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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO HORRY COUNTY
Honorable J. Mark Hayes II, Circuit Court Judge

Appellate Case No. 2025-001371

MITCHELL M. WEATHERALL,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

ALAN WILSON
Attorney General

BRYAN T. HALL
Assistant Attorney General
S.C. Bar No. 106039
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR PETITIONER

J. FALKNER WILKES
248 Deerwood Park Drive
Oakland, MS 38948
(803) 734-1330

ATTORNEY FOR RESPONDENT

VOLUME I OF II

PAGES 1- 495

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (MARCH 20-23, 2017)	1
INDICTMENTS	413
SENTENCE SHEETS	415
NOTICE OF APPEAL	421
BRIEF OF APPELLANT	423
BRIEF OF RESPONDENT	447
OPINION FROM SOUTH CAROLINA COURT OF APPEALS	485
REMITTITUR.....	495
APPLICATION FOR POST-CONVICTION RELIEF	496
RETURN	504
POST-CONVICTION RELIEF TRANSCRIPT	515
ORDER GRANTING POST-CONVICTION RELIEF	595
RULE 59(E) MOTION TO RECONSIDER, ALTER OR AMEND JUDGMENT GRANTING POST-CONVICTION RELIEF	609
FORM 4 ORDER DENYING RULE 59(E) MOTION.....	633

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2014-GS-26-01415

STATE OF SOUTH CAROLINA,)

Plaintiff,) Transcript of Record

vs.)

March 20-23, 2017

MITCHELL MONROE)

WEATHERALL,)

Defendant.)

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Nancy R. Livesay, Esquire
Attorney for Plaintiff

Jonny Gardner, Esquire
Thomas Jarrett Bouchette, Esquire
Attorney for Defendant

TAKEN BY:

Dixie C. Eubank

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

RECORD ON APPEAL INDEX

2

State v. Weatherall - 2014-GS-26-01415
INDEX

2

1	<u>I N D E X</u>	
2		<u>Pg.</u>
3	<u>MARCH 20, 2017 - DAY ONE</u>	
4	Voir Dire	8
5	Jury Selection	25
6	By the Court	33
7	Motions	34
8	By the Court	37
9	Motions	42
10	By the Court	54
11	<u>MARCH 21, 2017 - DAY TWO</u>	
12	By the Court	55
13	Motions	56
14	By the Court	59
15	Opening by Livesay	66
16	Opening by Bouchette	70
17	By the Court	76
18	Melissa Ann Baines	
19	Direct by Livesay	77
20	Cross by Gardner	82
21	Norma Davis	
22	Direct by Livesay	85
23	Cross by Gardner	89
24	Kelly Lynn Matteson	
25	Direct by Livesay	95

State v. Weatherall - 2014-GS-26-01415
INDEX

3

1	<u>I N D E X</u>	
2		<u>Pg.</u>
3	Kelly Lynn Matteson	
4	Cross by Gardner	119
5	Seraphim Haftoglou	
6	Direct by Livesay	122
7	Cross by Gardner	129
8	Redirect by Livesay	134
9	By the Court	135
10	Michelle McSpadden	
11	Direct by Livesay	151
12	Cross by Gardner	170
13	William Stair	
14	Direct by Livesay	172
15	Cross by Gardner	177
16	Melinda Shadoan	
17	Direct by Livesay	181
18	Cross by Gardner	185
19	Diane Phillips	
20	Direct by Livesay	190
21	Cross by Gardner	192
22	Angie T. Gunter	
23	Direct by Livesay	194
24	Cross by Gardner	204
25	Redirect by Livesay	212

State v. Weatherall - 2014-GS-26-01415
INDEX

4

1	<u>I N D E X</u>	
2		<u>Pg.</u>
3	Tonya Lynn Wedlock	
4	Direct by Livesay	213
5	Cross by Bouchette	236
6	Redirect by Livesay	241
7	Dr. Edward Leroy Proctor	
8	Direct by Livesay	245
9	Cross by Gardner	249
10	Redirect by Livesay	251
11	By the Court	252
12	<u>MARCH 22, 2017 - DAY THREE</u>	
13	Marcus Bell	
14	Direct by Livesay	269
15	Cross by Gardner	280
16	Redirect by Livesay	288
17	Sandy Lowe	
18	Direct by Livesay	290
19	Cross by Gardner	293
20	Doris Yarbrough	
21	Direct by Livesay	294
22	Cross by Gardner	297
23	Jennifer Aycock	
24	Direct by Livesay	298
25	Cross by Gardner	301

State v. Weatherall - 2014-GS-26-01415
INDEX

5

1	<u>I N D E X</u>	
2		<u>Pg.</u>
3	Jennifer Bartman	
4	Direct by Livesay	302
5	Cross by Gardner	307
6	By the Court	309
7	Sarah Hicks	
8	Direct by Livesay	313
9	Cross by Bouchette	326
10	Avra Woodberry	
11	Direct by Livesay	328
12	By the Court	331
13	Motions	332
14	Mitchell Monroe Weatherall	
15	By the Court	340
16	By the Court	347
17	<u>MARCH 23, 2017 - DAY FOUR</u>	
18	Charge Conference	355
19	By the Court	359
20	Closing by Livesay	360
21	Closing by Bouchette	381
22	Charge to Jury	387
23	Verdict of Jury	403
24	Polling of Jury	404
25	By the Court	406

State v. Weatherall - 2014-GS-26-01415
INDEX

6

1	<u>I N D E X</u>	
2		<u>Pg.</u>
3	Motions	407
4	By the Court	408
5	Sentence of the Court	411
6	Certificate of Court Reporter	412

