the benefit of any reasonable doubt. It becomes
22 your duty as a juror to analyze and to evaluate the
23 evidence, and determine that evidence which convinces you
24 of its truth. Now, the rules of evidence ordinarily do not
25 permit witnesses to testify to opinions or conclusions,

JURY CHARGE

1 this means that normally when a person testifies they must
2 testify by what they saw, heard or smelled, or something of
3 that nature. However, there is an exception when someone
4 is qualified because of that person's education or
5 experience. They can give their opinion in a certain area
6 if the Court qualifies them that way, that exception exists
7 for witnesses called expert witnesses. I believe there
8 were two expert witnesses on this case. Now, a witness who
9 has become an expert in some art, science, profession or
10 calling may state an opinion to any relevant or material
11 matter in which the witness claims to be an expert. Now,
12 to give opinion testimony does not mean that you have to
13 accept the opinion, it's simply evidence for you to use in
14 any way you see fit and to give it the weight and
15 credibility you believe it deserves. An expert witness'
16 testimony is to be given no greater weight than that of
17 other witnesses simply because the witness is an expert.
18 And further, you are not required to accept an expert's
19 opinion, even though that opinion may not be contradicted.
20 Generally there's two types of evidence offered during a
21 trial, what's called direct evidence and what's called
22 circumstantial evidence. I'll give you the law school
23 definitions and then I will explain them to you. Direct
24 evidence is the testimony of a person who claims to have
25 actual knowledge of a fact, such as an eye witness. It is

JURY CHARGE

1 evidence which immediately establishes the main fact to be
2 proved and does not require deduction. Circumstantial
3 evidence is proof of a chain of facts and circumstances
4 indicating the existence of a fact. It is evidence which
5 immediately establishes collateral facts from which the
6 main fact can be inferred, I'm going to explain this to you
7 in a second. Circumstantial evidence is based on
8 inference, not on personal knowledge or observation. The
9 examples I always use, the lawyers are probably tired of
10 hearing it, but for example if on a winter night, like now,
11 and you look outside and you see brown grass on your lawn,
12 you go to bed, you wake up the next morning and you see
13 snow and footprints on your lawn. Well, first you can
14 infer that it snowed. Secondly, you can infer that
15 somebody was walking on your lawn. Now see, these are
16 things that you can infer even though you didn't see it
17 snow and even though you didn't see somebody on your lawn.
18 Crimes may be proven by circumstantial evidence. The law
19 makes no distinction between the weight or value to be
20 given to either direct or circumstantial evidence, nor is
21 there a greater degree of certainty required of
22 circumstantial -- a greater degree of certainty required of
23 circumstantial evidence than of direct evidence. However,
24 to the extent the State relies on circumstantial evidence,
25 all of the circumstances must be consistent with each

JURY CHARGE

1 other, and when taken together point conclusively to the
2 guilt of the accused beyond a reasonable doubt. If these
3 circumstances merely portray the defendant's behavior as
4 suspicious, the proof has failed. The State has the burden
5 of proving the defendant guilty beyond a reasonable doubt.
6 This burden rests with the State regardless of whether the
7 State relies on direct evidence, circumstantial evidence or
8 some combination of the two. You should weigh all of the
9 evidence in the case, and after weighing all of the
10 evidence if you're not convinced of the guilt of the
11 defendant beyond a reasonable doubt you must find the
12 defendant not guilty. Now, the defendant has pled not
13 guilty to the charge of the indictment, and that plea, of
14 course, places the burden on the State to prove him guilty
15 as I just stated. A person charged with committing a
16 criminal offense is never required to prove himself
17 innocent. I charge you it's an important rule of law that
18 the defendant in a criminal trial, no matter what the
19 seriousness of the charge may be, will always be presumed
20 innocent until proven guilty of the crime for which the
21 indictment was issued, unless guilt has been proven by
22 evidence satisfying you, the jury, of that guilty beyond a
23 reasonable doubt. I'm fixin' to define reasonable doubt.
24 Now, ladies and gentlemen, this presumption of innocence
25 does not end when you begin your deliberations, but it

JURY CHARGE

1 accompanies the defendant throughout the trial until you
2 have reached a verdict. Imagine if you will, similar to
3 the robe I'm wearing, this presumption of innocence is like
4 a robe of righteousness placed about the shoulders of the
5 defendant, which remains with him until it has been
6 stripped from him by evidence satisfying you of the
7 defendant's guilt beyond a reasonable doubt. Now, this
8 presumption of innocence is not just a mere legal theory,
9 it's not just a legal phrase, it is a substantial right to
10 which every defendant is entitled unless you, the jury, are
11 satisfied of the defendant's guilt beyond a reasonable
12 doubt. So what is a reasonable doubt in the law? A
13 reasonable doubt is a doubt which makes an honest, sincere
14 conscious juror in search of the truth to hesitate to act.
15 Proof beyond a reasonable doubt must therefore be proof of
16 such a convincing character that a reasonable person would
17 not hesitate to rely and act upon it in the most important
18 of his or her own affairs. Now, proof beyond a reasonable
19 doubt can also be described as proof that leaves you firmly
20 convinced of the defendant's guilt. Now, there are very
21 few things we know in this world with absolute certainty,
22 and in criminal cases the law does not require proof that
23 overcomes every possible doubt. If, based upon your
24 consideration of the evidence, you are firmly convinced
25 that the defendant is guilty, then you must find him

JURY CHARGE

1 guilty. If on the other hand you think there's a real
2 possibility that he is not guilty, you must then give him
3 the benefit of the doubt and find him not guilty. Now,
4 ladies and gentlemen, I instruct you and emphasize that the
5 fact that the defendant did not testify is not a factor to
6 be considered by you in any way in your deliberations and
7 in your consideration on the question of guilt or the
8 innocence of the defendant. It must not be considered by
9 you in any manner whatsoever. A defendant has the
10 constitutional right to remain silent, and the assertion of
11 this right must not be considered by you in your
12 deliberations. So I repeat, under your oath you are to
13 draw no conclusion whatsoever from the fact that the
14 defendant in this case did not testify. In fact, this
15 should not even be discussed in the jury room. The burden
16 of proof, as I have stated to you, is always upon the
17 State. The defendant is not required to prove innocence.
18 The burden of proof remains on the State to prove guilt
19 beyond a reasonable doubt. Now, in order to establish
20 criminal liability, criminal intent is required. For
21 example, the mental state required to be proven by the
22 State for a particular crime might be purpose, intent,
23 knowledge, recklessness or criminal negligence. Criminal
24 intent must be proven by the State, of course, beyond a
25 reasonable doubt. Criminal intent is always a matter that

JURY CHARGE

1 must be determined by the jury from the circumstances.
2 surrounding the situation. There's no way to prove intent
3 to a mathematical certainty. There's no way medical
4 science can dissect a person's brain and determine what
5 that person had in mind. So the law says you, the jury,
6 have to -- criminal intent may be inferred from the
7 circumstances shown to have existed as you find them to be,
8 that's how you make a determination of whether or not the
9 element requiring intent was present. It's not necessary
10 to establish intent by direct and positive evidence, but
11 intent may be established by inference in the same way as
12 any other fact by taking into consideration the acts of the
13 parties and all of the facts and circumstances of the case.
14 Criminal intent is a mental state, a conscious wrongdoing.
15 It's up to you ladies and gentlemen to determine what the
16 defendant intended to do based upon the circumstances shown
17 to have existed. Criminal intent can arise from actions or
18 a failure to act. It can arise from negligence,
19 recklessness or an indifference to duty, or to consequences
20 that is considered by the law to be the equivalent of
21 criminal intent. Now, statements alleged to have been made
22 by the defendant have been admitted into evidence in this
23 case. While the Court -- that's me -- has determined that
24 the statements are admissible, you, the jury, must
25 determine whether the statements were made by the defendant

JURY CHARGE

1 voluntarily and of his own free will. This means that the
2 statements were not caused by pressure, force, fear,
3 threats, coercion or intimidation, or by hope or a promise
4 of leniency or a reward of any kind. In determining
5 whether the statements were voluntary you should consider
6 both the characteristics of the defendant and the details
7 of the questioning. Some of the factors that you must
8 consider are the age of the defendant, the defendant's
9 education or lack thereof, the defendant's mental state or
10 his capacity, the defendant's intelligence, the defendant's
11 background and his environment, the place and length of the
12 detention, the nature of the questioning and advice or lack
13 thereof to the defendant of his constitutional rights
14 including but not limited to the right to remain silent,
15 that any statement could be used against him in a court of
16 law, the right to have a lawyer present, that if he could
17 not afford a lawyer, a lawyer would be appointed to
18 represent him without any cost, and that he could stop
19 making a statement at anytime. You must carefully consider
20 all of the surrounding circumstances before you give any
21 weight to an alleged statement. Now, the State has the
22 burden of proving to you beyond a reasonable doubt that the
23 alleged statements were voluntary. If you determine that
24 they were, you may give the statements any further
25 consideration that you deem proper. You must decide what

JURY CHARGE

1 weight, if any, should be given to these alleged
2 statements. If you determine the alleged statements were
3 not free and voluntarily you should not consider them at
4 all. Now, there's been evidence presented that witnesses
5 have made prior statements which are not consistent with
6 their present testimony. You may use this evidence to
7 decide whether to believe the witness. You may also use
8 this evidence of the earlier contradictory statements to
9 determine the truth of those statements. It's up to you to
10 decide whether to believe the earlier statement or the
11 testimony given at trial. If a witness has shown to have
12 knowingly testified untruthfully concerning any material
13 matter, you may consider this in determining whether or not
14 to trust the witness' testimony as to other matters. You
15 can reject all the testimony of the witness or give all or
16 part of the testimony the weight that you think it
17 deserves. I'm almost finished. I'm going to define the
18 various offenses and then we will wrap it up. Thank you
19 for your attention up to this point. The defendant is
20 charged with murder. The State must prove beyond a
21 reasonable doubt that the defendant killed another person
22 with malice aforethought. Malice is hatred, ill will or
23 hostility towards another person. It is the intentional
24 doing of a wrongful act without just cause or excuse, and
25 with an intent to inflict an injury or under circumstances

JURY CHARGE

1 that the law will infer an evil intent. Malice
2 aforethought does not require that malice exists for any
3 particular time before the act is committed, but malice
4 must exist in the mind of the defendant just before and at
5 the time the act was committed. Therefore, there must be a
6 combination of the previous evil intent and the act. Now,
7 malice aforethought may be expressed or inferred. These
8 terms expressed and inferred do not mean different types of
9 malice, but merely the manner in which malice may be shown
10 to have existed, that's either by direct evidence or by
11 inference from the facts and circumstances which have been
12 proved to you. Expressed malice is shown when a person
13 speaks words which express hatred or ill will for another,
14 or when the person, for example, prepared beforehand to do
15 the act which was later accomplished, for example, lying in
16 wait for a person or any other acts of preparation going to
17 show that the deed was within the defendant's mind. That's
18 an example of expressed malice. Now, malice can also be
19 inferred from conduct showing a total disregard for human
20 life. Inferred malice may also arise when the deed is done
21 with a deadly weapon. Now, a deadly weapon is any article,
22 instrument or substance which is likely to cause death or
23 great bodily harm. A hand or a fist is not normally
24 considered a deadly weapon, however under some
25 circumstances depending on the manner and means of its use

JURY CHARGE

1 the wounds inflicted and other relevant facts, a hand or
2 fist may be considered a deadly weapon. It's for you to
3 decide in this case beyond a reasonable doubt whether or
4 not a hand or fist is a deadly weapon. Voluntary
5 manslaughter. If you find that the State has failed to
6 prove beyond a reasonable doubt that the defendant
7 committed murder, you may then consider whether the State
8 has proved beyond a reasonable doubt that the defendant
9 committed the lesser offense of voluntary manslaughter. To
10 prove voluntary manslaughter the State must prove beyond a
11 reasonable doubt that the defendant took the life of
12 another in the sudden heat of passion based on legal
13 provocation. Both heat of passion and sufficient legal
14 provocation must be present at the time of the killing to
15 constitute voluntary manslaughter. Sudden heat of passion
16 may for a time affect a person's self-control and
17 temporarily disturb a person's reasoning. The sudden heat
18 of passion must be the type that would make an ordinary
19 person unable to coolly reflect on his actions and would
20 produce an uncontrollable impulse to do violence.
21 Sufficient legal provocation must be the type that would
22 make a person of ordinary reason and caution to become
23 enraged and lose control temporarily. The provocation
24 needed for voluntary manslaughter must come from some act
25 of or related to the victim. Now, words alone, however

JURY CHARGE

1 vulgar or insulting, are not enough to meet legal
2 provocation. Where death is caused by the use of a deadly
3 weapon the words must be accompanied by some overt
4 threatening act, which could have produced the heat of
5 passion. The exercise of a legal right, no matter how
6 offensive it is to another, is never sufficient legal
7 provocation for voluntary manslaughter. If the heat of
8 passion has cooled or if there was enough time between the
9 provocation, if any, and the killing for the passing of
10 another reasonable person to cool, the killing would not be
11 voluntary manslaughter. In deciding whether a reasonable
12 person would have had enough time to cool off, you need to
13 consider all of the circumstances surrounding the killing.
14 You may consider the nature of the provocation, if any, the
15 defendant's mental and physical state, and the
16 circumstances and relationships between the parties.
17 Involuntary manslaughter. If you find that the State has
18 failed to prove beyond a reasonable doubt that the
19 defendant committed voluntary manslaughter you may consider
20 whether the State has proved beyond a reasonable doubt that
21 the defendant committed the lesser offense of involuntary
22 manslaughter. To prove involuntary manslaughter the State
23 must prove beyond a reasonable doubt that the defendant
24 unintentionally killed the victim without malice but while
25 engaged in an unlawful activity not naturally tending to

JURY CHARGE

1 cause death or great bodily harm, or that the defendant
2 unintentionally killed the victim without malice while
3 engaged in a lawful activity with reckless disregard for
4 the safety of others. Unintentional means that the
5 defendant did not intend for anyone to be killed or
6 seriously injured. Reckless disregard for the safety of
7 others is more than mere negligence or carelessness. Mere
8 negligence or carelessness is the failure to use the care
9 that a person of ordinary reason would use under the same
10 or similar circumstances. Recklessness, however, is the
11 conscious failure to use ordinary care. Reckless disregard
12 for the safety of others means that you are not interested
13 in the consequences of your acts or the rights and safety
14 of others. If a person who knows or should know that
15 ordinary care requires certain precautions be taken for the
16 safety of others but that person fails to use those
17 precautions without concern, that person's actions are
18 considered reckless. The State must also prove beyond a
19 reasonable doubt that the defendant's act was the proximate
20 cause of death. Proximate cause is the direct cause, it is
21 the immediate cause, it is the official cause. It is that
22 cause without which the death of the victim would not have
23 resulted. There must be a chain of causation from the time
24 of injury inflicted by the defendant until the time of the
25 defendant's death -- excuse me, the victim's death.

JURY CHARGE

1 Proximate cause does not necessarily mean that it occurred
2 immediately prior to death. Now, let me say something
3 about your deliberations. The word deliberation is defined
4 as a careful consideration weighing up with a view to a
5 decision. The genius of our jury system is that it allows
6 12 good people, both men and woman, from differing
7 backgrounds, life experiences and perspectives to consider
8 the evidence, talk about it and ultimately reach a verdict.
9 The task of a juror is called deliberations for a reason,
10 because you, the jury, are to consider the evidence in this
11 case carefully and deliberately, you are to discuss it in a
12 calm, thorough and courteous manner. Now remember, you are
13 not partisans or advocates for either side favoring one
14 side or the other, you are judges of the facts. Your sole
15 duty, as I have said many times, is to sort through the
16 information you received in this trial and find the truth
17 from the evidence presented in this courtroom. The supreme
18 law of our land, the United States Constitution, affords
19 everyone their day in court and a fair trial. So this case
20 is very important to both sides, the State and the
21 defendant, because it is their day. I charge you to listen
22 to the views of your fellow jurors, carefully consider
23 their viewpoints and courteously discuss the evidence.
24 Remember, you're doing something deliberately, you're not
25 in a big hurry and you are tasked with a duty of utmost

JURY CHARGE

1 importance. Now, in conclusion, ladies and gentlemen,
2 you've been selected by both the State and the defendant to
3 be fair and impartial jurors. It is your duty then in your
4 deliberations to determine the truth of this case, giving
5 the defendant the benefit of every reasonable doubt on the
6 charge, and from the facts which you determine to be true
7 you take and apply the law which I have now just given you
8 and thus arrive at a verdict which speaks the truth in this
9 case. I've told you the standards you have to apply to the
10 charge in the indictment, you've heard the evidence and now
11 you've heard the law. Whatever your verdict as to the
12 indictment, guilty or not guilty, Mr. Foreman, you will
13 indicate it by marking the jury's decision in the
14 appropriate blank on the verdict form, you will then sign
15 and date the verdict form. There's three choices -- excuse
16 me, four choices. We, the jury, unanimously find the
17 defendant as to the offense of murder, not guilty or
18 guilty, or guilty of the lesser offense of voluntary
19 manslaughter, or guilty of the lesser offense of
20 involuntary manslaughter, then you will sign it and date
21 it. Now Mr. Foreman, although you're the only one
22 authorized to write on the verdict form, you cannot write
23 on the verdict form until y'all have reached a unanimous
24 decision, that means all 12 of you have to agree to the
25 verdict. Now, I'm going to send you to your jury room, but

JURY CHARGE

1 again, don't discuss the case until you've received all of
2 the exhibits as well as the verdict form, once you receive
3 these things that is your signal to finally begin
4 deliberating on this case. And once you begin
5 deliberations you will deliberate until you've reached a
6 verdict, at which time you will knock on the door, advise
7 the bailiff and we'll bring you out to receive your
8 verdict. Thank you very much, ladies and gentlemen. Mr.
9 Foreman, y'all may retreat to your jury room, everybody
10 except for my alternates, if y'all will stay here with me.

11 (The jury left the courtroom.)

12 THE COURT: All right. Any exceptions to the charge?

13 MS. COLLINS: No, Your Honor. Thank you.

14 MR. LEE: No, Your Honor.

15 (The alternates were dismissed and the jury began
16 Deliberations.)

17 (The jury returned with a question.)

18 THE COURT: All right. All members of the jury are
19 present. Mr. Foreman and members of the jury, I have
20 received your note, and I'll read it into the record.
21 "Were there any lab tests conducted on Terry Catoe? If
22 yes, when was it done and can it be given to us? Is there
23 any previous criminal history of Terry Catoe?" Now, Mr.
24 Foreman and ladies and gentlemen of the jury, you have all
25 of the evidence back there with you in your jury room and

JURY VERDICT

1 your verdict must be based solely on the evidence that's
2 been presented, both the written evidence that you have in
3 the courtroom as well as the testimonial evidence which was
4 why I told you to pay attention. And like I told you many
5 times, you must not speculate about anything else, your
6 verdict must be based solely on the evidence presented in
7 this courtroom. Okay. So go back to your deliberations.
8 Thank you.

9 (The jury left the courtroom and resumed
10 deliberations.)

11 (The jury returned to the courtroom with a verdict.)

12 THE COURT: All right. All members of the jury are
13 present. Mr. Foreman, it's my understanding that the jury
14 has reached a verdict?

15 THE JUROR: Yes.

16 THE COURT: Is the verdict unanimous?

17 THE JUROR: Yes.

18 THE COURT: And did you indicate that on -- and did
19 you sign the verdict form and initial the appropriate form?

20 THE JUROR: Yes.

21 THE COURT: If you will hand that now to the clerk:

22 Mr. Clerk, you may publish the verdict.

23 THE CLERK: Yes, sir. "State of South Carolina versus
24 Terry Catoe, indictment number 2012-GS-29-612, we, the jury
25 unanimously find the defendant as to the offense of murder,

JURY VERDICT

1 guilty. I will certify the decision was a unanimous
2 decision of the jury, Himanshu Patel, dated January 6th of
3 2016." Ladies and gentlemen of the jury, if this be your
4 verdict so say you all by the raising of your right hands.
5 Let the record reflect all jurors have raised their right
6 hands.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, thank you so much for your service to the State of
9 South Carolina and to Lancaster County. Your service as
10 jurors has not only ended in this case but it has also
11 ended for this week. Again, thank you. You are more than
12 welcome to hang around or stick around for sentencing which
13 will be done momentarily here in this courtroom. Again,
14 thank you so much for your service. If you will please
15 retire to the jury room I believe the bailiffs have some
16 matters they need to talk to you about and then we'll go
17 from there.

18 (The jury left the courtroom.)

19 THE COURT: Any motions you would like to make at this
20 time?

21 MR. LEE: Your Honor, I would just make a motion for a
22 new trial and JNOV based on any actions that were entered
23 into in Court during the trial.

24 THE COURT: All right. That motion is denied. Y'all
25 prepare a sentencing sheet, we'll commence with sentencing

SENTENCING HEARING

1 here momentarily. We are in recess until y'all have that
2 done.

3 MR. NEWMAN: Thank you, Your Honor. May I have just a
4 moment to speak with the family?

5 THE COURT: Yes, sir.

6 (Break in proceedings.)

7 THE COURT: All right. The parties can approach.

8 MS. COLLINS: Your Honor, as to the defendant's prior
9 record he has the following criminal convictions: In
10 August of '93 he was convicted of possession of a sawed off
11 shotgun and possession of more than one gram of crack
12 cocaine, and received a suspended youthful offender
13 sentence. In December of '93 he was convicted of
14 disturbing the peace, in May of '95 he was convicted of
15 possession of less than one ounce of marijuana, that was a
16 second offense according to his record. For each of those,
17 the disturbing the peace and possession of marijuana, his
18 YOA was revoked for a time. In April of '99 he's got an
19 open container. February of 2005 driving under suspension.
20 Criminal domestic violence first offense in March of 2007.
21 Shoplifting first offense in July of 2007. Shoplifting
22 second offense in July of 2008. Possession of stolen goods
23 second offense January of 2008. Possession of less than
24 one gram of marijuana second offense, April of 2008.
25 Possession of less than one gram of crack cocaine base,

SENTENCING HEARING

1 April of 2008. He had a felony -- as you heard earlier a
2 felony trying to give contraband to a county prisoner in
3 April of 2008. March 2011, possession of less than one
4 ounce of marijuana, they allowed him to plead to a first
5 offense there. And he did enter a guilty plea to the
6 charge of solicitation of prostitution in March of 2012
7 from the companion charge in this case. He is entitled to
8 credit for jail time spent, he was in jail from the date of
9 his arrest on 2/29 of 2012 to 12/14 of 2012, and counting
10 those days -- he bonded out at that time, and counting
11 those days and the two days he served overnight here during
12 this trial would come to a total of 291 days jail time.

13 THE COURT: Thank you. Solicitor Newman?

14 MR. NEWMAN: Your Honor, the family has selected one
15 spokesperson that would like to speak at the appropriate
16 time, Mr. Jermaine Massey, he's the nephew of Ms. Gaymon.
17 Your Honor, the State's position as to sentencing, Your
18 Honor, I believe this is a case that warrants life in
19 prison no less, this is a very brutal crime, a very brutal
20 murder, a very senseless murder. And also if things went
21 the way he said they went he had every opportunity to ask
22 for help which he did not do. I believe the jury agreed it
23 was a very brutal murder, therefore we ask for life without
24 parole. Do you want to hear from the family?

25 THE COURT: I will be glad to hear from Mr. Massey.

SENTENCING HEARING

1 SPEAKER: I'm Jermaine Massey.

2 THE COURT: Yes, sir.

3 SPEAKER: I would like to just say like it's very
4 detrimental to our family, the situation. I knew my aunt's
5 history, she was not perfect, everybody have their
6 differences, but it was a very senseless act in the way she
7 was brutally murdered. But as far as my heart, I mean, I
8 forgive him, my family has forgiven him, but I'm glad that
9 like justice has been served. I appreciate the courts for
10 doing their job. I appreciate the DA for helping us out in
11 this situation. I know it's hard on his family but it's
12 much harder on ours because we have to go visit our aunt at
13 the grave. So I'm just glad it's over with and I just
14 thank y'all for what y'all have done. That's it.

15 THE COURT: Thank you, sir. Anything further from the
16 State?

17 MR. NEWMAN: Nothing further, Your Honor.

18 THE COURT: Mr. Lee?

19 MR. LEE: Thank you, Your Honor. May it please the
20 Court? Your Honor, Mr. Catoe is 43 years of age, he's
21 lived here in Lancaster except for when he bonded out. He
22 managed to get a job in Rock Hill and he was working up
23 there and living up there. He was laid off of that
24 particular job but he didn't just sit around, he went out
25 and got another job, and it was part-time initially and

SENTENCING HEARING

1 just recently been moved up to a full-time position, was
2 working at a McDonald's in Rock Hill. He has a high school
3 education. He has a total from what he tells me, there are
4 five children that he has. He was living in Rock Hill, had
5 been living in Rock Hill with his fiancée. She's here and
6 he has a sister who is here. They're, I think, pretty
7 upset, I'm not sure if they want to address the Court.
8 But, Your Honor, I will say that in talking with Mr.
9 Catoe -- I got appointed some time shortly after this, I
10 believe it looks like from our records the first part of
11 March of 2012, his story has been the same to me, he's
12 never wavered in what his story was as to what happened.
13 And he's told me a number of times that he was sorry this
14 happened and he was remorseful in what had happened on
15 this, he never intended it to happen that way, and we would
16 just ask the Court to take that into consideration. We
17 would ask the Court to have mercy on him. When you look at
18 his age, Your Honor, any sentence is a life sentence. We
19 would just ask the Court to maybe take into consideration
20 of giving him less than that life sentence. Like I said,
21 he's 43 years of age, as the Court is aware, any sentence
22 he does is going to be day for day and he won't get any
23 credit, although he will get credit for the 291 days. But
24 we would ask the Court to be lenient with him on this and
25 to -- I will say this, Your Honor, there are several people

SENTENCING HEARING

1 that I have run in to who know him and everybody agrees, "I
2 don't think Terry can do that, that just doesn't seem like
3 the Terry I know." And I've found him -- he's always --
4 anytime I needed to see him he responded to me, even when
5 we had transportation problems we worked it out and he
6 showed up to where I met him in Rock Hill. I have not had
7 problems from him and we would just ask the Court to be as
8 lenient as possible with him and have mercy on him.

9 THE COURT: Thank you, Mr. Lee. Mr. Catoe, I'll
10 extend to you an opportunity to speak to me. Do you wish
11 to tell me anything prior to imposing sentence? Yes,
12 ma'am, I will be glad to hear from you before I hear from
13 Mr. Catoe.

14 MR. LEE: Your Honor, this is his sister.

15 SPEAKER: I am Terry's sister. My name is Tamara
16 Watson, I'm very emotional right now. First I want to say
17 sorry to the family, I hate it happened. And I do know my
18 brother and I know that he wouldn't do such a thing, he was
19 at the wrong place at the wrong time. And I know that
20 drugs was a factor, it had to be. I just want to say I'm
21 sorry to y'all. It is so painful. I just ask you for
22 mercy, Your Honor. That's all.

23 THE COURT: Thank you ma'am. Mr. Catoe, I will be
24 glad to hear from you, sir.

25 THE DEFENDANT: I wanted to apologize to you and the

SENTENCING HEARING

1 victim's family, I'm just sorry.

2 THE COURT: Yes, sir. You know, Mr. Catoe, sitting
3 through this trial, I've sat through many trials in my
4 years on the bench, and the facts I heard, the evidence I
5 heard shocks the conscious. I have to respect the jury's
6 decision. I think there was more than enough evidence for
7 the jury to convict you of the most serious charge of
8 murder and I have to respect that verdict. In considering,
9 you know, the evidence which I've heard sitting through
10 this trial over the past three days, the evidence that has
11 shocked my conscience, I think the only appropriate
12 sentence would be life in prison. That is the sentence of
13 the Court. Good luck to you, sir.

14 (End of trial proceedings.)

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Lancaster County Sheriff's Office
Barry S. Faile, Sheriff

VOLUNTARY STATEMENT

LAST NAME Cauthen	FIRST NAME Sherry	MIDDLE NAME Renee	AGE 40	D.O.B. 71
NICKNAME/AKA	M. ☐ F. ☒ SSN	STREET ADDRESS		
CITY	STATE SC	ZIP	MAILING ADDRESS (IF DIFFERENT)	
HOME TELEPHONE	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION N/A	
EMPLOYER		EMPLOYER ADDRESS		
DL NUMBER/STATE	DATE AND TIME OF INTERVIEW 02/24/12 at 1455hrs		LOCATION OF INTERVIEW LCSO DTF Office	
INTERVIEWER Inv. F. Thompson	DEPT. Inv.	INTERVIEWER	CRN 12-06837	

I, Sherry R. Cauthen, understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purpose(s) it may serve, I ☒ can ☐ cannot read and write and have completed the 11 grade in school.

Q: Inv. F. Thompson

A: Sherry R. Cauthen

Q: How did you learn of the death of Linda Massey?

A: I just heard from Buck Sanders. I called him and he told me that somebody had gotten killed in the houses back behind Lou's store. That is when I told him that I saw Linda and a dude on a bicycle go back there this morning. It was between 1 and 2am. I left Jimmy's house to walk and the dude on the bike stopped me and asked me if I would be with him and I told him that I didn't do that anymore. He wanted me to go with him to one of those houses back behind Lou's store and I told him no.

Q: Where were you when he stopped you?

A: I was between Todd Street and the two story apartment on Brooklyn Ave. I was walking toward Crenco and he was riding toward me like he was coming from that direction.

Q: Do you know the name of the person that stopped you?

A: Not really, but I said "Hey William" and he said "Hey Sherry."

Q: Why did you call him William?

A: Because I knew his face. He looked like William Catoe to me.

Q: How do you know William Catoe?

A: I used to date him years ago.

Sherry R. Cauthen

Voluntary Statement Form Rev 01/2010

Lancaster County Sheriff's Office
Barry S. Faile, Sheriff

VOLUNTARY STATEMENT

Q: How long has it been since you have seen him?

A: About 3-4 years

Q: Did you and William discuss anything else in that conversation?

A: No

Q: How close to him did you get?

A: Within arm's length to him

Q: What did you do after that conversation?

A: I kept walking toward Lousia Street and that is when I turned around and started walking back toward the house. William was on the bike riding backward and forth. If he saw a girl he would try to stop them. He tried to stop Gretta, but she kept going. She lives on 13th Street and is dating Freddie Reid. After that is when he stopped Linda Massey and they went back there. She was walking beside him while he was riding his bike.

Q: Where did he meet with her at initially?

A: She was walking down Brooklyn. They met in front of the woman's house that works for the Department of Corrections.

Q: Did you see them go into a particular house?

A: No

Q: Did you see Linda anymore after that?

A: No. I heard her holla shortly after she walked in there. They didn't hardly have time to do anything.

Q: What did you hear her say?

A: I heard her say "Stop." I just stood there on the side walk and tried to figure out if I needed to go back there or not. I was scared

Q: How certain are you that you were approached by William Catoe?

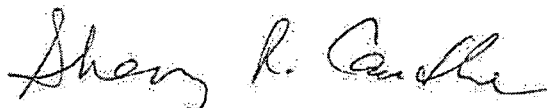
A: I know him and I know his face when I see it.

Q: How certain are you that the female that you saw him with is Linda?

A: I know her too. I saw them walking together. I had talked to her right before she met with him. She told me that she was tired and I told her that she needed to go home

Q: Do you see William Catoe in the Brooklyn area much?

A: No



Voluntary Statement Form Rev.01/2010

Lancaster County Sheriff's Office
Barry S. Faile, Sheriff

VOLUNTARY STATEMENT

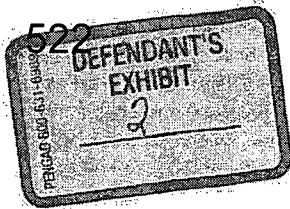
Q: Have you been completely honest in this statement?

A: Yeah

Q: Could you identify him from a photo line-up as being the person that asked you to be with him in the early morning hours of 02/24/12?

A: Yeah

Sherry R. Carlson



Lancaster County Sheriff's Office
Barry S. Faile, Sheriff

VOLUNTARY STATEMENT

LAST NAME Cauthen	FIRST NAME Sherry	MIDDLE NAME	AGE 40	DOB 1971
NICKNAME/AKA	M ☐ F ☒	SSN	STREET ADDRESS South Ave	
CITY Lancaster	STATE SC	ZIP	MAILING ADDRESS (IF DIFFERENT)	
HOME TELEPHONE	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION	
EMPLOYER		EMPLOYER ADDRESS		
DL NUMBER/STATE /	DATE AND TIME OF INTERVIEW 2/28/12 at 1:32pm		LOCATION OF INTERVIEW LCSO	
INTERVIEWER Capt Bailey/Inv Bennett		DEPT LCSO	INTERVIEWER Capt Bailey	CAN

I, Sherry Cauthen, understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purpose(s) it may serve, I ☒ can ☐ cannot read and write and have completed the 11th grade grade in school.

Q: Capt. Craig Bailey & Inv. Danny Bennett
A: Sherry Cauthen

Q: Sherry I understand you may have information about Linda Massey?
A: Yes, That Friday morning I was walking on Brooklyn Ave it was about 1:30am I think I know it was between 1:30 and 3:00am it's hard to narrow it down exactly.

Q: Where were you walking from?
A: I was walking from home on South Ave South Ave and I was going up to Crenco to get a soda and a Nab. I saw Linda Massey walking up 15th street to Brooklyn carrying a black pocket book. She had a wig on and dark clothing. The wig was about neck length with blue jeans and a dark or black coat. Linda turned on Brooklyn walking behind and 15 feet or so behind me. Linda looked like she was high or intoxicated to me.

Q: Did you talk with at all?
A: She called me by name and said she was tired. So I told her to take her black ass home. We laughed and she said she was trying to get back to Kershaw. We continued walking but I was ahead of her. When we got to the curve in the road at the two story apartment's and Lou's store. William Catoe came up on a bicycle it was a 10 speed bike I don't remember the color. He was coming from Main Street toward us. William stopped me first and asked if I would go into one of the empty house with him. I told him no I was trying to quit and clean my life up.

Q: What was he wearing?

Voluntary Statement Form Rev 01/2010

Barry S. Faile, Sheriff

VOLUNTARY STATEMENT

A: I couldn't tell you I don't know

Q: What did he say after you told him no?

A: Nothing he just kept riding

Q: Where is Linda now?

A: She was behind me still walking toward Crenco and he was riding the bike beside her toward Crenco. I was at Danny Gibson's store and looked back they were headed into the abandoned house's. They cut by the big tree in front of the apartments. Myself and Linda were the only ones out. I saw Gretta earlier but we were the only ones around. I know Gretta didn't see anything she was already on Louisa Street when all this took place.

Q: When I saw them walk past the old tree I just stood there a minute looking at them. They disappeared from my sight. It wasn't 5 minutes and she screamed "No don't do this and she screamed out for Bop Hall" he lives right behind there and I guess she was screaming for help. I waited for her come out so I waited between Lou's and Danny Gibson's old store but they never came out. I thought about it and I was scared so I just kept walking. I kept going back toward 15th street and on to 11th street. I stayed home the rest of the night and watched TV the rest of the night. About 11:00am I went to the grocery store when I cut through Brooklyn I saw the Sheriffs Dept there. I called Buck Sanders and he told me what happened. I told Buck what I saw and he said call Inv. Fred Thompson I didn't want to get involved and Buck told me if I didn't he was going to call so I did.

Q: How do you know William Catoe?

A: I use to date him a long time ago

Q: How long ago?

A: It's been years ago about 5 or 6 maybe longer

Q: How often do you see William Catoe out there?

A: It shocked me to see him out there he is Bi- sexual and he just don't be around Brooklyn with the girls. He lives on South Jackson

Q: When was the last time you saw him before that night?

A: Years ago since I saw him.

Barry S. Faile



283-4041

Lancaster County Sheriff's Office

VOLUNTARY STATEMENT (NOT UNDER ARREST)

I, Ricky Edward Sistare, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Inv. Danny Bennett. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 51 years of age, and I live at Th st.

Q: Inv. Danny Bennett

A: Ricky Sistare

Q: Mr. Sistare, you have come to the Sheriff's Office this morning at the request of Inv. Bennett in reference to a body that you found at a house located near Brooklyn ave. Can you give me any information that you have in this incident?

A-I live on _____ street and I walk through that area when going to the store. I walked to the Crenco this morning and bought two beers. It was about 10:30, I don't know the exact time. I walked by the house where the woman was found and she and a black man were going into the house. He was walking behind the woman. He was about 5/8 to 5/9. He had a bald head with a small goatee or small amount of hair on his chin. He appeared to be about 40 yoa and a medium build, not skinny. He had medium to dark skin. He was wearing blue jeans, a red Tshirt, I walked by them as they were going into the house. Knowing the area, I did not think anything of it. I walked on to the scrap yard (Andy's) and then on to Crenco's. I got two 24 oz beers and walked back toward home. I did not stop anywhere on the way back until I got to the house where the body was found and walked past it. At that time, I met (Mannor) Or Man in front of the house and he was walking towards the store, Lou's place. I ask Mannor why the couch was standing in front of the door. I walked in and saw the woman laying on her side. She did not have any clothes on. I did not touch her but as Mannor was walking back from the store, I told Mannor a woman was in the house. I walked away and to the house where I drank the beer. He went in the house two times. The first time he went in, when he came out, I ask him who it was and he said it looked like Tina. I don't know Tina. He went on to Lou's place and it was closed. Then he came back by and he had a lady with him. He went in the house the second time. The lady did not stop. When he came out, he said he felt her feet and she was cold. This is about the time the police showed up. I was at the apartment with the porch drinking the beer. At that time, I saw Mannor point at me and the officer ask for my name. I walked up the officer (Thompson) and ask what was going on. Thompson said that you needed to talk with me. I don't know these two people or why they were in this area.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at LCDC, this 24th day of February, 2012.

Witness: X Ricky Sistare

Signature of Person Giving Voluntary Statement

Witness: _____

Lancaster County Sheriff's Office

Barry S. Faile, Sheriff

525

VOLUNTARY STATEMENT

LAST NAME Catoe	FIRST NAME Terry	MIDDLE NAME NMN	AGE 39	D.O.B. 72
NICKNAME/AKA	M. ☒ F. ☐	SSN	STREET ADDRESS	
CITY Lancaster	STATE SC	ZIP	MAILING ADDRESS (IF DIFFERENT)	
HOME TELEPHONE	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION unemployed	
EMPLOYER		EMPLOYER ADDRESS		
DL NUMBER/STATE /	DATE AND TIME OF INTERVIEW 02/29/12 at 02:33		LOCATION OF INTERVIEW LCSO	
INTERVIEWER Inv. F. Thompson	DEPT. LCSO	INTERVIEWER Inv. D. Bennett	CHN 12	

I, Terry Catoe, understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purpose(s) it may serve, I ☒ can ☐ cannot read and write and have completed the 12 grade in school.

Q: Inv. F. Thompson & Crump

A: Terry Catoe

Q: What do you know about the death of Linda Massey Gaymon?

A: All I know is what I read in the paper

Q: Had you had any contact with her before her death?

A: Before Thursday evening, I had never seen her before. When I saw her she was walking up past Mrs. Jackie's walking up toward Main Street and I came up behind her. When I first saw her I thought that she was an undercover police until I seen the way that she was dressed. She was wearing black pants, and a blue or black shirt and a pocketbook with her. Just by the way that she was dressed; I thought that she was a prostitute so I propositioned her.

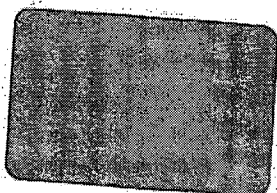
Q: What did you offer?

A: I told her \$10 at first and she wouldn't take that so I told her that I only had \$15 and she took that. I got off the bike and walked with her and we went to find somewhere to go.

Q: Did you find a place for the two of you to go?

A: We both agreed to go into the yellow house there on the end down below Lou's store. She showed me the room that she wanted to use. It had a bed or a mattress. She pulled down her cloths and kneeled down on the bed

Q: Did she perform oral sex on you or did you have vaginal or anal sex?



Voluntary Statement Form Rev 01/2010

T.C.

Lancaster County Sheriff's Office**Barry S. Faile, Sheriff****VOLUNTARY STATEMENT**

A: She pulled them down and kneeled down on the mattress. She got down on her knees.

Q: How long were the two of you in there?

A: No more than about 15-20 minutes. While we were having sex I could feel the condom break so I pulled it out and I let it go on the floor

Q: What do you mean by "let it go on the floor?"

A: I shot off on the floor

Q: Did you ejaculate inside of her at all?

A: I'm not sure. Maybe a drop or two.

Q: Did the two of you argue about anything while inside of the house?

A: No

Q: Did she tell you that the sex was uncomfortable or that she was hurting?

A: No sir

Q: What did you do or where did you go after you finished?

A: I went outside and got on my bike and went on up the road. When I got to Crenco I looked back and I saw her standing there with a white girl. I think that her name is Sherry. They were standing there talking to someone in a dark colored car. I said to myself that they were making some money tonight. It was just a darked colored car with tinted windows. I don't know if it was a Chevy or a Ford

Q: How do you know Sherry?