8	<u>E X H I B I T S</u>	
9	<u>No.</u>	<u>ID</u> <u>EV</u>
10	S1-55 Photos	101
11	S56-57 Photos	154
12	S58-63 Photos	158
13	S64 Large Chart	78
14	S65 Copy of Driver's License and	
15	Registration Card	89
16	S66 Calendar	89
17	S67 Clear Plastic Envelope	115
18	S68 Swab	115 118
19	S69 Swab	115 118
20	S70 Swab	115 118
21	S71 Swab	115 118
22	S72 Swab	115 118
23	S73 Swab	115 118
24	S74 Fingerprint card	128
25	S75 Jaw bone	148

State v. Weatherall - 2014-GS-26-01415
INDEX

7

1	<u>E X H I B I T S</u>			
2	<u>No.</u>		<u>ID</u>	<u>EV</u>
3	S76	Teeth	148	
4	S77	CD from Hotel		198
5	S78	Handwritten Letter	272	
6	S79	Jail Records		292
7	S80	Credit Card Subpoena		316
8	D1	Registration Card and copy IDs	91	
9	C1	Note from Jury	55	
10				
11	INDICTMENT			ROA 413
12	SENTENCING SHEET			ROA 415
13	JURY STRIKE SHEET			ROA 416
14	STATE EXHIBIT 78 HANDWRITTEN LETTER			ROA 419
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

8

1 (MARCH 20, 2017 - DAY ONE.)

2 (REPORTER'S NOTE: JURY VENIRE ENTERS COURTROOM.)

3 VOIR DIRE:

4 THE COURT: All right. Ladies and gentlemen, first of
5 all, I want to thank everybody on the jury panel for being
6 prompt and returning on time. We are getting ready to start
7 the trial of the case of Mitchell Monroe Weatherall and I'll
8 be going over some specifics on this with you in just a
9 second. Excuse me for one second.

10 All right. All of you have been qualified to serve as
11 jurors of this term of General Sessions Court. Now, I do have
12 some questions to go over with you now before we start the
13 trial of this case. These questions are referred to as voir
14 dire questioning and that's to determine whether or not you're
15 qualified to serve as jurors on this particular case and it
16 also gives the attorneys some additional information that
17 assists them in the jury selection process. But as I told you
18 during jury qualifications, just like witnesses, jurors are
19 constantly taking oaths. So, if I could please get all
20 members of the jury panel to stand and raise your right hand.

21 (REPORTER'S NOTE: Jury is duly sworn by Court.)

22 THE COURT: Thank you very much. You may be seated.

23 Is there any member of the jury panel that did not
24 respond to the oath by saying I do? If so, please stand.

25 (REPORTER'S NOTE: No response.)

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

9

1 Very well. All right. As I told you, we're getting
2 ready to start the trial of the case of State of South
3 Carolina versus Mitchell M. Weatherall. Now, the charge
4 against Mr. Weatherall is for murder. The allegations in this
5 case are that on or about November the 11th of 2013 in Myrtle
6 Beach, South Carolina, along the boulevard there that Mr.
7 Weatherall killed Helbert Woodberry with malice aforethought
8 when he hit the victim in the head with a bottle. This
9 occurred about November the 11th -- or allegedly occurred
10 about November the 11th, 2013 in Myrtle Beach, South Carolina.
11 Now, is there any member of the jury panel that has heard
12 anything, read anything, discussed anything or knows anything
13 about this case? If so, please stand.

14 (REPORTER'S NOTE: No response.)

15 THE COURT: All right. As I said, the Defendant in this
16 case is Mitchell Monroe Weatherall.

17 Oh, excuse me; I'm sorry. Yes, ma'am, your name and
18 number?

19 JUROR 139: Teresa Gaddy, 139.

20 THE COURT: All right, Ms. Gaddy, if you would come
21 forward, please.

22 (REPORTER'S NOTE: A bench conference was held off the record
23 with Juror 139 in the presence of but out of hearing of the
24 Jury. Juror 139 is excused from the trial of this particular
25 case.)

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

10

1 THE COURT: All right. Anyone else that has heard
2 anything, read anything, discussed anything or knows anything
3 about this case? If so, please stand.

4 (REPORTER'S NOTE: No response.)

5 THE COURT: All right. As I told you earlier, the
6 Defendant is Mitchell Monroe Weatherall. The alleged victim
7 is Helbert Woodberry. Is there any member of the jury panel
8 related by blood or marriage, have a close personal
9 relationship, business relationship, social relationship, or
10 any other type of relationship with either Mr. Woodberry or
11 Mr. Weatherall? If so, please stand.

12 (REPORTER'S NOTE: No response.)

13 THE COURT: All right. Please listen carefully as these
14 are potential witnesses who may testify in this case and there
15 is a number of them: Chad Mullinax with the State Law
16 Enforcement Division; Angie Gunter; Edward Proctor; Frank
17 Roderick; Ryan Truex; Joey Garsow or Garsow, G-A-R-S-O-W;
18 Tamara Willard; Pete Cestare, C-E-S-T-A-R-E; Timothy Perkins;
19 Tonya Wedlock; Tony Lever or Lever, L-E-V-E-R; Kelly Madison;
20 Michael Quinn; Steven Clothier; Michelle McSpadden, McSpadden,
21 M-C-S-P-A-D-D-E-N; Billy Bowles; Joe Cleary; Jeremiah Beam;
22 Paula Powell; Missy Banes; William Stair; Scott Williamson;
23 Jennifer Batman; Doris Yarborough; Jennifer Bartman; Diane
24 Roberts; Jennifer Aycock; Jackie Davis; Malinda Shadoan, S-H-
25 A-D-O-A-N; Sarah Hicks; Stephanie Perrin; Marcus Bell; Sandy

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

11

1 Lowe; Avra Woodberry; Norma Davis; Anthony James; Sammy
2 Haftoglou, H-A-F-T-O-G-L-O-U; Marvin McElveen. Is there any
3 member of the jury panel related by blood or marriage, have a
4 close personal relationship, business relationship, social
5 relationship or any other type of relationship with any of
6 these individuals?