A: From back in the days. Back when Brooklyn was wide open. She is a white girl that I met her around 1995 or 1996. At that time she was involved in prostitution. Now she is about 37-38 and she has lost a lot of weight

Q: Did you speak or talk to Sherry that day?

A: I spoke to her. She was on Brooklyn too and I spoke to her before I spoke to the other lady. She was just walking back and forth

Q: Approximately what time was this when you met with Linda Gaymon?

A: I don't have a phone or watch. It may have been a little after 8pm because I was trying to get home to watch a show called Intervention. It comes on at 9pm on Direct TV on Wednesday or Thursday night. I still didn't make it home on time to watch it.

Q: Did you go directly home after you left Brooklyn Ave?

Voluntary Statement Form Rev 01/2010

T.C.

Barry S. Faile, Sheriff

VOLUNTARY STATEMENT

A: No, I was on my way home, but when I knew that I would not make it home on time I stopped at the hill up by my house. That is where the guys sit around the fire barrel and drink

Q: Who did you meet with?

A: The Heaths. They live on Shiloh Unity Road in a trailer. It was Will Heath, James Howard, and a couple more guys were out there

Q: About what time did you leave there?

A: Around 10:30 or 11pm. It may have been a few minutes earlier or later.

Q: Where did you go after leaving the Heath's?

A: I went home

Q: Did you leave back out at anytime?

A: No sir

Q: Who could verify that came home that night?

A: Everybody was sleep and I came in through the window. I keep it unlocked. I talked to my sister Pam the following morning. She was walking out of her room when I was going into the bathroom

Q: How do you normally get into the house?

A: If I get home early enough my sister or her husband would open the door.

Q: Have you been completely honest in this statement?

A: Yes sir

Q: Are you willing to voluntarily consent to a DNA test to be tested against any DNA that was found on Linda Gaymon?

A: Yes sir

Voluntary Statement Form Rev 01/2010

Terry Catoe

Lancaster County Sheriff's Office

Barry S. Faile, Sheriff

Suspect's Rights Miranda Warning

For

Terry Catoe

Grade Last Completed in School 12

Place: LCSO

Under the Influence of Drugs/Alcohol? ☐ Yes ☒ No

Date: 02/29/12

Can you read and write the English Language? ☒ Yes ☐ No

Time: 3:28

CRN: 12-0

T.C. You have the right to remain silent.

T.C. Anything you say can and will be used against you in a court of law.

T.C. You have the right to talk to a lawyer and have him present with you while you are being questioned.

T.C. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.

T.C. You can decide at any times to exercise these rights and not answer any questions or make any statements.

T.C. **DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?**

T.C. **HAVING THESE RIGHTS IN MIND, ARE YOU WILLING TO TALK TO US AT THIS TIME?**

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed

Terry Catoe

Witness

[Signature]

Witness

Danny Bennett

On 02/29/12, investigators D. Bennett, F. Thompson, and J. Catalano did go to a residence in Heath Springs for the purpose locating and speaking with Terry Catoe. The unnamed female reported that he did not live at that residence anymore, but lives with his mother on Shiloh Unity Road. Investigators learned that Catoe's address is Shiloh Unity Road.

Investigators did respond to Shiloh Unity Road and did speak with Mrs. Truesdale, the mother of Catoe, who reported that he was not home at the moment. Thompson provided Mrs. Truesdale with his contact information and requested that she passes it on to Catoe.

At 12:21hrs, Investigator Thompson receives a call from T. Catoe while he was in an interview with another person that was possibly connected to this incident. Thompson asked T. Catoe to return his call in approximately 30 minutes.

At 13:03hrs, Investigator Thompson receives a follow up call from T. Catoe. Thompson asked T. Catoe to meet with him at the LCSO to discuss what he knows about this case and T. Catoe agrees. Thompson asked T. Catoe if he needs Law Enforcement to escort him to the LCSO and he reported that he would have his sister bring him.

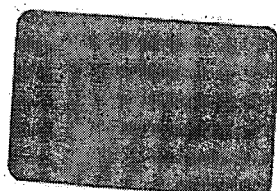
At 13:07hrs, Investigator Thompson received a call from T. Catoe's sister Tika Holmes reporting that she would be bringing him to the LCSO. At 13:55pm Holmes arrives at the LCSO with T. Catoe and investigators begin their interview.

T. Catoe provided investigators F. Thompson and D. Bennett with a voluntary statement concerning his knowledge of this incident. T. Catoe began his interview by stating that the only thing that he knows about this murder is what he read in the newspaper.

When asked about where he was in the night time hours of 02/23/12, T. Catoe reported that he had ridden his bicycle from the New Town area of Lancaster to the Midway area and from Midway to Brooklyn Avenue before heading back in the direction of his residence. T. Catoe reported that his intentions were to get home before 9pm so that he could watch the show Intervention.

While on Brooklyn Avenue he meets a thin white girl that he only knows as Sherry and speaks to her before meeting with an unknown black female that was walking on Brooklyn Avenue in the direction of South Main Street. Initially, T. Catoe assumes that she is working with law enforcement in a prostitution sting, but when he approaches her and see what she is wearing he opted to proposition her for sex. According to T. Catoe, he offers her \$10 and she declined. He then tells her that he only has \$15 and she agrees. T. Catoe gets off of his bicycle and walks beside the female up to a yellow abandoned house next to Lou's Store on Brooklyn Avenue. When asked about which house they entered, T. Catoe reported that it was the very first house on the right after walking past the store.

After T. Catoe and the female entered the house, he reported that she told him to follow her to one of the back bedrooms because there was a mattress or bed in that room and he did.



Initially, T. Catoe reported that the female took off her pants before getting on her knees, but later changed to state that she pulled them down and then got down on her knees on the mattress before they had sexual intercourse.

T. Catoe reported that during intercourse the condom that he was wearing broke. He could feel that it had, so he pulled his penis out of her and he ejaculated on the floor of the abandoned house. Investigators asked if he ejaculated inside of the female at all and T. Catoe reported that he may have allowed "a drop or two to go in her."

After they completed their act, both walked outside together. T. Catoe got his bicycle and rode it up toward South Main Street. At the light, T. Catoe looked back toward Todd Street and could see her standing at a dark colored car with tinted windows with the thin white female that he only knows as Sherry.

T. Catoe turns left and heads in the direction of his home. He reported to investigators that he stopped at the Heath's residence on Shiloh Unity Road for a moment before going to his residence. Upon his arrival home, T. Catoe learned that everyone was asleep, so he climbs into his unlocked bedroom window.

T. Catoe was asked to provide a possible time that he got home and he reported that it was around 10:30pm-11pm.

Before concluding this interview, investigators asked T. Catoe if he would voluntarily consent to DNA testing after explaining to him his options. T. Catoe signed a Consent to Search Form and Investigator D. Bennett collected the Buccal Swabs.

T. Catoe signed the Voluntary Statement and it was turned over to Capt. T. C. Bailey and Lt. M. B. Howell to be added to the case file.

At that time investigators reported to T. Catoe that several inconsistencies were found in his initial statement; therefore, investigator Thompson read and explained to him his Miranda Warning before resuming the interview.

Post Miranda, Thompson asked T. Catoe to describe what the female was wearing and he provided the same clothing description. Initially, T. Catoe reported that the female was wearing a wig. When Thompson confronted T. Catoe about what he had previously stated, he reported that he did not say that.

Next, investigators questioned T. Catoe about the time frame that he reported that he encountered the thin white female that he only knows as Sherry and the black female that he later learned to be Linda Massey-Gaymon.

T. Catoe reported that the time that he reported in the Voluntary Statement was not completely accurate either after investigators informed him that a person matching his physical description was seen in the area in the early morning hours of 02/24/12.

Investigators asked T. Catoe to tell them again about the sexual encounter and if she became agitated during the intercourse. He reported that they did not get into any altercation and that it lasted approximately 15-20 minutes. Afterwards, they walked out together. He walked out first and Gaymon walked out behind him and stood on the front porch as he got his bicycle.

Investigators asked T. Catoe if he had any scratches, cuts, or bruises. At that time T. Catoe became agitated and stated that William Catoe had informed him earlier that we had asked him and had even checked his arms. T. Catoe stated that he did have a scratch on his arm. Investigators asked him to tell them how he got it and he reported as she was walking into the back bedroom she slipped and accidentally scratched his arm with her finger nails.

Investigators asked T. Catoe to demonstrate how the incident occurred and he reported that he could not because it was too dark.

At this time Investigators asked T. Catoe to tell them an approximate time for this account of his evening and he reported that it was later than what he had reported earlier.

Investigators asked T. Catoe if he killed Linda Massey Gaymon and after a brief hesitation he reported that he did not. T. Catoe repeated it several times that he did not kill her before he reported that he was ready to go and that he did not want to talk anymore today.

Investigator Thompson asked T. Catoe if he would stay long enough for him (Thompson) to report back to him what he had provided in the presence of Capt. T. C. Bailey and he agreed. Thompson reviewed the information and afterwards T. Catoe was placed under arrest for Solicitation of Prostitution.

LANCASTER COUNTY SHERIFF'S OFFICE

BARRY S. FAILE, SHERIFF

SUSPECT'S RIGHTS
MIRANDA WARNING
FOR
TERRY CATOEPLACE L.C.S.O.DATE 3/1/2012TIME 3:51

- T.C. 1. YOU HAVE THE RIGHT TO REMAIN SILENT.
- T.C. 2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
- T.C. 3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
- T.C. 4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING, IF YOU WISH.
- T.C. 5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS. REPD
- T.C. 6. DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?
- T.C. 7. HAVING THESE RIGHTS IN MIND, ARE YOU WILLING TO TALK TO US AT THIS TIME?

WAIVER OF RIGHTS

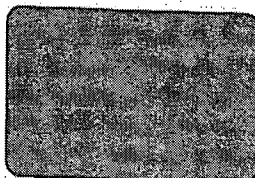
I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

WITNESS

WITNESS

TIME

SIGNED

Terry Catoe

I, TERRY CATOE GIVE FREELY AND VOLUNTARILY,

THIS STATEMENT TO INV C. CRUMP AND INV J. WHITAKER
 , WHO HAVE IDENTIFIED THEMSELVES AS OFFICERS OF THE LANCASTER COUNTY SHERIFF'S OFFICE,
 LANCASTER, SOUTH CAROLINA. I HAVE BEEN ADVISED THAT I DO NOT HAVE TO MAKE THIS OR ANY
 OTHER STATEMENT, AND THAT WHAT I SAY CAN BE USED AGAINST ME IN A COURT OF LAW. I HAVE BEEN
 ADVISED THAT I HAVE A RIGHT TO COUNSEL WITH AN ATTORNEY OF MY CHOICE, AND THAT IF I AM
 FINANCIALLY UNABLE TO OBTAIN AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT
 ME. I HAVE NOT BEEN THREATENED OR PROMISED ANY REWARD TO MAKE THIS STATEMENT AND I DO SO
 VOLUNTARILY. I UNDERSTAND I HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME AND I
 HEREBY WAIVE THESE RIGHTS.

A: YES

Q: DID LINDA HAVE AN ORGASM?

A: I DON'T KNOW

Q: TELL ME WHAT HAPPENED AFTER YOUR ORGASM?

A: AFTER I NUTTED I PUT MY CLOTHS ON, I THINK THAT THE DAMAGE WAS ALREADY DONE

Q: BY DAMAGE WHAT DO YOU MEAN?

A: SHE WAS ALREADY ABOUT TO GO OUT. SHE WAS JUST LYING THERE MOANING. I ASKED
 HER WHAT WAS WRONG AND SHE DID NOT SAY ANYTHING. I GOT SCARED AND LEFT

Q: DID YOU PAY FOR THE SEX AND IF SO HOW MUCH AND WHEN DID YOU PAY?

A: YES I DID, I PAID HER \$15.00.

Q: WHEN DID YOU PAY HER AND WHERE DID SHE PUT THE MONEY?

A: WHEN SHE PULLED HER CLOTHES DOWN I GAVE HER THE MONEY, I DON'T KNOW WHERE
 SHE PUT THE MONEY, IF SHE PUT IT IN HER BAR OR NOT.

Q: WHAT WAS SHE WEARING IF YOU CAN REMEMBER?

A: SHE WAS WEARING BLACK PAINTS AND A BLUE OR BLACK SHIRT

Q: WHAT WERE YOU WEARING?

A: I HAD ON BLUE JEANS A WHITE SHIRT AND A GREY HOODIE

Q: WAS LINDA ALIVE WHEN YOU LEFT HER?

A: YES SIR I GUEST SHE WAS

Q: YOU SAID YOU GUEST HOW DID YOU KNOW IF SHE WAS ALIVE?

A: HER LEG WAS MOVING AND SHE WAS LYING ON HER SIDE AND HER EYES WERE OPEN
 WHEN I LEFT

Q: DID SHE EVER YELL OUT "YOU DON'T HAVE TO DO THAT"?

A: YES SHE YELL OUT SOMETHING WHEN I FIRST PUT IT IN HER ASS. THE FIRST TIME I PUT IN
 WITHOUT ASKING HER, WE WERE DOING IT DOGGIE STYLE

Q: WHEN DID THE CONDOM BREAK?

A: WHEN I WAS IN HER ASS

Q: HAVE YOU BEEN HONEST IN THIS STATEMENT?

I HAVE READ OR HAD READ TO ME THE ABOVE STATEMENT CONSISTING OF PAGE (S) AND IT IS TRUE
 AND CORRECT AS BEST I RECALL, AND I HAVE RECEIVED A COPY OF THIS STATEMENT.

WITNESSES

[Signature]
[Signature]

Terry Catoe

COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

3

CASE NUMBER 12-05837
DATE 4/01/2010

I, TERRY CATOE GIVE FREELY AND VOLUNTARILY,

THIS STATEMENT TO INV. C. CRUMP AND INV. J. WHITAKER,
WHO HAVE IDENTIFIED THEMSELVES AS OFFICERS OF THE LANCASTER COUNTY SHERIFF'S OFFICE,
LANCASTER, SOUTH CAROLINA. I HAVE BEEN ADVISED THAT I DO NOT HAVE TO MAKE THIS OR ANY
OTHER STATEMENT, AND THAT WHAT I SAY CAN BE USED AGAINST ME IN A COURT OF LAW. I HAVE BEEN
ADVISED THAT I HAVE A RIGHT TO COUNSEL WITH AN ATTORNEY OF MY CHOICE, AND THAT IF I AM
FINANCIALLY UNABLE TO OBTAIN AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT
ME. I HAVE NOT BEEN THREATENED OR PROMISED ANY REWARD TO MAKE THIS STATEMENT AND I DO SO
VOLUNTARILY. I UNDERSTAND I HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME AND I
HEREBY WAIVE THESE RIGHTS.

A: YES, SIR

Q: ARE YOU WILLING FOR US TO PHOTOGRAPH YOUR WHOLE BODY?

A: YES

Q: IS THERE ANYTHING THAT YOU WANT TO ADD TO THIS STATEMENT?

A: I AM SORRY THAT IT HAPPENED, I WISH I COULD TAKE IT BACK I WISH SHE WAS STILL HERE
TODAY.

I HAVE READ OR HAD READ TO ME THE ABOVE STATEMENT CONSISTING OF PAGE(S) AND IT IS TRUE
AND CORRECT AS BEST I RECALL, AND I HAVE RECEIVED A COPY OF THIS STATEMENT.

WITNESSES

[Signature]
P. C. A.

Terry Catoe

WITNESSES

Bennett - LCSO #12-06837

f. C. ...

ARREST WARRANT NUMBER/DOA

M742534 (DOA-3-1-12)

ACTION OF GRAND JURY

Roger ...
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-29- *612*

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

JUNE TERM 2012

THE STATE

vs.

Terry Catoe

Indictment for

Murder

SC Code: §16-3-10
CDR Code: 0116
Class: Felony, EXM

2012 JUN -7 11:12 AM
LANCASTER

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

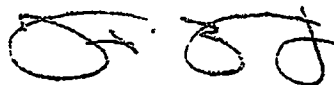
INDICTMENT

At a Court of General Sessions, convened on June 7, 2012, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That Terry Catoe did at Starnes Street, in Lancaster County on or about February 24, 2012, feloniously, willfully, and of his malice aforethought kill and murder Linda Massey Gaymon by choking the victim's neck during a sexual assault and the victim did die as the proximate cause thereof then and there, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT
2012-GS-29-612

STATE OF SOUTH CAROLINA)
vs.) TRANSCRIPT OF RECORD
TERRY CATOE)

NOVEMBER 20, 2015
LANCASTER, SOUTH CAROLINA

BEFORE THE HONORABLE BRIAN GIBBONS

APPEARANCES:

LISA COLLINS, ASSISTANT SOLICITOR
LANCASTER, SOUTH CAROLINA

ATTORNEY FOR THE STATE

TYREE LEE, ASSISTANT PUBLIC DEFENDER
LANCASTER, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-SNO.DESCRIPTIONID.

EV.

NO EXHIBITS

1 THE COURT - All right, Ms. Collins.

2 MS. COLLINS - May it please the Court. This is
3 State of South Carolina versus Terry Catoe who's present at
4 the bar with appointed counsel, Tyree Lee. He is before
5 you on true billed Indictment 2012-GS-29-612, which is a
6 true billed indictment for murder. We came previously
7 before Your Honor to put on the record his rejection of a
8 plea offer for at that time straight up to voluntary
9 manslaughter. At that time the case had been set for trial
10 in December. Mr. Lee, on behalf of the defendant,
11 contacted me recently and said the defendant might wish to
12 enter a plea to voluntary manslaughter if we could workout
13 a sentence range with a minimum and max. We did work out a
14 plea agreement where he would plead to voluntary
15 manslaughter with a floor of 10 and a cap of 26 and just
16 both parties could argue for the minimum or maximum with
17 Your Honor. I say we, that was Mr. Lee and I, and I've
18 been advised now that the defendant does not want to take
19 the offer and that's absolutely fine, but I want him to
20 understand that at this time the offer is withdrawn and
21 that he has not accepted it. We will be going forward on
22 the murder charge, and the trial date is a firm date of
23 January 4th, 2016.

24 THE COURT - And I believe I'm the trial Judge?

1 MS. COLLINS - I believe you are.

2 THE COURT - Okay. I don't -- I think I am. I
3 don't know. I haven't looked at my schedule

4 MS. COLLINS - You are. You're for January.

5 THE COURT - Okay. I know I'm the Chief
6 Administrative Judge. All right, thank you. Mr. Lee, did
7 you hear what Ms. Collins stated into the record?

8 MR. LEE - That is correct, Your Honor, and I
9 believe everything she informed the Court of is correct.
10 Your Honor, I've -- we've talked with Mr. Catoe. I've
11 talked with him numerous times about this, and at this
12 point in time I don't think he wants to accept the offer on
13 -- that's being made on it. He also has informed me that
14 his family wanted to hire somebody, which I have told him
15 that's fine, but the lawyer's got to be ready to step in
16 right where we are right now, and they're -- at least
17 they're pursuing that. And, of course, I -- my
18 understanding is I -- you know, until I get something from
19 somebody saying you're -- I'm taking the case over or the
20 Court relieves me, it's my case, but I -- I think where we
21 want to be is just for him to put on the record his
22 rejection of the offer, and I don't know if the Court wants
23 to address him as far as hiring another attorney.

24 THE COURT - All right, now, Mr. Catoe, you
25 understand what you're doing in Court today?

1 MR. CATOE - Yes, sir.

2 THE COURT - All right, I think I've talked to you
3 before about this issue. Isn't that right?

4 MR. CATOE - (Indicating yes)

5 THE COURT - I think I remember you. Is that
6 correct, Ms. Collins?

7 MR. COLLINS - You did. You handled the previous
8 -

9 THE COURT - Not rejection ---

10 MS. COLLINS - Yes, sir. Yes, sir.

11 MR. LEE - I think so. Back in -- yeah.

12 THE COURT - Okay. So you understand what I'm
13 fixing to ask you?

14 MR. CATOE - Yes, sir.

15 THE COURT - All right. Did you hear the offer
16 from the State of allowing you -- if you were to enter
17 knowingly, voluntarily and intelligently a guilty plea to a
18 charge of voluntarily manslaughter, in exchange for that,
19 the State would dismiss the murder charge against you,
20 allow you plead to that and would -- the agreement as I
21 understand it would be a minimum of 10 years up to a
22 maximum of 26 years. Do you understand the offer that's on
23 the table?

24 MR. CATOE - Yes, sir.

1 THE COURT - Do you agree with that offer or do
2 you reject that offer?

3 MR. CATOE - I reject.

4 THE COURT - Okay, thank you. Now, do you
5 understand that the charge of murder, if you are convicted,
6 carries a mandatory minimum of 30 years in prison up to a
7 maximum of life in prison. Do you understand that?

8 MR. CATOE - Yes, sir.

9 COURT REPORTER - He needs to speak up.

10 THE COURT - Do you understand that the charge of
11 voluntarily manslaughter, if you're convicted of the lesser
12 offense of voluntary manslaughter, carries I believe now a
13 minimum of two years, a minimum of two years up to a
14 maximum of 30 years. Do you understand that?

15 MR. CATOE - Yes, sir.

16 THE COURT - Okay. So understanding those
17 variables, -- of course, you're not giving up your right to
18 a trial. You understand that?

19 MR. CATOE - Yes.

20 THE COURT - Okay. Understanding that, you wish
21 to reject the offer at this time?

22 MR. CATOE - Yes.

23 THE COURT - Okay. Now, did you hear your lawyer,
24 Mr. Lee, indicate to me that your family was trying to get
25 money up to hire a lawyer?

1 MR. CATOE - Yes, sir.

2 THE COURT - Okay. Certainly you have the right
3 to do that, but I want to make sure you understand that the
4 State has noticed me as the Chief Administrative Judge, as
5 well as you through your lawyer, that the case is
6 proceeding the week of January 4th, 2016. You understand
7 that?

8 MR. CATOE - Yes.

9 THE COURT - Okay. And, of course, if -- if and
10 when you hire a lawyer, if you have another lawyer other
11 than Mr. Lee, that lawyer unless the Court rules otherwise,
12 which, you know, I'm the Chief Administrative Judge -- it
13 would have to me, and I'm also going to be the presiding
14 Judge, -- it's going to have to be me -- without hearing
15 anything from that other lawyer, who you may or may not
16 hire, I seriously doubt I'm going to continue the case,
17 because what's the year of the case? How old is it?

18 MS. COLLINS - It'll be four years old in
19 February.

20 THE COURT - It's a four year old case, so, you
21 know, it's probably in the interest of both parties to move
22 it on forward. You understand?

23 MR. CATOE - Yes.

24 THE COURT - Okay. So what I'm telling is, it's
25 very doubtful I will continue the case, so you have to get

1 a lawyer for them to come on board and try it. And there
2 may be lawyers out there willing to do that. Okay?

3 MR. CATOE - Yes, sir.

4 THE COURT - You understand?

5 MR. CATOE - Yes, sir.

6 THE COURT - Okay. Now, having said that, I will
7 tell you this -- for -- you have any family here with you
8 today?

9 MR. LEE - I believe his fiancé is here with him,
10 Your Honor.

11 THE COURT - Is that you, ma'am? Okay, I saw you
12 perk up when I started talking to it. That's why -- I want
13 to make sure you hear this as well, his family. I've known
14 Mr. Lee for -- how long I known you, Mr. Lee?

15 MR. LEE - Probably ---

16 THE COURT - Twenty-three years, since I started
17 practicing law?

18 MR. LEE - --- when you first start practicing,
19 Your Honor.

20 THE COURT - And before that I think you practiced
21 about -- how long you been practicing law?

22 MR. LEE - I've been practicing since 1976.

23 THE COURT - Okay, so forty years. Okay? I've
24 seen him try many cases. No offense to any of the other
25 defense lawyers in this courtroom, he's one of the best, if

1 not the best, criminal defense lawyer I've ever seen try a
2 case. Okay? I'm just saying that to you. And I've seen
3 many lawyers -- I've tried many cases with many lawyers,
4 both as a trial lawyer myself and as a presiding Judge.
5 Okay? And I'm just telling you that, if that'll help you
6 make your mind up or your family make your mind up as to
7 what you need to do. Okay?

8 MR. CATOE - Yes, sir.

9 THE COURT - I'm just letting you know that.
10 Okay? So the way it stands now, the case is set for trial
11 January 4th, 2016. If you desire to hire another lawyer,
12 that's absolutely your right, but if not, Mr. Lee is an
13 excellent lawyer who could represent you very well. Okay?

14 MR. CATOE - Yes, sir.

15 THE COURT - All right.

16 MS. COLLINS - Judge, can we just say on the
17 record that he should be here Monday, January 4th at 9:30
18 prepared to go to trial and if not, ---

19 THE COURT - In Lancaster.

20 MS. COLLINS - --- the trial -- in Lancaster ---

21 THE COURT - Monday, January 4th, 2016, 9:30 a.m.
22 ready to go forward. Okay?

23 MS. COLLINS - And if he does not appear, the
24 trial will proceed in his absence.

25 THE COURT - All right, you understand that?

1 MR. CATOE - Yes, sir.

2 THE COURT - Okay. That's what your bond says.

3 You have to be here, and if you're not, then they can do
4 what's called T-I-A, they'll try you in your absence. You
5 understand?

6 MR. CATOE - Yes, sir.

7 THE COURT - All right, good luck to you, sir.

8 MR. LEE - And, Your Honor, I don't know -- he
9 wasn't here mainly because he couldn't get up to the door.
10 I ---

11 MS. COLLINS - There was no bench warrant ---

12 MR. LEE - Oh, there wasn't one. I was going to
13 ask you to rescind that.

14 MS. COLLINS - I was joking with you about -- no,
15 no, no, there was ---

16 THE COURT - What, earlier?

17 MS. COLLINS - I told Mr. Lee, jokingly, I said -
18 --

19 THE COURT - No, there's 150 people outside
20 waiting to get in; that's not a problem.

21 MR. LEE - Along with family, so ---

22 THE COURT - Yes, sir. Thank y'all for getting
23 here. I appreciate it.

24 MS. COLLINS - So for the record, Mr. Lee is not
25 relieved; he's still the attorney until otherwise ---

1 THE COURT - No, Mr. Lee is still on the case.

2 MS. COLLINS - Yes, sir. Thank you.

3 THE COURT - All right, thank you.

4 MR. LEE - Okay. Thank you, Your Honor.

5 THE COURT - Y'all prepare accordingly. All

6 right.

7 (END OF TRANSCRIPT)

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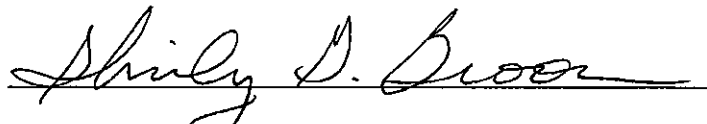
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25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 12 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Terry Catoe, as taken by me in the Court of General Sessions for the Sixth Judicial Circuit on November 20, 2015 and provided by me this the 18th day of Feb., 2016.

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

A handwritten signature in cursive script, reading "Shirley D. Broom", is written over a horizontal line.

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT

V.

TERRY CATOE,

APPELLANT

APPELLATE CASE NO 2016-000104

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER

Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense

P.O. Box 11589

Columbia, SC 29211-1589

(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting appellant's statements into evidence because the police violated appellant's Fifth and Sixth Amendment rights by using the "question first" strategy condemned in Missouri v. Siebert, 542 U.S. 600 (2004)?

STATEMENT OF THE CASE

On June 7, 2012, a Lancaster County grand jury indicted appellant for murder. R. ____.

On January 4, 2015, appellant was tried before the Honorable Brian M. Gibbons and a jury. R. 1. Randy Newman and Lisa Collins represented the State. R. 1. Tyree Lee and Justin Jones represented appellant. R. 1. The jury convicted appellant. R. 511, l. 12 – 512, l. 6. Judge Gibbons sentenced appellant to life imprisonment. R. 518, ll. 2 – 13. This appeal follows.

ARGUMENT

The trial court erred in admitting appellant's statements into evidence because the police violated appellant's Fifth and Sixth Amendment rights by using the "question first" strategy condemned in *Missouri v. Siebert*, 542 U.S. 600 (2004).¹

Before trial, the court conducted a lengthy hearing regarding the admissibility of appellant's statements pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964). R. 5, l. 17 – 94, l. 14. The police suspected appellant was involved in the death of Linda Massey Gaymon ("Gaymon"). R. 35, l. 12 – 36, l. 7. Officer Frederick Thompson ("Thompson") called appellant and asked him to come to the sheriff's department. R. 11, l. 24 – 12, l. 1. Appellant's sister brought appellant. R. 12, ll. 5 – 7.

Officer Thompson spoke with appellant in an office at the sheriff's department with two other officers, Danny Bennett ("Bennett") and Clark Crump ("Crump"). R. 12, l. 18 – 13, l. 4. R. 19, ll. 22 – 25. Officer Thompson was wearing his pistol. R. 13, ll. 8 – 9. The time of the interview was 2:23 PM. R. 19, ll. 18 – 21. He candidly admitted they did not give appellant his warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). R. 13, ll. 13 – 16. Officer Thompson claimed that appellant was not in custody and was free to leave. R. 13, ll. 17 – 21.

Officer Thompson typed his questions and appellant's answers during this initial, unwarned interrogation. R. 14, ll. 3 – 22. During this first interview, appellant admitted that he saw Gaymon and successfully propositioned her for sex in exchange for fifteen dollars. R. 16,

¹ In conducting its review pursuant to *Anders v. California*, 386 U.S. 738 (1967), this Court may wish to consider whether to apply plain error to the trial judge's charge that the jury could infer malice from the use of a deadly weapon when appellant also received the mitigating charges of voluntary manslaughter and involuntary manslaughter, in violation of *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009). R. 454, l. 1 – 455, l. 16. R. 466, l. 23 – 467, l. 3. R. 504, l. 20 – 505, l. 4.

ll. 15 – 20. They went into an abandoned house and had sex. R. 16, l. 20 – 17, l. 15. Appellant denied that the sex was uncomfortable or hurt Gaymon. R. 17, l. 3 – 16. When appellant left, he saw Gaymon talking to a woman appellant knew as “Sherry.” R. 17, l. 15 – 18, l. 5. Appellant guessed he encountered Gaymon between 8:00 PM and 9:00 PM R. 18, ll. 7 – 12. The police had appellant initial and sign the statement they typed. R. 19, ll. 14 – 17.

Officer Thompson testified that after getting appellant to sign this first statement, “we advised him that there was some inconsistencies so we advised him – we actually read him his Miranda warning.” R. 20, ll. 19 – 24. Appellant signed a written Miranda waiver. R. 20, l. 25 – 23, l. 2. The time on this waiver was 3:28 PM. R. 23, ll. 6 – 13. The officers claimed appellant continued to answer their questions voluntarily. R. 24, l. 11 – 26, l. 4. R. 52, l. 8 – 53, l. 22.

The officers interrogated appellant about why he did not mention that Gaymon was wearing a wig in his first statement and about the time he saw Gaymon. R. 28, l. 13 – 33, l. 5. Appellant then supposedly admitting buying and using cocaine. R. 28, l. 13 – 33, l. 5. He stated that he moved a couch inside the abandoned house to hide his bicycle while he had sex with Gaymon. R. 28, l. 13 – 33, l. 5. Appellant reiterated that Gaymon did not become agitated during their sexual encounter and denied killing her. R. 28, l. 13 – 33, l. 5. The police asked if appellant would be willing to take a polygraph examination and appellant stated he did not wish to continue speaking with the officers. R. 28, l. 13 – 33, l. 5. Appellant refused to sign a statement. R. 26, l. 5 – 27, l. 24.

At this point, the police arrested appellant for solicitation of prostitution and placed him in the jail. R. 33, ll. 10 – 15. R. 60, ll. 1 – 5. The next day, Officer Crump went to the jail to serve the solicitation arrest warrant on appellant. R. 60, ll. 1 – 5. According to Officer Crump, appellant asked him multiple questions trying to find out information about “What’s going on?”

R. 60, ll. 6 – 20. Officer Crump read appellant his Miranda warnings. R. 60, ll. 6 – 23. While appellant was in the cell, Officer Crump asked him if he was involved in Gaymon's death and appellant "said that he was." R. 61, ll. 10 – 20.

Officer Crump took appellant to an investigator's office and had appellant sign a written Miranda waiver. R. 61, l. 21 – 62, l. 24. The police claimed that appellant then gave a more detailed statement in which he admitted choking Gaymon because she wanted to have "hard core sex." R. 68, l. 24 – 71, l. 17. After they finished having sex, appellant realized that "the damage was already done," got scared, and left. R. 68, l. 24 – 71, l. 17. Appellant supposedly apologized. R. 68, l. 24 – 71, l. 17.

After the testimony at the Denno hearing concluded, trial counsel objected to the admission of appellant's statements. R. 93, ll. 3 – 6. Judge Gibbons considered the question over the lunch recess and, upon returning, ruled the statements were admissible. R. 93, l. 24 – 94, l. 9. Appellant preserved his pretrial argument with contemporaneous objections throughout the trial. R. 352, ll. 19 – 24. R. 360, l. 22 – 361, l. 3. R. 366, ll. 8 – 12. R. 387, l. 14 – 388, l. 14. R. 402, l. 24 – 403, l. 4. R. 408, ll. 21 – 25.

The trial court erred in admitting appellant's statements because the police intentionally circumvented Miranda when they did not give appellant warnings during their first interrogation. Missouri v. Siebert, 542 U.S. 600 (2004). State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). This intentional police strategy is called "question first" and the United States Supreme Court condemned this practice in Siebert. Siebert at 610-12 and n.2. The Court cited the Police Law Institute's manual which instructed officers to use a "two-stage interrogation" and not to give Miranda warnings until after arrestees have confessed. Id. at 610. The Court listed multiple

sources advising officers on how to obtain confessions and then curing the failure to give Miranda warnings. Id. at 610 n.2.

The Court rejected the notion that the subsequent giving of Miranda warnings could transmute these confessions into admissible evidence. Id. at 610-13. "By any objective measure . . . it is likely that if the interrogators employ the technique of withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content." Id. at 613. "After all, the reason that question-first is catching on is as obvious as its manifest purpose, which is to get a confession the suspect would not make if he understood his rights at the outset." Id. "Upon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again." Id.

South Carolina recognized the impact of Siebert in Navy. Kenneth Navy was convicted of suffocating his two year old son. Id. at 296, 688 S.E.2d at 838. EMS responded to Navy's house and found him giving the child CPR. Id. at 297, 688 S.E.2d at 838. Navy gave an unsatisfactory statement to the police at the hospital that night. Id. The police subsequently met with the pathologist who told them that the child died from suffocation. Id.

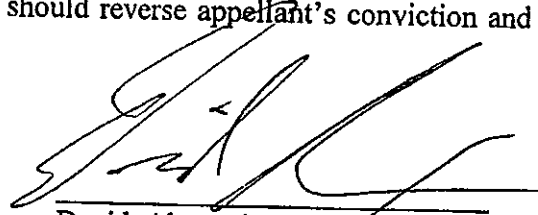
With this knowledge in hand, the police took Navy from his house to the police station. Id. He was not formally under arrest. He gave a statement that was not incriminating. Id. at 298, 688 S.E.2d at 839. Questioning continued and police confronted Navy with information from the autopsy. Id. at 298, 688 S.E.2d at 839-40. The Court found that "[a]t this juncture, the nature of the interrogation and respondent's status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation." Id. Without giving Miranda

warnings, the police ultimately obtained a confession from Navy which they memorialized after having him sign a Miranda waiver. The Court ruled these statements violated Siebert and were inadmissible. Id. at 301-04, 688 S.E.2d at 841-43.

The police strategy in this case is the same as in Siebert and Navy. Appellant was a suspect in a murder, in a room with three police officers when the initial questioning took place, and therefore was in custody, triggering the requirement to give Miranda warnings. State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003). By not giving the warnings, the police were able to get appellant to admit that he had sex with Gaymon. They used this initial admission to arrest him for solicitation of prostitution that led to his later, damning statements. These later statements are not admissible even though Miranda warnings were given because of the rule in Siebert and Navy. The trial judge erred in admitting these statements and, but for their admission, appellant would not have been convicted. This Court should reverse and remand this case for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction and remand this case for a new trial.

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of November, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY CATOE,

APPELLANT

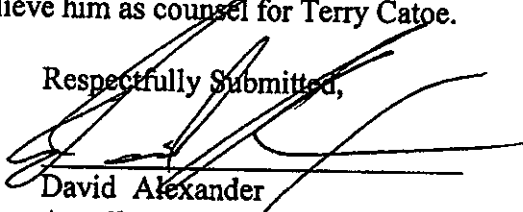
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Terry Catoe states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before the Honorable Brian M. Gibbons, which was held on January 4-6, 2016 (Trial and motions), and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Terry Catoe.

Respectfully Submitted,


David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 16th day of November, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County
Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY CATOE,

APPELLANT

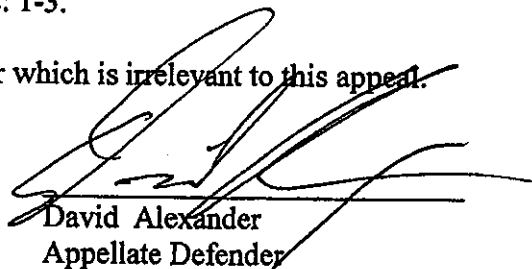
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) Trial Transcript,
- (3) State's Exhibits: 1-5,
- (4) Defendant's Exhibits: 1-3.

I certify that this designation contains no matter which is irrelevant to this appeal.

November 16, 2016



David Alexander
Appellate Defender

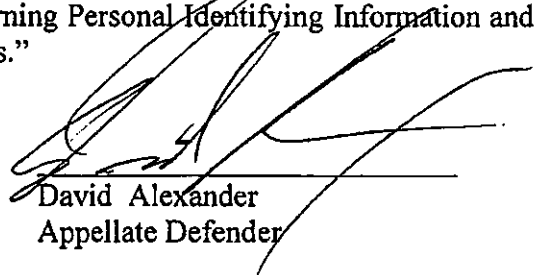
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 16, 2016.



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

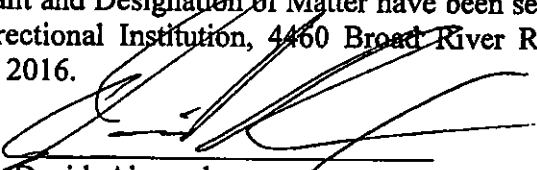
V.

TERRY CATOE,

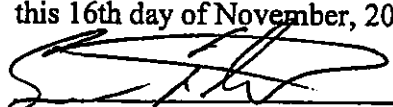
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Terry Catoe, #216913, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 16th day of November, 2016.


David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of November, 2016.

 (L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Terry Catoe, Appellant.

Appellate Case No. 2016-000104

Appeal From Lancaster County
Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2017-UP-256
Submitted June 1, 2017 – Filed June 28, 2017

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Deputy
Attorney General Donald J. Zelenka, both of Columbia,
for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

GEATHERS, MCDONALD, and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 08, 2017

The Honorable Jeff L. Hammond
PO Box 1809
Lancaster SC 29721-1809

REMITTITUR

Re: The State v. Terry Catoe
Lower Court Case No. 2012GS2900612
Appellate Case No. 2016-000104

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Terry Catoe, 00216913
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Lancaster

VS.

Terry Catoe

AKA:

BLACK Sex: M Age: 43

DOB: SS#:

Address:

City, State, Zip: Lancaster, SC 29720

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS29-612

A/W#: M742534

Date of Offense: 2/24/2012

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor
Randy Newman, JR.78667
SC Bar#

Defendant

Attorney for Defendant

3175
SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

b. State Department of Corrections.

☐ The Defendant is to be placed on the 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TO:	\$ 133.20

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

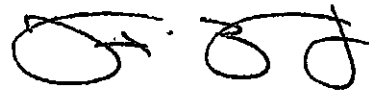
INDICTMENT

At a Court of General Sessions, convened on June 7, 2012, the Grand Jurors of Lancaster County present upon their oath:

MURDER

That Terry Catoe did at 916 Starnes Street, in Lancaster County on or about February 24, 2012, feloniously, willfully, and of his malice aforethought kill and murder Linda Massey Gaymon by choking the victim's neck during a sexual assault and the victim did die as the proximate cause thereof then and there, in violation of Section 16-3-10 of the *Code of Laws of South Carolina*.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Bennett - LCSO #12-06837

de C...

ARREST WARRANT NUMBER/DOA

M742534 (DOA-3-1-12)

671

ACTION OF GRAND JURY

Robert M. Bell
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-29-612

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

JUNE TERM 2012

THE STATE

vs.