7 All right. The lady in the white sweater, your name and
8 number?

9 JUROR 369: Number 369, Georgia Tyler.

10 THE COURT: Hold for one second.

11 All right, Ms. Tyler, who is it that you know?

12 JUROR 369: I work with Pete Cestare and you named about
13 three other officers that I work with.

14 THE COURT: Okay. This is with what agency?

15 JUROR 369: Horry County Police.

16 THE COURT: Okay. So you work with these individuals?

17 JUROR 369: Yes, sir.

18 THE COURT: All right. All right, Ms. Tyler, I'm gonna
19 excuse you from this particular case. Stay with us for right
20 now. Okay?

21 JUROR 369: Okay.

22 THE COURT: All right. The lady on the front row, your
23 name and number?

24 JUROR 377: Yes, sir, Lucia Watson, Juror 377.

25 THE COURT: All right, Ms. Watson, who is it that you

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

12

1 know?

2 JUROR 377: Tamara Willard.

3 THE COURT: And how do you know Tamara Willard?

4 JUROR 377: She's my husband's counselor.

5 THE COURT: All right.

6 JUROR 377: In private practice.

7 THE COURT: Now, when you say she's your husband's
8 counselor, how -- how often do you interact with her?

9 JUROR 377: Only if it's regarding his treatment, not
10 very often, but it's on a professional level with my husband's
11 professional care.

12 THE COURT: Okay. And is that an ongoing treatment.

13 JUROR 377: He is, yes; he's an home care patient.

14 THE COURT: Okay. Now, would the fact that you have --
15 that your husband has this ongoing treatment with Tamara
16 Willard, would that affect your ability to give both the State
17 and the Defendant in this case a fair and impartial trial?

18 JUROR 377: No, sir.

19 THE COURT: Would you be able to disregard the fact that
20 your husband is receiving treatment from Tamara Willard in its
21 entirety and I don't know whether -- is it Ms. Willard, Dr.
22 Willard or ---

23 JUROR 377: Ms., as far as I know.

24 THE COURT: Ms. Willard and I don't know who she's
25 testifying for or on behalf of, but would the fact that she's

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

13

1 testifying cause you to favor one side more than the other
2 because you do know her outside of this courtroom?

3 JUROR 377: No, because I only know her in a professional
4 capacity.

5 THE COURT: Would you be able to disregard your husband's
6 treatment and any knowledge or relationship you have with Ms.
7 Willard outside of the courtroom, disregard in its entirety
8 and base your decision in this case exclusively on the
9 testimony and evidence in this case?

10 JUROR 377: Yes, sir.

11 THE COURT: All right. Thank you very much for bringing
12 that to our attention.

13 All right. The lady in the gray sweater, your name and
14 number?

15 JUROR 27: 27, I'm not sure whether she has me as Lisa
16 Bell or ---

17 THE COURT: All right. Ms. Bell?

18 JUROR 27: Yes.

19 THE COURT: All right. And who is it that you know?

20 JUROR 27: Avra Woodberry.

21 THE COURT: All right. And how do you know Avra
22 Woodberry?

23 JUROR 27: She's a relative.

24 THE COURT: All right. How close of a relative?

25 JUROR 27: Her -- I think her grandmother and my dad are

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

14

1 first cousins.

2 THE COURT: Okay. All right. And I'm gonna be honest
3 with you, I've got some second and third cousins that I
4 maintain contact with pretty regularly, I've got some first
5 cousins that I might've seen twice in my life. So, would the
6 relationship affect your ability to give both the State and
7 the Defendant in this case a fair and impartial trial?

8 JUROR 27: It probably would.

9 THE COURT: Okay. Thank you very much, Ms. Bell. I'm
10 gonna excuse you from this particular case, but please stay
11 with us right now. Okay?

12 JUROR 27: Okay.

13 THE COURT: Yes, ma'am, your name and number?

14 JUROR 249: 249, Sharon Merkel.

15 THE COURT: All right, Ms. Merkel, who do you know?

16 JUROR 249: If it's the same person, Billy Bowles, if he
17 lives -- if it's the same Billy Bowles, that's kind of a
18 common name, he's my neighbor and a friend in the housing
19 development that I live in. I don't know if -- if I -- my
20 address or ask his address to know if that's him, but he's a
21 friend and neighbor if it's him.

22 THE COURT: Do we know Mr. Bowles' address?

23 JUROR 249: It would be Heather Lakes Housing Development
24 in Little River. He actually lives on Lake Vista Drive.

25 THE COURT: All right.

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

15

1 THE COURT: You don't. All right. Ms. Merkel, I'm
2 gonna be honest with you, just out of a sense of precaution, I
3 don't know if it's the same Billy Bowles or not. They don't
4 have an address for him. I would rather excuse you and find
5 out I should not have than not excuse you and have him testify
6 and find out that I should have, okay, because you say he's a
7 neighbor?

8 JUROR 249: And friend; neighbor and friend.

9 THE COURT: Okay. All right. I'm gonna excuse you, Ms.
10 Merkel, but please stay with us right now.

11 JUROR 249: Thank you.

12 THE COURT: Anyone else? Yes, sir, your name and number?

13 JUROR 388: Kevin Wilburn, 388.

14 THE COURT: All right, Mr. Wilburn, who is that you know?

15 JUROR 388: Sandy Lowe, we were co-workers together about
16 four years ago.

17 THE COURT: All right. Do you have any type of
18 relationship other than being former co-workers?

19 JUROR 388: No, sir.

20 THE COURT: Would that association affect your ability to
21 give both the State and the Defendant in this case a fair and
22 impartial trial?