Terry Catoe

Indictment for

Murder

SC Code: §16-3-10

CDR Code: 0116

Class: Felony, EXM

FILED
CLERK OF COURT
2012 JUN -7 PM 12:24
CLERK OF COURT
LANCASTER, SC

ARREST WARRANT

M-742534

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lancaster

THE STATE

12-06837

against

Terry Catoe

Address:

Lancaster, SC 29720-

Phone:

SSN:

Sex: M Race: B Height: 5 8 Weight: 140

DL State: SC DL #:

DOB: Agency ORI #: SC0290000

Prosecuting Agency: Lancaster County Sheriff

Prosecuting Officer: D. Bennett - 0019

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

3-1-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Lancaster County Magistrate
761 Lancaster Bypass East
Lancaster, SC 29720

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lancaster

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant D. Bennett

who

being duly sworn deposes and says that defendant Terry Catoe

did within this county and state on or about 2/24/2012

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lancaster)

in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT TERRY CATOE DID ON 02-24-12 WITH MALICE AFORETHOUGHT CAUSE THE DEATH OF LINDA MASSEY GAYMON WHILE AT IN LANCASTER COUNTY. THE DEFENDANT DID CHOKED THE VICTIM'S NECK, DURING A SEXUAL ASSAULT, CAUSING THE VICTIM'S DEATH. INVESTIGATOR'S WITH THE LANCASTER COUNTY SHERIFF'S OFFICE HAVE OBTAINED PHYSICAL EVIDENCE FROM THE SCENE AS WELL AS A DEFENDANT AND WITNESS STATEMENTS TO CORROBORATE THE ABOVE STATED FACTS.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lancaster

Affiant's Address 1941 Pageland Hwy

Lancaster, SC 29720-

Affiant's Telephone (803)283-3388

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/24/2012

defendant Terry Catoe

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Lancaster

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 3/1/2012

Signature of Issuing Judge

(L.S.)

Lancaster Central Court

Judge Code: 5974

Judge's Address 761 Lancaster Bypass East

Lancaster, SC 29721-

Judge's Telephone (803)283-3983

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

BAIL set by

Judge _____
on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS



CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 04/13/18
OMCOMITA RELEASE DATE SCREEN C056427
SCDC# > 216913 LOC: BROAD RIVER
CATOE, TERRY - SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
PREA PERP...: NONE
PREA VICTIM...: NONE
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...
LIFE CURRENT SENT START DATE: 03/21/2015
PROJECTED COMPLETION DATES
MAXOUT DATE: 99/99/9999
YOA SIX YEAR DATE: CURRENT EWC ..
INITIAL PAROLE DATE: 00/00/0000 CURRENT EEC ..
NEXT PAROLE HEARING DATE: 00/00/0000
TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 000000 ISS.....:
PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Friday, April 13, 2018

Classification Summary Reports

Inmate Number

216913

Submit

SCDC ID

00216913

Name

CATOE, TERRY

Sex/Race

M B INCARCERATED

Status

Y 00216913 CATOE, TERRY M B YOA PAROLE - CONDITIONAL

Classification Summary Report for CATOE, TERRY :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 04/13/2018

SCDC# 00216913

CATOE, TERRY

FBI# 792521WA6

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: BROAD RIVER

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC 999 YRS 0 MOS
SENT: 0 DAYS

VICTIM
WITNESS: SEPREQ:N

MED
CLASS:

INST
RESTRICT: NO RESTRICTION

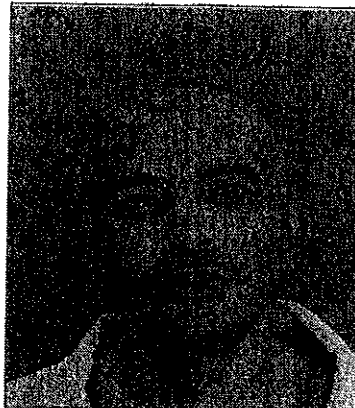
MENTAL
CLASS:

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 45



RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: MO 0141 A

PROJ MAXOUT
DATE:

PROJ PAROLE
DATE:

EWC
JOB: SR DINING ROOM OPERATOR

ASSIGNMENT: CAFETERIA

EWC
LEVEL: 3F5 EEC LEVEL:

EDUC
PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

Y00216913

CURRENT OFFENSES	YRS	MOS	SENTENCE	DYS	COUNTY	START	SENTENCE
MURDER	999	99	999	LANCASTER	03/21/2015	V 5	12GS29612

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

PREVIOUS OFFENSES	PREVSCDCID	SENTENCE			COUNTY	START	SENTENCE		
		YRS	MOS	DYS			V/NV	CAT	INDICT
POSSESSION OF WEAPON	Y00216913	4	0	0	LANCASTER	10/17/1994	N	3	93GS29-677
CRACK POSSESS	Y00216913	4	0	0	LANCASTER	10/17/1994	N	2	93GS291183

DETAINERS (HOLD,WANTED,NOTIFY):

RESIST ARREST/ASSLT OFF. NOTIFY OPEN ARREST NOTIFICATION CATEG:4

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

04/03/2018 POSSESSION OF CONTRABAND MAJOR DISC. HEARING

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
02/29/2016	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
01/11/2016	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
SR DINING ROOM OPERATOR	08/24/2017	-		3F5
FOOD SERVICE AIDE	06/14/2017	08/23/2017	TERM CODE CHG TO 13 OR 14	3F5
CANTEEN OPERATOR HELPER	04/13/2017	06/13/2017	LATERAL TRANSFER	3F5
FOOD SERVICE AIDE	03/13/2016	04/12/2017	INSTIT TRANSFER	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 5 - FULL TIME(NO EWC)	10/04/1995	12/01/1995	INSTIT TRANSFER
LVL 5 - FULL TIME(NO EWC)	07/11/1995	09/01/1995	INSTIT TRANSFER

***** END OF REPORT *****

Create PDF

Source : SummaryReport.jsp

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[Version: 1.4.13 Built: 02/01/2018 11:35:22 AM Time: 02:43:18 PM]

South Carolina Department of Corrections

Classification Summary Reports

Date: Friday, April 13, 2018

Classification Summary Reports

Inmate Number

216913

Submit

SCDC ID

00216913

Name

CATOE, TERRY

Sex/Race

M B

Status

INCARCERATED

Y 00216913

CATOE, TERRY

M B

YOA PAROLE - CONDITIONAL

Classification Summary Report for CATOE, TERRY :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 04/13/2018

SCDC# Y00216913

CATOE, TERRY

FBI# NONE

OFFENDER YOA5C-
TYPE: INDETERMINATE SENTE

INSTITUTION: LANCASTER CO

SECURITY/CUST: L3

CURR INCARC 0 YRS 7 MOS 0
SENT: DAYS

VICTIM
WITNESS: SEPREQ:N

MED
CLASS:

INST
RESTRICT:

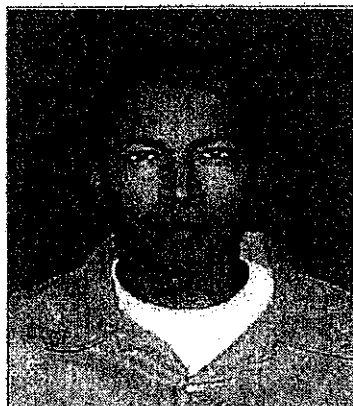
MENTAL
CLASS:

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: N

DNA: N

AGE: 45



RESIDENT
STABILITY:

DORMROOMBUNK_CODE:

PROJ MAXOUT 10/17/1998
DATE:

PROJ PAROLE 11/30/1995
DATE:

EWC
JOB: NO CURRENT JOB

ASSIGNMENT:

EWC 0 EEC LEVEL:
LEVEL:

EDUC NO CURR EDUC PROGRAM
PGM:

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE		START	SENTENCE		
			DYS	COUNTY		V/NV	CAT	INDICT
POSSESSION OF WEAPON	4	0	0	LANCASTER	10/17/1994	N	3	93GS29-677
CRACK POSSESS	4	0	0	LANCASTER	10/17/1994	N	2	93GS291183
COMPLETED OFFENSES								

NO COMPLETED OFFENSES**PRIOR COMMITMENTS OVER 90 DAYS:*****INMATE HAS NO PRIORS*****OFFENSES UNDER PREVIOUS NUMBER:*****NO PREVIOUS OFFENSES*****DETAINERS (HOLD,WANTED,NOTIFY):*****NO DETAINERS*****ESCAPES:*****NO ESCAPE HISTORY*****CRIMINAL CHARGES:*****NO CRIMINAL CHARGES HISTORY*****ASSAULTIVE DISCIPLINARIES:*****NO ASSAULTIVE DISCIPLINARY HISTORY*****PREVIOUS ASSAULTIVE DISCIPLINARIES:*****NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY*****NON-ASSAULTIVE DISCIPLINARIES:*****NO NON-ASSAULTIVE DISCIPLINARIES HISTORY*****PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:*****NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY*****HISTORY OF MOVEMENTS:**

DATE	LOCATION	STATUS	ACTION
12/01/1995	LANCASTER CO	YOA PAROLE - CONDITIONAL	PAROLE BOARD ACTION
09/01/1995	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
06/29/1995	LEE	INCARCERATED	ADMINISTRATIVE
05/10/1995	BROAD RIVER R&E	INCARCERATED	YOA PAROLE VIOLATOR
02/06/1995	LANCASTER CO	YOA PAROLE - CONDITIONAL	SHOCK INCAR-PROB COMPLETE
11/09/1994	THAMES SIU	INCARCERATED	SHOCK INCARC/YOA BOOT
11/01/1994	AIKEN	INCARCERATED	ADMINISTRATIVE
10/18/1994	BROAD RIVER R&E	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:***NO HISTORY OF EARNED WORK CREDIT ASSIGNMENTS*****HISTORY OF EARNED EDUCATION CREDITS:**

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 5 - FULL TIME(NO EWC)	10/04/1995	12/01/1995	INSTIT TRANSFER
LVL 7 - FULL TIME(NO EWC)	07/11/1995	09/01/1995	INSTIT TRANSFER

***** END OF REPORT *****

Create PDF

Source : SummaryReport.jsp

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 [Version: 1.4.13 Built: 02/01/2018 11:35:22 AM Time: 02:43:35 PM]

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

Terry Catoe, #216913,)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2018 CP 29 00338)

FILED
OFFICE OF CLERK
OF COURT
2018 MAR 27 AM 11:41
CLERK OF COURT
LANCASTER, SC

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 Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Lancaster Court of General Sessions, 104 North Main Street, Lancaster, SC 29720
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-29-0612: Murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) January 6, 2015: Life
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 28, 2017, Remittitur August 8, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Up. Op. No. 2017-UP-256
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Infective assistance of trial counsel.
 - (b) _____
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to properly prepare and investigate.
 - (b) Failure to make motions and objections.
 - (c) Failure to utilize Applicant as a witness at trial.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 - (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

No.

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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) PCR is the proper forum.

(b) _____

Revised 3/2003

- (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? Yes.
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. Tyree Lee, 6th Circuit Public Defender, PO Box 132, Chester, SC 29706
 - ii. Justin Jones, 1050 College Ave. Ext., Rock Hill, SC 29732
 - iii. David Alexander, Office of Appellate Defense, 1330 Lady Street, Suite 400, Columbia, SC 29201.
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Trial
 - iii. Direct Appeal
19. State clearly the relief you seek in filing this application:
A new trial.
20. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Richland)

I, Terry Catoe, 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.

Terry Catoe

SWORN to and subscribed before me this 15th
day of March, 2019.

[Signature] (L.S.)
Notary Public

My Commission Expires: 5/23/26

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

I, Terry Catoe, 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.

Terry Catoe
Applicant

SWORN or affirmed to and subscribed before me this
15th day of March, 2018.

[Signature]
Notary Public

My Commission Expires: 5/23/20

Lancaster County

Jeff Hammond
Clerk of Court

Clerk of Court of Lancaster County
Post Office Box 1809
Lancaster, S.C. 29721

Phone (803) 285-1581
Fax (803) 416-9388

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

6TH JUDICIAL CIRCUIT

Terry Catoe #216913

Applicant

CERTIFICATE OF SERVICE

CASE# 2018-CP-29-00338

VS

State of South Carolina

Respondent

I certify that, on March 27, 2018, I served a copy of the Application for Post-Conviction Relief by mailing to him at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Terry Catoe #216913
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

DeShawn Mitchell
Post-Conviction Relief Division
6th and 13th Judicial Circuits
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549

FILED
CLERK OF COURT
LANCASTER, SC
2018 MAR 27 PM 12:24

3/27/18

Date

Jeff Hammond
Signature

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	FOR THE SIXTH JUDICIAL CIRCUIT
	)	
Terry Catoe, #216913,	)	2018-CP-29-0338
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(COUNSEL RETAINED)
State of South Carolina,	)	
	)	
Respondent,	)	
	)	

In response to Terry Catoe's (Applicant) action for post-conviction relief (PCR) commenced March 27, 2018, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted at the June 2012 term of the Lancaster County Grand Jury for murder (2012-GS-23-612). Applicant was represented by Tyre D. Lee Jr., and Justin W. Jones, Esquires. Solicitor Randy Newman and Deputy Solicitor Lisa Collins prosecuted the case. Applicant's case proceeded to a jury trial January 4-6, 2015, before the Honorable Brian M. Gibbons. The jury convicted Applicant as indicted. Judge Gibbons sentenced Applicant to serve life imprisonment. Applicant appealed.

Appellate Defender David Alexander perfected Applicant's appeal by filing an *Anders*¹ brief to the court of appeals arguing the following:

1. The trial court erred in admitting [Applicant's] statements into evidence because the police violated [Applicant's] Fifth and Sixth Amendment rights by using the "question first" strategy condemned in *Missouri v. Seibert*, 542 U.S. 600 (2004).

¹ *Anders v. California*, 386 U.S. 738 (1976).

The court of appeals dismissed the appeal in an unpublished decision. *State v. Catoe*, Op. No. 2017-UP-256 (S.C. Ct. App. filed June 28, 2017). The case was remitted back to the circuit court on August 8, 2017. Applicant commenced this PCR action on March 27, 2018.

II. Facts

Applicant's charges stem from the death of Linda Massey Gaymon. Applicant voluntarily reported to the police department when asked by Officer Frederick Thompson, and Applicant gave a statement to the police. (Tr. 11–13). Thompson typed his questions and Applicant's answers during this initial interview. (Tr. 14). During the interview, Applicant admitted he successfully propositioned Gaymon to exchange sex for money. (Tr. 16). Applicant stated he and Gaymon went and had sex in an abandoned house, and Applicant left following sex. (Tr. 16). Applicant stated that as he left, he saw Gaymon speaking to a women he knew as "Sherry." (Tr. 17). Applicant signed the written statement transcribed during the interview. (Tr. 19). After he signed the statement, Applicant was arrested and given *Miranda* warnings. (Tr. 20). Applicant continued to voluntarily speak to the police. (Tr. 20–24). Applicant denied killing Gaymon. (Tr. 28). When asked if he would submit to a polygraph examination, Applicant invoked his right to remain silent. (Tr. 28–33). Applicant was arrested for solicitation of prostitution. (Tr. 33, 60).

The next day, Officer Clark Crump, who was present during the initial interview, served Applicant with an arrest warrant for soliciting prostitution. After being served the arrest warrant, Applicant asked Crump, "What's going on?" Crump re-*Mirandized* Applicant, and asked Applicant if he was involved in Gaymon's death. Applicant admitted his involvement. (Tr. 60–61).

Applicant then signed a waiver of rights form and gave a second statement. In his second statement, Applicant admitted to choking Gaymon because Gaymon wanted to have "hard core

sex.” (Tr. 68). Applicant stated that after they finished having sex, he got scared and left because “the damage was already done.” (Tr. 68–71).

Applicant, through counsel, objected to the admission of his statements pre-trial. (Tr. 93). Applicant also preserved his objection and pre-trial argument with contemporaneous objections throughout the trial. (Tr. 352, 360, 366, 387–88, 402–03, 408). Applicant was convicted of murdering Gaymon, and sentenced to serve life imprisonment.

III. Current Application

Applicant alleges he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. Failure to properly prepare and investigate;
 - b. Failure to make motions and objections; and
 - c. Failure to utilize Applicant as a witness at trial.

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated herein are the Lancaster County Clerk of Court records, Applicant’s records from the South Carolina Department of Corrections, Applicant’s appellate records which includes an entire trial transcript, and the records of this PCR action.

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant’s allegations of ineffective assistance of trial counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove “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.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). 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). In making a fair assessment of attorney performance, a court must make every effort 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.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the

PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Procedure Act² and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCPP. *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. *See* Rule 15(a), SCRCPP.

² S.C. Code Ann. §§ 17-27-10 to -160.

VI. Any and All other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

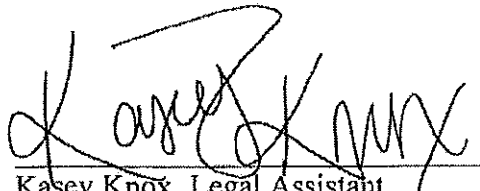
July 31, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
	)	
	)	2018-CP-29-0338
	)	
TERRY CATOE, #216913	)	
	)	
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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tricia A. Blanchette
Law Office of Tricia A. Blanchette, LLC
Post Office Box 2147
Leesville, South Carolina 29070

DATED this the 31st day of July, 2019.


 Kasey Knox, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Terry Catoe, #216913,)
Applicant,)

2018-CP-29-0338

v.)

ORDER AUTHORIZING DISCOVERY

State of South Carolina,)
Respondent.)

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on March 27, 2018. Donae Minor, Esquire was appointed to represent Applicant. By written Order issued June 18, 2018, Tricia A. Blanchette, Esquire, was substituted in as Applicant's counsel.

On July 2, 2018, Applicant, through counsel, filed a Motion for Discovery. On July 17, 2018, a motion hearing was conducted at the Lancaster County Courthouse in front of the Honorable Brooks P. Goldsmith. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by DeShawn Mitchell, Assistant Attorney General.

By way of the written motion and at the motion hearing, Applicant, through counsel, respectfully requested the opportunity to issue subpoenas to the appropriate people, offices or agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-27-150(a) (2008) limited to those files/materials that were subject to discovery during the underlying criminal proceeding:

1. A complete copy of Applicant's file generated from his representation by the Lancaster County Public Defender's Office (trial counsel's file).
2. If not contained therein, a complete copy of the Lancaster County Solicitor's file.
3. If not contained therein, a complete copy of the Lancaster County Sheriff's Department file and/or any local law enforcement agencies' file.

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4. A complete copy of the Lancaster County Coroner's file, to include color photographs and medical records.
5. A complete un-redacted copy of the State Law Enforcement Agency (SLED) file.
6. A complete copy of all records maintained by the Lancaster County Clerk of Court.
7. The opportunity for Applicant's counsel, private investigator and potential expert to review the evidence maintained with SLED, local law enforcement and/or the Lancaster County Clerk of Court.

Applicant, through counsel, further requested the opportunity for his counsel, private investigator and/or expert to review any and all requested materials that cannot be copied or provided to counsel. Additionally, Applicant asked the Court to find that if a party fails to comply or does not have a file or requested item to produce, a written explanation must be provided for the failure to produce said file or item to Applicant's counsel.

At the motion hearing, the State asked that discovery be limited since Applicant's counsel had not received and reviewed counsel's file due to her recent substitution as counsel. In response, counsel requested that at a minimum, she be granted authority to obtain the file from trial counsel, SLED, the Coroner's Office and Clerk's Office to allow Applicant's potential expert to begin reviewing the case.

Therefore, this Court finds that Applicant, through counsel, shall be allowed to issue written requests and/or subpoenas to the appropriate people, offices or agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-27-150(a) (2008) **limited** to those files/materials that were subject to discovery during the underlying criminal proceeding:

1. A complete copy of Applicant's file generated from his representation by the Lancaster County Public Defender's Office (trial counsel's file).

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be written in cursive or a similar fluid script.

2. A complete copy of the Lancaster County Coroner's file, to include color photographs and medical records.
3. A complete un-redacted copy of the State Law Enforcement Agency (SLED) file.
4. A complete copy of all records maintained by the Lancaster County Clerk of Court.
5. The opportunity for Applicant's counsel, private investigator and potential expert to review the evidence maintained with SLED and/or the Lancaster County Clerk of Court.

If copies cannot be made of items in the file, this Court grants the opportunity for counsel for both parties, a private investigator and/or expert(s) to review such items in person. This Court finds that if a person, office or agency does not have a file to provide, Applicant's counsel must be provided with a written response and explanation for the absence of such file. Applicant's counsel is to provide the Office of Attorney General with the opportunity to copy all discovery received pursuant to this Order.

IT IS THEREFORE ORDERED:

1. That Applicant's counsel is permitted to serve a subpoena and/or submit a request, along with a copy of this Order, upon the above listed people, offices or agencies for the above listed items.
2. That Applicant through counsel may renew the Motion for Discovery, if needed, after obtaining files pursuant to this Order.

AND, IT IS SO ORDERED.


Honorable Brooks P. Goldsmith
Presiding Judge, Sixth Judicial Circuit

August 8, 2018

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Terry Catoe, 216913,

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

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CLERK OF COURT
LANCASTER, SC

IN THE COURT OF COMMON PLEAS

CASE NO.

2018-CP-29-0338

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Tricia A. Blanchette, Bar No. 74904
Address:
PO Box 2147
Leesville, SC 29070
phone: 803-908-3266 fax:
e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:
Deshawn Mitchell, Bar No.
Address:
PO Box 11549
Columbia, SC 29211
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Amendment to Application for Post Conviction Relief

Estimated Time Needed: 3-4 hours Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

June 29, 2021

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

- ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT
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Terry Catoe, 216913,)
Applicant,) 2018-CP-29-0338
CLERK OF COURT
LANCASTER, SC

v.)
State of South Carolina,) AMENDMENT TO APPLICATION
Respondent.) FOR POST CONVICTION RELIEF

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on March 27, 2018. The State submitted a Return on July 31, 2019.

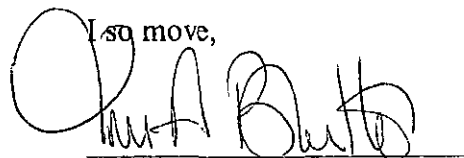
Applicant, through counsel, would move to amend his Application, as addressed below, to provide Respondent notice of his allegations as known at this time. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

1. Ineffective assistance of trial counsel for failure to properly prepare and present a viable defense. Specifically, but not limited to the following:
 - a. Failure to ensure that Applicant understood the defense strategy prior to the rejection of the plea offer and prior to trial.
 - b. Failure to prepare and utilize Applicant as a witness.
 - c. Failure to effectively address Applicant's statements and the summary of his interaction with law enforcement admitted by the State at trial.

- d. Failure to further question the State's expert witnesses (i.e. Dr. Janice Ross) and/or utilize an expert pathologist.
 - e. Failure to provide the jury a basis for finding Applicant guilty of a lesser included offense and/or not guilty.
2. Ineffective assistance of trial counsel for failure to request an accident charge.
3. Ineffective assistance of trial counsel for failure to request proper instructions on murder and manslaughter and enter objections and/or exceptions when such instructions were not given. Specifically, but not limited to the following:
- a. The inference of malice instruction when evidence was presented that could reduce, excuse, justify or mitigate the homicide;
 - b. The improper and incomplete inference of malice instruction, which lacked the general permissive inference instruction;
 - c. The inference of malice instruction amounting to a comment on the facts; and
 - d. The absence of an instruction that malice is not an element of voluntary manslaughter.

See State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), *Gibson v. State*, 416 S.C. 260, 786 S.E.2d 121 (2016), *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), *State v. Jackson*, 377 S.C. 523, 377 S.E.2d 570 (1989), *State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800 (1985), *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983).

Isu move,


Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

June 29, 2020

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT
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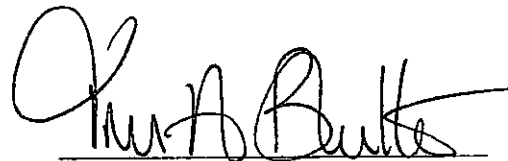
Terry Catoe, #216913,) CLERK OF COURT) 2018-CP-29-0338
Applicant,) LANCASTER, SC)

v.)
State of South Carolina,)
Respondent.)

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency," as amended June 15, 2021, the undersigned hereby certifies a true copy of an Amendment to Application for Post Conviction Relief has been served on opposing counsel by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

Michael Davidson, Esquire
Michaeldavidson@scag.gov



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

June 29, 2021

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STATE OF SOUTH CAROLINA - COUNTY OF LANCASTER
6TH JUDICIAL CIRCUIT

TERRY CATOE	)
	) Docket No.
APPLICANT,	)
	) 2018-CP-29-0338
	)
	)
V.	)
	)
	) PCR HEARING
STATE OF SOUTH CAROLINA	)
	)
RESPONDENT	)

August 3, 2021
Lancaster, South Carolina

B-E-F-O-R-E:

HONORABLE JOCELYN NEWMAN

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

TRICIA BLANCHETTE, ESQ.
Attorney for the Applicant

MICHAEL DAVIDSON, ESQ.
Assistant Attorney General

Maria DiScioscia, RPR
Official Court Reporter

1 THE COURT: Good morning, folks. This is
2 2018-CP-29-0338, Terry Catoe versus the State of South
3 Carolina.

4 Let me get some background from Mr. Davidson.

5 MR. DAVIDSON: Thank you, your Honor. May it
6 please the Court.

7 Applicant was indicted in June 2012 for murder.
8 He was represented on those charges by Tyre Lee and
9 Justin Jones. Applicant's case proceeded to a jury
10 trial January 4th through 6th of 2016 before Judge
11 Gibbons. The jury convicted Applicant as indicted and
12 Judge Gibbons sentenced Applicant to serve life in
13 prison. Applicant appealed. Appellant defender, David
14 Alexander perfected Applicant's appeal by filing an
15 *Anders* brief to the Court of Appeals. The Court of
16 Appeals dismissed the appeal in an unpublished decision
17 on June 28, 2017. The case was remitted back to the
18 Circuit Court on August 8, 2017. This PCR was filed
19 March 27, 2018.

20 In his application, Applicant alleged
21 ineffective assistance of counsel for failure to
22 properly prepare and investigate, failure to make
23 motions and objections and failure to utilize applicant
24 as a witness at trial.

25 On July 7th -- sorry, on July 7, 2021,

1 Applicant filed an amended application adding the
2 following allegations:

3 Failure to ensure that Applicant understood the
4 defense strategy prior to the rejection of the plea
5 offer and prior to trial; failure to prepare and utilize
6 Applicant as a witness; failure to effectively address
7 Applicant's statement in the summary of his interactions
8 with law enforcement admitted by the State at trial;
9 failure to further question the State's expert
10 witnesses, Dr. Janice Ross and/or utilize an expert
11 pathologist; failure to provide the jury the basis for
12 finding Applicant guilty of the lesser included offense
13 and/or not guilty.

14 Ineffective assistance of trial counsel for
15 failure to request an accident charge; ineffective
16 assistance of trial counsel for failure to request
17 proper instructions on murder and manslaughter and use
18 objections and/or exceptions when such instructions were
19 not given. And then there's some specifics -- specific
20 allegations under that one.

21 Applicant is present and he's represented by
22 Ms. Tricia Blanchette and the State is ready to proceed.

23 THE COURT: Ms. Blanchette, ready?

24 MS. BLANCHETTE: Thank you, your Honor. Your
25 Honor, is it okay for me to pull this down to speak?

1 THE COURT: Absolutely.

2 MS. BLANCHETTE: I just wanted to make sure.

3 Also, as your Honor knows, I have tendency to
4 talk a little fast, so either you or Madam Court
5 Reporter needs me to slow down, you can give a wave
6 through that Plexiglass and I'll try to do my best.

7 Your Honor, just one brief thing regarding
8 procedural history. I did note in the appeal on pretty
9 much everything that was filed, it says the trial was
10 held 2015; it was actually 2016. That's properly
11 reflected on the sentencing sheets. And that also make
12 sense because there was a hearing prior to that in 2015.

13 So I just wanted to point that out to make sure
14 that we're clear on that for the record. But the front
15 of my transcript actually has the wrong date but the
16 sentencing sheets reflect the proper date.

17 THE COURT: That's so strange.

18 MS. BLANCHETTE: As I was saying, I brought
19 that to Mr. Davidson's attention before. I think he
20 just failed to mention it.

21 THE COURT: All right.

22 MS. BLANCHETTE: But I did bring that to his
23 attention just to make sure I was right on that. But as
24 I was doing the chronological dates, it just didn't make
25 sense so I went back and checked it and it was in

1 fact -- it appears to be 2016, but from the front of the
2 transcript forward, it seems to have been reported
3 wrong.

4 THE COURT: Right. I see. Okay.

5 MS. BLANCHETTE: So I just didn't want any
6 confusion with that.

7 Your Honor, also, if the Court would allow,
8 I've prepare just a brief outline of how the issue was
9 raised at trial that was raised on appeal. We're not
10 alleging ineffective assistance of appellant counsel,
11 but Mr. Catoe didn't testify; just his statements were
12 admitted. And so I thought that would be helpful to the
13 Court just to go through the *Jackson versus Denno*
14 hearing and how those were utilized at trial, since,
15 it's my understanding your Honor would have just
16 received her packet this morning. So just to give you
17 some background information before we dive into issues
18 involving that, that would be helpful at this time.

19 THE COURT: Yes, ma'am.

20 MS. BLANCHETTE: Okay. Your Honor, as the
21 State said, he was represented on appeal by David
22 Alexander. Mr. Alexander submitted an *Anders* brief.
23 And the issue raised there was in regard to the
24 admissibility of his statement. And as I said, I've
25 just prepared a brief outline of how the statement came

1 up in the trial transcript and all the references to
2 that.

3 There was a *Jackson versus Denno* hearing that
4 is reported at Page 6 of the transcript. And I'm just
5 summarizing what the Solicitor said in beginning that
6 *Jackson Versus Denno* hearing.

7 On Page 6, he explains that Mr. Catoe is
8 interviewed twice on February 29th, 2012, by
9 Investigator Fred Thompson and Investigator Danny
10 Bennett. There was a first statement given and they
11 questioned him about inconsistencies and then they
12 Mirandized him and he signed a waiver. That's all
13 reflected on Page 6.

14 On Page 7, he explains that the questioning
15 ended and Mr. Catoe essentially told them that that's
16 all he wanted to say that day.

17 On Page 8, he explains that Mr. Catoe was
18 placed under arrest for solicitation of a -- for
19 prostitution and they obtained a warrant. He goes on to
20 explain on Page 8 that on March 1st of 2012, they went
21 to serve the search warrant on Mr. Catoe and he told
22 Officer James Whitaker, "What do you want to know?"

23 Then Catoe admitted to killing the victim and
24 said it was a result of rough sex.

25 On Page 9, the Solicitor says that Investigator

1 Whitaker took him to his desk. Investigator Clark Crump
2 was also present and that's when he gave a subsequent
3 statement.

4 The witnesses that they called at the *Jackson*
5 *versus Denno* hearing were Fred Thompson. His testimony
6 begins on Page 10. He testifies that he asked Mr. Catoe
7 to voluntarily come in. He testified on Page 13 that
8 Mr. Catoe was free to go. He also testifies on that
9 page that he initially did not go over Miranda with him.

10 On Page 14, he recounts and reads the
11 three-page statement given by Mr. Catoe. He then
12 explains on Page 20 that he questioned him about the
13 inconsistencies. He Mirandized him. And then he goes
14 over the report that is later admitted on what they
15 discussed because that wasn't memorialized in the
16 written statement.

17 Thomas Craig-Bailey testified on Page 45. My
18 summary of his testimony is that he was present for the
19 interview and questioning. Danny Bennett was called on
20 Page 50. He also was present for interviews and
21 questioning. Clark Crump testified on Page 58. He was
22 present but he had to leave. He was present on the next
23 day when they served the warrant on Mr. Catoe, and on
24 Page 60, he said Catoe wanted to talk, or Mr. Catoe
25 wanted to talk so they Mirandized him. He clarifies

1 that the date of 4-1 of 2010 on a statement is incorrect
2 on the second statement. And he clarifies that on Page
3 68. And then on Page 68, he also goes into the second
4 statement given by Mr. Catoe. He reads that into the
5 record and then there's discussions regarding redactions
6 that took place.

7 James Whitaker was the final witness on Page
8 80. He went with Mr. Crump to serve the warrant and he
9 also was present for the interview.

10 On the record, on Page 93, is where the defense
11 said that they object to the statements to protect the
12 record and they don't intend to call Mr. Catoe's to
13 testify and then it was ruled admissible.

14 At trial, Mr. Fred Thompson testified on Page
15 345. He went into greater detail then he did in the
16 *Jackson versus Denno* hearing. He does explain on Page
17 363, after putting the first statement into the record,
18 that Mr. Catoe didn't want to sign the second statement.
19 So he memorialized it in a report and his report was
20 admitted into evidence on Page 366. That was the same
21 report referenced during the *Jackson versus Denno*
22 Hearing.

23 Danny Bennett testified on Page 388. Clark
24 Crump testified on Page 396, again, about going to serve
25 the warrant on Mr. Catoe and him wanting to testify --

1 I'm sorry -- him wanting to give a statement and through
2 him the subsequent statement was published on Page 409.

3 He also said that Mr. Catoe made admissions
4 while they were talking in the bunk before the statement
5 was made and he says that on cross on Page 416.

6 James Whitaker also testified regarding the
7 statements on Page 418 and he also testifies about
8 Mr. Catoe being served the warrant. And then on Page
9 423 about giving the second statement.

10 As I said, Mr. David Alexander raised the issue
11 via *Anders* brief. He argued that the trial court erred
12 in admitting the statements because the police violated
13 the Fifth and Sixth Amendments by using the question for
14 a strategy. And as the State said, that appeal was
15 dismissed.

16 I just thought that background information
17 would be helpful to the Court before we dove into the
18 issues. Obviously, I defer to the transcript and those
19 are just summaries of how all this was presented.

20 Your Honor, additionally, I will not go through
21 the issues as listed in the amendment unless you would
22 like me to. I would like to -- I thought it might be
23 helpful at the outset. I've already provided these
24 cases to the State and I can argue them in greater
25 detail at the end. But beginning on Issue 3 -- and I

1 apologize, my contacts are making this a little
2 tricky -- beginning on Issue 2: "Ineffective assistance
3 of trial counsel for failure to request an accident
4 charge."

5 I have case law for Issues 2 and 3 because
6 those are strictly legal issues that I'm happy to argue
7 now or at the end. I think at the end may be more
8 appropriate. But I can hand those up to your Honor now
9 if those would be helpful to you.

10 THE COURT: Yes, please. And, also, when you
11 begin talking about the *Jackson versus Denno* and
12 Mr. Catoe's statement, those notes that you were reading
13 from, is that something that I can have a copy of or is
14 that your work product?

15 MS. BLANCHETTE: Your Honor, I would be happy
16 to -- it's part of my outline for my presentation today.
17 But I can pull that out and email that to you after the
18 hearing if that would be helpful.

19 THE COURT: That would be great.

20 MS BLANCHETTE: Or if you would like it now I
21 could try and --

22 THE COURT: After the hearing is fine.

23 MS. BLANCHETTE: Okay. And, your Honor, here's
24 those cases (handing.)

25 THE COURT: Thank you. You just talk fast and

1 it's hard to take notes.

2 MS. BLANCHETTE: I figured. It's so hard. I
3 don't want to bore everybody and go slow but I also want
4 to make sure everybody's tracking with me.

5 THE COURT: Okay. If you're ready to proceed,
6 you can call your first witness.

7 MS. BLANCHETTE: Yes, the Applicant's first
8 witness would be Dr. John Wren.

9 THE CLERK: Do you swear to tell the truth, the
10 whole truth and nothing but the truth so help you God?

11 DR. WREN: I do.

12 THE CLERK: Please be seated at the witness
13 stand.

14 J-O-H-N D-A-V-I-D W-R-E-N, PhD, the Expert Witness
15 herein, having been sworn by the Clerk of Court
16 testified as follows:

17 MS. BLANCHETTE: Your Honor, I'm kind of
18 getting used to this new setup. I will need to approach
19 the witness and provide him things. We may even at one
20 point have to use my computer to show some pictures. Is
21 it best I just come through there and -- I just don't
22 want to get too close. I don't know where I'm supposed
23 to go.

24 THE COURT: I don't really know. Whatever
25 makes you most comfortable. Yeah, that's good. As you

1 know I don't normally preside in Lancaster so this all
2 new to me as well. So yes, you can come through there.

3 MS. BLANCHETTE: I can come through there for
4 something I need to show him?

5 THE COURT: Absolutely.

6 MS. BLANCHETTE: Thank you, Your Honor.

7

8 DIRECT EXAMINATION

9 Q. (BY MS. BLANCHETTE) Can you please state your
10 name for the record.

11 A. I left my glasses on the desk. I think I need
12 them.

13 Q. Can you state your name for the record when
14 you're ready.

15 A. My full name is John David Wren, W-R-E-N. And
16 I go by the name of David.

17 MS. BLANCHETTE: Your Honor, I intend to offer
18 Dr. Wren as an expert. It's my understanding the State
19 would like me to go through his qualifications prior to
20 offering him as an expert.

21 THE COURT: Go ahead.

22 MS. BLANCHETTE: Okay.

23 Q. (BY MS. BLANCHETTE) Dr. Wren, we're just going
24 to have you go through the curriculum vitae that you
25 provided to me that I provided to the State. We'll

1 start a little bit backwards.

2 Can you tell us what your current occupation
3 is?

4 A. Currently, I work for Carolinas Pathology
5 Group, which is based in Charlotte, North Carolina. We
6 merged. The one that I started with was Spartanburg
7 Pathology Associates. I started working there in
8 October the 18th 1982. And over the years we formed a
9 second private laboratory called Spartanburg Pathology
10 Consultants. From its inception in 1983 until we merged
11 to get those two entities together in 2005, I was
12 president and I was director of the Spartanburg
13 Pathology Consultants.

14 Spartanburg Pathology Associates was the actual
15 hospital-based practice in Spartanburg. After we became
16 one group, I was president and actually secretary of
17 treasurer also, as well as the chief of pathology at
18 Spartanburg Medical Center.

19 At that time it was called Spartanburg General
20 Hospital, I think. But at any rate, until we merged
21 with Carolinas Pathology Group in North Carolina in
22 January 1, 2009, I was the president and vice president
23 of the whole group.

24 Now, I work for Carolinas Pathology Group. I
25 was a full partner for some time but when I became their

1 mandatory retirement age, I had to give up my
2 partnership.

3 Two years before that, I had to give up my
4 voting rights but I've remained as laboratory medical
5 director and a pathologist, general pathologist in
6 anatomic clinical pathology.

7 And at the time we merged, I started doing all
8 the coroner cases in Spartanburg County, and for a
9 while, some of the surrounding counties when we actually
10 started doing some work in Union County and took that
11 hospital over as part of our practice.

12 But at any rate, I am the laboratory medical
13 director of the Spartanburg Regional Medical Center
14 itself and the laboratory medical director. And also at
15 the clinical laboratory, I see a lot of autopsies still.
16 I don't do surgical pathologies for several years to
17 concentrate on running the laboratory. But I did
18 forensic pathology on coroner cases until May the 13th,
19 2019. I still do private cases. Particularly, those
20 that are difficult for other people to force themselves
21 to risk their health.

22 And in cases like CRION Disease, I do those
23 types of cases for Case Western University procurement
24 for that. And I've done private cases for Duke
25 University as part of their hospital system.

1 So right now I'm a laboratory medical director
2 and autopsy pathologist, as well as the medical director
3 of that area of the anatomic pathology.

4 Q. And Mr. Wren, what was the education that you
5 received before obtaining these positions?

6 A. Pardon me?

7 Q. What was the education you received prior to
8 obtaining these positions?

9 A. I have a bachelor's degree, a master's degree
10 and a PhD in Chemical Engineering from Clemson
11 University. My master's dissertation and my doctoral
12 dissertation was on Growth Kinetics of life support
13 systems. And I then went to work for five years with --
14 at that time it was called Hystron Fibers, which was a
15 merger of Farbwerke Hoechst A.G., a German fibers
16 company and Hercules Powder Company at that time,
17 Hercules Chemical Company, they formed Hystron Fibers.

18 I started out as a research engineer, developed
19 some products at that time and also I became -- I did
20 some flow work and quenching of fibers and actually
21 developed the process that improved the process,
22 essentially double the output and they put it --
23 Farbwerke Hoechst put it on all of their machines all
24 over the world. It not only improved the quality but it
25 actually improved the input through their spinnerets,

1 they were called.

2 I then became process control and improvement
3 engineer of -- as well as group leader of process
4 controlling, computer control and part of the process
5 that made the polymer itself developed a mathematical
6 model using production equipment that only had less than
7 10 percent of quality and pulse processing which
8 actually we distribute the process and measure pertinent
9 parameters and then mathematically model that to get
10 within 3 percent of all predicted values.

11 It was to be used in Spartanburg but from
12 political considerations at that time with a German
13 company, they did a table lookup and integration
14 procedure which actually was -- took a lot of effort by
15 three PhD engineers, several master's, a couple of BS
16 degrees and some technicians on power plant equipment,
17 which they decided to use.

18 And at that time I became disenchanted with the
19 politics at that time of industrial so I decided to go
20 to medical school to be my own employer.