23 JUROR 388: No, sir.

24 THE COURT: Would you be able to disregard that
25 association in its entirety and base your decision in this

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

16

1 case exclusively on the testimony and evidence in this case?

2 JUROR 388: Yes, sir.

3 THE COURT: All right. Thank you very much for bringing
4 that to our attention, Mr. Wilburn.

5 Anyone else know of any of these witnesses?

6 MR. GARDNER: Your Honor, I apologize, but we have a
7 couple of additions to that list.

8 THE COURT: All right. Let me see it.

9 THE COURT: All right, ladies and gentlemen, please
10 listen up as these are some additional witnesses that may
11 testify in this case: Carol Allen; Salvador Ware, S-A-L-A-V-
12 A-D-E-R Ware; Tommy Benton; Missy Banes; Anthony James; Norma
13 Davis. Any member of the jury panel related by blood or
14 marriage, have a close personal relationship, business
15 relationship, social relationship, or any relationship with
16 any of these potential witnesses?

17 Yes, ma'am, your name and number?

18 JUROR 307: Kathleen Russell; it's 307.

19 THE COURT: Hold for one second. All right, Ms. Russell,
20 who is it that you know?

21 JUROR 307: Carol Allen, I worked with a Carol Allen at
22 the company that I work at now. She has since transferred
23 down to Florida about, I guess about six months ago and I
24 haven't had any contact with her, but the name is the same.

25 THE COURT: All right.. This is a Carol Allen with the

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

17

1 Myrtle Beach Police Department.

2 JUROR 307: Okay, no.

3 THE COURT: Okay. Thank you very much.

4 Anyone else?

5 (REPORTER'S NOTE: No response.)

6 THE COURT: All right. Ladies and gentlemen, prosecuting
7 this case on behalf of the State is Nancy Livesay of the
8 Fifteenth Circuit Solicitor's office. The Defendant is
9 represented by attorney, Johnny Gardner of -- is it Gardner
10 Law Firm, that's the name of your firm?

11 MR. GARDNER: Yes, sir. Here in Conway, Judge.

12 THE COURT: Okay. The Gardner Law Firm here in Conway,
13 South Carolina. Is there any member of the jury panel related
14 by blood or marriage, have a close personal relationship,
15 business relationship, social relationship, or any other type
16 of relationship with either of these attorneys? If so, please
17 stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Any member of the jury panel ever been
20 represented by either of these attorneys? If so, please
21 stand.

22 All right. Are there any other attorneys participating
23 in the trial? Those are the only ones I have listed.

24 MR. BOUCHETTE: Your Honor, Jarrett Bouchette, I'll be
25 working with Mr. Gardner. I provided a business card to Madam

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

18

1 Court Reporter for the spelling.

2 THE COURT: All right. Also, Jarrett Bouchette is
3 assisting Mr. Gardner in the defense. Any member of the jury
4 panel related by blood or marriage, have a close personal
5 relationship, business relationship, social relationship, or
6 any other type of relationship with Mr. Bouchette? If so,
7 please stand.

8 (REPORTER'S NOTE: No response.)

9 THE COURT: Anybody of the jury panel ever been
10 represented by Mr. Bouchette? If so, please stand.

11 (REPORTER'S NOTE: No response.)

12 THE COURT: Is there any member of the jury panel ever
13 been involved in any legal action in which any of these
14 attorneys represented another party to that action? If so,
15 please stand?

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Is there any member of the jury panel who
18 either personally has a family member or close personal friend
19 employed with the Fifteenth Circuit Solicitor's office or the
20 Johnny Gardner Law Firm in Conway, South Carolina? If so,
21 please stand.

22 (REPORTER'S NOTE: No response.)

23 THE COURT: Any member of the jury panel either
24 personally have a family member or close personal friend who
25 has applied for employment with the Fifteenth Circuit

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

19

1 Solicitor's office or the Johnny Gardner Law Firm? If so,
2 please stand.

3 (REPORTER'S NOTE: No response.)

4 THE COURT: Has any member of the jury panel formed or
5 expressed an opinion about any issue involved in this case?
6 If so, please stand.

7 (REPORTER'S NOTE: No response.)

8 THE COURT: Any member of the jury panel aware of any
9 bias or prejudice towards either the State or the Defendant in
10 this case? If so, please stand.

11 (REPORTER'S NOTE: No response.)

12 THE COURT: Any member of the jury panel a member of the
13 Grand Jury that issued the indictment in this case? If so,
14 please stand.

15 (REPORTER'S NOTE: No response.)

16 THE COURT: Is there any member of the jury panel who is
17 a member of or a contributor to any group which has as its
18 primary concern the promotion of law enforcement or victim's
19 rights? Some of these organizations are Mother's Against
20 Drunk Drivers, also known as MADD; Student's Against Drunk
21 Drivers, also referred to as SADD; CAVE, which is Citizens
22 Against Violent Crime; and CASA, Citizens Against Spousal
23 Abuse or any similar organization. Is there any member of the
24 jury panel a member of or a contributor to any such
25 organization? If so, please stand.

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

20

1 All right. And I apologize, we have to create a record,
2 so every time you stand, I'll need you to give me your name
3 and number.

4 JUROR 377: Yes, sir. Lucia Watson, Juror 377.

5 THE COURT: All right, Ms. Watson, are you a member of or
6 a contributor to which organization?

7 JUROR 377: I was a contributor to, when I lived in
8 Charleston, to My Sister's House, which is a Domestic Violence
9 Agency; and then when I lived in Syracuse, New York, I was a
10 contributor to Vera House, which is also a Domestic Violence
11 Agency.

12 THE COURT: All right. Would the fact that you have
13 contributed to those organizations affect your ability to give
14 the Defendant and the State in this case a fair and impartial
15 trial?