21 I applied to the Medical University of South
22 Carolina. While I was there, I did research in
23 nephrology for the nephrology department, presented some
24 papers. I also did some papers on my PhD work while I
25 was working with Hoechst. Actual, Hysteron Fibers

1 eventually became Hoechst Fibers when Farbwerke Hoechst
2 in Germany bought out the Hercules portion of the
3 polymer production area.

4 At the Medical University, I also did
5 hemodialysis in water conditioning consultation because
6 I had a minor degree in environmental systems control
7 and did research in that while I was working on my
8 doctorate in chemical engineering at Clemson.

9 I graduated in three years and there months by
10 pushing my courses closer together and getting some --
11 volunteering to work when some of the students who were
12 considerably younger than I was, were on vacation or in
13 a break between their courses, I just went ahead and
14 volunteered to assume the duties so I could finish that
15 rotation early and go to another one.

16 So I became a resident in pathology at the
17 Medical University and February the 1st, 1979, I
18 graduated with my class in late May of 1980 -- I mean,
19 '79.

20 So I started by residency five months earlier
21 because I finished all my requirements. I then did my
22 full residency in AP in clinical pathology. At that
23 time the department chairman wanted you to do five
24 years, but I had done enough research in nephrology, as
25 well as while I was in medical school, as well as

1 working on my doctorate degree that I was certified to
2 apply that to my residency train.

3 I was chief resident in anatomic pathology the
4 last six months I was in that rotation in anatomic,
5 which I did first. Then I went to clinical and I was
6 chief resident there also.

7 So while I was there at the Medical University,
8 the department chairman by some strange circumstances
9 decided that a -- relatively hilarious when I tell you
10 the story, but I'm not going to tell you the story.
11 Anyway he asked for me to become the deputy medical
12 examiner in Charleston County. I started that on
13 January the 1st, 1980, investigating and going to scenes
14 for the -- at that time, Charleston had a forensic
15 pathology, forensic pathologist that was a medical
16 examiner, a forensic pathologist who was on staff at
17 Medical University, was the medical examiner for
18 Charleston County and he had two other forensic
19 pathologist at that time. They did rotations through
20 forensic pathology. So a place came open to investigate
21 cases.

22 At the beginning, I took call ten nights and
23 days a month and one out of every three weekends. One
24 of the other residents -- we had three at that time --
25 one of the other ones left, and that left only two of

1 us, so I started doing 15 cases, weekend -- on nights, a
2 month. And every other weekend, I assisted with and did
3 some autopsies. In my rotation I did probably 15 or so.
4 And then the department chairman wanted me to -- one of
5 the assistant forensic pathologist in Charleston took
6 the chief medical examiners job in Jefferson County,
7 which is the county that Birmingham, Alabama is in, so
8 that left him with only two.

9 So at that time he asked me to do autopsies one
10 weekend a month at that time. Well, every third
11 weekend. And so I accepted that, for him to give me
12 credit for residency training, in addition to my three
13 months to hand the boards in forensic pathology.

14 The other pathology resident had four children
15 and was trying to get out and he was having trouble
16 financially so he took the other weekend. So we did
17 every fourth weekend.

18 I did about 90 autopsies while I was there,
19 testified some, some in the lower part of the State at
20 times and got qualified to take my boards in forensic
21 pathology.

22 When I came to work in Spartanburg, I actually
23 didn't do very many forensic pathology coroner cases
24 because all six of them, six other pathologist that were
25 there, did their rotation on the weekends so it left me

1 only one weekend. I was at another hospital. I was at
2 Mary Black Hospital as one of the two pathologist over
3 there.

4 We did hospital cases there. But only on the
5 weekends did I do very many. Until I moved over to the
6 main hospital, Spartanburg Medical Center to take over
7 the chemical pathology and clinical laboratory portion
8 of the group, department medical directors.

9 Then I started doing -- and one by one the
10 other pathologist dropped out for various reasons, that
11 only left two of us doing autopsies. And I wound up
12 doing about two-thirds of the autopsies for several
13 reasons, whereas the other pathologist only did -- he
14 didn't do -- he didn't like doing autopsies on children.
15 And the Solicitor at that time didn't want him to have
16 to come testify for logistic reasons. So I started
17 doing all of the legal -- the ones that were going to go
18 to legal court.

19 Over the years I've done over 6,000 autopsies.
20 The majority of them from 2009 until 2019. I think the
21 lowest I did was like 230 or so a year, up to 313 was
22 the most I did as basically a part-time job. I did
23 autopsies after 5 o'clock to not interfere with the
24 other work I did. And all of them on the weekends, is
25 the way I handled that.

1 I passed my AP boards on my first attempt and I
2 think it was 1984 and my first attempt in clinical
3 pathology was 1987. I passed it on the first try.
4 Because of all the duties that I had and other things I
5 was doing. Although I was qualified for forensic
6 pathology boards, I never took them simply because I
7 didn't have time.

8 And over the years, I have been qualified in
9 probably half the counties in South Carolina testifying
10 mostly for the prosecution but I have done defense
11 cases, civil and legal. And I'll name some of the
12 counties.

13 Starting in the Upstate, I did -- I testified
14 in Greenville, Anderson, Spartanburg, York, Cherokee,
15 Chester, Fairfield, Laurens, Greenwood, Newberry,
16 Lexington.

17 Moving on over, I've testified in Jordan, Horry
18 County, Clarendon County, Charleston, Dorchester,
19 Berkeley, Barnwell, Beauford, Horry. I might have said
20 that one already.

21 Georgetown, Orangeburg again, Lexington.

22 Never testified in Columbia.

23 Saluda, that's more in the Upstate though. I
24 think that's the majority of them. There are probably a
25 couple more down in the lower part of the State. I'd

1 have to go through the listing of the 46 counties to
2 give you the complete list.

3 Q. And Dr. Wren, do you hold --

4 A. And I was qualified --

5 Q. -- I'm sorry.

6 A. -- as an expert in all the cases I've ever
7 testified in in forensic pathology.

8 Q. Dr. Wren, do you hold current licensures in
9 North Carolina and South Carolina?

10 A. I have a medical license in North Carolina and
11 South Carolina. Part of the joining the Carolinas
12 Pathology Group, as a member, we had to be licensed in
13 both states because we did some work across state lines.

14 Q. And you mentioned you've been qualified in
15 forensic pathology.

16 Have you also been qualified in other areas of
17 pathology as well?

18 A. As what?

19 Q. I'm sorry, I'll take this down. You testified
20 that you've been qualified in forensic pathology.

21 Are there other categories -- and if I'm saying
22 it incorrectly, I apologize -- of pathology that you
23 have been qualified, such as clinical, medical or
24 anatomical?

25 A. Well as part of my AP and CP, you're qualified

1 in clinical. But I have an expertise in chemical
2 pathology. I haven't taken those boards, but I think a
3 PhD in chemical engineering and all the medical stuff
4 that you'd do in the laboratory would qualify you pretty
5 good at expertise in chemical processes.

6 MS. BLANCHETTE: Your Honor, I would defer to
7 the State if they had any questions for Dr. Wren.

8 THE COURT: Any voir dire?
9

10 VOIR DIRE EXAMINATION

11 Q. (BY MR. DAVIDSON) I just have a few questions
12 for you. Maybe its based on me not fully understanding
13 all the different pathologies.

14 You said you're specialized in forensic
15 pathology?

16 A. Not that I have special extended training and
17 initially, I had -- I was qualified to take the boards,
18 but I never took the board. But also the other duties
19 that I had where I was working at the time, I just never
20 took the time. But over the years, the qualifications
21 to take the boards expired because you have to have
22 done, as I understand it, at least six months in a
23 residency program, a short time before you have -- take
24 the test.

25 So being out of academics since I left

1 academics in October the 18th, 1982, although, I taught
2 medical students. I've taught courses and to -- the
3 dental class and medical class while I was a resident.
4 I haven't done any -- and we have a teaching program at
5 Spartanburg Medical Center, which I -- we have residents
6 that come through there and I have teaching
7 responsibilities with them, but I've never taken the
8 boards but I have been qualified as an expert in
9 forensic pathologies and simply from experience and
10 through the background that I have over the years.

11 I just recently, last week, I think last week
12 testified in a murder trial. The murder occurred in
13 2018 and it just came to trial last week and I was
14 qualified as an expert in forensic there to testify.

15 Q. And can you just explain what the forensic
16 pathologist does?

17 A. A forensic pathology is a branch of anatomic
18 pathology and subspecialty of autopsy pathology in which
19 the forensic pathology does medical legal cases, and
20 autopsies of unexpected and unexplained deaths to try to
21 determine the circumstances surrounding death. The
22 cause of death is sort of superfluous because -- because
23 in my opinion you present a case to hundred pathologist,
24 autopsy pathologist of a hospital case, you would be
25 hard pressed to get any real unanimous consensus of the

1 cause of death but the manner of death is different.
2 We're trying to find out the manner of death, whether
3 it's natural, suicide, accidental, homicide which means
4 another persons was involved or undetermined based on
5 all the evidence you have.

6 So we try to determine the circumstance
7 surrounding death, give our opinions of the cause of
8 death and then, in my case in Spartanburg, the initial
9 coroner there wanted to sign the manner of death
10 himself.

11 So I was never involved until he had a problem
12 and then asked my opinion of what manner of death it was
13 after I gave my opinion of the cause of death in very
14 controversial cases like drug cases and things like
15 that. And then an opinion as to circumstances, as far
16 as, I can tell surrounding what happened in the scene.

17 MR. DAVIDSON: I beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 MR. DAVIDSON: No further questions, your
20 Honor.

21 THE COURT: Ms. Blanchette?

22 MS. BLANCHETTE: At this time I would offer Dr.
23 Wren as an expert in forensic pathology.

24 THE COURT: Any objection?

25 MR. DAVIDSON: No objection.

1 THE COURT: All right. You are deemed so
2 qualified by the Court.

3 MS. BLANCHETTE: Thank you, your Honor.
4

5 CONTINUED DIRECT EXAMINATION

6 Q. (BY MS. BLANCHETTE) Dr. Wren, now let's turn to
7 this matter here before us.

8 The case of Terry Catoe involving the victim by
9 the name of Linda Gaymon.

10 Can you explain to the Court what you've
11 reviewed in preparation for today.

12 A. Basically I reviewed what was provided to me
13 several times. I've actually spent quite a good bit of
14 time over the several years it's been since you
15 contacted me to see what I could gain from the
16 proceedings.

17 And I've reviewed, among other things, I've
18 reviewed the scene photographs. I reviewed the
19 testimonies and the statements made in connection with
20 Mr. Catoe. And I've reviewed the complete autopsy
21 report which I thought were the only autopsy photos that
22 I've seen that I have. I thought that was all of them.
23 I'm not sure they are or not but I do have the photos of
24 the ones that I was provided with.

25 And the toxicology, as well as, the SLED

1 reports and the findings in the SLED reports, as well
2 as, the photographs on Mr. Catoe.

3 I think it was March the 2nd, might have been
4 March the 1st, 2012 that were taken. I evidently didn't
5 see them all but I saw some of the ones just recently.

6 Today, as a matter of fact, were introduced as
7 evidence. My photographs on CD were not quite as good
8 as these. I also did show -- I looked at some of the
9 photographs taken of the victim at the coroner's office.

10 Like I said, the autopsy and the toxicology and
11 the autopsy's findings, those are the things that I've
12 reviewed.

13 Q. Okay. And Dr. Wren, through a discovery order
14 that was issued in this case, I was able to issue
15 subpoenas and obtain the defense attorney file and then
16 separately obtain the SLED file and the corner's file.
17 Those are the files that you're referring to that you
18 were able to review; is that correct?

19 A. Basically, yes.

20 Q. Okay.

21 MS. BLANCHETTE: Your Honor, it's my
22 understanding through the course of Dr. Wren's
23 testimony, he will be referring to State's Exhibit 11,
24 which was the corner's death report and then State's
25 Exhibit 13 which was the five-page autopsy report issued

1 by Dr. Ross. I have extra copies of those if Your Honor
2 would like one. I've shown those to the State. And
3 they don't have the stickers on them, just because of
4 COVID, I couldn't get up here to get these exact ones.
5 But I do have copies.

6 THE COURT: Yes, please.

7 MS. BLANCHETTE: Also I have 11 and 13 here if
8 Your Honor would like those, the marked copies.

9 THE COURT: Not necessarily.

10 MS. BLANCHETTE: Okay. I will just leave those
11 as a reference for anyone that needs them. And then I
12 have copies for the State as well.

13 THE COURT: Just maybe put them in a pile so
14 they don't disappear.

15 MS. BLANCHETTE: Yeah, I will stick them in the
16 box.

17 Q. (BY MS. BLANCHETTE) Dr. Wren, I know you've
18 already said you've spent quite a few hours preparing
19 for today. And I've already referenced State's 11 and
20 13 and you referenced some exhibits that were pictures,
21 as well as items that you've reviewed as part of the
22 files. If you could just take us through, I believe
23 maybe beginning with Dr. Ross' report, you can
24 correct me if I'm wrong, what you've reviewed and what
25 your findings were that you would have been able to

1 share with defense counsel and/or testify to at a
2 proceeding for Mr. Catoe.

3 A. As I planned on talking about the scene for a
4 little bit, because I have been to a good a many scene.
5 I did them both in Spartanburg. And I had unusual -- we
6 had one case where an attorney lived by himself and
7 evidently fell down steps -- stairs in his apartment and
8 they found him dead and they wanted me to look and see
9 if there was -- to investigate the surroundings, what
10 might have happened and I also did the autopsy. There
11 has been some others I went to, as well as I said, I did
12 -- any time there was an unusual case in Charleston
13 while I was the Deputy Medical Examiner, I would take
14 the truck with investigators, we had three
15 investigators, I would meet them at the scene and we
16 would retrieve that body. If it was thought to be a
17 natural death, we'd have them sent to the funeral home.
18 And then we went and examined them then. But the
19 autopsy report --

20 Q. Dr. Wren, you can actually started with the
21 scene. I apologize. If you want to take us through the
22 scene first.

23 A. I was going to talk about the scene first.
24 This place from looking at all the pictures was a mess,
25 really cluttered and from some of the other findings it

1 seems like it was pretty much almost like a meeting
2 place for multiple people based on the DNA results. But
3 any way, in one of the bedrooms, that was in one of the
4 back rooms of the place that was -- the decedent was
5 laying on her right -- left side, with her left arm
6 extended out and her right arm sort of to her face. Her
7 face was down on the mattress there, and her knees were
8 drawn up somewhat and her bra and blouse were up above
9 her breast partially. In the front, they were up a good
10 ways and in the back a little bit lower. She was nude
11 from the waste down and her buttocks were exposed.

12 Q. Dr. Wren, do you have pictures that are
13 demonstrative of this, or that show this for the Court?

14 A. Yes. I have several. And the reason I chose
15 those was to -- there's several reasons. She has
16 alternating dark and light areas of her skin which is
17 not unusual. There were a good many around her -- she
18 had a lot of irritation that was chronic about her
19 crease of her buttocks. You can see that it's dark,
20 considerably dark around that.

21 Q. Dr. Wren, is there any way for you -- do you
22 have those pictures there if the Court would like?

23 MS. BLANCHETTE: I don't know if she can see
24 them or you're entrusted in seeing what he's referring
25 to, your Honor.

1 THE COURT: If you'll just keep talking, I'll
2 stand over and look.

3 THE WITNESS: I described how she was lying.
4 Then took some other pictures and I thought it was
5 important to show these because around the outlets at
6 her head there are two holes in the wall as well as a
7 receptacle. If you look over on the other side of the
8 room, there are some more.

9 So in my opinion -- and I don't think I'm wrong
10 since I have some experience in electricity -- I think
11 some -- over the years somebody's taken and removed all
12 the copper wiring and they knocked into the wall to do
13 that.

14 This photograph here shows dark areas around
15 her anus and I don't see any external injuries. I think
16 some of it is irritation from fecal material as well as
17 just chronic irritation. Then I just showed some
18 different directions. How the breast are higher on the
19 shirt and bra. And supposedly she had a bruise or
20 contusion in her right thigh. There are no pictures of
21 that that I can tell anywhere. It just shows her left
22 thigh and you can see a dark area down near her knees.
23 I think that's a partial shadow because it goes away in
24 the next picture there. It's pretty much gone. There
25 was nothing on the left medial thigh. This one is a

1 closer up of her irritation around her buttocks. Shows
2 no injuries found below her waist. Except there's one
3 contusion on her anterior lateral right thigh, which was
4 documented. And I'll show it. I dropped them awhile
5 ago. So this is a close-up of the contusion. This
6 contusion has resolving areas, some pale areas and
7 fading on the outside. So I'm not sure if it occurred
8 at the time of the incident.

9 By the way, there are no injuries to her hands
10 except her left thumb. You can see it in several cases
11 here. Having a bulse fingernail and subungual
12 hemorrhage there.

13 Now, when they did the DNA on her fingernails,
14 there was no hit on the assailant -- purported assailant
15 connected to that. They could not get any DNA. On the
16 right hand they did, but there are no injuries to the
17 right hand. And then there's the little bit of a closer
18 up of these area. I told you, I dropped it.

19 Now, I went ahead and in the photos, these were
20 -- a picture of her driver's license. It was expired in
21 2015. So it may have been a year or so old. I took
22 that picture because -- to show her eyes. They're not
23 puffy, they're not -- her lips are not -- are not very
24 prominent. They're not wrinkled and she's got these
25 darker areas under her eyes. Whoops --

1 THE COURT: Be careful of that microphone.

2 THE WITNESS: Pardon?

3 THE COURT: Be careful of that microphone.

4 THE WITNESS: Oh, I'm sorry.

5 Now, another one that was done at the scene --
6 and I don't think this was at the scene. I think this
7 is in the coroner's office because that looks like a
8 zipper bag to me. They took a picture of the right side
9 of her neck and I don't see anything there except maybe
10 a little bit of discoloration which is lateral to the
11 strap muscles of the neck.

12 There's a bunch of muscles, we call it --
13 forensic pathologist call it strap muscles. And I'll
14 show you a picture of that connected with the autopsy.
15 But I don't think there are any injuries there. Then
16 you can see, she does have contusion of her left eye,
17 but her right eye is just as swollen as the left.

18 Then from her position in the -- and this is in
19 the -- at the morgue, the coroner's office too. I
20 assume since they said coroner's office, they have a
21 place nearby where they store bodies, waiting to
22 transfer them to Newberry where they did the autopsy.

23 But anyway, you can see she has some rigger
24 here that already started and it distorts her mouth.
25 And there's been extravasation of blood down from this

1 forehead injury which is the main point of impact is
2 over her right eye. Just the right -- the medial tempus
3 location above her right eye. And that wound is --
4 actually has curvilinear abrasion in it. I don't have a
5 good picture of that but I may find one. I'm not --
6 since I dropped it. But there's an abrasion there and
7 then there's streaky areas that occurred so sort
8 indicates to me it's not from someone hitting her,
9 particularly since I'll show you connected with the
10 autopsy where all the hemorrhage is in her forehead.

11 And you can see little areas where it's darker,
12 a little bit darker. Those are areas of blood. There's
13 some there, some there, some there, some there. So I
14 think that's more consistent with a fall or at least
15 hitting something pretty solid all the way across her
16 head with an abrasion from there where she may have
17 fallen. I don't think it was from the wall because I
18 don't think anybody knocked her head up against the wall
19 because there's very little place you can do that in
20 that room and not have something there. And this is her
21 lips. She has as contusion there and they're swollen
22 completely. I don't know what -- if they were like that
23 before or not. But she's got a little scar right there
24 and a little scar right there. Not severe, but enough
25 to indicate an injury.

1 And then if you note the left eye as she's
2 lying at the scene, you can see her face all the way
3 down on the mattress and note the left eye is swollen
4 also. This one shows -- from another angle, it shows
5 this one with a contusion but this is in the morgue
6 because you can see blood here and some extraneous
7 stuff. So that was taken at the morgue. And this looks
8 like -- it looks to me like it was a EKG pad but I don't
9 know how it got there but that's what it looks like to
10 me. Unless it's something I don't know about.

11 And then this is -- note both eyes are
12 edematous, which wasn't the case when it was taken --
13 her driver's license photo was taken. And of course,
14 she's aged several years, at least a year. I don't know
15 how long before that since you can use your prior
16 photographs. But at least she didn't have these swollen
17 eyes and her lips didn't look like that initially. Some
18 of this is a little bit of hemorrhage. Her teeth were
19 -- she didn't have any teeth missing.

20 So I took a -- this may have been introduced as
21 evidence. But I took this black and white and it's on
22 the front and back so think it came from Counselor
23 Blanchette something she had gotten from one of the --
24 one of her references. Which means that a lot of those,
25 including the coroner's -- I mean the autopsy report was

1 on the front and back pages so I think it came with
2 that.

3 But you can see the way I've outlined the paler
4 areas and the dark areas that shows that this is an
5 irregular area of hemorrhage and you can see her lips
6 don't look swollen there. And the right eye appears
7 larger than the left there. Then this is a black and
8 white at the scene -- I mean a color at scene. And you
9 can see a contusion up here but some of the blood could
10 have extended down into there. There was no mention in
11 the autopsy that she had any injury to her orbital plate
12 so it could have been from the contusion but I don't see
13 any real confluent petechiae eye there.

14 However, that's a poor exposure or close-up of
15 that eye at the -- this is at the corner's office. This
16 is at the scene. Then the right eye has hemorrhage in
17 the inner canthus area, as well as some petechiae and a
18 little bit of a hemorrhage there. I think some of that
19 could have come down from the upper portion particularly
20 if there had been some orbital plate injury. And
21 there's a little -- another at the corner's office, I
22 think, where you see the petechiae on the right eye.
23 That's indicative of -- it can be indicative of asphyxia
24 or struggling to catch your breath or it can be from
25 acute episodes of heart failure or other things that we

1 have to consider.

2 And this is at the scene where they have this
3 area on her neck. And I'll show you the pictures of her
4 neck later after it's been reflected. It looks like
5 it's a little bit of subcutaneous hemorrhage there to me
6 and it might have just been -- I can't -- I can't tell
7 you. I can speculate what it could have been from. I
8 doubt it could be from someone hitting her down there.
9 It could have been from her cloth being up against
10 there, rubbing against it. There's another picture of
11 it. And I've got these numbers on here because of the
12 numbers that were referenced. That's what I looked at
13 from the scene.

14 And so what I gathered from that was it appears
15 to me that almost most -- essentially most of the
16 activities prior to her death occurred at the -- in that
17 room and actually the position she was lying in is
18 consistent with those that die from anal intercourse
19 sometimes. And I'll talk about that later.

20 Q. (BY MS. BLANCHETTE) Dr. Wren, if I can
21 interrupt you for just a second.

22 THE COURT: Yeah. I just want to take a short
23 break. I didn't know -- I was trying to find a good
24 stopping place.

25 THE WITNESS: I'll be through this in one

1 second.

2 THE COURT: Okay. Let's let him finish this.

3 MS. BLANCHETTE: Okay.

4 THE COURT: Before we go to the next topic,
5 we'll take a short break.

6 MS. BLANCHETTE: Thank you, Your Honor.

7 THE WITNESS: And I did not see any injuries to
8 her hands. None below her waist. Well except for what
9 was reported around her anus and her vagina. And I
10 didn't see any real defense wounds on her. So it seemed
11 like there's a chance that she could have suddenly
12 collapsed. And the other one I wanted to show -- I was
13 given was a picture of a bloody footprint which I was
14 wondering if it was factual whose blood it might have
15 been or what happened to that. It shouldn't have been
16 in the scene unless they were going to talk about. I
17 mean the pictures, unless they did something with it.

18 So that ends that part of the presentation
19 scene photos. And then I will get into the autopsy
20 report.

21 THE COURT: Let's take just a 15-minute break.
22 We'll be back in just a few minutes.

23 THE WITNESS: Judge, I want to add one thing.
24 I will leave these for you to review. I don't need them
25 anymore. If you keep them in order when you review them

1 or whoever has them to keep them in order, I would
2 appreciate that.

3 THE COURT: Yes, sir.

4 MS. BLANCHETTE: Your Honor, may I approach the
5 witness just to count the pictures and keep an accurate
6 number of those? I won't discuss anything with him.

7 THE COURT: Absolutely. And after you do that,
8 can you staple them together so that they stay in the
9 same order for me.

10 MS. BLANCHETTE: Okay.

11 THE COURT: All right. 15 minutes.

12 (Whereupon, a brief recess was taken.)

13 THE COURT: All right. Ms. Blanchette, you may
14 proceed.

15 MS. BLANCHETTE: Before we move on to the next
16 section of Dr. Wren's testimony, I would move to admit
17 the photographs that have been stapled that he
18 referenced as Applicant's Number 1. The State and I had
19 a chance to review them during the break. Dr. Wren has
20 taken some notes on them and they come from three
21 different CD's that were turned over in discovery. I
22 don't know how the Court or the clerks office would like
23 us to proceed. But I'm happy to -- if I could take them
24 and make cleaner copies and provide a substitute because
25 I don't think we want those in the record with the

1 notes. I just don't have a clearer copy on me right
2 now.

3 THE COURT: Is that something that you could
4 perhaps do today? I mean, it looks like this is going
5 to run a little long. So we will need to take a lunch
6 break at some point. Is that something that can be
7 accomplished over the lunch break so that you don't
8 leave here today at the conclusion of the hearing with
9 what would be the original exhibit?

10 MS. BLANCHETTE: I have my computer and I have
11 the CDs; I just don't have a printer. I mean if there's
12 a local place that I could do that or -- being that I'm
13 not from this circuit as well.

14 THE COURT: Right.

15 MS. BLANCHETTE: I know that Judge Manning has
16 a color printer but that's in Richland.

17 THE COURT: I see some heads nodding so there
18 must be a way.

19 MS. BLANCHETTE: I will go do that over the
20 lunch break. Yes. If there's a way to do that, I'm
21 happy to do that.

22 THE COURT: Okay. I just don't want you to
23 leave here today with the exhibit.

24 MS. BLANCHETTE: That was my worry too, is that
25 I did not want to take an exhibit but also I did not

1 want to have that be the official exhibit. It needs
2 some redaction.

3 THE COURT: Let me ask Mr. Davidson: Any
4 objection to the admission of Applicant's 1?

5 MR. DAVIDSON: No, your Honor, as long as
6 they're clean copies.

7 THE COURT: Okay. So clean copies of the same
8 photographs will be admitted as Applicant's Exhibit 1.
9 And we'll take care of that over the lunch break.

10 (Whereupon, Applicant's Exhibit 1, Packet 1
11 Photographs, was admitted into evidence.)

12 MS. BLANCHETTE: Thank you, your Honor.

13 One other matter, I did just email the
14 abbreviated outline that you requested with those case
15 cites that I gave earlier this morning.

16 THE COURT: I have it. Thank you very much.

17 MS. BLANCHETTE: You're welcome.

18 DIRECT EXAMINATION (CONT.)

19 Q. (BY MS. BLANCHETTE) Dr. Wren, I believe next
20 you were going to take us through your review of
21 Dr. Ross' reports and findings and share with us your
22 findings and opinions.

23 A. That's next. I reviewed her report and I think
24 there were six or eight photographs that were provided
25 with that, I had at one time or another. But I have no

1 real problems with the report. I would like to comment
2 on several things. She gave a brief history, which is
3 just -- I use those two from what they tell me when they
4 start and just remind myself what's going on. When I
5 read it, there's nothing particularly to comment about.

6 On external exam she had -- she mentioned the
7 eyes which I've already talked about. There's a
8 contusion over the left eye or you could sort of see
9 blood down into there. She did have what I consider
10 Petechiae in the right eye. I will comment on that a
11 little bit later. She had a contusion of her inner
12 lips, mostly the lower lips and both looked like they
13 were prominent. And like I said, I don't know what she
14 looked like just before that but those abrasion could
15 of -- I mean those contusions could have come from any
16 type of blow, except she didn't have injuries to her
17 teeth according to what's down. She said there was some
18 absent but they were healed sockets. So that didn't
19 occur then and there. And she talked about a stipple
20 contusion of the left lower neck. I was shown a picture
21 of that. It didn't have any pattern to it. It looks to
22 me like it was probably subcutaneous. And then they say
23 contusions continue on the upper chest. I looked at
24 that real closely and the picture I've had, I couldn't
25 tell if the vessels were not just prominent underneath

1 that. I didn't see enough to go any further, but not
2 the -- and I did not see any photos of the chest area
3 after reflecting the skin so can't comment any further
4 on that.

5 And there were -- it appeared to be areas of
6 contusion under the chin on the left side. I don't
7 disagree with that. She had a scar according to the
8 left anterior lower forearm with a small circular scar.
9 She didn't comment on when that occurred and I didn't
10 see any photographs of that. And there was an abrasion
11 of the posterior right elbow which is -- can happen most
12 any time even just from resting on it a good bit. I
13 talked about a contusion of the right lateral thigh.
14 And she talks about a smaller one on the right lower
15 medial thigh.

16 And as I commented, I haven't seen any pictures
17 that show that. I don't know whether there's any
18 available that I may have seen so I couldn't even
19 comment about that. She had fecal -- said they had
20 fecal material about the anus and vagina and within the
21 vagina. And in my experience that adds to accentuation.
22 Particularly it's more liquid breakdown of the skin but
23 she talks about an abrasion of the lower inner introitus
24 of the vagina. I didn't see a picture of that. And
25 some tearing of the anterior anus without pictures that

1 I saw.

2 Like I said, feces accentuate decomposition
3 changes, particularly the warm part of the time. And
4 the corner's record indicates that the body temperature
5 was 60 degrees and the inside temperature of the room
6 was 60 degrees. She had reached room temperature by the
7 time they took those measurements and they didn't
8 indicate what time so I can't comment on that.

9 And when I talk about a petechiae, both eyes
10 more prominent on the right and she called those
11 confluent petechiae on the left, which that's up for
12 interpretation I think.

13 Then she said there was a contusion of the
14 strap muscles and over soft tissue of the posterior
15 larynx. And I'll comment on that with the photographs
16 that I saw. And she says probable fracture of the left
17 thyroid cartilage with hemorrhage into the left vocal
18 cord. I saw no pictures. She says probable fracture is
19 evidence of strangulation. Then later she says
20 equivocally it was a fracture.

21 So without seeing that, I'd have to take her
22 word for it.

23 The hyoid bone is intact, judged to be intact
24 on dissection, which I would mitigate against manual
25 strangulation. Because a lot of times you see a

1 hemorrhage in the hyoid bone and you can actually
2 fracture them. She was of an age where she could have a
3 fracture if she were grabbed in that area and pressed
4 real hard. But I want to show a picture of the strap
5 muscles in a few minutes. Then she had some hemorrhage
6 around the left lobe of the thyroid. I don't doubt
7 that.

8 The heart weighed 470 grams and in her gross
9 dictation she says 9090 percent occlusion of the left
10 anterior descending and no other comments. In the final
11 summary she says it's 95 percent occlusion.

12 Now, I'm going to have to take everybody back
13 to fourth or fifth grade math. Everybody knows that or
14 you can visualize any vessel as it's distended or when
15 its aligned as a pipe, a circular pipe. So everybody
16 knows or should know and remember from grammar school
17 that the area of a circle is pie or squared or it can be
18 pie times the -- since R is half the diameter, you can
19 put $D/2$ where R is and put it in parentheses and square
20 that. That makes the area of a circle, pie times D^2 and
21 you'd have to square the two under the parentheses too.
22 So it's pie $D^2/4$. Pie over four is a constant number.
23 We can take that out. So the area is proportionate to
24 the diameter squared.

25 Now, the volume going down a vessel depends a

1 little bit on the friction in the vessel and what rate
2 occurs -- for practical purposes, of a person, you can't
3 change the pressure without causing other things to
4 happen very much so, that relatively speaking, the
5 volume going down that vessel is πD^2 over four, which
6 is the area times the linear velocity of the fluid.

7 Now, assuming that there's little variation,
8 and I mean maybe 10 percent variation in the volume
9 going down a vessel, depending on the pressure that you
10 can mount. And everybody knows, the lower the pressure
11 on a pipe, the less flow you have. So anything that
12 would cause it to slow down, would slow down the volume.

13 Now the hard part to visualize is what happens
14 when you occlude a vessel or a vessel gets stenosis by
15 atherosclerosis. What happens is, let's just say
16 arbitrarily, we don't care what the units are, whether
17 it's miles in diameter, feet in diameter, inches in
18 diameter, centimeters in diameter, millimeters in
19 diameter or microns in diameter. You can arbitrarily,
20 for calculation purposes, say that the diameter
21 unobstructed with no stenosis is one. So one is a
22 constant in this equation until we start doing stenosis.
23 So the volume of blood delivery down to the heart, down
24 this left anterior descending artery is equaled to some
25 constant, times the diameter squared for all practical

1 purposes.

2 So I tell the residents that come in to look at
3 an autopsy, for all practical purposes lets say it's
4 one. And like I said, we can get into strange numbers
5 if we put fractions or whatever in there. If it's one
6 and you have 90 percent stenosis, what's left is 10
7 percent of the diameter of the vessel -- 10 percent. If
8 it's 95 percent occluded, it's 5 percent less. So the
9 diameter becomes relative to one, with 10 percent
10 occlusion .1 but it's squared to deliver the volume. So
11 .1 times .1, as anybody should know is .01. So if you
12 occlude a vessel or the vessel gets stenotic by 90
13 percent -- well, lets take 50 percent first. If it's 50
14 percent occluded and 50 percent is open. So 50 percent
15 is .5 of one. So you change the diameter from one to .5
16 by just closing the vessel down. So .5 times .5 is .25.
17 So if you have 50 percent stenosis of a vessel anywhere
18 at the relative same pressure the volume of delivery of
19 blood and therefore, oxygen, is 1/4 of what it was if
20 it's completely opened. If it's 90 percent, it's .1
21 times .1 of .01, so it's one one-hundredth of what it
22 was when you had a completely open vessel. Because 95
23 percent occlusion, it becomes .05 times .05 and that is
24 .00025.

25 In other words, the difference between 90

1 percent of stenosis or occlusion and 95 percent
2 occlusion, changes it from one one-hundredth of the
3 volume going down to two and a half parts per thousand
4 or 2.5 parts per ten thousand volume. That is why
5 people get stenosis. I mean get angi (sic) and why they
6 have heart attacks. The closer it gets to -- and if
7 it's 99 percent, it's .01 times .01 is .0001 or one
8 ten-thousandths of the volume that was going down
9 before. That that significant. That's why you have to
10 get bypasses. So I'm not going to argue with either
11 one. It just means that if it's 95 percent, she's
12 getting two and a half -- she's getting -- I'd have to
13 do that on a piece of paper .0100 divided by .0025,
14 that's four times moving the decimal over. It's 1/40th
15 of what it is at 95 percent occlusion. I mean, at 90
16 percent occlusion. That is significant. It doesn't
17 really matter because you can get a bypass at 90
18 percent, as well as, 95 percent if you went to a doctor.

19 Then she talks -- and I note that, I think it's
20 significant that she had cardiomegaly. Meaning that
21 both ventricles of the heart were enlarged and
22 thickened. So she probably had chronic hypertension too
23 or at least she had some episode of heart failure and
24 therefore, her right ventricle was having to pump
25 against her lungs and the left ventricle significantly

1 because the ventricle itself's wall can thicken. And
2 that's a judgment -- it's sort of a judgement call and a
3 forensic pathologist would have to measure it all before
4 -- a rule of thumb, the right ventricle -- ventricular
5 wall is up to -- up to five millimeters and the left
6 ventricle is up to 15 millimeters. Or in other words,
7 .5 -- half a centimeter up to -- for the right ventricle
8 to one and-a-half centimeters to the left ventricle.
9 And we can tell by experience which one, whether it's
10 hypertrophy or not. Nevertheless, it weighs more than
11 it does so she's got some kind of myocardial hypertrophy
12 or cardiomegalia as we call it or it could be
13 hypertropic cardiomegalia -- I mean cardiomyopathy or it
14 could be some hypertension; but in other words, her
15 heart was enlarged.

16 Now she talks about a slight amount of frothy
17 fluid in the tracheobronchial tree. In people that are
18 strangled or going into heart failure, you'll get a good
19 bit of -- if it's any length of time at all, you'll get
20 a good bit of frothy edema fluid. It'll get up and
21 sometimes come out of the mouth if a person drowns. So
22 that's a judgment as to how much it is and the fact that
23 she says there's a slight amount means that she probably
24 died rather quickly in my opinion or whatever happened.

25 She had gallstones in her kidney she said and

1 has granular cortical surfaces. And usually that's an
2 indication of arteriolonephrosclerosis which means
3 hardening of the arteries or stenosis of the small
4 vessels in the kidneys. If it's coarse granular, it's
5 more likely some other problem with the kidneys. And
6 there's no mention of that other than that.

7 When she talks about internal organs, she talks
8 about subgaleal contusion of the right frontal scalp. I
9 have some photographs of that that I will mention and
10 the rest of the brain was okay. No contusion of the
11 brain. No contra contusions indicating in her head was
12 accelerated when it hit something can come out more.

13 Now, I'm going to quote her autopsy findings:

14 "Autopsy findings included evidence for
15 strangulation (conjunctival petechiae, contusions of the
16 neck and strap muscles, contusion of the posterior
17 larynx and fractured larynx), cardiomegaly with
18 biventricular hypertrophy -- which I talked about --
19 "dilatation and 95 percent occlusion of the left
20 anterior descending coronary artery."

21 Now, I don't know what she meant by
22 "dilatation." I don't know what she was referring to,
23 but I'm not going to argue with that, not knowing what
24 she talked about.

25 And then she talks about, positive analysis

1 submitted to this prosector, toxicology. Amended
2 opinion might be necessary. Then she thought -- said
3 that she thought the cause of death was asphyxia due to
4 strangulation. She didn't assign whether it was manual
5 or soft ligature or just strangulation. So I would
6 assume probably from the hands or intense pressure.

7 You can strangle a person and cause particular
8 hemorrhaging by manual strangulation and just enough to
9 occlude the arteries and the vessels that go in the
10 groove between the -- in the neck, that you can feel your
11 carotid plus there. If you preclude those elements and
12 restrict the flow you can get strangulation. You can
13 press on the trachea enough to cause it to become
14 occluded and you get no air. Those are long term things
15 that would happen or you can get a combination of both,
16 but -- and then the manner of death is homicide.

17 Now, I have photographs showing after she'd
18 been cleaned up versus what I had before.

19 Do you want to project them or?

20 MS. BLANCHETTE: If we can just come around, if
21 that would be okay, your Honor?

22 Q. (BY. MS. BLANCHETTE) You may want to flip up
23 your mic a little bit and then it won't -- isn't that
24 bendable?

25 A. This is -- I got, I think it was eight or nine

1 photographs. They're on a disk by themselves. I got
2 the numbers of those. It was on the disk that I have.
3 They were Numbers 5, 6, 7, 8, 10, and 11 on the actual
4 photographs and the JPG number is 74, 75, 76, 78, 79 --
5 no, 77 is Number 8. 79 is Number 10 and 80 is Number
6 11. And 78 was a lot like the previous one. But here
7 is Number 7 and this is the photograph after she'd been
8 cleaned up. You can see a little discoloration on both
9 sides which may be a shadow because I'll show you the
10 internal in a few minutes. And there's no evidence --
11 that might be the blood that you'll see in a little bit.
12 And I don't see a whole lot on the right shoulder. You
13 see some vessels here but that could be some
14 decomposition. That's Number 7.

15 Number 8 is kind of hard and I apologize for
16 this but something happened on the way when I was
17 printing these things and I got these bands of
18 discoloration and doesn't change except where they -- it
19 just shows it a little bit different. There is the left
20 side where she talks about the little particular
21 hemorrhages. You could hardly see them in this
22 photograph. Then this is her neck to the side and you
23 can barely see them down in here. There's nothing
24 underneath that that I can tell. And then there is that
25 area that shows us a little bit better, but you can see

1 her eyes, but both of them are swollen. A little bit of
2 -- and as I told you before on her driver's license,
3 there is discoloration under her eyes anyway.

4 In some cases it indicates chronic allergies.
5 And this is the other photograph of the right shoulder.
6 The left shoulder is over here. Chin is up here and
7 that is a little bruise.

8 Then in the general autopsy, we either make a Y
9 shaped incision or Kocher shaped incision in females and
10 babies under their breast and fold their breast back up
11 after dissecting up to the neck. This is a colored
12 photograph showing the strap muscles and then there's
13 some over-lining the trachea and the thyroid gland.
14 You'll see right in that area there. Whoever reflected
15 this, reflected a little bit of muscle off of it. I
16 don't see evidence of hemorrhage there. This muscle and
17 this muscle look entirely normal to me. There's some
18 blood over here, but it's not showing externally
19 anything. And I think it might just be where they
20 reflected up. The other side, there's a blood soaked
21 tissue over-lining that and I think they might have hit
22 a vessel there, that was bleeding, because I don't see
23 anything there. Now this is a black and white. You can
24 see there's hardly any change there. And generally
25 speaking in the strap muscles, you reflect those off and

1 if you think there's hemorrhage or even if you don't
2 think there's hemorrhage, you cut through those and look
3 to see if you see hemorrhage inside the muscle.

4 I don't -- I probably would have done it if I
5 said there was hemorrhage there to see how deep it was
6 but I can't comment any further on that. You can see
7 the hemorrhage around the trachea and thyroid cartilage
8 there. I don't see any pictures behind there. She may
9 have taken them but I don't know.

10 Then this photograph is after she reflected the
11 scalp forward and backwards to examine the brain. And
12 you can see these areas of hemorrhage very easily in
13 that outline -- I made the outline of that to see how
14 close it came to that grossly. And that was in what I
15 presented earlier. And then this is a black and white
16 just for comparison in case somebody gets disgusted when
17 they see blood or gets squeamish.

18 Now, if you look at the -- go back and look at
19 the reflection of what this is -- from the neck
20 photograph. Just imagine all the skin from the lower
21 part of the sternum and partially beneath the breast,
22 which I don't think she did. I think that's a Y shaped
23 incision, meaning that you just cut down like a Y, you
24 reflect it back and there's some little pieces of muscle
25 here, which I don't see any hemorrhage. I don't see any

1 evidence of any there. And I don't see any in her neck.
2 This is her clavicle on that side and there's her
3 clavicle on the other side. I don't see any hemorrhage
4 below that in either place.

5 So that's what I considered of the -- with the
6 autopsy. I don't have any real questions except there
7 are some few little discrepancies which can be probably
8 be explained. I've done that before, when I was reading
9 them closely too.

10 Now the toxicology is significant I think.

11 Q. Dr. Wren, before we move to the toxicology
12 reports --

13 MS. BLANCHETTE: Your Honor, I would move the
14 second packet of pictures that were obtained in
15 discovery as he was going over the autopsy report as
16 Applicant's Number 2, with kind of the same
17 stipulations. I'll review them to see if they need to
18 be redacted.

19 THE COURT: Any objection?

20 MR. DAVIDSON: No, your Honor.

21 THE COURT: All right. Those will be admitted
22 as Applicant's 2. And lets go ahead and staple those
23 together and make sure we know what's what.

24 (Whereupon, Applicant's Exhibit 2, Packet 2
25 Photographs was admitted into evidence.)

1 THE COURT: Ms. Blanchette, indicated there are
2 some numbers written on the photos. And I know Mr.
3 Davidson's had the opportunity to review that version of
4 the photos. Is there any objection to that actual set
5 of photos being introduced without redaction?

6 MR. DAVIDSON: No, your Honor.

7 THE COURT: Let's go ahead and mark that as
8 Applicant's 2, so that will be done and you won't need
9 to worry about it.

10 I said it, But it's admitted into evidence.

11 MS. BLANCHETTE: Thank you, Your Honor.

12 Q. (BY MS. BLANCHETTE) Dr. Wren, turning to the
13 toxicology reports that you reviewed as part of
14 discovery, what did you note and what were your findings
15 regarding those?

16 A. As far as the toxicology is concerned it
17 appears to me the toxicology was done in duplicate. One
18 was done by SLED and one was done by NMS, which is the
19 National Medical Services labs. It was interpreted --
20 the NMS was interpreted by Amy Garden. She has a PhD, I
21 know her very well. I know her husband too. I assume
22 he's still around. But Amy is a very good pharm- --
23 doctorate in pharm pathology.

24 I do have -- since we have -- I need to explain
25 the different, the slight differences in the reports.

1 SLED measures concentrations in weight versus
2 -- percent weight versus volume for alcohols and for
3 drugs, they use milligrams per liter.

4 National Medical Services on the other hand
5 uses either micrograms per milliliter or nanograms per
6 milliliter.

7 Now this takes a little bit more understanding.
8 I can show you if I have to, but take my word for it and
9 you can take anybody that interprets these works for it.
10 A milligram per liter is exactly the same as a microgram
11 per milliliter. Because I'm sorry -- Yeah. That's
12 right. Microgram per milliliter. Because to convert
13 milligrams per liter, you divide milligrams by a
14 thousand to make micrograms and you multiple. So you
15 put it in the numerator, the same number by one thousand
16 milliliters per liters. So when you do that
17 computation, the thousand numbers cancel out. So all
18 you've got is the units that are left. Instead of
19 milligrams in the numerator you've got micrograms. And
20 instead of liters in the denominator, you've got
21 milliliters.

22 Now, the next computation to get it to
23 nanograms. There are a thousand nanograms in a
24 microgram. So if you have a gram -- a kilogram, there's
25 a thousand grams in a kilogram. There's a thousands

1 milligrams in a -- I mean there's a thousand micrograms
2 in a milligram and a thousand nanograms in a microgram
3 and there are a thousand picograms, which is the next
4 big unit in a nanogram.

5 So I'm going to give you the final numbers.
6 SLED says and their report was -- is dated 3/26/12. It
7 says, that the victim had .06 milligrams per liter.
8 Which, as I said, a milligram per liter is the same as a
9 microgram or milliliter or if you take that same number
10 and multiply it by a thousand, you get nanograms per
11 milliliter. So that .06 becomes 60 nanograms per
12 milliliter. On the other hand, NMA also did their
13 report issued on March the 8th, which was 18 days
14 earlier found a hundred nanograms per milliliter of
15 cocaine in her system, whereas, SLED found 60. That's a
16 discrepancy of 40 units. This starts becoming more
17 significant the higher the number and I'll talk about
18 that in a minute. Then benzoylecgonine by SLED is 720
19 nanograms per milliliter or .72 in their terminology
20 milligrams per liter versus the benzoylecgonine in NMS
21 is 910. So it's 910 versus 720 which is another -- it
22 might be two standard deviations above the average,
23 might be three. Then she also had by both systems, she
24 had -- SLED reported 11 carboxylate tetrahydrocannabinol
25 5.1 micrograms per liter. Whereas NMS reported both the

1 active ingredient, Delta-9-Tetrahydrocannabinol as 1.5
2 nanograms per milliliter and the Delta-9-Carboxy-THC,
3 which is an abbreviation tetrahydrocannabinol is 7. And
4 that's the inactive component. SLEDs component is only
5 11 carboxy-tetrahydrocannabinol. And that is the first
6 metabolic product or one of the metabolic products of
7 Delta-9-THC. In any rate, these indicate that she's
8 taken, but not as a therapeutic or even a therapeutic
9 level of Delta-9-THC, which NMS report said 1.5 nanogram
10 per milliliter for it to be active and effects a person,
11 it has to be 50 to 20. So she's coming off of -- and it
12 doesn't stay up there very long, so it's coming down.
13 They don't measure Delta-9-THC at SLED, but they get the
14 first metabolic product and that product is still
15 active, but it's less potent. So she has a little bit
16 of Delta -- Delta-9-THC still in her system, but not
17 enough to effect her actions. And then she has an
18 inactive product, which can stay around for several
19 days. And in some people it stays longer depending on
20 how heavy they are.

21 But in any rate, I need to comment about the
22 cocaine. According to Dr. Garvin who actually reviewed
23 this and her comment was iliac blood, negative alcohols,
24 toxicology findings indicate antemortem use Delta-9-THC
25 containing products (cocaine and benzoylecgonine are

1 identified the presence of cocaine and may indicate drug
2 use proximate to the time of death other compounds
3 reported do not appear to be of toxicological log
4 significance.) Which she was positive for caffeine,
5 cotinine, and nicotine; which most everybody is if they
6 drink tea or smoke, but they'd have cotinine and
7 caffeine. And if they smoke regular cigarettes, they'd
8 have nicotine.

9 So anyway SLED, there's the effect of cocaine
10 has an overlap in that -- I'll have to read you their
11 comment on what they say. "The effects of cocaine are
12 euphoria, excitement, restlessness, risk taking, sleep
13 disturbance and aggression." And everybody knows about
14 aggression. And then they say, "the average blood
15 concentration in 980 impaired drivers was 87 nanograms
16 per milliliter" and in her case, it's 100 impaired
17 drivers with a range of 5 to 2390. So it's at the lower
18 range of normal, but it is present in impaired drivers.
19 The therapeutic range of cocaine is reported as 100 to I
20 believe it's 300. I didn't write that down, but I think
21 it's 300. It's been a while since I've written it down
22 and I'm getting old and I forget some things. In any
23 case, then it says, "blood cocaine concentration
24 patients admitted to an emergency room for cocaine
25 related medical complaints was 260 with an standard

1 deviation -- one standard deviation of 500. So she's
2 within medical complaints at 100. Just half -- a little
3 over -- about one-half to one-third of that average of
4 people that are admitted to the emergency room. And the
5 average blood cocaine concentration in 37 cocaine
6 related fatalities range from 40 to 31000 nanograms per
7 milliliters. So she's in that range too.

8 Now, there's a handbook for forensic toxicology
9 for medical examiners and pathologist, I think it's
10 called. I can get the reference if anybody wants to
11 challenge that. I have two copies of it. It say that
12 the therapeutic range for cocaine is 100 to 200 or 300.
13 The lethal range is 100 to 33,000 -- 330,000 and the
14 toxic range is 100 to some lessor number, around 200 and
15 something. So she's in the lower range of therapeutics.
16 I mean she's in the lower range of therapeutic. She's
17 also in the range of toxicology -- I'm sorry, not
18 toxicology, of toxic effects which are side effects and
19 lethal range, which can cause sudden arrhythmia.
20 Benzoylecgonine is also within those ranges because they
21 also report in this report that benzoylecgonine, which
22 is an inactive cocaine metabolite has a half life of
23 eight to ten days. In other words, if you had a level
24 of 200 and you didn't do anything for eight to ten days,
25 it would be down to 50. Take another eight to ten days,

1 it goes to 25 and then on so forth. But that's why it
2 stays around for a while, when you're testing it and it
3 indicated prior use. Like I said, her's was 720 in SLED
4 and 910 in NMS.

5 They say, I've already told you what the
6 average -- well the average benzoylecgonine, we call it
7 BEG concentration 960 impaired drivers was 1260. Now
8 she's pretty close to that at 910. The range were 5 to
9 17,600. In patients admitted to emergency room for
10 cocaine related medical complaints it was 1280 average
11 with a standard deviation of 1290. So she's still
12 within that range of medical complaints. Then the
13 average blood benzoylecgonine concentration in cocaine,
14 37 cocaine related fatalities 7900 with a range of 700
15 to 31,000. So based on -- everybody's familiar with
16 George Floyd, the happening in Minnesota. I'm not go to
17 comment on that. I could have a lot of comments. I
18 reviewed the autopsy report. I got a copy of that from
19 an unnamed source. And I could comment on that, but
20 there was a question about him being under the influence
21 and this questions whether she is too. Now, that's the
22 major part of the autopsy report, but I need the
23 toxicology -- I'll just skip on over to the conclusion
24 of possible causes of death. She could have had anoxic
25 episode from some type of pressure on her neck, but it

1 was not in the strap muscles. Usually, when you have it
2 in the strap muscles, as well as, fractured collarbone,
3 she could have become anoxic with that. And the fact
4 that she had a bad artery would accentuate any ischemia
5 or anoxia she has. So it could have contributed to her
6 having a sudden arrhythmia and therefore, no evidence
7 of, as far as I can tell, it looks like she just turned
8 over on her side and died. Then cocaine induced
9 arrhythmia is possible to. Those are other two
10 contributing factors, could have been coronary artery
11 disease and I think she did have some injuries, as I
12 mentioned. There were no defense wounds on her hands.
13 She did have a splintering of her nail. They didn't
14 find it or at least I don't know. That hand did not
15 have any concrete evidence that she had or any evidence
16 that could prove that she had touched the alleged
17 assailant. And her right-hand the possibility of one
18 and three individuals is what they said. They did
19 identify something of another person, but they couldn't
20 quantitate it. So it was only one and three
21 probabilities.

22 So that's my conclusions from the autopsy
23 reports that I found. Now, I did have, if you want to
24 go over it. I basically said, DNA analysis -- I'll just
25 go ahead and do it quickly. These condoms they talk

1 about in analyses are irrelevant because none of those
2 belong to the alleged assailant or any other person they
3 knew except they did identify someone in 2015, his
4 record has shown up. They have his name, but there's no
5 need for me to mention it, I don't know -- I don't think
6 he was a suspect. Mr. Catoe, the alleged assailant's
7 semen was found on her hips, in six specimens, six swabs
8 and there were four others that they had taken. One of
9 them there was no profile developed and the other was
10 insufficient for diagnosis. I can give you location of
11 where they were. The vaginal swab from the victim was
12 positive for the victim only. The semen and the
13 non-semen contents of the swabs they did from the
14 vaginal area. I don't know whether it was deep vaginal
15 or where it was from. I usually did them deep and at
16 the introitus. She did have a laceration or abrasion.
17 I think I called it abrasion on her anterior vaginal
18 wall. And then oral, it was negative for foreign DNA
19 under hers. The rectum is really confusing. It says
20 it's positive in specimen 20.5 but in specimen 20.6 it
21 was negative. And it makes a comment that in Number 5,
22 there was no foreign human DNA in the non-sperm
23 component. And I don't even -- I couldn't -- I didn't
24 even see where they analyzed -- where they did --
25 someone did a rape kit but I didn't see where they did

1 any cytology or pap smear to determine them. And in
2 Number 5 with a sperm component there was no human DNA
3 found. A profile couldn't be developed. All I have
4 left is and I'm sorry, the right nails, the DNA I told
5 you was one and three possibilities, it was the alleged
6 assailant. And the left nail where she had the
7 splintering of the nail was insufficient for evaluation
8 or they didn't find anything that they could tie it.

9 And then I was going to talk about the alleged
10 injuries or whatever they found on Mr. Catoe.

11 Q. That's what I was going ask you, Dr. Wren. I
12 was going to ask you next, you had the opportunity to
13 review pictures they took of Mr. Catoe?

14 A. Yes.

15 Q. As well as pictures they admitted at trial?

16 A. Yes.

17 Q. What were your opinions and findings regarding
18 those?

19 A. Well, the pictures are a little bit better.
20 Mine, some of them they accentuated a little bit better.
21 I have them here.

22 Q. Sorry to interrupt you. If you're referring to
23 trial exhibits, if you'll just tell us the sticker
24 number on that so that can be helpful.

25 A. There are no numbers. Oh, they're on the back.

1 Statement -- it's the exhibit 51, State's exhibit. They
2 all have numbers on them if you want me to.

3 Q. Sir, if you're speaking about them, if you
4 could just reference them for the record, that would be
5 helpful.

6 A. Pardon. Did you address me?

7 Q. Yes. If you wanted to speak about those and if
8 you could reference the numbers and stickers as you're
9 speaking about those please.

10 A. Okay. They have a photograph of his posterior
11 left shoulder. He's got three little discolored areas.
12 I don't see and that's Exhibit Number 51. Mine didn't
13 show that that well and mine were, I didn't make copies
14 of those, but I have them referenced, his posterior
15 shoulder. I didn't see much there, but in this case it
16 does look like there are a couple of discolored areas
17 and I don't see any evidence of as scratch mark. It
18 could have occurred at that time, but it should have
19 resolved by now if it was just a contusion.

20 And then on his biceps region it's discolored
21 and had they didn't circle that. In fact, on his neck
22 you can see areas where it's discolored like hers was in
23 the autopsy photos and the scene photos too.

24 In Exhibit Number 41, they show his right arm
25 with a little circle on it with -- and in that case, I

1 saw one that had two white scars on it, on my
2 photograph. And an almost square-shaped deep wound that
3 was filled in with blood and crusty material. That
4 could have happened at the time of the murder. He has
5 another one on his posterior right arm that I'll talk
6 about in the minute, that I think is older than the time
7 of the incident and I will tell you why. But that one
8 we need further investigation and then there's another
9 area that I referenced as one long white irregular area
10 that they have circled later. In fact, State's Exhibit
11 Number 42, shows the crusty wound that's almost
12 square-shaped and the two little -- in fact, there are
13 more than two on this picture of guarded areas of old
14 scars.

15 And on Exhibit Number 37, they've got
16 essentially on his inner, on his lateral volar forearm,
17 they've got this longer area and little abraded area.
18 It don't look like a scratch mark and it don't look like
19 a real contusion but it's nevertheless a partially
20 crusty defect that's shown by Exhibit Number 38 is a
21 close-up. It's a little more abraded. It has five or
22 six little areas that are surrounded by lighter colored
23 hypertrophic looking skin. And then trailing from that
24 area, it looks like the skin goes on down and it's just
25 normal. It's different tissue, but it's -- I think it's

1 more chronic, that part.

2 In Exhibit Number 45, is a close-up of that
3 linear area that I was talking about that extends down a
4 little bit. It's barely visible. And the crusty almost
5 square-shaped blood filled crusty lesion.

6 Then, Exhibits 48, 49 are essentially the same
7 photographs, slightly different angles of -- it looks
8 more like a chronic hypertrophic type of thing, where he
9 might have had an injury and he started scratching at
10 the skin and gets rugated they call it. It looks like
11 it's got light areas down below the main part of it,
12 which I don't think would have happened at that time.
13 Then Number 47 is a darker area -- darker thing of the
14 one that's further down on his anterior medial volar
15 forearm -- I mean, lateral anterior -- lateral forearm,
16 which is sort of like -- and on his left elbow he has a
17 crusty lesion sort of like that. And down on the elbow
18 proper where the bones are, he's got one similar to that
19 that could get an abrasion from resting on something as
20 well as the one on the back. Then, his right arm, his
21 right arm has the tattoo on his right biceps. He had
22 vague area just at the lower part of his biceps, near
23 the antecubital fossa that's nonspecific. There's
24 another one on his posterior right upper arm, it's curve
25 linear. It looks like it could be a fingernail mark,

1 but the fact then becomes, how could somebody that's --
2 has their back to him through the majority of this, and
3 according to statements and the way she was found, have
4 inflicted that with her left-hand particularly and even
5 her right-hand unless he had his arm way around her and
6 she scratched him. That's the only thing I can see
7 incriminating of these pictures. Then there's one on
8 the back of his right arm that's further down, I think
9 that's his right arm. Yeah. It must be the same one.
10 The one I saw is much less pronounced than these two,
11 That's Number 55. This after he removed his t-shirt,
12 but he still has his boxers on. That wound looks like
13 it's healing and I estimated that wound to be nine or
14 ten days. And that was done. From the way it looks, it
15 looks like it's healed and I did that off of my -- The
16 lighter, it is the more -- it looks like it's less than
17 that.

18 Parenthetically, there's one below his
19 posterior right axiliary that nobody ever mentions. I
20 don't even know -- that could be an old place where he
21 leaned up against something or had gotten burned but
22 it's not fresh. That was Number 55 and 39. Both of
23 those are I think the same picture with just different
24 angles.

25 Now, one has a background or a concrete wall

1 and the other one has, it looks like a wooden door and
2 concrete to the side of that, unless he turned. And the
3 last one is similar to the other square shaped one with
4 the other scar area in Number 43. These could be --
5 some of these could be consistent with defensive wounds,
6 but then in the position that both people were, both
7 assailant, alleged assailant and the victim were, it's
8 hard to explain --

9 Q. And Dr. Wren --

10 A. -- on their -- on his back, most of them are on
11 the posterior surface.

12 Q. You've referenced the position the victim was
13 found in and the evidence regarding anal intercourse.
14 Could that have also lead to come other type of
15 response --

16 A. Oh, I forgot about that. Yeah, that was in my
17 conclusions. So coronary artery disease is significant
18 and the cocaine induced erythema's significant. But
19 there's another incident that occurs in anal
20 intercourse. There's a -- the tenth cranial nerve that
21 comes out of the brain and goes down into the chest
22 cavity, it actually slows the heart down when stimulated
23 or when it acts. It acts to slow the heart down. It
24 goes down and has branches to the stomach, which
25 stimulates the stomach to produce acids and it goes

1 further down into the abdominal cavity and you have
2 nerve endings for that, nerves also in the anus. If you
3 have forceful or exuberant intercourse, there are
4 numerous records, numerous reports on record where
5 people have done that and the person -- person that died
6 suddenly had an arrest. Now, if you stimulate that, it
7 will slow the heart down and cause cardiac arrest. In
8 some cases, it's similar to a person being startled. If
9 you are startled -- and everybody's been startled
10 before. It felt like your heart stopped beating. Well,
11 that was the vagus nerve stimulating your heart to slow
12 down. But then adrenal gland produces a flight or fight
13 hormone called adrenaline that goes directly to your
14 heart and it takes only a short time. And in that time,
15 there's a time that makes you -- when you have that,
16 when it feels like your heart stopped and then it starts
17 beating real fast, that's the time it takes the adrenal
18 gland to get there.

19 Now, there's no mention of adrenal glands,
20 which I would have investigated myself, but they were --
21 I think they were referenced as normal. So I think
22 that's another possibility of sudden death. And it
23 looks like from her position and all, that she was lying
24 on her side and suddenly died. And the fact is that,
25 she didn't have hardly any fluid in her respiratory tree

1 that would substantiate it was a relatively quick death,
2 which could have been caused by cocaine induced
3 arrhythmia or coronary artery disease or a combination
4 of all three of those things, as well as, a partial
5 obstruction of the arteries.

6 Q. Now even though you say "quick death" is it
7 possible though that Mr. Catoe could have observed her
8 still appearing to breath when he left?

9 A. She could have gasped I guess for some time
10 trying to get her breath.

11 Q. Now, all that you -- is there anything further
12 regarding your findings and what you've reviewed?

13 A. Pardon.

14 Q. Is there anything further regarding your
15 findings and what you've reviewed in preparation for
16 today?

17 A. No, that's all I have unless, I forgot
18 something that I've mentioned to you.

19 Q. Having said that, Dr. Wren, my question is
20 this. Would you have been willing to undertake the
21 review of these discovery materials for defense counsel
22 prior to Mr. Catoe's trial?

23 A. I do that for a lot of people. I've done it
24 for all of the United States in the past. I don't mind
25 doing it.

1 Q. Would you have been willing to share what you
2 shard today with him and/or testify to that in a trial?

3 A. If I testify today, I'd testify then.

4 MS. BLANCHETTE: Your Honor, if I could beg the
5 Court's indulgence just, one moment.

6 THE COURT: Yes, ma'am.

7 MS. BLANCHETTE: Your Honor, I have no further
8 questions of Dr. Wren.

9 THE COURT: Mr. Davidson, do you anticipate the
10 duration of your cross-examination?

11 MR. DAVIDSON: Um.

12 THE COURT: Would it be similar in length to
13 direct examination?

14 MR. DAVIDSON: Possibly.

15 THE COURT: Let's take a lunch break. Lets see
16 y'all back at 1:30. Take a lunch break until 1:30,
17 1:45. Yes. See you at 1:45.

18 (Whereupon, a recess was taken.)

19 THE COURT: Back on the record.

20 Dr. Wren, you can come on back up to the stand.

21 MS. BLANCHETTE: Your Honor, if I may briefly,
22 regarding this exhibit that I was working on?

23 THE COURT: Yes, ma'am.

24 MS. BLANCHETTE: I was able to get back in the
25 courtroom for about the last 15 minutes and find the

1 majority of them and get them copies onto a USB drive.
2 A private investigator that I work with a good bit is
3 coming down from Rock Hill. If I could just hand him
4 the USB drive when he comes in the courtroom and then
5 he's going to go get them printed.

6 THE COURT: Of course.

7 MS. BLANCHETTE: So we don't interrupt court
8 and get it done today as well.

9 Your Honor, there are four that I'm just having
10 trouble finding in this brief period of time in getting
11 on the USB. And I believe the State agrees, I do have a
12 correction tape, could just redact a little bit of the
13 handwriting off of those, if that would be okay with the
14 Court.

15 THE COURT: Certainly.

16 MR. DAVIDSON: Yeah, no objection from the
17 State.

18 MS. BLANCHETTE: And I was going to put them
19 back up here without the redaction so that they can be
20 utilized during cross-examination.

21 THE COURT: Yes, ma'am.

22 THE DEFENDANT: If I can beg the Court's
23 indulgence for one moment, he's here. If I can just
24 sync up with him and then we could resume, that would be
25 much appreciated?

1 THE COURT: Yes, ma'am.

2 MS. BLANCHETTE: Thank you, your Honor.

3 THE COURT: Mr. Davidson, cross-examination?

4

5 CROSS-EXAMINATION

6 Q. (BY MR. DAVIDSON) Dr. Wren, you testified
7 earlier that you had no problems with the report of the
8 coroner; correct?

9 A. Not overall, no.

10 Q. And specifically, to the cause of -- her
11 conclusion on cause of death, did you agree with those?

12 A. No. I said that was open to question as to
13 whether there were contributing factors to it.

14 Q. But --

15 A. But the gross report I didn't have that much
16 problems with it except a few things I mentioned, being
17 the ones that -- excuse me. In one place she talks
18 about a possible fracture and then she changes it to a
19 fracture. One place she said 90 percent occlusion and
20 then she changed it to 95 percent. Trying to explain
21 the differences to that which makes a good bit of
22 difference when ones 40-times more flow than the other
23 one.

24 Then the fact that -- that was her opinion. I
25 usually put down -- for instance, when I do an autopsy

1 or when I've signed just a natural death, we couldn't do
2 that in Spartanburg County until we got the toxicology
3 back. In places there are some drugs, whether it's
4 overlapping toxicity versus therapeutic versus lethal.
5 One of the prime examples is that in this state, you're
6 supposed to do all methadone deaths autopsies unless
7 there's an extremely straight-forward reason they died.
8 It's a state law as far as I know and we did those.

9 The therapeutic for methadone is 250 to 700.
10 The toxic level is about 500 to -- I can't remember the
11 exact figures but it overlaps the therapeutic. And then
12 the lethal overlaps both of them. So if it was at the
13 upper limits of normal or very slightly above within the
14 toxicology range, I would put as contributing factor,
15 possible -- some times I would put possible methadone
16 toxicity. Because I couldn't tell from all the history
17 if this person was found dead without anybody around,
18 you couldn't tell to show what it was, but it's
19 possible.

20 After a while, it's just like the COVID deaths.
21 When you send down to the State bureau everything it has
22 elevated drug levels and you put that down it becomes an
23 accidental overdose. Just like COVID, when somebody
24 dies with COVID, not of COVID in my opinion, it's kind
25 of this COVID death; that's not necessarily true. So I

1 would have put down -- I would have waited until I got
2 the autopsy, I mean until I got the toxicology back if
3 there was any question and then I would put that in my
4 summary and then give an opinion based on what I knew.

5 Q. Okay so --

6 A. But it's definitely probably a homicide, which
7 is not murder. A homicide means contributed by another
8 person. So I think that's probably a contributing
9 factor. It doesn't necessarily mean it's murder. It's
10 up to a jury to decide murder. It's not my job as a
11 forensic pathologist to call it that.

12 Q. So noting that you have an issue with the 90
13 percent occlusion than changed to 95 percent occlusion
14 and noting that the contributing factors that you would
15 include are not there?

16 A. Yes.

17 Q. The rest of --

18 A. And the fact that -- I can't say she didn't see
19 a fracture, but I don't see a fracture.

20 Q. Okay.

21 A. I can't -- I can't confirm that or deny it
22 unless I see a picture.

23 Q. So are you agreeing that she was strangled?

24 A. Pardon.

25 Q. Are you agreeing that she was strangled?

1 A. I don't know for sure she was strangled. There
2 are signs that show she was strangled, but there are
3 signs that show that she could have been dead from
4 something else.

5 Q. You said you reviewed the statements that the
6 Applicant gave to police officer's where he admitted to
7 strangling her; correct?

8 A. I don't think he said straight out that he
9 strangled her. I didn't see all this -- the ones you
10 were reading earlier. I have two statements by him and
11 then a little write-up by one of the officers or two of
12 the officer's maybe after questioning him and I have
13 some of the coroners notes. But I didn't see ones where
14 he absolutely said he strangled her physically with his
15 hands or any other way.

16 But I did say when I was testifying that I
17 didn't see injuries enough that I usually see on manual
18 ligature strangulation that would have supported that
19 premise if you had no history at all.

20 Q. Okay. And if what the conclusion states is in
21 the coroners report is evidence of strangulation based
22 on conjunctival petechiae -- I don't know if I'm saying
23 that correctly. Contusions of the neck and strap
24 muscles, contusion of the posterior larynx, and
25 fractured larynx. Cardiomegaly with biventricular

1 hypertrophy --

2 A. Hypertrophy.

3 Q. -- and then the occlusion of the left anterior
4 descending coronary artery. You don't agree with the
5 strangulation portion of that?

6 A. I said if she was strangled, which it could be
7 manual; which I don't see any obvious evidence of
8 manual, taking a hand and occluding the vessel; which I
9 talked about, occluding the respiratory tree. You could
10 even probably stimulate the vagus nerve because it runs
11 right between the carotid artery and the internal
12 carotid -- the jugular vein. I've never seen a case
13 where someone claimed that they've stimulated the vagus
14 nerve and stopped the heart, but I guess it's possible
15 because it runs right through there.

16 Q. Would there been any way in an autopsy to prove
17 that?

18 A. No. I don't think you could prove that in an
19 autopsy unless, you found it was lacerated or contused
20 itself.

21 Q. And you testified about thing bruising on her
22 neck being subcutaneous and you speculated that was --

23 A. It's on the lower part of the neck. It's in
24 the lower part of her left neck.

25 Q. Yep.

1 A. Yes.

2 Q. And you speculate it was caused by him or you
3 said, clothes. However, whenever you mentioned that her
4 thyroid was bruised, you testified that you wouldn't
5 doubt that. Can you explain why you wouldn't doubt
6 that her --

7 A. Because there's hemorrhage in the thyroid.

8 Q. How come?

9 A. There's supposedly hemorrhage in the thyroid
10 gland. I didn't see no dissection of the thyroid gland
11 and I didn't see a picture of the thyroid gland. I seen
12 hemorrhage around it. And she said there was hemorrhage
13 in the thyroid gland.

14 Q. And that's why you wouldn't doubt that?

15 A. Right.

16 Q. And how -- what are common ways that the
17 thyroid gets hemorrhaged?

18 A. Well blood vessels could rupture. Somebody
19 could be hit hard enough to cause a vessel to rupture.
20 To get hemorrhage, you'd have to have some type of
21 trauma unless, it's spontaneous from hypertension or
22 some extraneous cause causing the vessel to break and
23 cause hemorrhage in the gland.

24 Q. Okay.

25 A. What causes hemorrhage in the heart, your

1 muscle of the heart. It's the same type. It's almost
2 the same type of organ. It's not the same tissue but
3 it's a protected organ, not as protected as the heart
4 and you get hemorrhage in a heart when a blood vessel --
5 small blood vessel ruptures.

6 Q. Is it possible to get a hemorrhage in the
7 thyroid by choking someone?

8 A. By what.

9 Q. Choking someone.

10 A. Sure. Imagine -- yes. Just like if you press
11 the muscles in the arm hard enough, you could probably
12 get hemorrhage in that too.

13 Q. And if some one were being strangled and have
14 such a large occlusion in their heart, such as Ms.
15 Gaymon did. Would being strangled make that -- or would
16 having that enlarged or that large occlusion make it
17 worse on your heart?

18 A. Sure. That's why I tried to explain how much
19 the blood flow would decrease, because that's what
20 causes a heart attack. Some people go along and -- this
21 is irrelevant to our case, but we have a pathologist in
22 our group that had a heart attack in 1986. He had a
23 bypass. In 1996 he had another heart attack with a
24 bypass and then he started having trouble with his
25 heart. And he was born 19 -- either 29 or 30. I think

1 he was born in 1930. So in 1996 he had the second
2 bypass, a few years go by and he starts having angina.
3 He went to Duke. He went to Bowman and Gray. He went
4 to Emory University and I think he went the Medical
5 University of South Carolina to see if anybody would
6 work -- do another bypass. None of them said he would
7 love. We had a rather good vascular, cardiovascular
8 surgeon who was practicing down in Spartanburg and he
9 said, I don't recall his name. He said, you make your
10 plans incase you don't survive and I'll try. The next
11 day he walked out -- he walked down the hall and he
12 lived until two years ago. That means four academic
13 experts told him he wouldn't survive it and one guy
14 tried and he lived another 20 years. And he died from
15 Alzheimer's disease. He didn't have another heart
16 attack either. So that shows you the problem that
17 happens when you get large vessel atherosclerosis.

18 You know, it stands to reason your heart has
19 some -- some -- some reserve, but there's a point where
20 it doesn't get enough oxygen and that could decrease
21 flow or even just not enough oxygenation from your
22 lungs. It doesn't matter which, your muscles aren't --
23 the heart muscles not getting enough blood and you have
24 a heart attack -- enough oxygen rather, and therefore,
25 either from blood or decreased oxygenation. So if you

1 have, and I realized that, you take your victim like you
2 find them, that's how true it is. You can't tell what
3 their problem might be when something happens. So
4 you're not responsible for that, but that can cause them
5 to die. If you put your hand over their nose and
6 smother them enough to get them decreased oxygenation in
7 their blood, it could reach a point where you might get
8 enough to the heart and they could have a heart attack.
9 So that is a factor that has to be considered when you
10 decide what caused somebody to die.

11 Q. Is it possible that she could have had a heart
12 attack without having the other contributing factors
13 that you mentioned about --

14 A. Absolutely.

15 Q. -- the cocaine and --

16 A. Absolutely. I've seen cases signed out by
17 physicians, I mean pathologist where the only thing they
18 found was an enlarged heart, they call it hypertrophic
19 cardiomyopathy. They've had coronary artery disease and
20 sometime you do an autopsy, sometimes they don't. But
21 if they die without any extraneous causes, they call it
22 coronary artery disease, it's common everywhere. If you
23 find that somebody dies under unusual circumstances, you
24 usually do an autopsy to see what might have been
25 whether it's something, but every case in Spartanburg

1 County, when somebody dies and the coroner assumes a
2 responsibility for signing that autopsy. They do a
3 toxicology or at least take blood and if the person has
4 any history of taking any drugs, they'll do a toxicology
5 report to find out. That's before -- we don't sign them
6 out before they do -- if the toxicology's back.

7 Q. Okay. And --

8 A. And I might add, as far as having stenosis of
9 the artery from atherosclerosis, I don't know the exact
10 amount of occlusion and I think it depends on clinically
11 how many arteries and which ones and where it is, as to
12 when they do bypasses. But I can guarantee you that if
13 someone had any symptoms at all that they told the
14 doctor and they found 95 occlusion in left anterior
15 descending and that was the only place and they could
16 get around it with a bypass, they would have a bypass if
17 they were to consent to it.

18 Q. And as a practice as a forensic pathologist
19 what would be a more accurate way to diagnose a cause of
20 death by actually doing the autopsy or reviewing photos?

21 A. I think reviewing -- doing the autopsy, but I
22 have to add, in all cases when I did autopsies and when
23 we do autopsies in Spartanburg, anything of significance
24 including an artery like that, we take a picture of it.
25 So there can be no question as to whether it was there.

1 Now, like I said, if I had taken those muscles and I saw
2 anything that looked like hemorrhage, the first thing I
3 would do is reflect them at the points of origin and
4 insertion. I would take a knife and cut along there,
5 particularly over the place where I thought there was
6 hemorrhage and see how deep it was and how much it was.
7 And I didn't see -- she may have done it, I'm not saying
8 she didn't, but I'd like to see it before I agree to it.

9 Q. And throughout reviewing some of those
10 photographs you testified about how there was
11 inconsistency in the quality of the photos --

12 A. No. I said the problem was -- it might have
13 been something in my -- my printer because I've got some
14 that doesn't show these little lines that you see. And
15 I'm not sure how many pixels or whatever, I don't know
16 that much about printing, but I do know that some of
17 them are much clearer than others and the ones that I
18 have didn't seem to be as clear as these I commented on
19 here.

20 Q. Okay. And when you were preparing --

21 A. And you can take that tape I have and if
22 somebody wants to look at the both of them, they had to
23 have been taken probably at the same time, but they
24 don't look the same.

25 Q. And when you were preparing for your testimony

1 today, what photos were you using to base your opinion?

2 A. Ive 'got six. Well, I didn't -- one of them
3 was just as hearing and it's an audio only and it's so
4 low and so distorted; I stopped listening to it because
5 I couldn't hear very much they said. But there's six of
6 them and they're numbered with a designation and there
7 pictures. I gave the numbers of that disk itself what
8 number it was in the disk. And I also gave the number
9 in the list of how it was designated.

10 For instance, I reviewed 82 numbers on two
11 disks. One of them was 1 to 68 and the other one was 69
12 to 82, I believe. They're on two different disks, but
13 they had to have been taken at the same time. I mean,
14 they had to have been on the same disk at one time,
15 unless they filled up the first disk. And I numbered
16 those and the number on the autopsy, it was numbered 74
17 through 81 or 82; it was something after 81 or 82. And
18 then I put the number it was on the -- on the -- because
19 I looked at each photo. Number 74 was Number 5 and I
20 wrote that on some of those cases and the others, I just
21 put 74, Number 74 and it might have been -- might have
22 been. I mean, maybe 54. It might have been the
23 thirtieth one shown, but it was designate 54. I know
24 for a fact some of these that I looked at are the same.
25 We have the possibility of going to enlargement and some

1 of them were chained -- it was the exact same photo, but
2 you didn't see the outside of it. They hadn't made it
3 bigger to see what was -- to see if they could see what
4 they were looking at a little bit closer.

5 MR. DAVIDSON: I beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 Q. (BY MR. DAVIDSON) One more question. Can you
8 say with medical certainty that her death was not from
9 strangulation?

10 A. No. I can't say with 100 percent certainty it
11 was and I can say within a reasonable medical certainty
12 that one of those other three things could have happened
13 too that I talked about; the toxicology contributing,
14 the vasovagal response. That's -- that's the risk
15 people take with anal intercourse. Any time that
16 happens, it can happen and it happens a good bit.
17 People just don't know about it. People who won't
18 admitted it for one reason now but it's documented. And
19 the other one is the coronary artery disease. Any of
20 those could have happened. I don't think it's without
21 at doubt when -- if you took a number of 10,000 units of
22 fluid going down this vessel, fully oxygenated and you
23 reduce it to two and a half units going down, don't it
24 stand to reason that they're not getting as much oxygen
25 as they would in the other positions.

1 Q. Are you asking me a question?

2 A. I'm asking anybody that has any common sense.
3 If you were drinking 10,000 units of water a day and
4 somebody started giving you two and a half, do you think
5 it would effect you? You don't have to answer. I know
6 your answer. It's the same thing as oxygenating the
7 heart. That's why we do bypasses. That's why we treat
8 heart problems. Because anything can tip a person over
9 to death and it can happen suddenly. That's what causes
10 heart attacks. They exert themselves a little bit too
11 much, they get ischemia, or hypoxic and it kills the
12 muscle and you have a heart attack. If it doesn't --
13 and you don't have a heart attack, you have angina,
14 which is chest pain.

15 MR. DAVIDSON: Thank you. No further
16 questions.

17 THE COURT: Ms. Blanchette, anything further
18 from this witness?

19 MS. BLANCHETTE: No, your Honor.

20 THE COURT: Thank you, sir. You may step down.

21 MS. BLANCHETTE: Your Honor, I'd ask that Dr.
22 Wren be excused.

23 THE COURT: Any objection?

24 MR. DAVIDSON: No.

25 THE COURT: You are free to go, sir. Don't

1 take those with you.

2 MS. BLANCHETTE: Your Honor, may I beg the
3 Court's indulgence just one moment while we sort out the
4 exhibits?

5 THE COURT: Yes, ma'am.

6 MS. BLANCHETTE: Your Honor, I would call
7 Mr. Lee to the stand.

8 THE COURT: Mr. Lee, come on.

9 T-Y-R-E L-E-E, the Witness herein, having
10 been sworn by the Clerk of Court testified as follows:

11

12 DIRECT EXAMINATION

13 Q. (BY MS. BLANCHETTE) Can you please state your
14 name for the record.

15 A. My name is Tyre Douglas Lee, Jr. First name
16 spelled with one E. And I'm sorry, what else did you
17 ask?

18 Q. That's what I asked. Is it okay if I call you
19 Mr. Lee?

20 A. That's fine.

21 Q. Mr. Lee, are you currently practicing law?

22 A. Not exactly practicing. I'm still licensed by
23 the bar but I had some health problems so I'm not able
24 to do that. I'm not able to engage in day-to-day
25 practice.

1 Q. Mr. Lee, can you hear me okay if I stay back
2 here or would it be helpful if I came closer?

3 A. If you don't mind getting a closer, I'd
4 appreciate that. That's one of the things I have, is
5 I'm a little hard of hearing.

6 Q. And I can tend to project but there's a lot of
7 Plexiglass between you and I so one second.

8 Mr. Lee, how long did you practice law,
9 actively practice law?

10 A. It's been 40 -- I think 42 years, 43 year.

11 Q. And during those 40 years, what was the primary
12 focus of your practice?

13 A. Mostly criminal defense.

14 Q. And back in 2012 to 2016, when you were
15 representing Mr. Catoe, what was the primary focus of
16 your practice?

17 A. I was working for the public defenders in the
18 Sixth Circuit.

19 Q. I'm sorry, what was that?

20 A. Public defenders in the Sixth Circuit.

21 Q. And you just said you were working with the
22 Public Defender's Office.

23 Were you appointed to represent Mr. Catoe?

24 A. I was. During this period of time I was
25 actually the chief of the juvenile division. What

1 happened in the -- they made new legislation for the
2 circuit-wide public defender's offices. There was a
3 provision that each office was supposed to have a
4 full-time person dedicated to juvenile defense.