16 JUROR 377: No, sir.

17 THE COURT: Would you be able to disregard your
18 contribution to and association with those organizations in
19 its entirety and base your decision in this case exclusively
20 on the testimony and evidence in this case?

21 JUROR 377: Yes, sir.

22 THE COURT: Thank you very much, Ms. Watson, for bringing
23 that to our attention.

24 Yes, ma'am, your name and number?

25 JUROR 290: Crystal Rautzhan, Juror 290.

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

21

1 THE COURT: All right. All right, Ms. Rautzhan, what
2 organization are you a member of or contributor to?

3 JUROR 290: I'm an alumni of the Myrtle Beach Citizen's
4 Police Academy, which I attended for professional reasons for
5 my job.

6 THE COURT: Okay. Are you a member -- so you just
7 attended -- it's just an educational type training?

8 JUROR 290: Yes.

9 THE COURT: All right. And this was in conjunction with
10 what?

11 JUROR 290: I did it for my position where I work just to
12 educate myself when they have seminars on drug abuse and
13 stuff.

14 THE COURT: Okay. Would your participation in that
15 program affect your ability to give both the Defendant and the
16 State in this case and fair and impartial trial?

17 JUROR 290: No, sir.

18 THE COURT: Would you be able to disregard your
19 participation in that program in its entirety and base your
20 decision in this case exclusively on the testimony and
21 evidence in this case?

22 JUROR 290: Yes, sir.

23 THE COURT: Thank you for bringing that to our attention.

24 Anyone else a member of such organization or a
25 contributor to any organization that has as its primary

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

22

1 concern the promotion of law enforcement or victim's rights?

2 If so, please stand.

3 (REPORTER'S NOTE: No response.)

4 THE COURT: Is there any member of the jury panel that
5 has a religious or moral opposition to the consumption of
6 alcohol? If so, please stand.

7 (REPORTER'S NOTE: No response.)

8 THE COURT: Is there any member of the jury panel who
9 feels that a person's sexual orientation would affect your
10 ability to be fair and impartial to that person? If so,
11 please stand.

12 (REPORTER'S NOTE: No response.)

13 THE COURT: Does any member of the jury panel know of any
14 reason whatsoever why he or she should not serve as a juror in
15 this case with particular emphasis being placed on your
16 ability to be fair and impartial to both the State and the
17 Defendant? If so, please stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Has any member of the jury panel, either
20 personally or had a family member or a close personal friend
21 that was the victim of a violent crime? If so, please stand.

22 All right, sir. The gentlemen in the striped shirt,
23 your name and number?

24 JUROR 126: I don't know my number, Your Honor, it's
25 Steven Fauber.

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

23

1 THE COURT: Hold for a second. Steven M. Fauber?

2 JUROR 126: Yes, sir.

3 THE COURT: All right. Juror 126, if you would come
4 forward, please.

5 (REPORTER'S NOTE: A bench conference was held with Juror 126
6 off the record in the presence of but out of hearing of the
7 Jury. Juror 126 remains in Venire.)

8 THE COURT: All right. The lady on the end, your name
9 and number?

10 JUROR 337: Number 337, Lisa Spallone.

11 THE COURT: Lisa J. Spallone. All right, Ms. Spallone,
12 if you would come forward, please.

13 (REPORTER'S NOTE: A bench conference with Juror 337 was held
14 off the record in the presence of but out of hearing of the
15 Jury.)

16 THE COURT: All right. Ms. Spallone, Juror 337, I'm
17 gonna excuse from this particular case.

18 All right, the gentleman in the royal blue shirt or
19 jacket, I can't tell from this ---

20 JUROR 343: 343.

21 THE COURT: All right. Charles K. Steele?

22 JUROR 343: Yes, sir.

23 THE COURT: All right, Mr. Steele, if you would come
24 forward, please.

25 (REPORTER'S NOTE: A bench conference with Juror 343 was held

State v. Weatherall - 2014-GS-26-01415
VOIR DIRE

24

1 off the record in the presence of but out of hearing of the
2 Jury.)

3 THE COURT: Mr. Steele, Juror 343, I'm gonna excuse from
4 this particular case.

5 All right. The gentleman in the black shirt.

6 JUROR 261: Vincent Myers, 261.

7 THE COURT: All right, Mr. Myers, if you would come
8 forward, please.

9 (REPORTER'S NOTE: A bench conference with Juror 261 was held
10 off the record in the presence of but out of hearing of the
11 Jury. Juror 261 remains in Venire.)

12 THE COURT: All right. The lady to my left in the
13 striped top, your name and number?

14 JUROR 21: Ann Marie Baranofsky, Number 12.

15 THE COURT: I'm sorry, what's your Juror Number?

16 JUROR 21: 12.

17 THE COURT: I've got 21.

18 JUROR 21: 21, I'm sorry.

19 THE COURT: 21. Okay. All right, Ms. Baranofsky, if you
20 would come forward, please.

21 (REPORTER'S NOTE: A bench conference with Juror 21 was held
22 off the record in the presence of but out of hearing of the
23 Jury. Juror 21 remains in Venire.)

24 THE COURT: Ma'am, your name and number?

25 JUROR 215: Jessica Linebaugh, 215.

State v. Weatherall - 2014-GS-26-01415
JURY SELECTION

25

1 THE COURT: All right, Ms. Linebaugh, if you'd come
2 forward, please.

3 (REPORTER'S NOTE: A bench conference with Juror 215 was held
4 off the record in the presence of but out of hearing of the
5 Jury. Juror 215 remains in Venire.)