5 In the big office it's not really a problem.
6 They already had a group of people that just did that,
7 but in the smaller offices -- there really just -- it
8 wasn't set up in most of these smaller offices. And
9 people -- the juvenile cases were just passed around
10 among the attorney's in the office.

11 At some point in time, the Office of Indigent
12 Defense in Columbia thought it would be through the
13 circuit public defenders that they had to have a
14 dedicated person to do juvenile defense. And so I had
15 been, prior to that, the public defender in Chester
16 County under the Sixth Circuit. And Mr. Mike Lifsey, he
17 was a circuit public defender came to me and asked me if
18 I would set up whatever office we needed and run that
19 particular office and service all three counties. And I
20 told him I would do that and though -- but I did do some
21 adult cases. At that time, I was, I think maybe
22 still -- I was the only member of the office who
23 actually had death penalty experience. I tried a number
24 of death penalty cases. I'd actually had taken one all
25 the way through. Thought we settled it -- we pled

1 before the case was over with to something other than
2 the death penalty. But I was the only one that had that
3 kind of experience. Plus, at that time, I had, I guess,
4 25 years worth of trial experience.

5 MS. BLANCHETTE: Your Honor, could I beg the
6 Court's indulgence one moment, the investigator guy came
7 back in the courtroom.

8 THE COURT: Yes, ma'am.

9 Mr. Lee, if you want to pull your mask down or
10 take it off, it might be easier to understand you.

11 MR. LEE: Thank you, your Honor.

12 THE COURT: It might make it more comfortable.

13 MR. LEE: All this came after I stopped working
14 so --

15 THE COURT: Right. Right. I understand.

16 MS. BLANCHETTE: Thank you, your Honor.

17 THE COURT: Yes, ma'am.

18 Q. (BY MS. BLANCHETTE) Mr. Lee, we've established
19 you're appointed to this case. Did you receive
20 discovery in its normal course in this case?

21 A. I'm sorry?

22 Q. I'm sorry, I'll pull my mask down.

23 Did you receive the discovery from the
24 Solicitor's Office in this case?

25 A. Yes, eventually. I think initially we only got

1 some basic things but as we asked for full discovery, we
2 got everything they had up to that point. And as they
3 would get other stuff coming in, they would send us
4 copies of it.

5 Q. And as part of a discovery order in this case,
6 you made a complete copy of the file that you had on
7 Mr. Catoe and provided that had to me; is that correct?

8 A. That's correct. I think the only thing I
9 precluded was my trial notes and even that, I can't tell
10 several years later what I was saying. But I may have
11 left out work products.

12 Q. Now as part of that discovery, did you receive
13 a copy of the investigative reports and the statements
14 signed by Mr. Catoe?

15 A. I did.

16 Q. Did you have the opportunity to review those
17 statements and the things that's in those reports the
18 officer's reported he said with Mr. Catoe?

19 A. I did. We'd -- we'd gotten, I think initially,
20 I had the incident reports and the -- some of the basic
21 things that they -- they had and copies of the
22 statements. I think -- my recollection is that the
23 office got appointed to Mr. Catoe's case on the, maybe
24 the 5th of the month and Mr. Lipfsey talked to me some
25 time after that. At that time, like I said, I was the

1 chief of the juvenile division, but they had a rash of
2 murder cases here in Lancaster County and all the other
3 attorney's just got a case, so he asked me, would you
4 take it? You know, one of these adult cases and so I
5 was given Mr. Catoe's case.

6 My recollection was that I talked to him
7 probably through the bars at the jail initially
8 basically just to introduce myself, to tell him, I got
9 the information, I'd be back out to talk to him.
10 Cautioned him not to talk to anybody. Not to give any
11 other statements. If the police wanted to talk to him,
12 just say that he wanted his attorney present. And like
13 I said, not to talk to people in the jail -- in the
14 cellblock with him because these conversations get back
15 to the Solicitor's Office.

16 Q. Regarding the statements there, the signed
17 statements and the investigative reports, what was your
18 advice to him as to whether or not he should testify and
19 admissibility of those statements?

20 A. Okay. Initially that conversation I was
21 speaking of, when I talked to him through the bars, we
22 didn't cover anything about that at all. Later when I
23 came out and I had gotten some information and sat down
24 with him and talked to him about what was going on in
25 the case and that sort of thing and went over statements

1 with him, basically, I -- we talked about what he said,
2 what his version of what happened was. In fact, his
3 final statement of his version was somewhat consistent
4 with what he told the police. And then I started
5 looking when he told me what had happened, I realized
6 this looked a lot like that -- something that could
7 happen to cause sexual asphyxiation or erotic
8 asphyxiation where one person -- either chokes
9 themselves if it's a single person or if it's partners,
10 one partner chokes the other one almost to the point of
11 passing out, supposedly gives the person a higher orgasm
12 and sensation and it looked like that kinda fit the bill
13 on that.

14 When we looked into it a little farther and
15 talk about what was going on and his statement kind of
16 suggested that. He said she told him what to do, put
17 his hand -- put his elbow on the ground. Put his arm
18 across the throat and push down on his arm while they
19 were having sex and that generally is what happens in
20 those cases, so that's basically where we were looking
21 at. Initially, he was -- his bond had been denied. We
22 went in front of a term of court and it was denied again
23 and general sessions, it was denied. And I think five
24 months later we had another offer or request for bond
25 being set and they set a bond of \$50,000, which

1 considering he was charged with murder, seemed to be
2 fairly reasonable. I think at the time he thought he
3 wasn't going to be able to get that and I told him we
4 would try again later on. And suddenly he wasn't in
5 jail, he was out. I think his family had gotten some
6 money together and got a bail bondsman to go and he was
7 out. And after that, we talked at one of the offices.

8 Q. What was your advice to him regarding those
9 statements whether or not you thought they were
10 admissible or did you want them to be admitted? Because
11 in the Jackson Versus Denno hearing and I'm just
12 summarizing your statements, where you essentially said,
13 "I'm just making this argument to protect the record."
14 You didn't give a detailed argument. What was your
15 strategy with that?

16 A. My experience has been that if your story is
17 kind of close or exact to what you said on your
18 statements, it's better to let that statement get in
19 because that way it's going to get in front of the jury
20 and to fill in by your testimony, you know, what
21 actually, you know, the differences in what was going
22 on. At least, that's an argument that you can make to
23 the jury, is that "See, he finally told the truth on
24 this and today's, he's told you the same thing." You
25 know, this is what happened.

1 Q. But in this case he didn't testify. How was
2 the decision made that he wasn't going to testify?

3 A. Okay. Every time I talked to him I explained
4 to him that his testimony was crucial. There were only
5 two people who knew what happened and one of them was
6 dead and he was going to have to provide that. But also
7 would say, you don't have to testify if you don't want
8 to. You have a right under the Fifth Amendment under
9 the constitute not to testify. You know, but the jury's
10 not going to know what you said if you don't testify,
11 you know, your side of the story if you don't testify
12 because I can't tell it. You know, I can't say, Mr.
13 Catoe told me this and this is what happened. That was
14 the only way to get it to occur. I have a form that
15 I've used for years where the front part of the form is
16 basically getting together information on the individual
17 and on the back it's called Advise of Your Rights. On
18 this, I have the person sign it, initial it, things of
19 this where I go through all their rights. And then I go
20 down to, one of them is: You have a right not to
21 testify, if you do not want to testify. Also I put in
22 there to remind them they have a right to appeal and
23 they must file a notice within 10-days and explain to
24 them what that is because, a lot of people don't really
25 know about what that is. And actually, I developed this

1 form over the years because when I first started doing
2 criminal cases, PCR applications, the main complaint
3 was, "I wasn't advised of my rights to appeal." So I
4 generally on that will, I have -- you have 10-days to
5 appeal. You must tell me you want to appeal within
6 those 10-days because paperwork has to be filed and then
7 I circle the 10 to make sure they understand that
8 they've got to appeal because that way, like I said, I
9 developed it basically because that was the main thing
10 my lawyer didn't tell me, I had a right to appeal and so
11 I wanted to make sure I was covered on that.

12 Q. I think you touched on this. In your closing
13 argument on page 470, do you have a copy of the
14 transcript there? I can read it for you.

15 A. I was looking on one of those in the back, it
16 wasn't mine. If I could get that packet.

17 MS. BLANCHETTE: Your Honor, may I approach the
18 witness.

19 THE COURT: Yes, ma'am.

20 Q. (MS. BLANCHETTE:) Page 470 I believe. It
21 looks like 470 in the transcript and the record on
22 appeal. Beginning at line 15 you say: You have -- and
23 this is in your closing arguments. "There really was
24 only two people there Ms. Gaymon and unfortunately, she
25 can't testify and Mr. Catoe and he's chosen not to

1 testify." Would a you agree there, that you were
2 commenting on your client's choice to not testify?

3 A. Well, I'm sure I said that. Of course the
4 Judge advised him of his rights on that. And I'm not
5 sure whether the Judge may have also said he didn't
6 testify and you shouldn't associate anything with that
7 or put any weight on the fact that he didn't testify.
8 He's doing a constitutional -- he's exercising his
9 constitutional rights.

10 Q. You told him it was crucial for him to not to
11 testify.

12 Do you know why he didn't testify and why you
13 had to prepare your case without his testimony?

14 A. You mean crucial for him to testify?

15 Q. Yes. I'm sorry, if I misstated that.

16 A. Yes. He was concerned about the Solicitor's
17 Office. About the solicitor that was prosecuting the
18 case, she's very effective, very aggressive solicitor as
19 far as cross-examining. And that's one of the things
20 that we did when we would meet and go over his testimony
21 was so that he would know some of what she was asking,
22 you know, things of that nature. He would just say,
23 "Man, she's going to tear me up."

24 I said, yeah, I said, she's good. I said,
25 you've got to be prepared. You've got to cover -- don't

1 lose your cool. Don't -- you know, just answer the
2 questions. If you don't understand, ask for a
3 clarification. You know, basically, I sort of explained
4 to him what to do on that. But that was his main
5 concern. He was just afraid of being cross-examined.

6 Q. Was that decision made before trial or during
7 the course of the trial?

8 A. His decision not to testify?

9 Q. Yes. Was that made before trial or during the
10 course of the trial?

11 A. That was made just before we started our case.
12 I was just going to say, what had happened was,
13 Mr. Jones -- we had taken a break and I had gone back to
14 the Solicitor. I guess we talked to the Judge or went
15 over some things. I'm not sure what. But Mr. Jones
16 went back with Mr. Catoe into the witness cell. Not the
17 witness cell, in the lock-up, and he was talking to him.
18 When I came in there to talk with them, Mr. Jones said
19 something like, he don't want to testify. And I
20 basically -- I said, our whole case has been based on
21 the fact that you were going to testify, that you were
22 going to tell -- you know, you were going to tell what
23 happened. And, you know, you have a right to do this.
24 You know, I don't want somebody to say, my lawyer said I
25 had to testify, but I really didn't want to testify.

1 Just the same as I wouldn't want him to say the
2 opposite. And I said, we discussed it and I finally
3 said well, we've got to tell the Judge this because I
4 knew the Judge was going to ask him if that was his
5 decision.

6 And my recollection is, when I came out, he had
7 some family members here and one of them, I think his
8 sister came up and I don't remember whether she said --
9 whether she heard he wasn't going to testify or whether
10 she asked me, you know, something about it. And I told
11 her that he decided -- that's his right and he had an
12 absolute right not to testify if he didn't want do. She
13 was upset about that because I think she was the sister
14 who came to see me one time about him and I explained
15 that his case was one where he had -- he had to explain
16 his side and had to testify as to what happened for us
17 to be able to accomplish anything. But we made the
18 decision and it was just before we started the defenses
19 case.

20 Q. Now the trial was held in January of 2016 in
21 front of Judge Gibbons.

22 Now, do you recall appearing in front of him in
23 November of 2015 the prior -- just a couple months prior
24 for on the record rejection of a plea offer?

25 A. We may have. I can't remember whether we did

1 it on the record. I know we had a conference with him,
2 the Solicitor and myself and Judge Gibbons. Basically,
3 to discuss the case and I guess what was in there. And
4 I know at that particular time the offer -- originally,
5 we had run out of our offer, it had been offered with a
6 time limit on it. We didn't take it. We didn't take
7 that because he said he didn't want to take it. And you
8 know, we may have put it on the record. I'm sorry, it
9 just slipped my mind this far passed.

10 Q. That's fine. I have the transcript here dated
11 November 20, 2015 that was provide by the attorney
12 generals office with the documents they provided. In
13 that, you're in front of Judge Gibbons and the State
14 puts on the record a voluntary manslaughter plea of 10
15 to 26 years and then it's formally withdrawn.

16 Was that the best plea offer that you remember
17 in this case, was the 10 to 26?

18 A. That -- I know that was the last offer. We
19 encountered some time before that with pleas hitting
20 voluntary manslaughter and, with no limitations on it.
21 And he -- because Terry had said -- I think the maximum
22 was 5 years on that. He had said, I can do 5 years, but
23 when it got passed that, that was his basic response.
24 "Well, I just can't do that much time."

25 Q. Do you remember any advice you gave him prior

1 to this hearing or at the hearing with Judge Gibbons
2 where he formally rejected the 10 to 26 year offer to
3 voluntary manslaughter. Did you give him any advice as
4 to the amount of time you thought Judge Gibbons may give
5 him?

6 A. No. I think -- I think probably what I said
7 was this -- I guess on some of the others, if you plead
8 to manslaughter that the Solicitor's going to seek to
9 try to get 30 years, we try to get 2 or anything less
10 than that, but he didn't want to take that.

11 Q. And during that hearing he indicates to the
12 Court that he's trying to hire a private lawyer. And
13 the Court responds to him with what an excellent lawyer
14 you are and then tells him there's a firm trial date of
15 January of that year.

16 We're you aware that he was trying to hire
17 another lawyer?

18 A. No, I don't remember. I know there had been
19 some talk about, I think maybe with his sister one time,
20 you know, can we hire somebody to help you. I said no,
21 you can hire somebody to represent him, but I can't, you
22 know, once you hire somebody, I can't -- I can't
23 represent him. I don't remember anybody saying, "wait,
24 I want to, you know, delay because I want to hire
25 somebody." I just don't recall that at all.

1 Q. Prior to the trial did you consult with any
2 expert pathologists or anybody in the medical field
3 regarding the pathology coroner's reports, toxicology
4 reports and just to put it simply, everything you heard
5 Dr. Wren testify about this morning because you've been
6 her in the courtroom?

7 A. Well, some of the things he testified to, I --
8 we didn't talk about. I contacted Dr. Ross and talked
9 to her because the basis was, I think this sexual
10 asphyxiation, you know, has she heard of it. If she
11 hasn't heard of it, if I could get somebody who heard
12 about it. And she indicated she had heard about it and
13 we sort of discussed that. And that's basically, you
14 see it with males where one takes some type of a noose
15 or something and puts it around the neck and supposedly
16 will let it go before it chokes them to death; but it
17 causes a sexual arousal and sexual, a very intense
18 orgasm. But usually happens sometimes where one partner
19 does that to the other partner and as a consequence
20 something happens and it goes too far. But she was
21 aware of both of those and we discussed that a little
22 bit and I think she basically came to the conclusion,
23 she wouldn't have -- she wouldn't say that that didn't
24 happen. That it could have happened. You know, she
25 didn't know. I thought her testimony was pretty good.

1 I was going to get that from her and I didn't see the
2 need to hire anybody else.

3 Q. And so you would be referring to your
4 cross-examination to her -- I think it appears beginning
5 on page 244. You -- I think at the bottom you take a
6 break and then you start asking her about sexual
7 asphyxiation and that goes into page 245.

8 A. Yes.

9 Q. After a series of questions there on page 245,
10 on 246 the State objects and that objection's overruled,
11 but then you don't ask any further questions. Is that
12 because you had finished, you just had a couple
13 questions to ask her on that or?

14 A. I think the main thing was to get that that
15 existed; that, that could occur. It was at that point
16 then, Mr. Catoe, at that moment we thought he was going
17 to testify; to say this is what happened. That she told
18 me how to do this. And this is what I did. And you can
19 look at her third statement basically brings that out
20 that that's what happened.

21 Q. And so in your interactions with Mr. Catoe, did
22 you ever talk about it being accidental, that Ms. Gaymon
23 died?

24 A. I can't remember. I know I probably said, you
25 know, when you go in front of a jury it's like tossing a

1 coin, you could win or you could loose. The jury could
2 come back and say, "you're not responsible for this at
3 all." But of course he was always willing to plead to
4 voluntary manslaughter, if he could get that. You know,
5 so my point was trying to convince the Solicitor's
6 office to see if there's anyway they can give us
7 voluntary.

8 Q. And Mr. Catoe admitted he was there and he
9 admitted he was involved in this act with Ms. Gaymon.
10 But for you, did it really hinge on the lack of malice
11 in this case?

12 A. Well I don't think that -- you know, I may be
13 wrong about this, but I haven't really looked at the
14 laws in several years. I don't think you had to have
15 malice with involuntary.

16 Q. I want to answer your question, but I can't.

17 A. Well, you know. I obviously didn't, you know,
18 do that. I think that's probably why we were looking at
19 some type of manslaughter preferably involuntary
20 manslaughter.

21 Q. Immediately before you asked Dr. Ross about
22 sexual asphyxiation, on page 244 beginning at line 14
23 you ask her:

24 "If I understand correctly, you got back a copy
25 of the toxicology report?"

1 She says: "That's correct."

2 You asked: "Did it show any drugs or alcohol?"

3 She responded: "Yes, there was cocaine present
4 and byproducts of marijuana."

5 And then you ask: "If that was of blood
6 samples?"

7 And she says: "That's correct."

8 Why didn't you go further into that toxicology
9 report and address that she had issued her reports
10 before that came back?

11 A. Quite frankly that was -- today, was the first
12 time I remembered there was two reports. I had what we
13 had gotten from the State, which I think is all they
14 had.

15 Q. And now I separately, through discovery, got
16 the coroner's file. Do you know if you had the
17 coroner's file leading up to trial?

18 A. I had whatever the State had given me on that.
19 I think that's what we had.

20 Q. Did you discuss -- because you said kind of the
21 person you consulted with regarding the pathology was
22 Dr. Ross herself.

23 A. That's right.

24 Q. Did you discuss with her any alternate causes
25 such as the heart disease that has been discussed today

1 or vasovagal susceptibility?

2 A. I think we looked at -- there was gross amounts
3 of information about coronary arteries being included.
4 And I think I asked her, you know, could that have
5 caused, you know, her death?

6 And she said well, maybe; maybe not. She
7 didn't have a definite opinion on that.

8 Q. Would it have been helpful for you to be able
9 to argue to the jury these other underlining possible
10 causes or alterative contributing factors to her death?

11 A. It probably -- excuse me, it probably, you
12 know, probably wouldn't hurt to, you know, have done
13 that. Sometimes it looks like you're shotgunning, you
14 know, let them pick at least one and sometimes you do
15 that. And I -- you know, looking back you can always
16 criticize what you did. It might have been better to
17 have done something. But, no, we had to do this. We
18 were sort of rushing it, because we were planning on,
19 you know, testimony from Mr. Catoe and suddenly, we've
20 got to change -- change our target on what we're going
21 to do. I'm not going to say it wasn't, you know, it
22 wouldn't have been helpful, it might have been anything
23 that the jury could latch onto could help.

24 Q. Now, in a minute I'm going to ask you a little
25 bit about the charges and charging conference, but at

1 the end of the Judges involuntary manslaughter charge --
2 sorry, this could be found on page 507 beginning on line
3 18. And I'll give you a second to turn there, 507 line
4 18.

5 Beginning on line 18, I believe it's what's
6 commonly called as the "proximate cause" charge. And
7 the Judge says: "The State must also prove beyond a
8 reasonable doubt that the defendant's act was the
9 proximate cause of death -- proximate and it says
10 "case," is the direct cause, it is the immediate cause,
11 it's the official cause," and he goes on to further
12 explain.

13 Can you point to anywhere in your arguments or
14 through the trial that you tried to show that he was not
15 the proximate cause of her death?

16 A. I would have to look again. I don't recall it.

17 Q. Was that one of your strategies as you remember
18 going into this trial at all?

19 A. Yes. That was the thing was to -- was to -- to
20 say what had happen was because of the sexual act they
21 were doing that he was choking her, but not -- I think I
22 ask her if she saw any indications or bruises to indicate
23 that he was -- he had his hands on her strangling her,
24 versus his version which was he just put his arm across
25 her throat and pushed down with the other arm, which his

1 version was that she had told him what to do. That she
2 asked him if he ever done any rough sex, I think is what
3 he called it or hard core sex or something of that
4 nature. And he said he didn't know what that was. She
5 supposedly instructed him on what to do.

6 Q. Now, I want to go back a little bit to this --
7 I touched on "accident" and "manslaughter" and talked
8 with you about the charging conference and kind of where
9 you-all landed with that.

10 The charging conference begins on page 452 of
11 the transcript. And the first thing is the State
12 requested an inference of malice from a deadly weapon
13 charge on page 454, line 6. At that time the case of
14 *State versus Belcher* had been decided addressing the
15 inference of malice from a deadly weapon charge.

16 Is there any reason you didn't object to that
17 charge or make argument against that charge when
18 requested by the State?

19 A. I know a good reason not -- I really wasn't
20 aware until I looked at the transcript about what had
21 happened on there.

22 Q. Just to clarify, you were aware of the *Belcher*
23 case that was decided in 2009, some several years prior
24 on that charge?

25 A. I think I probably read it or gotten word about

1 it or that sort of thing, but now, why I didn't object
2 to the --

3 Q. Oh. Go ahead. I'm sorry.

4 A. I was going to say, I don't know why I didn't
5 object to it.

6 Q. And in this case, was it unique for you that
7 they were going to consider the hand and the fist as a
8 deadly weapon? Had you run in to any cases that
9 involved that before?

10 A. No, I don't recall that. I don't recall
11 looking into that.

12 Q. The State specifically then asked that there be
13 an instruction given about how the hand or the fist
14 could be a deadly weapon.

15 Is there any reason you didn't object to that
16 being a charge on the facts of this case?

17 A. No. Not that I know of.

18 Q. Now the Court agrees to charge that. He says:
19 "There's no evidence of self-defense so he will charge
20 it."

21 But you've already said you weren't aware of
22 the *Belcher* case or you didn't argue the *Belcher* case
23 that says: "It's not proper if there's any evidence to
24 reduce, excuse, justify or mitigate the homicide."

25 A. As far as I can recall.

1 Q. And then the issue of voluntary manslaughter
2 came up. The State requested it, and then they also
3 addressed involuntary and then you objected to voluntary
4 but said you wanted involuntary and that was on Page 463
5 if you need to refresh your memory.

6 A. Okay. Let me look at that just a minute.

7 Q. Okay. Yes. I believe where you respond is
8 beginning on Page 463.

9 A. Which line are you talking about?

10 Q. I have that you began responding -- the Judge
11 asks for your response on line 14 of 463. And then you
12 go -- you kind of go back and forth with the Judge
13 there.

14 A. I think we just may have been looking with the
15 hopes he could get an involuntary charge and that the
16 jury would go with that.

17 Q. Do you recall a specific reason why you didn't
18 want the voluntary charge?

19 A. No. I just -- that's the first time I realized
20 that. I would have thought I might have said we would
21 have no objection on that. But I don't know that -- it
22 don't make much sense. I certainly would have taken
23 that over murder.

24 Q. You don't have a strategic reason now why you
25 chose --

1 A. No. Like I said, my first thought was that
2 would have been -- that I would have said we had no
3 objection.

4 Q. To be fair, it's moot because he did charge it.
5 Because since we were discussing the voluntary plea and
6 your strategy, I was just wondering the reason why you
7 were objecting or if there was a reason you could recall
8 for opposing that?

9 A. I don't recall. Like I said, I would have
10 thought I might have said, we have no objection on that.

11 Q. On Page 466, you're continuing your discussion
12 with the Judge about the charges. And again, it's line
13 14, you're kind of talking about the evidence and if
14 they could make a leap. And the Judge's response on
15 line 18 to the facts that you're arguing is:

16 "And then, again, they could believe it was an
17 accident."

18 I don't see where you ever formally asked for
19 an accident charge or nor was one given.

20 Was there a reason you don't ask for an
21 accident charge?

22 A. No. Other than the fact that, like I said, we
23 heard -- his statement was -- his written statement was
24 that, he had -- she had asked him do that. He didn't
25 know actually when -- my understanding was he -- she was

1 acting funny and made her moan or something of that
2 nature and that noticed her turn over to one side, he
3 got scared and ran.

4 Q. Recently in 2021, our Court of Appeals and
5 Supreme Court issued decisions in an *Owens* case that I
6 provided to the Court. And they begin that case by
7 saying, "The defense of accident is a recluse. It is
8 seldom seen and often misunderstood."

9 I thought that was interesting. Then they go
10 on in this case to give the appropriate accident charge
11 that should be used from here forward.

12 I understand that's a good bit after your case.

13 But what I was just wondering was, had you
14 drafted an accident charge, was it anything you had
15 considered, or did that just -- was it even something
16 that was on the radar?

17 A. I think the only thing I can think of is I
18 probably, before he said he wasn't going to testify, was
19 going to mention something to the jury to the effect and
20 maybe it's an accident, maybe nobody's responsible, but
21 we didn't have -- we didn't have the specific charge on
22 that.

23 Q. Okay. Now let me ask you a little about the
24 charges that were given.

25 Beginning on Page 503, the Judge begins his

1 murder charge. On Page 504 he explains that malice
2 aforethought may be expressed or inferred. Beginning on
3 line 18 he goes into inferred malice.

4 And again, you didn't have any reason for not
5 objecting to the deadly weapon inference of malice
6 charge?

7 A. No. I don't think so. Somehow this transcript
8 ends Page 500.

9 Q. Mine is Volume II of the record on appeal.
10 Starts with the subsequent pages.

11 A. I'm not sure. I don't recall anything. It's a
12 little difficult to look back six years and remember
13 exactly what you were thinking.

14 Q. I understand. And just to make sure we're
15 building the record here, I'm just kinda going to go
16 through the charge with you on 504. I'm going to go
17 through the malice charge with you on Page 504. The
18 Judge also goes on, and the transcript will fully
19 reflect it, "that a hand or a fist is not normally
20 considered a deadly weapon. However, under some
21 circumstances depending on the manner and means of its
22 use, the wounds inflicted and other relevant facts, a
23 had fist may be considered a deadly weapon. It's for
24 you to decide in this case beyond a reasonable doubt
25 whether or not a hand or fist is a deadly weapon."

1 Is there any reason you didn't object to that
2 being a comment on the facts?

3 A. No. I can't recall anything right now.

4 Q. And then he also gives in the inferred malice
5 charge, are you familiar with the *Elmore* case that was
6 decided? And let me give you the date of that.

7 MS. BLANCHETTE: If I could beg the Court's
8 indulgence and your indulgence. One moment.

9 THE COURT: Yes, ma'am.

10 Q. (MS. BLANCHETTE:) In 1983, the Court handed
11 down the *Elmore* decision, E-L-M-O-R-E. In that, they
12 address the inferred malice charge and said "there had
13 to be certain language given that inference could be
14 accepted or rejected by the jury, a permissive inference
15 versus a mandatory inference."

16 Were you familiar with that language and is
17 there any reason why you didn't object to that proper
18 charge being given in this case?

19 A. I've probably read that case at one point in
20 time but as to any reason, I can't recall now.

21 Q. And were you familiar with the general
22 permissive inference instruction set forth in *Elmore*?

23 A. I think I knew the basis.

24 MS. BLANCHETTE: If I could beg the Courts
25 indulgence. Just one moment.

1 THE COURT: Yes, ma'am.

2 Q. (MS. BLANCHETTE) When the Judge gave the
3 voluntary manslaughter charge, he didn't specifically
4 state that "Malice is not an element of voluntary
5 manslaughter." Is there any reason you didn't ask him
6 to include that language or object when it was not
7 included?

8 A. Not that I can recall right now.

9 Q. Now, in the State's closing argument they
10 argued on page 485, that this was not an accident. It
11 was not rough sex. But we've established that you
12 didn't argue accident nor did you ask for the charge; is
13 that correct?

14 A. I'm sorry.

15 Q. In the State's closing argument, one of their
16 arguments on 485 was this was not an accident. But
17 you've already testified that you didn't ask for an
18 accident charge nor did you fully argue that; is that
19 correct?

20 A. That's correct.

21 MS. BLANCHETTE: Your Honor, If I could beg the
22 Court's indulgence just to check with my client.

23 THE COURT: Yes.

24 Q. (MS. BLANCHETTE:) Now prior to -- we have a
25 rejection on the record. But prior to rejecting plea

1 offers, do you believe that Mr. Catoe's was fully
2 advised regarding your strategy for his trial and what
3 you thought the outcome of his trial could be?

4 A. I think we had talked -- we talked a number of
5 times. Like I said, a lot of the times we went over the
6 fact of the case. Basically, the questions that I was
7 going to ask. And my intention was to put him on the
8 witness stand, put him under oath and basically, let him
9 run with it for a little while. I found that's more --
10 juries appreciate that more rather than having the
11 defendant saying something and then say, what happened
12 next and then say something, and that, if you could talk
13 like, it and deliver your version of what happened. But
14 -- so they would get the impression that this is what
15 happened and not something he's had to learn. And that
16 was -- that was what we were going to do. And then I
17 don't know if I told him or not, about that I had talked
18 to Dr. Ross and that Dr. Ross mentioned that this sort
19 of stuff did go on. I just -- I can't recall on that.
20 But we do that, I would sort of try to prepare him for
21 questions that they may ask him on cross-examination.
22 We talked a lot about, how you say things, not what you
23 say. Because that's what he has -- in telling the
24 truth, he has to say what happened. But some times you
25 could use different words that mean the same thing, but

1 they could convey the wrong connotation to them. You
2 know, that sort of thing. But I think the main thing we
3 did was, you know. We talked about sort of what was
4 going on. When we had set up appointments for him,
5 initially I would talk to him about any developments in
6 this case, anything new, stuff that had come up, that
7 sort of thing. And then we'd go over the testimony.
8 And talk about what to say, you know. I'd sort of say,
9 this is what I'm looking for when I ask you, you know,
10 this question. That sort of thing. And how important
11 it was that he deliver the testimony as to what
12 happened. And we talked about looking at the jury and
13 talking to the jury, that sort of thing. Because if you
14 have someone who has not actually been in a trial then
15 they don't know. They're gonna -- you sort of have to
16 educate them on what's going on.

17 MS. BLANCHETTE: Your Honor, I have no further
18 questions.

19 THE COURT: Cross-examination.
20

21 CROSS-EXAMINATION

22 Q. (BY MR. DAVIDSON) Mr. Lee, I want to take you
23 back to right when you got appointed to Mr. Catoe's
24 case.

25 Did you go meet with him immediately?

1 A. That's what I said. When we first got
2 appointed, the only date I could find -- I think an
3 appointment slip for maybe the 3rd or 4th of the month
4 that he got arrested in. And initially, I wasn't
5 appointed myself, just the office was appointed. Then
6 what I did was I went and I talked -- like I said, my
7 recollection is I went and I talked to him at the jail
8 but just talking to him. We weren't in a room. He was
9 just through the bars. Since I had worked in Lancaster
10 County before, mostly older jailers knew me and they
11 really didn't have any problems with me going back and
12 talking to somebody like that. My main instructions
13 were, Don't talk to anybody about this. If the police
14 want to talk to you again, tell them you want your
15 lawyer present. Tell them, you know -- just don't say
16 anything about the case and I'll be out when I get some
17 information on the case.

18 I went to the scene and I took some photographs
19 of it, which turned out to be a wise thing. I think
20 because the fact that one or two years after this, the
21 owner's tore it up, a lot of the buildings. So we
22 couldn't have taken the jury to the scene, but I had the
23 photographs of what it looked like. And what Dr. Wren
24 said was, "It was a mess." It was just a room. I think
25 it was a little house, a small house. It looked like it

1 may have been two bedrooms, a living room and a kitchen
2 and junk all in it. There was a mattress in one room
3 and I figured that was the place this occurred.

4 This mattress had squares cut out of it, which
5 indicated to me that they had taken samples to be
6 analyzed and just to get me a feel of what it was like
7 in there.

8 Once I got copies of the statements, a full
9 incident report and things of that nature and then I
10 went and talked to him. It was about -- I think the
11 form I signed, I put the date on the form as something
12 like the 28th or 29th of that month. So I don't go
13 right out other than to caution him not to talk and
14 probably told him, don't use the phone or don't talk
15 about any of this on the phones because they're not
16 secure. Just basic things that I wanted him to stop and
17 not do anything or say anything until we had a chance to
18 fully sit down and talk. Normally, that interview
19 process takes about an hour.

20 Q. An hour?

21 A. An hour.

22 Q. And you said you met with him at the jail.

23 Did he eventually get a bond?

24 A. That's correct. Initially, bond was denied and
25 so he was still in jail six months later or five months

1 later. We made another motion and he was given a
2 \$50,000 bond. I think he couldn't make it but
3 evidently, at some point in time, we -- somebody in his
4 family put the money up or something and he got out.

5 First thing we knew, from what I understand
6 was, he came in the office to tell me he was out. And
7 for awhile we thought he was living here in Lancaster
8 County. Come to find out he was actually living in Rock
9 Hill. But, you know, like I said, we discussed what
10 went on and I wanted to hear his version of what
11 happened, that sort of thing. Then we would discuss
12 that sort of thing over the course of the time as to
13 what he could expect as far as questioning.

14 Q. What did he tell you happened?

15 A. Basically, very close to what I think was in
16 his third statement, which was one reason I didn't
17 really object to the statements coming in, was because
18 his version of what happened was not very far from what
19 was in that version.

20 But basically that he had been riding around
21 and unfortunately, one of the other statements he said
22 something about he used some cocaine with somebody, not
23 the victim, somebody that he went down looking in this
24 area in Lancaster with, prostitutes by their trade. And
25 he went to talk to somebody and have sex with him. It

1 seems to me he said he asked one person and they didn't
2 want to and then ran into the victim in this case and I
3 believe they haggled about the price a bit and then they
4 went -- he told me that normally when he would have sex
5 with somebody, he liked to let the lady pick where it
6 was at so she could feel more secure and as a
7 consequence, she knew about this vacant house. They may
8 have been close to that area. And they went in and he
9 told me that they both lifted an old sofa that was
10 there, put it over the door because he used a borrowed
11 bicycle and he was afraid somebody was going to steal
12 that bicycle. They didn't put that in the house for
13 some odd reason, but they blocked the doorway partially
14 with the sofa and that she had helped him pick it up and
15 put it blocking the door. I think that maybe in one of
16 the statements too. They had sex basically the way he
17 describe it in his statement. As they were getting
18 ready to do it the second time, she asked -- she's the
19 one to ask if he's ever done, I think she used the term
20 "hard core sex."

21 And he said, "What do you mean?" And she
22 said -- told him how to do it. How to put his elbow
23 down beside her, I guess, face and push down on her neck
24 with his arm to put pressure with his other arm. And
25 that was somewhat consistent, I think, with some of the

1 bruises that appeared on the photographs and also what
2 the pathologist said that she was bruised there. There
3 was no indication that someone had put their hands
4 around and strangled her or left finger indentions, you
5 know, on the neck and that sort of thing. But they had
6 sex and she may have made a moaning sound and I think, I
7 believe I would have to look back again. But they
8 actually finished sex and that's when she made the
9 moaning motion and turned her head to one side and he
10 got scared and left.

11 Q. So in his story to you, he had his forearm
12 across her neck?

13 A. That's what he told me that he had -- she had
14 told him to put his elbow on one side of her neck and --

15 Q. Like on the ground?

16 A. Yeah, on the ground, and the forearm. In this
17 case I guess the mattress and press down on the other
18 end of his arm with his other arm and that was the way
19 they did it and that's when she -- she moaned.

20 Q. Okay. After that first meeting where you spoke
21 about his side of the story, did you guys discuss your
22 options, as far as, what defenses you saw or potentially
23 what strategy you might want to go forward with?

24 A. I think because I had read and heard some cases
25 about this erotic sexual asphyxiation that I said, you

1 know, what you're telling me sounds a lot like something
2 like this. And in that case, we certainly ought to get
3 it down lower than what you're charged with. And you
4 can't tell what the jury's going to do. They might let
5 you go, but I doubt it. But that was basically the way,
6 you know, I presented. The way I thought was going to
7 happen.

8 Q. Did you guys talk about him taking the stand at
9 that meeting?

10 A. I don't think I went into detail, but I
11 explained to him that -- again, like I said before, only
12 two people knew exactly what happened and one of them
13 was dead, he was going to have to tell his version and
14 at least this sounded like what he said in his
15 statements. At least I could argue that he's telling
16 you the truth because he hasn't changed, the story
17 hadn't changed.

18 Q. And so after that meeting did you schedule any
19 type of follow up meetings?

20 A. We -- when he got out. I saw him several times
21 over that five month period at the jail. Basically,
22 some times not real long, just talk to him about what's
23 going on in this case, that sort of thing. And at some
24 point in time he told me when I had explained the three
25 murder, voluntary and involuntary manslaughter that, you

1 know, he could, you know, that maybe what we're looking
2 at, something a long those lines. And we would just
3 briefly talk about things that were involved in the
4 case. Once he got out, then I sought of basically said,
5 you need to start coming to see me a little more. At
6 that time, like I said, I was -- my main office was in
7 Chester. So I said, "I'm not here everyday." "So you
8 need to call and make an appointment or we'll get word
9 to you when I want to see you." And some time, I want
10 to say, maybe in August or September, it was August that
11 the State wasn't going to offer us anything less than an
12 open-ended sentence on voluntary manslaughter. And I
13 told him that I needed to talk to him more to go over
14 what was going on in this case. And basically, we had
15 it set up about every, maybe about once every -- every
16 week or may have been sometimes two weeks between the
17 two, but basically that's what we would do. We would
18 sit down. That went on for a couple of weeks and
19 suddenly, he didn't show up. And our office manager
20 down there tried to get in touch with him. And when I
21 final got him back in again, he was just -- said he was
22 sorry. He was living in Rock Hill and he just couldn't
23 get down here. He had not called ahead of time to tell
24 us he couldn't make it. So we scheduled him again. The
25 next time he missed, I asked him would it be easier for

1 him to come to Chester and talk with me because that's
2 where my office was. He said, he could get down there
3 with a lot less problem. So we meet in Chester for
4 several weeks. A time or two he didn't show up down
5 there. When he did show up, I was always explaining to
6 him, this case is a crucial case. What you say and how
7 you say it is going to be important.

8 And finally, I guess maybe in November, he
9 missed a time or two again. And I said, look, I've got
10 a cousin who has an office in Rock Hill. He's an
11 attorney, I said, he does civil law. I can see if I can
12 use his conference room and you come by there.

13 "Oh. Yeah. I can make that."

14 So we meet once or twice and again, he didn't
15 show up another time. And I know the last time he didn't
16 show up was -- I had him set up to come either the 23rd
17 or 24th of December and the reason I remember that date
18 was because the fact that my wife and daughter went with
19 me and they dropped me off at my cousin's office so they
20 can do Christmas shopping while I talked to him.

21 And they hadn't been gone for about 15 or 20
22 minutes when it's obvious he was not going to come. I
23 had called them back from shopping to come pick me back
24 up again. That's one reason I remember that date
25 specifically. And then I think maybe we meet one other

1 time before trial but I'm not sure.

2 Q. On the 23rd or 24th of December, did he call
3 you to let you know that he wasn't going to be coming?

4 A. No, he didn't call.

5 Q. And that was probably one or two weeks before
6 trial?

7 A. That's right. He just didn't show up and we
8 tried to call the number we had for him and couldn't get
9 an answer.

10 Q. By that point, lets say beginning of December,
11 how are you feeling about his progress with handling
12 testifying?

13 A. I felt like he was doing a decent job. At
14 least my experience, the client never does a perfect
15 job. But you know, just very little I had to interrupt
16 him in his main discussion to say, don't forget this.
17 You told me this and you have to put that in there. You
18 know, that he was able to carry the ball, I guess, I
19 would say. And you know, I felt that was probably the
20 best, you know, that we could get. And what I have to
21 do was to try anything neglected to try to work that in
22 after he testified.

23 Q. And did you also work on I guess mooting him as
24 far as cross-examination?

25 A. I think what I was doing was saying, you know,

1 if you say it that way, this is what the solicitor's
2 going to do. So you may want to change how you say it.
3 And I never told the client what to say. But I'd tell
4 him not to say something differently. But he could use
5 a different choice of words or things of that nature,
6 but, you know, basically that is what we would go over
7 that way.

8 If he said something, then I can come back and
9 say, what did you mean by this? The Solicitor is going
10 to catch that if you say that. So you've got to try to
11 cover that in your statement.

12 Q. And you just -- I think you testified earlier
13 that you had a discussion with him about the Solicitor
14 that was going to prosecute the case, so he had some
15 type of notice that she maybe hard on him?

16 A. That's -- that's correct. I've known
17 Ms. Collins for a long time and all of my experiences,
18 she was a good tough solicitor and she was an excellent
19 trial attorney. In fact, I think that is one of the
20 reasons she got hired as a deputy solicitor. We needed
21 a solicitor and we needed somebody who knew what to do
22 in a courtroom and how to do it. And basically, I kept
23 saying, she is tough. You don't want to go out on a
24 limb and suggest something she might know, she might
25 have evidence to come back and show you're lying. So

1 you tell your story the way it happened and let's go
2 from there.

3 Q. And so all though he skipped that meeting right
4 before trial, did you feel when trial started that you
5 guys were ready to proceed?

6 A. I thought so. Like I said, you know, we were
7 going to have to go forward any way because it was --
8 trial started. But hopefully, the idea was that
9 anything we had to do was pick it up with his testimony.

10 Q. And you didn't know that he didn't want to
11 testify until the day that the State rested and your
12 case began?

13 A. That's correct. I mean right before our case.
14 I always told him, you have a right not to testify, but
15 if you don't testify, nobodies going to know what your
16 story is. I'm your lawyer, but I can't tell the jury
17 what you told me.

18 Q. Did you have a feeling that Mr. Catoe
19 understood from, at least the point in August, that he
20 -- the strategy was for him to testify?

21 A. Yes. I think, you know, we were hoping and
22 would have liked to have gotten involuntary manslaughter
23 plea. And he was willing to do that and if they -- if
24 we could get that. They didn't want to go that far
25 down. And even with the voluntary, they wanted the

1 upper limits. And his statement was, "I could do five
2 years, but I can't do anything like what they're talking
3 about."

4 Q. And is it fair to say that based on that
5 strategy you were aiming towards the jury acquitting him
6 or involuntary manslaughter?

7 A. That's what I -- that's what I hoped it would
8 be that. Because, you know, we had to change things
9 rather suddenly when he decided not to testify. I mean,
10 he never indicate to me in the times we were talking "I
11 don't want to testify." "I don't want to testify." You
12 know, because I don't want to tell a client, you know,
13 to testify and then come back and say "I didn't want to
14 testify."

15 Q. And I think it was your testimony that the
16 statements that were going to be admitted at trial would
17 corroborate Mr. Catoe's story and that's part of your
18 strategy --

19 A. That is correct.

20 Q. To let them come so he could fill in the gaps?

21 A. Yeah. It was very close what the end result
22 was going to be, as far as, his testimony and what he
23 said happened.

24 Q. And you also testified that you spoke with
25 Dr. Ross and specifically, spoke to her about sexual

1 asphyxiation. What was your thoughts as to what she
2 told you about sexual asphyxiation. Did it fit into
3 your narrative and your strategy?

4 A. She knew about it. I don't remember now
5 whether it was she just volunteered it or whether she's
6 -- I was going to try to pin her down, what is this?
7 What happens? Like I said, in most cases, you have a
8 male who does this and it's not a partner, but there are
9 some cases where they are partners. It happens whether
10 it's two males or male and female. Also, the fact that
11 the person who requested it, Mr. Catoe said, you know,
12 she brought up the fact of this is how you do this. The
13 fact is the person who does the choking or putting the
14 arm across the neck doesn't necessarily get that much of
15 a sexual benefit from it. It's the person who is being
16 choked that gets the sexual benefit.

17 Q. And that testimony was going to fit in with
18 your trial strategy?

19 A. That's right, yeah. His story was that she had
20 asked him and told him how to do it. And a lot of
21 people don't know about that or they never heard of
22 that. So I felt like that was one of the things that
23 went in his favor because he didn't know what she was
24 talking about. She had to tell him how to do it.

25 Q. "Applicant alleges that ineffective assistance

1 of counsel for failure to provide the jury a basis for
2 finding applicant guilty of a lesser included offense
3 and or not guilty."

4 As you just testified, the day of trial or the
5 day that you were going to present your case,
6 applicant's testimony, being on the stand, he decided
7 not to.

8 Is there any other reason other than that that
9 you chose not to put on a case?

10 A. That's -- well the other thing being that, if
11 you don't put the evidence up, you don't have to go
12 first in the closing arguments. And I wanted to be very
13 careful putting something up and we lose that benefit
14 with him not testifying. If he had testified of course,
15 that if we had anything else we could put it up. I
16 wanted to preserve that right to close. So then at
17 least I could argue against what the State's saying.

18 Q. If I understood correctly, once he decided not
19 to testify, your new strategy was to preserve last
20 argument?

21 A. That's right. Like I said, this was right
22 before we started our case, that he said he didn't want
23 to do it. And that threw everything we had been
24 planning out the window or we had to reshuffle around
25 and try to figure out other things to do.

1 Q. And as far as the accident charge for the jury.
2 I think it was your testimony earlier that you didn't
3 have any reason for that. Are you familiar with the
4 elements of that defense?

5 A. Yes. I've been doing this for a long time.

6 Q. And did those elements apply in this case?

7 A. I think they could have been at least in the
8 involuntary. They may not have been in voluntary, but
9 the Judge charged it anyway. If it's involuntary then I
10 think we would have been happy if we got it.

11 Q. Would it be fair to say that engaging in acts
12 of prostitution is unlawful and so it might not have
13 applied?

14 A. Yes. You know, looking back it's just always
15 easier to figure out different things to do. And a lot
16 of this was going real fast at that point in time of the
17 trial because we had to completely change how we do
18 things.

19 Q. You heard Dr. Wren's testimony and all of the
20 potential possibilities, was it your theory to go into
21 this challenging their report or their reasons or was it
22 to tell your client's story?

23 A. I'm sorry. I didn't quite understand.

24 Q. Was your strategy to challenge the forensic
25 pathologist reasoning or was it to have your client tell

1 his side of the story?

2 A. I think to have him tell his side of the story.
3 It fit, like I said, fairly close with what the facts
4 were. You know, you could always say there were other
5 things and I think pathologist a lot of times will, you
6 know, they'll generally, they can't say exactly how
7 something happened, but they can say, this is what it
8 looked like.

9 MR. DAVIDSON: I beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 MR. DAVIDSON: Nothing further.

12 THE COURT: Anything further from this witness?

13 MS. BLANCHETTE: Briefly, Your Honor.

14 THE COURT: Yes, ma'am.

15

16 REDIRECT EXAMINATION

17 Q. (BY MS. BLANCHETTE) Mr. Lee, your testimony
18 regarding the decision of the client, Mr. Catoe, to not
19 testify. I just want to clear up some things I see in
20 the transcript. At the top of page 93, the Court says
21 at the end of the *Jackson versus Denno* hearing, he asked
22 you if you have any evidence. And you respond: "Your
23 Honor, we do not. I would just object to the admission
24 of these to the jury for the record to protect his
25 rights in this matter. But we don't intend for the

1 defendant to testify."

2 Are you just referring there to the *Jackson*
3 *versus Denno* hearing and not to the whole trial itself?

4 A. I think what I meant by that was, just for the
5 *Jackson v Denno* hearing, we weren't going to put him up
6 for that.

7 Q. Okay.

8 A. Because essentially, his story was not that
9 different from what the statement said. But we weren't
10 going to put him up to refute. You know, to say, they
11 promise me this, that, and the other, you know, what was
12 going on then.

13 Q. And then -- go ahead, I'm sorry.

14 A. That's what that refers to. It's not
15 testifying in the *Jackson v Denno* hearing.

16 Q. And then -- I'm sorry. I keep looking down and
17 I don't see you talking.

18 A. We just wanted that statement in. Actually,
19 all the statements in.

20 Q. And at the conclusion of the Court questioning
21 him about his right to testify and this appears on page
22 452. This is what you say to the Court. "Your Honor,
23 we've talked with him of course. On one said there are
24 pluses and on the other side there are minuses. We've
25 told him that it is his decision to make on that. We've

1 given him both the positive things that we see and the
2 negative things that we see, and I believe he
3 understands it and he's the one who made the choice on
4 that. We agree with him in the sense that he made the
5 choice and that's what he wants to do."

6 Today your testimony was, it was a complete
7 surprise. It was crucial to your case. Essentially, it
8 through-off your whole case that he chose not to
9 testify. When you were going through the pluses and
10 minuses with him like you told the Court, did you
11 explain that to Mr. Catoe, that it was crucial, his
12 whole case hinged on his testimony?

13 A. We explained that to him. And like I said, I'd
14 always say, you've got a right you don't have to
15 testify. But there are things only you can bring out.
16 A lot of times and I don't think Mr. Catoe had any other
17 prior records, but I'm not sure. A lot of times people
18 who have gone to trial don't understand that you can't
19 say things to the jury and you can't put their side
20 forward if you don't have evidence to that effect.
21 That's the minus, in that, I can't tell them what you
22 told me about this.

23 Q. Uh-huh. Now on page 450, the State has asked
24 if there's an impeachable offenses and they give quite a
25 few. Have you discussed those and talked with Mr. Catoe

1 about that? I was just confused by your answer about
2 not knowing if he had priors.

3 A. Yeah. He had a number of things. Some of the
4 things, I don't think they could have gotten in. This
5 is one of the problems that we had. He had two prior
6 offenses involving woman. One of them the victims
7 version of what happened was that he had given her a
8 ride. He pulled off the road somewhere and asked her if
9 she wanted some drugs. She said, no. And then he
10 choked her. And then she came too and they were in the
11 back seat of the car and she jumped out of the car
12 without her clothes and ran. That case happened in
13 2006, I mean in 2000. And so there was a question
14 about, can we say that's relevant that far a long.
15 There was some problems with the State finding this
16 victim again. I don't think they could use it
17 necessarily against him, that one. And we had -- but if
18 they could, having an interaction with a woman and
19 choking her, we would have been good. As it turned out,
20 I don't think the State could find this young lady. It
21 looked like at some time prior to this, I forgot when it
22 was, maybe 2010 they let -- Mr. Catoe plead to some type
23 of drug offense and a simple assault and battery. And
24 that kind of indicated to me they couldn't find her.
25 The other one was a more recent case that happened in

1 2012 -- 2006. And this involved a young lady who
2 according to Mr. Catoe, they had gone together at one
3 point in time. Her story was that they got into an
4 argument and he hit her head against a rock. And when
5 she came too, she was in an abandoned house and he
6 grabbed -- he had a hold of her, I guess blouse or shirt
7 and she was able to pull out of that and run away.

8 And Mr. Catoe's version was, as I recall, was
9 that they had an argument. She pulled a knife on him
10 and he hit her head on a rock, but he didn't drag her to
11 this abandon house, but that was always out there. Now,
12 the State could have gotten it in saying this is a
13 pattern with him, I don't know. But those are the two
14 we were worried about. I wasn't worried about
15 necessarily the drug cases and things of that nature,
16 because like he said, he was using drugs. But these
17 were two cases that looked -- gonna look bad if they had
18 the victims to testify, trying to establish a pattern
19 that this is something he does on routine basis.

20 Q. And did they move to introduce that in any type
21 of pretrial motion as far as you recall?

22 A. I'm sorry. What?

23 Q. Did they either move to introduce that or you
24 moved to exclude that evidence?

25 A. No. We were probably going to use it in

1 rebuttal -- in rebuttal. And they did, like I said, on
2 the first case, the oldest case, I felt like the
3 timeframe on that was the fact that I don't think we
4 could necessarily find -- my information was, they
5 couldn't find the victim because, like I said, they made
6 him plead to simple assault and battery. And this was
7 obviously, an attempted assault of some type and
8 obviously, assault by choking. But again, when they
9 couldn't find her, it was always the other one and that
10 sacred us.

11 Q. So are you're saying that even before trial you
12 had reasons that you explained to your client as to why
13 he shouldn't take the stand?

14 A. I'm sorry?

15 Q. Are you saying that even before trial there
16 were reasons that you discussed with your client as to
17 why he should not take the stand?

18 A. No. No. I told him we will have to deal with
19 that if they introduce evidence on, you know, all that.
20 And you obviously, should have a right to tell your
21 version of what happened in this case. But I said,
22 that's out there, you know, we want to try to avoid it.
23 That's one of the reasons we're going over these
24 questions because I don't want you to inadvertently say
25 something that opens the door for the Solicitor then to

1 present this evidence.

2 Q. And then I have the transcript of the plea
3 rejection in November of 2015, a couple of months before
4 trial.

5 You testified at some length about the issues
6 with Mr. Catoe making appointments and meetings with
7 you.

8 Did you ever communicate that to the Court when
9 he was talking about your firm trial date of January
10 2016?

11 A. I don't think so. I don't have that
12 transcript, you know, of what was said. But I don't
13 recall. If it's in the transcript, that's obviously
14 what I said.

15 Q. But you don't recall communicating any concerns
16 about being prepared and Mr. Catoe actively preparing
17 with you?

18 A. No. Like I said, he was missing some dates
19 when we were meeting. And obviously, it's aggravating
20 when you make plans to talk to someone and they don't
21 show up. You can't get other people in for other
22 things. It's the way public defenders work. You get
23 your clients to come in or go to see them. You know,
24 you can't do anything else. You got wasted time.

25 MS. BLANCHETTE: Your Honor, I have no further

1 questions.

2 THE COURT: Anything further from this witness,
3 Mr. Davidson?

4 MR. DAVIDSON: No, your Honor.

5 THE COURT: Thank you, sir. You may step down.
6 Now would be a good time for a ten to 15-minute
7 break.

8 (Whereupon, a recess was taken.)

9 THE COURT: Back on the record.

10 MS. BLANCHETTE: Your Honor, on the record, I
11 just wanted to make sure we had admitted Applicant's
12 Number 1, so I just wanted to make sure that was
13 properly admitted.

14 THE COURT: Applicant's 1 and 2 were admitted.

15 MS. BLANCHETTE: Your Honor, I would call Mr.
16 Catoe to the stand.

17

18 T-E-R-R-Y C-A-T-O-E, the Witness herein, having been
19 duly sworn, was examined and testified as follows:

20

21 DIRECT EXAMINATION

22 Q. (BY MS. BLANCHETTE) Can you state your name
23 for the record.

24 A. Terry Catoe.

25 Q. And Mr. Catoe, you are the applicant that filed

1 the PCR application. It's Docketed at 2018-CP-29-03338
2 that we are here about today; is that correct?

3 A. Yes, ma'am.

4 Q. And you have worked with me, I think it was for
5 about the last three years, on this application, in
6 putting together the allegations and we filed an
7 amendment in July of this year. And those are the
8 allegations that you're going forward on today and you
9 want the Court to consider; is that correct?

10 A. Yes, ma'am.

11 Q. Now, Mr. Catoe we've talked about this as well.
12 What is the relief you're asking the Court to give you?

13 A. A new trial.

14 Q. And do you understand a new trial is kind of a
15 weird language we assign to the fact that your current
16 conviction and sentence is set aside. You're put back
17 in the position that you were as if you had never been
18 convicted or gone to trial. And you face your original
19 charges all over again with no guarantee of less time.
20 Do you understand that?

21 A. Yes, ma'am.

22 Q. And you want to go forward with your
23 application and ask the Court for a new trial today; is
24 that correct?

25 A. Yes, ma'am.

1 Q. Mr. Catoe, I'm going to take you back to the
2 time of your arrest. You remained in the county after
3 you were arrested or did you make bond?

4 A. Stayed there pretty much until they gave me a
5 bond.

6 (Court reporter interruption.)

7 Q. (BY MS. BLANCHETTE) And maybe if you can back
8 up a little bit, too, because you're getting a little
9 bit of an echo.

10 Once you were out on bond, were you able to
11 regularly meet with your attorney?

12 A. Yes, ma'am.

13 Q. And during his testimony, he said you first met
14 while in the county jail. Do you recall that?

15 A. Yes, ma'am.

16 Q. Okay. Was that meeting -- he said it was
17 behind bars.

18 How do you remember those -- that meeting or
19 meetings there?

20 A. It was in the visitation room.

21 MS. BLANCHETTE: Did I have him back up too far
22 where he's hard to hear?

23 THE COURT: I'm fine.

24 Q. (BY MS. BLANCHETTE) And you-all met in the
25 visitation room.

1 Do you remember about how many times at the
2 county jail?

3 A. Two, three times. I can't remember.

4 Q. And while you were out on bond, you had the
5 opportunity to go meet with him; is that correct?

6 A. Yes, ma'am.

7 Q. And he testified today that you had trouble
8 getting to his office here. Do you recall that?

9 A. No, ma'am.

10 Q. Do you recall meeting with him in Rock Hill?

11 A. Yes, ma'am.

12 Q. And okay, why was that set up for you to meet
13 with him in Rock Hill?

14 A. He had a friend or someone's office he could
15 use.

16 Q. And that was more convenient for you?

17 A. Yes, ma'am.

18 Q. Did you have transportation to go meet with him
19 when you needed to meet with him?

20 A. Yes, ma'am.

21 Q. And did he have a phone number where he could
22 reach you if he -- if there were issues with you not
23 making the meeting?

24 A. Yes, ma'am.

25 Q. He testified about you skipping, especially a

1 meeting right before trial. Do you remember skipping
2 out on a meeting right before trial?

3 A. There was only one meeting I didn't meet with
4 him with and I think that was in Rock Hill.

5 Q. There was only one meeting, I'm sorry, what?

6 A. That I didn't go to meet him.

7 Q. And was that shortly before your trial?

8 A. I think so.

9 Q. Okay. Were you intentionally trying to miss
10 meetings with your attorney or were you trying to make
11 sure you were prepared?

12 A. Making sure I was going to be prepared.

13 Q. Did you-all have a chance to go over the
14 discovery he received from the State?

15 A. Yes, ma'am.

16 Q. Specifically, did you go over the signed
17 statements and the investigative reports that
18 memorialized or stated what you had told law
19 enforcement?

20 A. Yes, ma'am.

21 Q. Okay. And when you went over those, did you
22 have the opportunity to tell him if you agreed with
23 those statements or if there was additional information
24 that you had wanted to testify to?

25 A. Additional information.

1 Q. What was the additional information you shared
2 with him?

3 A. Like, I was telling everyone, I didn't kill
4 her. I mean, but I had an issue about the \$15.

5 Q. Can you explain that issue for me, just
6 briefly.

7 A. I gave her the money. I don't know what she
8 did with it.

9 Q. Okay. So that was something that you were
10 trying to tell law enforcement.

11 What else in your interaction specifically with
12 Mr. Whitaker were you trying to convey to law
13 enforcement that you felt weren't in those statements?

14 A. That it was accidental.

15 Q. Did you tell that to Mr. Lee?

16 A. Yes, ma'am.

17 Q. Did he prepare you to testify?

18 A. He told -- no, ma'am.

19 Q. What did he tell you about testifying?

20 A. He told me not to testify, him and Mr. Jones.

21 Q. And why were you advised not to testify?

22 A. He said the State could open up more doors.

23 Q. Did he explain to you what those doors were?

24 A. No, ma'am.

25 Q. Did he explain to you that if you didn't

1 testify that all they were going to have were these
2 statements that didn't tell the whole story?

3 A. Yes, ma'am.

4 Q. Were you concerned about that?

5 A. Yes, ma'am.

6 Q. And specifically, in closing arguments he said
7 "There's only two people there, the victim and she can't
8 testify and then Mr. Catoe, and he's chosen not to
9 testify."

10 Did he explain to you how important -- and
11 today, I think he might have even used the word
12 "crucial" or your whole case hinged on your testimony.
13 Did he explain that to you before you chose not to
14 testify?

15 A. No, ma'am.

16 Q. If you would have understood that your case
17 hinged on your testimony, would you have taken the
18 stand?

19 A. Yes, ma'am.

20 Q. And would you have explained that there was
21 additional information beyond what was in your statement
22 that you would had wanted to tell the jury?

23 A. Yes, ma'am.

24 Q. And specifically, I know you mentioned some
25 things but is there any other information that is not in

1 those statements. If you could answer with a yes or no?

2 A. Yes.

3 Q. Would you have wanted to explain to the jury
4 exactly what happened in your own words?

5 A. Yes, ma'am.

6 Q. Now I referenced today that there was an
7 on-the-record plea rejection on November 20, 2015, in
8 front of Judge Gibbons. At that time the State
9 indicated they had offered you ten to 26 years on a
10 voluntary manslaughter conviction.

11 Do you recall your attorney's advice regarding
12 accepting or rejecting that plea offer?

13 A. Yes, ma'am.

14 Q. What was his advice?

15 A. He told me he would feel confident that the
16 Judge would give me 25 years cap.

17 Q. And for that reason, did you choose to not take
18 that offer?

19 A. Yes, ma'am.

20 Q. Now, during that hearing, you indicated to the
21 Judge that you were trying to hire a private lawyer.
22 And Judge Gibbons responded that you had a firm trial
23 date of January 14, 2016.

24 What happened with you trying to hire a lawyer?

25 A. The Judge told me that he was not going to

1 grant a continuance and if I did get a lawyer, he or she
2 would have to be ready to go when he was ready.

3 Q. And at any point did Mr. Lee, you remember him
4 expressing concerns about you not meeting with him and
5 not participating in the preparation of your case in the
6 way that you needed to?

7 A. No, ma'am.

8 Q. At any time prior to your trial or the
9 rejection of the plea offer, did Mr. Lee discuss with
10 you the strength of the State's case for trial and what
11 your defense strategy was going to be?

12 A. Yes, ma'am.

13 Q. I'm sorry. What was that?

14 A. Yes, ma'am.

15 Q. And so he explained to you what the defense
16 strategy was going to be. I can rephrase my question.

17 Did he tell you, this is what I'm going to
18 argue on your behalf or this is the evidence that we're
19 going to use --

20 A. Oh. No, ma'am.

21 Q. -- and we hope for whatever outcome at trial?

22 A. No, ma'am.

23 Q. Did he ever speak with you about getting an
24 expert to address other potential causes of death or
25 other ways or things that could have contributed to the

1 victim dying in this case?

2 A. No, ma'am.

3 Q. Did he ever discussed with you this issue of
4 sexual asphyxiation that he asked Dr. Ross about?

5 A. Yes, ma'am.

6 Q. What did he tell you about that?

7 A. He just told me it was -- I don't know his
8 exact words, but we did talk about it.

9 Q. Okay.

10 A. I can't remember exactly what he said.

11 Q. Mr. Catoe, why did you proceed with a trial?

12 A. I wasn't going to take a plea. I didn't kill
13 her. They were trying to give me time for something I
14 didn't do intentionally.

15 Q. You had no intention of killing her, therefore
16 you did not want to plea?

17 A. Yes, ma'am.

18 Q. By way of the amendment that I helped you put
19 together and I filed on your behalf, issues 2 and 3, and
20 3 has a lot of subparts. Those deals with jury
21 instructions and charges.

22 You're not a lawyer, correct, Mr. Catoe?

23 A. Yes, ma'am.

24 Q. Who were you relying on to make all the proper
25 legal decisions, objections and those types of things in

1 your case?

2 A. My lawyer.

3 Q. And would you have wanted him to ask for the
4 proper instructions to be given to the jury?

5 A. Yes, ma'am.

6 Q. Would you have wanted him to object if those
7 instructions were not given?

8 A. Yes, ma'am.

9 Q. And today, he testified he was familiar with
10 the *Elmore* decision. He wasn't familiar with the
11 *Belcher* decisions.

12 Were you relying on him to be familiar with the
13 case law that was applicable to your case?

14 A. Yes, ma'am.

15 MS. BLANCHETTE: Your Honor, if I can beg the
16 Court's indulgence? One moment.

17 THE COURT: Yes, ma'am.

18 MS. BLANCHETTE: Your Honor, no further
19 questions of Mr. Catoe.

20 THE COURT: Cross-examination?

21

22 CROSS-EXAMINATION

23 Q. (BY MR. DAVIDSON) You just testified that you
24 met with Mr. Lee two to three times in the visitation
25 room; correct?

1 A. Yes, sir.

2 Q. And you just testified that you never had any
3 trouble getting to his office once you were out on bond;
4 is that correct?

5 A. Yes, sir.

6 Q. And how many times did you say that you met
7 with Mr. Lee once you were out on bond?

8 A. I don't remember. I was out on bond four
9 years, I don't remember.

10 Q. And eventually you guys started meeting rather
11 then in Lancaster or Chester, in Rock Hill; correct?

12 A. Yes, sir.

13 Q. Why were the meetings moved to Rock Hill?

14 A. Because to be closer to me.

15 Q. You testified that you -- he did not prepare
16 you to take the stand; is that correct?

17 A. Yes, sir.

18 Q. So during those meetings, what did you guys do?

19 A. He wanted me to tell him what happened that
20 night and discuss erotic asphyxiation and
21 involuntary/voluntary murder, the difference.

22 Q. Did he ever discuss telling your side of the
23 story differently?

24 A. No, sir.

25 Q. He never gave you any critique or informed you

1 of what the Solicitor might say?

2 A. Yes, sir. I have paperwork on what questions
3 -- possible questions they may ask.

4 Q. If you took the stand?

5 A. He told me not to take the stand.

6 MR. DAVIDSON: I beg the Court's indulgence.

7 No further questions, Your Honor.

8 THE COURT: Anything further from this witness?

9 MS. BLANCHETTE: No, Your Honor.

10 THE COURT: Mr. Catoe, you can go back and sit
11 next to your lawyer.

12 MS. BLANCHETTE: Your Honor, the Applicant
13 would rest. I've already provided those cases. If the
14 Court wants me to address them at the end or -- I know
15 your Honor, typically allows us to get the transcript
16 and what is needed at that point.

17 THE COURT: Right. Mr. Davidson, does the
18 State have any witnesses?

19 MR. DAVIDSON: Yes. The State calls Justin
20 Jones.

21

22 J-U-S-T-I-N J-O-N-E-S, the Witness herein, having been
23 duly sworn was examined and testified as follows:

24

25 DIRECT EXAMINATION

1 Q. (BY MR DAVIDSON) Good afternoon, Mr. Jones.

2 A. Good afternoon.

3 Q. Thanks for sticking around. Just have a few
4 brief questions.

5 When did you get involved in representing
6 Mr. Catoe?

7 A. Pretty late in the process. Mike Lifsey, the
8 chief public defender at the time asked if I could sit
9 second chair and help Mr. Lee kind of deal with
10 Mr. Catoe in the course of the trial. I'd say probably
11 the last month or so before the trial is when I started
12 kind of getting familiar with the file.

13 Q. And did Mr. Lee inform you of what his kind of
14 strategy was going to be?

15 A. He did. He kind of told me what Mr. Catoe
16 relayed to him. The plan as I understood it was always
17 for Mr. Catoe to testify. We went forward through the
18 trial with the understanding he was going to testify.
19 And in the holding cell right here, I had a conversation
20 with him while Mr. Lee and Solicitor Collins were having
21 a conversation. I don't know if they were reviewing
22 some of the evidence or they were talking to the Judge
23 but I was with Mr. Catoe. And that's when he informed
24 me that he thought the Solicitor was going to be pretty
25 tough on him and he did not want to testify.

1 I explained that we had based our entire
2 strategy on the fact that he was going to testify. I
3 would expect that she's going to be tough because the
4 nature of the allegations are pretty serious. That's
5 kind of what we knew the deal was when we came into it
6 and he just insisted he did not want to testify. Up
7 until then, we all understood he was going to be given
8 testimony.

9 Q. Again, when that occurred, did you guys have a
10 new strategy with how to deal with him not testifying?

11 A. I think at that point we were scrambling -- I
12 say scrambling. At that point the entire thing had been
13 based on him testifying. So we have to kind of rework
14 the strategy. He obviously was not going to be able to
15 give his version of events. So we had to make the
16 decision. I don't believe and I apologize, but I don't
17 believe we had any real evidence outside of his
18 testimony to put forward anyway. And if there was
19 anything, it certainly didn't warrant giving up final
20 close so we didn't put anything up.

21 MR. DAVIDSON: I beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 Q. (MR. DAVIDSON:) After the conversation you had
24 with Mr. Catoe, you relayed that to Mr. Lee?

25 A. I did. I told Mr. Lee at that point and then

1 we relayed to the Judge that we did not believe he was
2 going to be going forward with testimony.

3 Q. Did Mr. Lee come back to the room and discuss
4 it with him as well?

5 A. With that, I'm kind of -- I believe he did. If
6 he didn't, we had a conversation out here in the
7 courtroom. I believe he came back to the cell and spoke
8 to him back there.

9 Q. So Mr. Lee had a conversation with him?

10 A. Mr. Lee had a conversation with him. Yes, sir.

11 Q. And then after that conversation, did he
12 reiterate that he didn't want to take the stand?

13 A. A number of times he did. Yes.

14 MR. DAVIDSON: No further questions.

15 THE COURT: Cross-examination.

16 MS. BLANCHETTE: No questions for this witness.

17 THE COURT: Okay. Thank you. You may step
18 down.

19 MR. JONES: Thank you, Your Honor.

20 THE COURT: Call your next witness.

21 MR. DAVIDSON: The State calls Lisa Collins.

22

23 L-I-S-A C-O-L-L-I-N-S, the Witness herein, having been
24 duly sworn, was examined and testified as follows:

25

DIRECT EXAMINATION

Q. (BY MR. DAVIDSON) Ms. Collins, where are you employed currently?

A. I'm the Deputy Solicitor for the Lancaster County Solicitor's Office, which is part of the Sixth Judicial Circuit of the Solicitor's Office.

Q. How long have you been practicing law?

A. I've been practicing law almost 35 years. Since November 1986.

Q. Were you employed at the Solicitor's Office in the Sixth Circuit during Mr. Catoe's case?

A. Yes. I was one of the prosecutors along with Chief Solicitor Randy Newman.

Q. And as the prosecutor, you were obviously in the courtroom and observing everything?

A. Yes.

Q. And what were your thoughts during the trial about the strength of your case based on the defense that Mr. Jones and Mr. Lee were putting up?

A. Well, I felt like they were a very formidable team. I mean, first of all, a lot of times people seem hesitant to get public defenders. But let me tell you, in the 35 years that I've been practicing, the public defenders I've worked with, particularly Mr. Lee and Mr. Jones, they are highly specialist in the criminal

1 defense law.

2 Also, they are very dedicated individuals who
3 have a passion for the service of indigent people who
4 believe that the quality of their representation should
5 not depend on what's in their billfold. And Mr. Lee and
6 Mr. Jones are shining examples of that.

7 I knew going in that they would be a very
8 strong team because Mr. Lee, who had been practicing
9 years and years longer than I had, had a stellar
10 reputation. He brought to the table wisdom and years
11 and years of trial strategy. His entire career had been
12 focused primarily -- I say entire, but he was actually
13 head of Indigence Defense Commission for a while and he
14 had been a public defender for years and he is just
15 someone that has focused on championing the rights of
16 people who can't afford to hire a private attorney. And
17 eventually, the State is held to its task to prove a
18 case beyond a reasonable doubt. I knew that he would
19 appeal to certain people on the jury who wanted to see a
20 little bit of gray hair at the table, a little bit of
21 life experience, as well as, those years of practicing
22 law. I hoped that I was also bringing that to the
23 table. Solicitor Newman was a newer member of the bar,
24 as was Mr. Jones.

25 However, let me say that Mr. Jones brought to

1 the table a whole other strength. He was young. He's
2 dynamic. He's without a doubt one of the finest legal
3 minds I have encountered in my career. I would love to
4 practice on the same side of the table one day. I have
5 a lot of respect for him. I knew that he not only had
6 the energy and the passion to represent his client
7 diligently, but he also had a strength for thinking
8 outside of the box. He's very imaginative. He's very
9 creative and I viewed him as the wild card at the
10 defense table. I knew that Mr. Lee and I kind of
11 assessed the case the same way. But I knew that Justin
12 Jones would bring a fresh aspect and passion to the
13 defense team, which he did. So going in, I knew the
14 strength at the table and the strength of two attorney's
15 representing the defense. That displayed itself twice.
16 Particularly, during the trial if I may go on to explain
17 that.

18 Dr. Ross was testifying. Mr Lee was able to
19 cross-examine Dr. Ross. I think I did the direct exam
20 of her. And Mr. Lee elicited testimony from Dr. Ross
21 regarding the sexual erotic act. The theme of the
22 defense was that it was a consensual act that the people
23 participating, one was getting pleasure in it.

24 Dr. Ross testified on cross-examination by
25 Mr. Lee that in her expert opinion that the person who

1 was receiving the suffocation got the greater pleasure
2 during the act. I objected vehemently to that. I felt
3 strongly and I still feel that it was wildly outside of
4 the scope of the expertise of Dr. Ross.

5 She certainly didn't have experience to be able
6 to testify as an expert witness as experienced she was
7 in the autopsy itself, but as to which partner would
8 receive greater pleasure from that act. Of course the
9 thrust of the State was that the defendant had committed
10 this act and had killed her with malice and was forcing
11 in terms of anal sex upon the victim and that it was
12 just a very sad situation.

13 When Judge Gibbons allowed Dr. Ross over my
14 objection to testify to that, I really had to, you know,
15 give some respect in my mind to the defense team because
16 suddenly, they had flipped what I thought was a very
17 strong witness for the State to defense in terms of they
18 were trying to say that this was something that someone
19 would in fact want and that they would have elicited and
20 wanted that because they would have received pleasure
21 from that.

22 There was no evidence whatsoever, other than
23 the statement given by the defendant that the victim
24 herself had asked to undergo this act, this horrible act
25 that resulted in her death. So I was very concerned

1 about that.

2 Also, the other aspect of the defense team
3 brought to the table, they were able to get a charge
4 from Judge Gibbons as to involuntary manslaughter. We
5 had been very firm that we would not offer involuntary
6 manslaughter since it only carried up to five years.
7 And we believed that it was at least voluntary
8 manslaughter in the heat of passion, even if there
9 wasn't malice. Of course we believed that there was
10 malice. So we felt it was either murder or voluntary
11 manslaughter.

12 So when the defense team was able to get from
13 the Judge a charge to the jury allowing the jury to
14 consider involuntary manslaughter, we were concerned
15 about that. We were concerned, first of all, because
16 obviously we had the burden of proving beyond any
17 reasonable doubt. But we were also concerned that it
18 might result in a split jury and a hung jury and we
19 might have to be revisiting the whole thing if the 12
20 couldn't decide between the three -- well, four possible
21 verdicts; murder, voluntary manslaughter, involuntary
22 and then not guilty.

23 So we were concerned about that aspect.

24 And also concerned if he was convicted of
25 involuntary that we had put the family through this to

1 get a result that we did not feel was favorable and
2 luckily and I think rightfully so, the jury saw it as we
3 presented it, I appreciate that. But again, they were
4 able to get from the Judge a charge to allow them to
5 argue that to the jury, to have the jury consider a much
6 lessor offense that we were never willing to put on the
7 table and that's something I can tell you we're just
8 very firm about that in this circuit.

9 That if someone takes someone's life
10 intentionally, that involuntary is not going to be on
11 the table unless at the end of the day we believed that
12 it actually was involuntary manslaughter.

13 Q. And based on his strategy and your -- sorry,
14 his narrative that he was telling during opening and
15 through cross-examination, did you expect that he may
16 put up any kind of defense?

17 A. You know, I've done a lot of criminal defense
18 trials and criminal prosecution. I was defense attorney
19 for four years in the Public Defender's Office in York.
20 The majority of my career has been as a prosecutor. But
21 I've seen and I'm sure Mr. Lee's has seen that juries do
22 unexpected things and it's hard to predict and
23 defendants too. It's hard to predict whether or not at
24 the end of the day that they are willing to go ahead
25 through to testify or that they are going to suddenly

1 decide, I don't want to testify. That's why I believe
2 the record is always very firm. Judge's are always very
3 careful to elicit on the record responses from the
4 defendant that it's his decision.

5 You know, I knew I was going against a strong
6 team, Randy Newman and we both knew that. So we weren't
7 sure what to expect. We knew that the thing would be --
8 it was a consensual act between consenting adults that
9 went horribly wrong but that there was no malice.

10 Q. Is there anything else that --

11 A. No.

12 Q. -- I missed?

13 A. Thank you.

14 MR. DAVIDSON: No further questions.

15 THE COURT: Cross-examination?

16 MS. BLANCHETTE: I have no questions, Your
17 Honor.

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

19 Any additional witnesses?

20 MR. DAVIDSON: No, Your Honor.

21 THE COURT: I could hear arguments, but I know
22 Ms. Blanchette intends to order the transcript of
23 today's hearing and so typically, with Ms. Blanchette's
24 case at least, I allow time for the transcript to be
25 prepared and sent to counsel. Plus some additional time

1 to prepare proposed orders which really are your
2 arguments in written form.

3 So I don't see any need to do oral arguments
4 this afternoon. If you'll just both prepare a proposed
5 order once you receive the transcript and I understand
6 that will take a number of months.

7 So Mr. Catoe, for all those reasons, you will
8 not have a decision today or tomorrow or next week.
9 Your attorney likes to be very thorough in the things
10 she does. I'm sure you've seen that already. So we're
11 going to give some time for her to give the best
12 argument that she can once she gets the transcript of
13 today's proceedings and that just takes some time to do.
14 So it will be several months before you get a decision.
15 But you will receive it in writing in several months.

16 And Ms. Blanchette, if you will just let me
17 know when you receive the transcript so that I have sort
18 of a timeframe in my head. If you'll just communicate
19 with me via email and then, I'll -- I just don't want it
20 to languish out there. I just would like to have some
21 sort of semblance of a timeframe to resolve the case.
22 Okay.

23 MS. BLANCHETTE: Absolutely, Your Honor. And I
24 believe it's correct that I can provide you a copy. I
25 just can't provide opposing counsel a copy. So I will

1 send it to you also.

2 THE COURT: If you can send it to me or if you
3 let me know that you've gotten it. I can ask Madam
4 Court Reporter for it. I can get it. That's not a
5 problem.

6 MS. BLANCHETTE: I will notify you as soon as I
7 receive it.

8 THE COURT: Wonderful.

9 Anything else before we adjourn for the day?

10 MS. BLANCHETTE: Thank you for your patience
11 and time.

12 THE COURT: Absolutely. That concludes this
13 matter. Thank you all.

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C E R T I F I C A T E

I, the undersigned Maria DiScioscia, Official Court Reporter for the 6th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Lancaster, South Carolina, on the rd day of August, 2021.

I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.

Maria DiScioscia
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Terry Catoe, #216913,

Applicant

Case No.: 2018-CP-29-0338

v.

State of South Carolina,
Respondent.

ORDER OF DISMISSAL

This matter came before the Court by way of Terry Catoe's (Applicant) action for post-conviction relief (PCR) commenced March 27, 2018. The State made its return on July 31, 2019. Applicant, through PCR Counsel, amended his application on July 7, 2021. The Court convened an evidentiary hearing into the matter on August 3, 2021, at the Lancaster County Courthouse. Applicant was present at the hearing and represented by Tricia Blanchette, Esquire. Michael D. Davidson, Esquire, of the South Carolina Attorney General's Office, appeared on behalf of the State.

Applicant testified on his own behalf at the evidentiary hearing. Applicant also presented testimony from Doctor John Wren, and Applicant's trial counsel, Tyre Lee, Esquire. The State presented testimony from ^{Lee's} Applicant's co-counsel, Justin W. Jones, Esquire, and Deputy Solicitor Lisa Collins, Esquire. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original ^{trial} plea transcript, a copy of the PCR transcript, the records of the Clerk of Court regarding the subject convictions, the pleadings, and the exhibits introduced at the evidentiary hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Lancaster County Clerk of Court. Applicant was indicted at the

June 2012 term of the Lancaster County Grand Jury for murder (2012-GS-23-612). Applicant was represented by Assistant Public Defenders Tyre Lee and Justin W. Jones. Solicitor Randy Newman and Deputy Solicitor Lisa Collins prosecuted the case. Applicant's case proceeded to a jury trial January 4-6, 2015, before the Honorable Brian M. Gibbons. The jury convicted Applicant as indicted. Judge Gibbons sentenced Applicant to serve life imprisonment. Applicant appealed.

Appellate Defender David Alexander perfected Applicant's appeal by filing an *Anders*¹ brief to the Court of Appeals arguing the following:

1. The trial court erred in admitting [Applicant's] statements into evidence because the police violated [Applicant's] Fifth and Sixth Amendment rights by using the "question first" strategy condemned in *Missouri v. Seibert*, 542 U.S. 600 (2004).

The Court of Appeals dismissed the appeal in an unpublished decision. *State v. Catoe*, Op. No. 2017-UP-256 (S.C. Ct. App. filed June 28, 2017). The case was remitted back to the circuit court on August 8, 2017.

Current Application

Applicant timely commenced this PCR action on March 27, 2018. In his application, Applicant alleged ineffective assistance of counsel for:

1. Failure to properly prepare and investigate;
2. Failure to make motions and objections; and
3. Failure to utilize Applicant as a witness at trial.