6 THE COURT: All right. Any additional questions from the
7 State?

8 MS. LIVESAY: No, sir, Your Honor.

9 THE COURT: Any from the Defense?

10 MR. BOUCHETTE: No further questions, Your Honor.

11 JURY SELECTION:

12 THE COURT: All right. All right, ladies and gentlemen,
13 the way we proceed in the jury selection process in General
14 Sessions Court is that your names will be called -- your names
15 have been generated on a list at random and your names will be
16 called one at a time. When your name is called, if you'd
17 please come forward, stand here at the podium and turn and
18 face the attorneys. Now, the State's attorney is gonna take a
19 look at you and look at her notes and look back at you and
20 look at her notes, and then if she wants you as a juror, then
21 the Defense is gonna take a look at you and look at their
22 notes and look at you and look at their notes and decide if
23 they want you, and we follow this process until we get 12
24 jurors and 2 alternates. Now, when you come forward, if you'd
25 please bring with you any coats, any umbrellas, pocketbooks,

State v. Weatherall - 2014-GS-26-01415
JURY SELECTION

26

1 whatever you might have, stand at the podium, turn and face
2 the attorneys, and then we'll give you some further
3 instructions at that time.

4 Now, if you are struck by either the State or the
5 Defense, please don't take it personally. It just means that
6 for whatever reason you don't fit a certain profile that
7 they're looking for in this particular case. I've known
8 jurors that have been struck in one case and accepted by the
9 same party in the next case, and conversely I've known them be
10 accepted in one case and then struck in the next case by the
11 same party. So, there's really no rhyme or reason as to why
12 the attorney -- I mean why the juror is struck or kept, so
13 please do not take it personally.

14 But please listen up and when your name is called, if you
15 would please come forward, stand at the podium, turn and face
16 the attorneys until we can get some further instructions.

17 Thank you very much.

18 This will be 5 and 10, correct? All right.

19 CLERK: Number 57, Peter Brevik.

20 What say the State?

21 MS. LIVESAY: Please present this juror.

22 CLERK: Please be seated. I'm sorry.

23 MR. BOUCHETTE: Your Honor, please swear this juror.

24 THE COURT: All right.

25 CLERK: Please be seated in our jury box.

State v. Weatherall - 2014-GS-26-01415
JURY SELECTION

27

1 THE COURT: I'm sorry, it's up at that end.

2 CLERK: 34, Matthew Benson.

3 What say the State?

4 MS. LIVESAY: Would you please present this juror.

5 CLERK: Defense?

6 MR. BOUCHETTE: Please swear this juror.

7 CLERK: Please be seated in our jury box.

8 Number 318, Joel Schmaltz.

9 What say the State?

10 MS. LIVESAY: Would you please present this juror?

11 CLERK: Defense?

12 MR. BOUCHETTE: Your Honor, please thank and excuse Juror

13 318.

14 CLERK: You're excused from this particular case.

15 Number 167, Jacob Harrell.

16 What say the State?

17 MS. LIVESAY: Would you please present this juror.

18 CLERK: Defense?

19 MR. BOUCHETTE: Please present this juror.

20 CLERK: Please be seated in our jury box.

21 Number 191, Shirley Wright.

22 What say the State?

23 MS. LIVESAY: Would you please excuse this particular
24 juror?

25 CLERK: You're excused from this particular case.

State v. Weatherall - 2014-GS-26-01415
JURY SELECTION

28

1 THE COURT: You may be seated. Thank you, ma'am.
2 CLERK: Number 14, Emerson Ard.
3 MR. BOUCHETTE: Madam Clerk, which number was it?
4 CLERK: This one?
5 MR. BOUCHETTE: Yes.
6 CLERK: Number 14.
7 What say the State?
8 MS. LIVESAY: Would you please present this juror.
9 CLERK: Defense?
10 MR. BOUCHETTE: Your Honor, please thank and excuse Juror
11 Number 14.
12 THE COURT: You may be seated. Thank you.
13 CLERK: Number 281, Robert Porter.
14 What say the State?
15 MS. LIVESAY: Would you please present this juror.
16 CLERK: Defense?
17 MR. BOUCHETTE: Your Honor, please thank and excuse this
18 juror.
19 THE COURT: All right. You may resume to your seat, take
20 your seat. Thank you.
21 CLERK: Number 347, Nathan Straight.
22 What say the State?
23 MS. LIVESAY: Would you please present this juror.
24 CLERK: Defense?
25 MR. BOUCHETTE: Your Honor, please swear this juror.

State v. Weatherall - 2014-GS-26-01415
JURY SELECTION

29

1 THE COURT: All right.

2 CLERK: Please be seated in our jury box.

3 Number 244, Alexander McKoy.

4 What say the State?

5 MS. LIVESAY: Would you please present this juror.

6 CLERK: Defense?

7 MR. BOUCHETTE: Please present this juror.

8 CLERK: Please be seated in our jury box.

9 Number 64, Aaron Burgess.

10 What say the State?

11 MS. LIVESAY: Would you please present this juror.

12 CLERK: Defense?

13 MR. BOUCHETTE: Your Honor, please thank and excuse Juror

14 Number 64.

15 CLERK: You're excused from this particular case.

16 Number 181, Diane Infantino.

17 What say the State?

18 MS. LIVESAY: Would you please present this juror.

19 CLERK: Defense?

20 MR. BOUCHETTE: Please swear this juror.

21 CLERK: Please be seated in our jury box.

22 Number 153, Patricia Grann.

23 What say the State?

24 MS. LIVESAY: Can you please present this juror.

25 CLERK: Defense?

State v. Weatherall - 2014-GS-26-01415
JURY SELECTION

30

1 MR. BOUCHETTE: Please present this juror.
2 CLERK: Please be seated in our jury box.
3 Number 115, Steven Dye.
4 What say the State?
5 MS. LIVESAY: Would you please present this juror.
6 CLERK: Defense?
7 MR. BOUCHETTE: Please swear this juror.
8 CLERK: Please be seated in our jury box.
9 Number 62, Jessica Burd.
10 What say the State?
11 MS. LIVESAY: Would you please present this juror.
12 CLERK: Defense?
13 MR. BOUCHETTE: Please thank and excuse Juror Number 62.
14 CLERK: You're excused from this particular case.
15 Number 286, James Quesinberry.
16 MR. BOUCHETTE: I'm sorry, Madam Clerk, what was that
17 number again?
18 CLERK: 286.
19 MR. BOUCHETTE: 286, thank you.
20 CLERK: What say the State?
21 MS. LIVESAY: Would you please present this juror.
22 CLERK: Defense?
23 MR. BOUCHETTE: Please swear this juror.
24 CLERK: Please be seated in our jury box.
25 Number 121, Nancy Esposito.