On July 7, 2021, Applicant filed an amended application adding the following allegations:

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were

¹ *Anders v. California*, 386 U.S. 738 (1976).

violated prior to and during his trial. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

1. Ineffective assistance of trial counsel for failure to properly prepare and present a viable defense. Specifically, but not limited to the following:
 - a. Failure to ensure that Applicant understood the defense strategy prior to the rejection of the plea offer and prior to trial.
 - b. Failure to prepare and utilize Applicant as a witness
 - c. Failure to effectively address Applicant's statements and the summary of his interaction with law enforcement admitted by the State at trial.
 - d. Failure to further question the State's expert witnesses (i.e. Dr. Janice Ross) and/or utilize an expert pathologist.
 - e. Failure to provide the jury a basis for finding Applicant guilty of a lesser included offense and/or not guilty.
2. Ineffective assistance of trial counsel for failure to request an accident charge.
3. Ineffective assistance of trial counsel for failure to request proper instructions on murder and manslaughter and enter objections and/or exceptions when such instructions were not given. Specifically, but not limited to the following:
 - a. The inference of malice instruction when evidence was presented that could reduce, excuse, justify or mitigate the homicide;
 - b. The improper and incomplete inference of malice instruction, which lacked the general permissive inference instruction;
 - c. The inference of malice instruction amounting to a comment on the facts; and
 - d. The absence of an instruction that malice is not an element of voluntary manslaughter.

See State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), *Gibson v. State*, 416 S.C. 260, 786 S.E.2d 121 (2016), *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), *State v. Jackson*, 377 S.C. 523, 377 S.E.2d 570 (1989), *State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800 (1985), *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983).

As relief, Applicant requests a new trial. At the evidentiary hearing, Applicant proceeded forward on the allegations as set forth in the July 7, 2021, amendment.

II. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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). Applicant must  prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. 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.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

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)).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to section 17-27-80 of the South Carolina Code, this Court makes the following findings based upon all of the probative evidence presented.



Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of the allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency and any prejudice therefrom.

- A. Ineffective assistance of trial counsel for failure to properly prepare and present a viable defense. Specifically but not limited to the following: 1) Failure to ensure that Applicant understood the defense strategy prior to the rejection of the plea offer and prior to trial; 2) Failure to prepare and utilize Applicant as a witness; 3) Failure to effectively address Applicant's statements and the summary of his interaction with law enforcement admitted by the State at trial; 4) Failure to further question the State's expert witnesses (i.e. Dr. Janice Ross) and/or utilize an expert pathologist; and 5) Failure to provide the jury a basis for finding Applicant guilty of a lesser included offense and/or not guilty.**

- 1. Failure to ensure that Applicant understood the defense strategy prior to the rejection of the plea offer and prior to trial.***

At the evidentiary hearing, Applicant called Tyre Douglas Lee, Jr., Esquire, ("Counsel") to the stand. When Counsel took the stand, he explained his years of experience and work in the public defender's office. PCR pp. 89-92. He recalled being appointed to Applicant's case and requesting full discovery. PCR pp. 92-94. He also recalled receiving discovery as it came from the Solicitor's Office and reviewing it with Applicant. PCR pp. 92-95. *piecemeal*

After being shown the transcript, he recalled the formal rejection of the plea offer of ten to twenty-six years for voluntary manslaughter in front of Judge Gibbons on November 20, 2015. PCR pp. 101-102. He could not specifically recall the advice he gave Applicant prior to the rejection of the plea offer, but he could recall Applicant not wanting to take the plea. ~~PCR p. 102-~~ 103.

When asked if Applicant was fully advised regarding the trial strategy prior to the rejection of the plea offer, trial counsel provided a lengthy response recounting what he could remember discussing with Applicant, specifically how he prepared him to testify at trial. PCR pp. 117-119.

During direct examination, Applicant testified that he rejected the plea offer based upon counsel's advice that the court would likely sentence him to twenty-five years. PCR p. 149, lns. 6-19. He testified that counsel did not advise him of the trial strategy or strength of the State's case prior to rejection of the plea offer and that he had requested time to hire a private lawyer, but the court informed him, as is reflected in the transcript, that the case would not be continued. PCR pp. 149-150. When asked why he proceeded to a trial, Applicant responded: "I wasn't going to take a plea. I didn't kill her. They were trying to give me time for something I didn't do intentionally." PCR p. 151, lns. 11-14.

In *Judge v. State*, 321 S.C. 554, 471 S.E.2d 146 (1996) (overruled on other grounds by *Jackson v. State*, 342 S.C. 95, 535 S.E.2d 926 (2000)), the South Carolina Supreme Court held: "The Sixth Amendment protects criminal defendants against ineffective assistance of counsel during the plea-bargaining process, even if the plea offered ultimately is rejected." *See also Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009).

This Court has reviewed the records, to include the transcript of the formal rejection of the plea offer, and this Court has heard and reviewed the evidentiary hearing testimony summarized above. This Court finds no deficiency in counsel's handling of the plea bargaining process, to include the rejection of the plea offer. Additionally, this Court finds Applicant has failed to show any resulting prejudice from Counsel's alleged deficiency. Notably, Applicant testified that he did not accept the plea offer due to the amount of time that counsel advised he may receive and his own decision to pursue a trial to prove his innocence. Therefore, the record does not support a finding of deficiency nor a finding of prejudice. Accordingly, the allegation is denied and dismissed with prejudice.

2. Failure to prepare and utilize Applicant as a witness. Failure to effectively address Applicant's statement and summary of his interaction with law enforcement.

As addressed above, Counsel acknowledged receiving discovery, to include the investigative reports and statements of Applicant. PCR pp. 92-95. Specifically, he recalled Applicant's version of events being very similar to his final statement. PCR pp. 94-96, 122. He explained how he prepared Applicant to take the stand to testify. PCR pp. 117-119, 128-129.

He recalled advising Applicant every time they met that his testimony was "crucial." PCR p. 97, lns. 3-4, p. 137. He further recalled advising Applicant regarding his right under the Fifth Amendment to not testify, but he told Applicant that the jury would not know Applicant's side of the story if he did not tell it. PCR pp. 98-99. When asked why Applicant did not provide the testimony he deemed crucial, he responded that Applicant was concerned about the solicitor tearing him up on the stand. PCR pp. 99-100, 128-130. He explained how Applicant's decision to not testify was made just before the defense started their case. PCR pp. 100-101, 130.

When Applicant took the stand, he recalled discussing his statements with trial counsel. PCR p. 146. He recalled providing counsel additional information that was not in his statements, to include that he did not intend to kill the victim and that her death was accidental. PCR pp. 146-147. He further recalled counsel advising him to not testify because the State "could open up more doors," but counsel did not tell him what those doors were. PCR p. 147, lns. 19-24. He agreed that if he would have understood that his entire case hinged on his testimony, he would have taken the stand. PCR p. 148. He also explained the additional information he would have wanted to testify about in front of the jury. PCR pp. 148-149.

On cross-examination, Applicant testified that trial counsel did not prepare him to take the stand. PCR p. 153. Yet, he testified that counsel discussed with him what happened that night and

provided him "paperwork" on the possible questions he could be asked on the stand. PCR pp. 153-154.

The State called Justin Jones, Esquire, to the stand, and he explained how he came into the case to assist Counsel. PCR pp. 154-155. He recalled Counsel informing him of the trial strategy and his understanding that Applicant was going to testify. PCR p. 155. He further recalled meeting with Applicant during trial, Applicant deciding not to testify and informing Counsel of the same. PCR pp. 155-157. Mr. Jones described "scrambling" at that point to "rework the strategy." PCR p. 156, lns. 9-20.

When the State called Lisa Collins, Esquire, to the stand, she testified that she is currently the Deputy Solicitor for Lancaster County and that she prosecuted Applicant's case. PCR pp. 157-158. She was asked about the strength of the State's case and her understanding of the defense. PCR pp. 158-159. When asked about Applicant's decision to not testify, she responded: "It's hard to predict at the end of the day that they are willing to go ahead through to testify or that they are going to suddenly decide, I don't want to testify." PCR p. 163, ln. 23 – p. 164, ln. 1.

This Court finds Applicant has failed to show counsel was ineffective for his allegations that counsel failed to prepare and utilize Applicant as a witness or failed to effectively address Applicant's statement and summary of his interaction with law enforcement. The testimony establishes that counsel had prepared to utilize Applicant's statements in support of his defense and had prepared Applicant as the primary witness for the defense, but it was the decision of Applicant to not testify. Counsel testified that it was conveyed to Applicant that his testimony was crucial, but it was also conveyed to him that cross-examination could be brutal. As the Deputy Solicitor testified it is hard to predict if a defendant will testify or not. Here, the error, as will be discussed below, was in counsel not having a viable defense strategy without the testimony of

Applicant. Therefore, this Court finds that counsel was not deficient for failing to prepare and utilize Applicant as a witness at trial. Furthermore, this Court finds Applicant failed to show any resulting prejudice, as it was his decision to not follow the previously discussed trial strategy at the very last minute. Therefore, the record does not support a finding of deficiency nor a finding of prejudice and the allegations are denied and dismissed with prejudice.

3. Failure to further question Dr. Janice Ross and utilize an expert pathologist.

During the trial, the State called Dr. Janice Ross and qualified her as an expert pathologist. Trial pp. 224-225. She explained that she conducted the forensic autopsy of the victim and discussed her autopsy report. State's Trial Exhibit #13, Trial pp. 226, 228. After addressing her findings, she opined that the cause of death was asphyxia due to strangulation. Trial p. 236.

At the evidentiary hearing, Applicant called Dr. John David Wren and qualified him as an expert in forensic pathology. PCR pp. 25-26. While on the stand, Dr. Wren addressed the items he reviewed and testified regarding his findings that he could have shared with defense counsel and/or testified to at trial. PCR p. 72, ln. 19- p. 73, ln. 3.

First, he addressed the scene and referenced the pictures taken by law enforcement at the scene and autopsy. He explained his findings related to such to include: victim's forehead injuries were indicative of a fall, a contusion on her thigh was resolving, the right eye hemorrhage could be the result of asphyxia or an acute episode of heart failure, her positioning was indicative of those that die from anal intercourse, no defensive wounds, and the likelihood of sudden collapse. PCR pp. 29-38. When trial counsel was on the stand, he explained that he went to the scene, and he agreed with Dr. Wren's opinion that the scene was "a mess." PCR p. 120.

Secondly, Dr. Wren addressed the autopsy report and finding of Dr. Ross. PCR p. 41. He testified that he had "no real problems with the report." PCR p. 41, ln. 25 – p. 42, ln. 1. On cross-

examination when asked if he agreed with Dr. Ross's conclusions regarding the cause of death, he responded: "No, I said that was open to question as to whether there were contributing factors to it." PCR p. 75, lns. 12-13. On direct, he noted several findings of Dr. Ross that he could not comment on because of the lack of pictures or procedure done, to include her finding of a probable fracture of the thyroid cartilage indicative of strangulation. PCR pp. 42-45. When asked on cross-examination whether reviewing pictures or conducting an autopsy is a better way to diagnose a cause of death, he responded that doing the autopsy but added that he would have taken additional pictures while conducting the autopsy in this case. PCR p. 84, lns. 18 – p. 85, ln. 8.

During direct examination, Dr. Wren also noted the following issues in relation to the autopsy report: the fecal matter around the anus and vagina could add to accentuation or decomposition, the hyoid bone was intact which mitigates against manual strangulation, hypertrophic cardiomegaly – meaning that both ventricles of the heart were enlarged and thickened, hypertension was probable, a slight amount of frothy fluid was in the tracheobronchial tree indicative of a quick death, gallstones in the kidney which is typically an indication of hardening of the arteries or stenosis of the small vessels in the kidney, no contusion of the brain, the report did not indicate whether the cause of death was manual / soft ligature strangulation or just strangulation, and the report alternates between a possible fracture and a fracture. PCR pp. 42-45, 48-51. On direct and cross-examination, he explained in detail his concern with the reporting regarding the percent occlusion of the heart vessels. PCR pp. 45-48, 75. Further on direct, he also addressed additional photographs in conjunction with the autopsy report, and he addressed the absence and presence of hemorrhages. PCR pp. 51-55. Regarding the finding of strangulation, he responded on cross: "I don't know for sure she was strangled. *There are signs that show she was strangled*, but there are signs that show that she could have been dead from something else." PCR

p. 78, lns. 1-4 (emphasis added). On cross-examination, the following testimony was elicited regarding the cause of death:

Question: One more question. Can you say with medical certainty that her death was not from strangulation?

Answer: *No. I can't say within a reasonable medical certainty that one of those other three things could have happened too that I talked about; the toxicology contributing, the vasovagal response.* That's – that's the risk people take with anal intercourse. Any time that happens, it can happen and it happens a good bit. People just don't know about it. People who won't admitted it for one reason now but it's documented. And the other one is the coronary artery disease. Any of those could have happened. I don't think it's without a doubt when – if you took a number of 10, 000 units of fluid going down this vessel, fully oxygenated and you reduce it to two and a half units going down, don't it stand to reason that they're not getting as much oxygen as they would in the other positions.

PCR p. 87, lns. 7-25. (emphasis added)

Thirdly, he addressed the toxicology reports he reviewed and his concerns regarding toxicology. PCR pp. 56-57. He explained that it appeared that the toxicology was done in duplicate, one report by SLED and one by National Medical Services Lab. PCR p. 56. He explained the slight differences in the reports and the overall findings. PCR pp. 56-59. He addressed the reports in light of Dr. Ross's findings. He detailed that victim's blood cocaine concentration was a concern and was in the range for cocaine related fatalities. PCR pp. 60-62. He further detailed that she was in the range for toxic effects and lethal effects, which can cause sudden arrhythmia. PCR pp. 61-63. He also addressed the reported benzoylecgonine levels and the effects that could result. PCR pp. 61-63. On cross-examination, he explained that he could not issue an opinion in Spartanburg County until toxicology was back. PCR pp. 75-76.

Next, Dr. Wren addressed the DNA analysis and findings. PCR p. 63. He noted that some of the findings were "confusing" and noted the findings in relation to Applicant. PCR pp. 63-65.

Then, Dr. Wren addressed the pictures and alleged injuries on Applicant. PCR p. 65. While referencing trial exhibits and additional pictures, he addressed several areas of discoloration, injury, and scarring. He also addressed the absence of any scratch marks on Applicant's body. PCR pp. 65-70.

Finally, Dr. Wren addressed the likelihood of cardiac arrest resulting from pressure on the vagus nerve during anal intercourse. PCR pp. 70-72. He explained a scenario involving pressure on the vagus nerve that could be another possibility that could result in a sudden death. PCR pp. 70-72.

When trial counsel took the stand, he was asked if he had consulted with an expert pathologist prior to trial and/or investigated any of the matters testified to by Dr. Wren. PCR p. 104, Ins. 1-6. He responded that he recalled reaching out to Dr. Ross and asking her about "sexual asphyxiation" and discovering she was aware of it.² PCR pp. 104, 132. Specifically, he explained: "I think she basically came to the conclusion, she wouldn't have – she wouldn't say that that didn't happen. That it could have happened. You know, she didn't know. I thought her testimony was pretty good. I was going to get that from her and I didn't see the need to hire anybody else." PCR p. 104, ln. 22 – p. 105, ln. 2. When asked about the State's objection to his line of questioning with Dr. Ross and not further questioning her, he responded that he got the "main thing" from her testimony. PCR p. 105, Ins. 9-15.

Regarding Dr. Ross's testimony about the victim's toxicology and the testimony offered by Dr. Wren, counsel responded that he did not recall there being two toxicology reports. PCR pp.

² During his continued direct examination, trial counsel was asked about his preparation with Applicant, and he stated: "I don't know if I told him or not, about that I talked to Dr. Ross and that Dr. Ross mentioned that this sort of stuff did go on. I just – I can't recall on that." PCR p. 118, Ins. 16-19.

106-107. In response to whether he obtained the Coroner's file, he responded that he had what the State had given him. PCR p. 107. Again, he confirmed that Dr. Ross was the only person he consulted, but he did not provide a clear answer as to whether he discussed other alternate causes of death such as heart disease or vasovagal susceptibility with her. PCR pp. 107-108. He recalled Dr. Ross not having "a definite opinion on that." PCR p. 108, lns. 6-7. In conclusion, counsel was asked if it would have been helpful to raise and/or argue possible causes or alternative contributing factors to the victim's death. In a lengthy response, he agreed it could have been helpful and "it might have been better to have done something," but he explained that they were "sort of rushing it" and that he was planning on Applicant testifying. PCR p. 108, lns. 8-23.

After referencing the trial court's charge on proximate cause, counsel was asked if he tried to argue or show that Applicant was not the proximate cause of the victim's death. PCR p. 109. He responded: "I would have to look again. I don't recall it." PCR p. 109, ln. 16. He explained his trial strategy was to show that Applicant was instructed by victim in how to engage in "hard core sex" and Applicant was following her instructions. PCR pp. 109-110.

Deputy Solicitor Collins was called to the stand, and she testified that she prosecuted Applicant's case. PCR pp. 157-158. She was asked about the strength of the State's case and her understanding of the defense. PCR pp. 158-159. In response, she provided her high opinion of the defense counsel involved and her understanding of the defense. PCR pp. 158-164. She recalled objecting to the line of questioning about a sexually erotic act of suffocation during the cross-examination of Dr. Ross. PCR pp. 160-161. Specifically, she testified as follows: "I objected vehemently to that. I felt strongly and I still feel that it was wildly outside of the scope of the expertise of Dr. Ross." PCR p. 161, lns. 2-4.

During Applicant's direct examination, he recalled counsel talking with him about sexual asphyxiation, but he could not remember counsel's exact words. PCR p. 151. He also testified as follows:

Question: Did he ever speak with you about getting an expert to address other potential causes of death or other ways or things that could have contributed to the victim dying in this case.

Answer: No, ma'am.

PCR p. 150, ln. 23 – p. 151, ln. 2.

Applicant alleges Counsel was ineffective for his failure to further question Dr. Janice Ross and utilize an expert pathologist. However, this Court disagrees. *Strickland* requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). In making a fair assessment of attorney performance, a court must make every effort 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. Accordingly, 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).

"[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007). This duty includes the duty to investigate the prosecution's medical evidence and present expert testimony refuting the State's expert. *McKnight v. State*, 378 S.C. 33, 661 S.E.2d 354 (2008). However, when counsel vigorously cross-examines the State's witnesses and attacked the accuracy of the evidence, his representation is not rendered deficient. *Lorenzen v. State*, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008) (citing *Frasier v. State*, 306 S.C. 158, 160-61, 410 S.E.2d 572, 573 (1991)).

Based upon the record and testimony before this Court, this Court finds that counsel was not ineffective for his failure to utilize an expert and to rely upon a strategy to cross-examine the State's expert pathologist to establish a defense. Counsel testified his strategy from the outset was to have Applicant take the stand to give his side of the story and show that he put his arm over the Victim's throat at her own request and that her death from being choked was an accident. At the time that Dr. Ross testified, Counsel was not aware that Applicant would chose not to testify.

This Court finds that Counsel's strategy was reasonable. Furthermore, this Court finds that counsel was able to vigorously cross-examine the State's expert and his success at having Dr. Ross testify to sexual asphyxiation was part of his reasonable trial strategy. Accordingly, this Court finds Counsel was not deficient. See *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992) ("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."). Additionally, this Court finds that the utilization of an expert pathologist, such as Dr. Wren, to address the scene, report of Dr. Ross, statements of Applicant, possible scenarios, contributing

factors and alternative causes of death was also based upon the above discussed trial strategy, which this Court finds reasonable. Therefore, Counsel was not deficient.

Furthermore, Applicant has failed to show any resulting prejudice as the testimony provided by Dr. Wren would not have changed the outcome of trial. Notably, the evidence presented to the jury via Applicant's statements admitted as evidence, was that he choked the Victim at her own request, and that he did not mean to kill her. The fact that the Victim died as a result of Applicant choking her was never a contested fact in the case. Additionally, Dr. Wren testified he could not be medically certain that the Victim's cause of death was from choking. This Court finds Counsel was not ineffective for failing to call an expert like Dr. Wren because even had Counsel called him at trial, Dr. Wren's testimony would contradict or undermine Applicant's statement to law enforcement and Applicant's own testimony if he had chosen to testify, that she died from accidental strangulation after Applicant complied with her request. *See Ingle v. State*, 348 S.C. 467, 560 S.E.2d 401 (2002) (finding ineffective assistance of counsel where defense counsel called a witness whose testimony contradicted the defense's theory of the case. Accordingly, the allegation is denied and dismissed with prejudice.

4. Failure to provide the jury a basis for finding Applicant guilty of a lesser included offense or not guilty.

This Court finds this issue is fully addressed throughout this Order under the other issues addressed herein. Therefore, a separate discussion of this issue is not appropriate and would be redundant.

B. Ineffective assistance of trial counsel for failure to request an accident charge.

After Applicant's decision to not testify was put on the record, a discussion was held regarding the jury charges. Trial pp. 452-3. During that discussion, the State requested an inference of malice from a deadly weapon charge and argued that a hand or fist could be considered a deadly

weapon. Trial p. 454, ln. 6. In response, the trial judge provided the charge he intended to give, unless defense counsel convinced him otherwise. Trial p. 454, ln. 17 – 455, ln. 12. The trial court explained:

Now, there's no evidence in the record, and the defendant has indicated he is not testifying, there's no evidence in the record that I know of which would show any self-defense or any mitigating circumstances and I therefore intend on charging the deadly weapon language.

Trial p. 454, ln. 23- p. 455, ln. 3.

Then, the court asked the parties about charging voluntary manslaughter. Trial p. 455. In response, the State requested a charge on voluntary manslaughter and provided an argument in support of the request. Trial pp. 455-461. During the State's argument, the trial court asked about an involuntary manslaughter charge. Trial p. 461, ln. 15. Following the State's argument, the trial court inquired about the defense's position. Trial p. 463. Trial counsel responded that the defense objected to a charge on voluntary manslaughter but requested an involuntary manslaughter charge. Trial p. 463. Thereafter, counsel responded to the court's question of how he could charge involuntary without charging voluntary. Trial pp. 463-465. In the middle of counsel's argument, the court stated: "I agree with you on that, I'll charge involuntary. Talk to me about voluntary." Trial p. 465, lns. 8-9. In response, trial counsel argued against a voluntary manslaughter charge. Trial pp. 465-466. As counsel was concluding his response, the court stated: "And then again, they could believe that it was an accident." Trial p. 466, lns. 18-19.

After hearing from both parties, the trial judge determined that he would charge murder, voluntary and involuntary manslaughter. Trial p. 466, lns. 23-25. Following closing arguments, the trial court instructed the jury on murder, voluntary and involuntary manslaughter. Trial pp. 503-506. In relevant part, the murder instruction was given as follows:

Now, malice aforethought may be express or inferred. These terms expressed and inferred do not mean different types of malice, but merely the manner in which malice may be shown to have existed, that's either by direct evidence or by inference from the facts and circumstances which have been proved to you.

[Portion relating to express malice omitted.]

Now, malice can also be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. Now, a deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. A hand or fist is not normally considered a deadly weapon, however under some circumstances depending on the manner and means of its use the wounds inflicted and other relevant facts, a hand or fist may be considered a deadly weapon. It's for you to decide in this case beyond a reasonable doubt whether or not a hand or fist is a deadly weapon. Voluntary manslaughter.

Trial p. 504, ln. 6-7, ln. 24 – p. 505, ln. 5. No request was made or instruction given on accident.

At the evidentiary hearing, trial counsel was asked if Applicant ever discussed the victim's death being accidental, and he responded that he could not remember. PCR p. 105, lns. 18-24. When asked about the State's argument in closing that victim's death was not an accident, counsel agreed that he did not fully argue nor ask for an accident charge. PCR p. 117.

Addressing counsel's argument made in objection to a voluntary manslaughter charge and the court's response that the jury could believe it was an accident, counsel was asked why he did not request an accident charge. Trial p. 466, PCR pp. 113-114. Initially, he responded that Applicant's statement was "she asked him to do it," but he also responded that before Applicant chose not to testify he was going to argue "maybe it's an accident, maybe nobody is responsible, but we didn't have – we didn't have a specific charge on that." PCR p. 114, lns. 13-22. On cross-examination, he agreed that he was familiar with elements of an accident defense and/or charge. PCR p. 134.

From the records and testimony before this Court, this Court concludes that counsel failed to make a request for an accident charge despite the trial court's comment that counsel's argument could lead the jury to believe it was an accident. Counsel admitted that accident was part of his argument prior to Applicant's decision to not testify, but he did not "have a specific charge on that." PCR p. 114, Ins. 13-22. Yet, this testimony is inconsistent with the arguments made by counsel to the court and the jury. Applicant testified that he told counsel that the victim's death was accidental. PCR pp. 146-147.

This Court finds that trial counsel was deficient for failing to request an accident charge. Recently, in *State v. Owens*, 427 S.C. 325, 831 S.E.2d 126 (Ct. App. 2019) affirmed by *State v. Owens*, Op. No. 28035 (S.C. Sup. Ct. filed June 16, 2021), the South Carolina Court of Appeals opined that that "the defense of accident is a recluse: it is seldom seen and often misunderstood."

Thereafter, the Court of Appeals recommended the following charge for future cases:

The defendant has raised the defense of accident. Harm to another, including death, is excusable on the ground of accident if the harm was caused by the unintentional and lawful act of a defendant exercising due care. For the defense of accident to apply, you must find: (1) the act of the defendant that caused the harm was accidental and not intentional; (2) the act was lawful; and (3) the act was not careless, negligent, or reckless.

If you find the defense of accident applies, you must find the defendant not guilty. However, if the State has proven beyond a reasonable doubt that any of the three elements of the defense of accident do not apply, then the defendant is not entitled to the defense. A defendant engaged in unlawful conduct, including the unlawful possession of a weapon, is entitled to claim the defense of accident unless the State has proven beyond a reasonable doubt that the unlawful conduct was not merely incidental to but was the direct and foreseeable cause of the Victim's harm.

Owens, 427 S.C. at 334, 831 S.E.2d at 130.

As the record reflects, the trial court decided to charge the jury on murder, voluntary and involuntary manslaughter, so it could be deduced that the court would have considered giving a charge on accident. Nevertheless, this Court is not convinced of the prejudice that resulted from the failure to request an accident charge because counsel failed to put up a viable case under the defense of accident. The record before this Court demonstrates that Applicant did not testify nor was an expert utilized to establish the defense of accident. Therefore, this Court finds that there is a scant amount of evidence in the record to support an accident charge or a finding of not guilty under the defense of accident. Accordingly, the allegation is denied and dismissed with prejudice.

C. Ineffective assistance of trial counsel for failure to request proper instructions on murder and manslaughter and enter objections and/or exceptions when such instructions were not given. Specifically, but not limited to the following: 1) The inference of malice instruction when evidence was presented that could reduce, excuse, justify or mitigate the homicide; 2) The improper and incomplete inference of malice instruction, which lacked the general permissive inference instruction; 3) The inference of malice instruction amounting to a comment on the facts; and 4) The absence of an instruction that malice is not an element of voluntary manslaughter.

As addressed above, the trial court instructed the jury on murder, voluntary and involuntary manslaughter. Trial pp. 503-506. In relevant part, the murder instruction was given as follows:

Now, malice aforethought may be express or inferred. These terms expressed and inferred do not mean different types of malice, but merely the manner in which malice may be shown to have existed, that's either by direct evidence or by inference from the facts and circumstances which have been proved to you.

[Portion relating to express malice omitted.]

Now, malice can also be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. Now, a deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. A hand or fist is not normally considered a deadly weapon, however under some circumstances depending on the manner and means of its use the wounds inflicted and other relevant facts, a hand or fist may be considered a deadly weapon. It's for you

to decide in this case beyond a reasonable doubt whether or not a hand or fist is a deadly weapon. Voluntary manslaughter.

Trial p. 504, ln. 6-7, ln. 24 – p. 505, ln. 5.

As is also discussed above, the State requested an inference of malice from the use of a deadly weapon charge during the charging conference.³ Trial p. 454, ln. 6. When asked at the evidentiary hearing if there was any reason he did not raise *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), or make argument against the charge, trial counsel responded that he was aware of *Belcher* and did not have a reason for not objecting or making an argument in response to the State's request. PCR pp. 110-111.

When asked about the charge stating that a hand or fist could be a deadly weapon, counsel could not recall if he had ever been involved in case where the hand or fist was considered a deadly weapon. He responded that he did not have a reason for not objecting to the State's request to give this charge. PCR p. 111. Regarding the malice charge given to the jury, counsel stated that he could not recall a reason for not objecting to the charge as being a comment on the facts. PCR pp. 115-116.

While testifying, counsel explained that the defense strategy was to get to some type of manslaughter, preferably involuntary manslaughter. PCR pp. 106, 125-126. On cross examination, he recalled that after hearing Applicant's version of events he remembered hearing about some cases involving erotic sexual asphyxiation and advising Applicant "we certainly ought to get it down lower that what you're charged with." PCR p. 125, lns. 2-3.

³ This Court hereby incorporates the complete discussion of the charging conference and charges given under the "accident" issue discussed above as part of the discussion of this issue.

When asked if he had a specific reason or strategy for not wanting a voluntary manslaughter charge, he responded that what he said in the transcript did not make sense since they certainly would have taken "it" (voluntary manslaughter) over murder.⁴ PCR p. 112, lns. 17-23. Counsel was asked about the trial court's failure to instruct the jury that malice is not an element of voluntary manslaughter, and he could not recall a reason for not objecting or entering an exception to that charge. PCR p. 117.

Next, counsel was asked about the 1983 decision in *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983), regarding a permissive inference versus a mandatory inference, and the absence of the language set forth in *Elmore* in the instant case. PCR p. 116. He responded that he had probably read the case and was familiar with it, but he could not recall a reason for not requesting the language set forth in *Elmore*. PCR p. 116.

During his direct examination, Applicant testified that he was relying on counsel to make all necessary arguments and requests for charging the jury. PCR pp. 151-152. He also testified that he was relying upon counsel to be familiar with cases applicable to his case. PCR p. 152.

When Deputy Solicitor Collins was on the stand, she testified that the prosecution knew the defense "would be – it was a consensual act between two consenting adults that went horribly wrong but that there was no malice." PCR p. 164, lns. 7-9.

This Court has reviewed the trial transcript and summarized the relevant portions of the charging conference and jury charge under the accident issue above. Simply put, this Court is confused by counsel's performance during the charging conference and lack of explanation at the

⁴ Despite counsel's objection, the court gave a voluntary manslaughter charge. Trial pp. 463-466, 505.

evidentiary hearing.⁵ As discussed below, this Court agrees that counsel rendered ineffective assistance when he failed to request proper instructions and enter objections and/or exceptions when such instructions were not given.

Prior to Applicant's trial, in *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), the South Carolina Supreme Court addressed the "half-truth" created by charging that malice could be inferred from the use of a deadly weapon when there was evidence in the record to reduce, mitigate, excuse or justify the killing. After a lengthy discussion, the Court overruled prior precedent and held:

Under our policy-making role in the common law, we hold that the "use of the deadly weapon" implied malice instruction has no place in a murder (or assault and batter with intent to kill) prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing (or the alleged assault and battery with the intent to kill).

Belcher, 685 S.E.2d at 809.

This Court finds that trial counsel erred in failing to argue that the lower court should not have given the inference of malice instruction involving a deadly weapon when evidence was presented that could reduce, excuse, justify or mitigate the homicide. Here, counsel testified that the strategy was to get something less than murder but he failed to argue for a limited malice instruction under *Belcher* based upon the premise that evidence existed to reduce, excuse or justify the homicide. In making his argument for involuntary manslaughter, which caused the trial court to question if the jury could believe it was an accident as discussed above, counsel addressed

⁵ At the evidentiary hearing, counsel seemed confused by the questions regarding his objection to voluntary manslaughter despite making a lengthy argument to the trial court against it. He stated at the evidentiary hearing that the defense wanted a charge on voluntary manslaughter. PCR pp. 112-113.

evidence that would reduce, excuse or justify the homicide but he failed respond when the court inquired about the same. Trial pp. 454-455, 463-466.

This Court finds Counsel was also deficient for his failure to object to the hand or fist language being a comment on the facts. In relevant part, the court instructed the jury:

Inferred malice may also arise when the deed is done with a deadly weapon. Now, a deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. A hand or fist is not normally considered a deadly weapon, however under some circumstances depending on the manner and means of its use the wounds inflicted and other relevant facts, a hand or fist may be considered a deadly weapon. It's for you to decide in this case beyond a reasonable doubt whether or not a hand or fist is a deadly weapon.

Trial p. 504, ln. 20 – p. 505, ln. 4. By failing to object to this portion of the instruction, counsel missed another opportunity to limit the malice instruction given to the jury and to ensure that the instruction given to the jury did not result in prejudice to Applicant. As discussed above, this instruction, which explained that a hand or fist could be a deadly weapon, would no longer be allowed under *Burdette*. As discussed in *Burdette*, this Court finds that the court's instruction was improper court sponsored emphasis of a fact in evidence. 427 S.C. at 503, 832 S.E.2d at 582. In *State v. Jackson*, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989), the South Carolina Supreme Court explained:

Under South Carolina law, it is a general rule that a trial judge should refrain from all comment which tends to indicate to the jury his opinion on the credibility of the witnesses, the weight of the evidence, or the guilt of the accused. *State v. Campbell*, 374 S.E.2d 668 (S.C.1988); *State v. Sosebee*, 284 S.C. 411, 326 S.E.2d 654, n. 1 (1985) (citing *State v. Pruitt*, 187 S.C. 58, 196 S.E. 371 (1938) and *State v. Kennedy*, 272 S.C. 231, 250 S.E.2d 338 (1978)); *State v. Smith*, 288 S.C. 329, 342 S.E.2d 600 (1986).

Here, the State requested and counsel did not object to the instruction where the court specifically emphasized facts in evidence. This Court finds that counsel's failure was deficient in regards to the fact specific inferred malice instruction given to the jury.

This Court also finds that counsel was deficient for failing to request a complete inference of malice instruction and/or enter an objection or exception when the court's instruction lacked the general permissive inference instruction set forth in *State v. Elmore*, 279 S.C. 417, 421, 308 S.E.2d 781, 784 (1983). Trial p. 504, ln. 6-7 – p. 505, ln. 5.

An inferred malice charge has two components, the charge detailing the circumstances from which malice can be inferred and the general permissive malice instruction. The trial court's charge on murder lacks the general permissive inference instruction that is required when a judge charges the jury on inferred malice:

If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.

State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810, fn. 9 (2009). While *Belcher* deals specifically with a charge that permits the inference of malice from the use of a deadly weapon, the Court has stated that all inferences should be accompanied by the general permissive inference instruction. See *State v. Mattison*, 276 S.C. 235, 238 277 S.E.2d 598, 600 (1981) (“[W]e strongly suggest to the Trial Bench that a more appropriate instruction on implied malice would deal with the evidentiary nature of the presumption and that the implication does not require the jury to infer malice but only permits it”), *overruled on other grounds by Belcher*.

As discussed, dating back to 1983 in *State v. Elmore*, 279 S.C. 417, 421, 308 S.E.2d 781, 784 (1983), the Court set forth a standard permissive inference charge to be used when instructing the jury on the inference of malice:

The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.

After promulgating the standard charge, the following warning was issued: "We caution the bench, that hereafter only slight deviations from this charge will be tolerated." *Id.*

In *Belcher*, 385 S.C. 597, 685 S.E.2d 802, the Court explained that *Elmore*'s first sentence constituted "[t]he standard implied malice charge" whereas the second sentence constituted "the general permissive inference instruction." 385 S.C. at 612, 685 S.E.2d at 811, fn. 9. Since *Elmore*, South Carolina's appellate courts have repeatedly instructed trial courts to give the general permissive inference charge when the standard implied malice instruction is given. See *State v. Lewellyn*, 281 S.C. 199, 201, 314 S.E.2d 326, 327 (1984) ("The trial bench is reminded that the proper charge on implied malice is that suggested in *Elmore*."), *State v. Peterson*, 287 S.C. 244, 247, 335 S.E.2d 899, 802 (1985) ("The judge should make it clear to the jury that it is free to accept or reject these permissive inferences depending on its view of the evidence."); *Belcher*, 385 S.C. at 612, 685 S.E.2d at 811, fn. 9 (2009) (distinguishing the standard implied malice charge from the general permissive inference charge); *State v. Wilds*, 355 S.C. 269, 277, 584 S.E.2d 138, 142 (Ct. App. 2003) ("In a charge to the jury, the judge should make clear to the jury that it is free to accept or reject the permissive inferences depending on its view of the evidence.").

A trial attorney's failure to object to the lack of a general permissive inference instruction when it is warranted constitutes deficient performance by trial counsel. *Gibson v. State*, 416 S.C. 260, 786 S.E.2d 121 (2016). This Court finds that the trial court should have given the general permissive inference instruction provided in *Elmore*, and counsel admitted that he was familiar with *Elmore* and had no reason for not requesting the instruction set forth therein. Therefore, this Court finds that trial counsel was deficient when he did not request, object or enter an exception when the trial court proposed and gave an instruction that omitted a general permissive inference instruction.

However, despite Counsel's deficiencies regarding the jury charges, this Court finds that Applicant has failed to show how he was prejudiced by Counsel's deficiencies. The presence of significant, independent evidence of guilt negates any claim that counsel's performance could have reasonably affected the result of the trial. *Franklin v. Catoe*, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n.3 (2001), *cert denied*, 535 U.S. 1114 (2002); *see also Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is significant, independent evidence of guilt). When evaluating the question of prejudice pursuant to *Gibson*, the court "must decide whether the erroneous malice instruction contributed to the jury's verdict based on all the evidence presented to the jury." *Gibson* at 265, 786 S.E.2d at 265. "The Court must weigh the significance of the presumption to the jury against the other evidence of malice considered by the jury without the erroneous malice charge." *Id.* "In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial. In addition, the PCR court should consider the strength of the State's case in light of all the evidence presented to the jury. In general,

the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice." *Smalls* at 188, 810 S.C. at 844 (internal citations omitted).

Based upon a review of the evidence presented to the jury and the record made at the evidentiary hearing, this Court finds Applicant has failed to meet his burden of proving prejudice because the Court is not convinced that the erroneous malice instruction contributed to the jury's verdict. Specifically, after considering the strength of the State's case considering all the evidence presented to the jury, Counsel's failure to object did not amount to prejudice because there was significant, independent evidence of guilt. The State presented testimony of an eyewitness who observed Applicant and the Victim entering the home where the Victim was found murdered. That witness testified that prior to observing this, Applicant had solicited her for sex, which she denied. The State also presented the statements Applicant gave to police where he admitted to soliciting the Victim for sex, engaging in sexual intercourse with the Victim, choking the Victim while they were engaged in sexual intercourse, and leaving her to die while "she was already about to go out" because Applicant "got scared and left." Trial p. 209, ln. 7 – p. 412, ln. 14. Additionally, Applicant's DNA was found on the victim and inside the abandoned home where she was found murdered. Trial p. 328, lns. 5–11.

This Court further finds Applicant has failed to meet his burden of proving prejudice because there was significant, independent evidence of guilt which negates a conclusion that Counsel's failure to object would have a reasonable probability of a different outcome at Applicant's trial. *See Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is significant, independent evidence of guilt). Furthermore, this Court finds the evidence presented by the State presented an adequate showing of express malice that superseded inferred malice as instructed by the court. To

sum up the State's presentation of express malice, the following excerpt from the State's closing argument is representative of their showing of express malice in this case:

Malice is define[d] as hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse, or with intent to inflict injury or under circumstances that the law will infer evil intent. And I am telling you folks, he may not have had malice when he walked into that house, but when she started to put up a fight and she started to resist he had malice in his heart, and he had malice at the time and at the moment that he committed that murder and that's all it takes. Malice has to be there -- malice aforethought doesn't have to exist for any length of time, it only has to be there at that moment, and I'm telling you he had it. It's murder, folks. Dr. Ross told you it takes only seconds to go unconscious, and only four to five minutes to die when you're being strangled. Terry Catoe said in his own words he choked her for 20 to 25 minutes while engaging in brutal anal sex and when he left the damage was done, that's what he said. The damage was done.

Trial p.486, lns. 5-23. Accordingly, because Applicant has failed to show prejudice, the allegations shall be denied and dismissed with prejudice.

Finally, Applicant has alleged that that counsel was ineffective for failing to request a proper instruction on voluntary manslaughter and enter an objection or exception when the trial court failed to instruct the jury that malice is not an element of voluntary manslaughter. Trial pp. 505-506. However, this Court finds that prejudice cannot be established since the jury found Applicant guilty of murder, which requires malice. Accordingly, Applicant's claims shall be denied and dismissed with prejudice.

IV. CONCLUSION

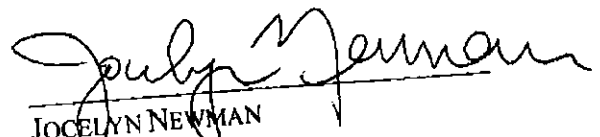
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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), an 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 the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15th day of January, 2025


JOCELYN NEWMAN
Presiding Judge
Sixth Judicial Circuit

Columbia, South Carolina