State v. Weatherall - 2014-GS-26-01415
JURY SELECTION

31

1 What say the State?

2 MS. LIVESAY: Could you please present this juror.

3 CLERK: Defense?

4 MR. BOUCHETTE: Please thank and excuse this juror.

5 CLERK: You're excused from this particular case.

6 Number 307, Kathleen Russell.

7 What say the State?

8 MS. LIVESAY: Would you please excuse this particular

9 juror.

10 CLERK: You're excused from this particular case.

11 Number 404, Margaret Yorrie.

12 What say the State?

13 MS. LIVESAY: Could you please present this juror.

14 CLERK: Defense?

15 MR. BOUCHETTE: Your Honor, please thank and excuse Juror

16 Number 404.

17 CLERK: You're excused from this particular case.

18 Number 397, David Winecoff.

19 What say the State?

20 MS. LIVESAY: Would you please excuse this particular

21 juror.

22 CLERK: You're excused from this particular case.

23 Number 20, Cindy Baldree.

24 What say the State?

25 MS. LIVESAY: Would you please present this juror.

State v. Weatherall - 2014-GS-26-01415
JURY SELECTION

32

1 CLERK: Defense?
2 MR. BOUCHETTE: Please swear this juror.
3 CLERK: Please be seated in our jury box.
4 Number 226, James Madl.
5 What say the State?
6 MS. LIVESAY: Would you please present this juror.
7 CLERK: Defense?
8 MR. BOUCHETTE: Please swear this juror.
9 CLERK: Please be seated in our jury box.
10 Number 69, Leisa Cannon.
11 MR. BOUCHETTE: Madam Clerk, that number one more time,
12 please?
13 CLERK: 69.
14 MR. BOUCHETTE: 69, thank you.
15 CLERK: What say the State?
16 MS. LIVESAY: Would you please present this juror.
17 CLERK: Defense?
18 MR. BOUCHETTE: Please swear this juror.
19 CLERK: Please be seated in our jury box.
20 THE COURT: All right. We'll pick the first of two
21 alternates; the State gets one strike and the Defense gets
22 two.
23 CLERK: Number 391, Cody Williams.
24 What say the State?
25 MS. LIVESAY: Would you please present this juror.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

33

1 CLERK: Defense?

2 MR. BOUCHETTE: Please swear this juror.

3 CLERK: Please be seated in our jury box.

4 THE COURT: All right. We'll select the second
5 alternate; the State will get one strike, the Defense will get
6 two.

7 CLERK: Number 297, Stacy Ritch.

8 What say the State?

9 MS. LIVESAY: Would you please present this juror.

10 CLERK: Defense?

11 MR. BOUCHETTE: Please swear this juror.

12 CLERK: Please be seated in our jury box.

13 BY THE COURT:

14 THE COURT: All right, ladies and gentlemen, you'll be
15 the jury that presides over this first case. I'm gonna excuse
16 you back to the jury room for just a few minutes while I
17 release the rest of the jury panel. Do not discuss the case
18 or reference this case at all. It's still too early for
19 deliberations or anything of that nature, but this will give
20 you an opportunity to stretch your legs, use the restroom,
21 whatever the case may be. I'm gonna excuse you back to the
22 jury room for just a few minutes. Thank you very much.

23 (REPORTER'S NOTE: Jury exits courtroom.)

24 THE COURT: All right. Any challenges to the selection
25 or composition of the jury by the State?

State v. Weatherall - 2014-GS-26-01415
MOTIONS

34

1 MS. LIVESAY: No, sir, Your Honor.

2 THE COURT: Any by the Defense?

3 MR. GARDNER: Yes, Your Honor.

4 (REPORTER'S NOTE: A bench conference was held off the record
5 in the presence of but out of hearing of the Jury Venire.)

6 THE COURT: All right. All right, ladies and gentlemen,
7 we have a matter I'm gonna need to address with the attorneys.
8 It's gonna require me to excuse the jury panel back down to
9 the jury room for just a few minutes. I don't know that we'll
10 need to bring you back, but if we do, we'll bring you back.

11 But I'm gonna excuse you back downstairs to the panel room for
12 just a few minutes and we'll give you some further
13 instructions at that time. Thank you very much.

14 (REPORTER'S NOTE: Remaining Jury Venire exits courtroom. The
15 following takes place outside the presence of the Jury.)

16 THE COURT: All right, Mr. Gardner, you said you had an
17 objection to the selection and composition of the jury?

18 MOTIONS:

19 MR. GARDNER: I did, Your Honor. According to my notes,
20 Juror 191 was a black female and I think she was the only
21 black female called out of all the potential jurors and the
22 Solicitor struck her. My client is a black male, same race,
23 and I would suggest to this Court that -- that we object to
24 the Solicitor striking that person.

25 THE COURT: All right. You know, there's a whole lot of

State v. Weatherall - 2014-GS-26-01415
MOTIONS

35

1 leeway. I know that it -- if there had been more black
2 females called and struck, you could address it, but since
3 there was only one called -- Ms. Livesay, what is the basis
4 for striking Juror 191?

5 MS. LIVESAY: Your Honor, I struck her because our
6 records indicated that she had a prior conviction. When she
7 showed up, she argued that that was not her, but as an
8 abundance of caution, because under our records, it showed
9 that she would have been disqualified as a juror. That's why
10 I struck her as an abundance of caution.

11 THE COURT: All right.

12 MS. LIVESAY: We looked through the NCIC; that's what we
13 saw, but she came up and showed her license. I noticed she
14 did not have a license; all she has was a personal ID, which
15 is also indicative of a drug charge or some other kind of
16 charge that takes your license away. So, as an abundance of
17 caution, I struck her.

18 THE COURT: All right. Anything in reply to that?

19 MR. GARDNER: No, Your Honor. I do want to put one thing
20 on the record. The -- the striking of 397, and I don't -- and
21 I believe -- I don't think -- I might be wrong, but I don't
22 think the Supreme Court has recognized sexual orientation as a
23 protected class, but one of the things that's involved in this
24 case, and I believe we've made it obvious to this Court and to
25 the potential jury panel by our questions, is that one of the

State v. Weatherall - 2014-GS-26-01415
MOTIONS

36

1 witnesses for the State and one of our witnesses, our client,
2 is a homosexual, and we believe that the only reason the
3 Solicitor struck Juror Number 397 was because of that juror's
4 sexual orientation.

5 THE COURT: All right. I'm gonna go ahead and deny your
6 motion because I agree, there's no protected class based upon
7 sexual orientation. But at least so we'll have a record, do
8 you want to put anything on the record as to why you struck
9 Juror Number 397?

10 MS. LIVESAY: Your Honor, I just want to put on the
11 record that I didn't know he was gay; was that in the
12 qualification and I missed it, because it wasn't in any of our
13 notes. I had no idea he was gay and I don't know what
14 evidence we have that he was a homosexual. So, I didn't know.

15 THE COURT: All right. And I understand that.

16 MS. LIVESAY: I mean, that wasn't a part of why I struck
17 him.

18 THE COURT: And I'm not gonna require you to give the
19 reason that you struck him unless you just want to put that on
20 the record. You want to put that on the record?

21 MS. LIVESAY: Your Honor, the only reason I struck him
22 because watching him throughout the juror process, he appeared
23 completely disinterested, and when he stood up there, he
24 looked completely disinterested.

25 THE COURT: Okay. All right. Well, I'm gonna deny your

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

37

1 motion because I don't think that sexual orientation is a
2 protected class. Likewise, I find that there is a justifiable
3 reason for striking Juror Number 191.

4 All right. Anything further from the Defense?

5 MR. GARDNER: That's it, Your Honor; thank you.

6 THE COURT: All right. So, I'm gonna let this jury stay
7 empaneled subject to the Defendant's objection.

8 BY THE COURT:

9 THE COURT: I don't think we need to bring the jury panel
10 back. Can you just send word down to the remaining panel that
11 they can call back after 6:00 P.M. tomorrow or -- no, call
12 back after 6:00 P.M. today. Yeah.

13 All right. Anything from the State before we bring the
14 jury in?

15 MS. LIVESAY: No, sir, Your Honor.

16 THE COURT: Anything from the Defense?

17 MR. GARDNER: No, Your Honor.

18 THE COURT: All right. What I'm gonna do is I'm gonna
19 bring the jury in and I'm gonna go ahead and excuse them until
20 tomorrow morning. Then I'm gone take up this other hearing
21 that I've got scheduled and then if y'all want to just wait
22 around and we'll address the pretrial motions in this case.
23 Okay?

24 MR. GARDNER: Thank you, Your Honor.

25 MS. LIVESAY: Thank you, sir.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

38

1 THE COURT: All right. Let's go ahead and bring the jury
2 in.

3 THE COURT: I'm not gonna swear the jury until tomorrow.

4 MS. LIVESAY: No, sir... No, sir.

5 (REPORTER'S NOTE: Jury enters courtroom.)

6 THE COURT: Ladies and gentlemen, welcome back. You will
7 be the jury that will preside over this first case, but I have
8 some matters in another hearing on another case that I'm gonna
9 need to address this afternoon, which is probably gonna take
10 the remainder of the day. So, I'm gonna excuse you to go home
11 for the remainder of the day, and I'm gonna ask that you
12 please be back in the jury room tomorrow morning at 9:15 and
13 we'll try to get started on this case as soon as after 9:15 as
14 we can. Plus, it will give you an opportunity to get some
15 coffee or whatever the case may be.

16 Also, when you get back tomorrow morning at 9:15, if you
17 can do me a favor and that would be to select a foreperson for
18 this jury. Okay? Now, you may not be able to select a
19 foreperson; if you cannot select a foreperson, don't worry
20 about it, I can appoint someone to serve as foreperson. Many
21 judges appoint their own foreperson. I just like to give the
22 jury the opportunity to select one on their own accord if
23 they're able to do so. So when you get back, if you can
24 select a foreperson, just write his or her name on a sheet of
25 paper with the juror number, give it to the Bailiff and we'll

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

39

1 bring you back in the courtroom at that time.

2 Now, the only restriction would be Mr. Williams and Ms.
3 Ritch. Right now, you are alternates, so you would not be
4 eligible to serve as foreperson because you are alternates and
5 you will only serve in the event you become a part of the 12-
6 panel jury, but any of the rest of you can serve as the
7 foreperson.

8 Now, the foreperson has absolutely no more authority, no
9 more influence, no more importance than any other juror. The
10 function of the foreperson is to act as the liaison between
11 the Court and the jury. If the jury has a need, the
12 foreperson lets the Court know. If the jury has a question,
13 the foreperson lets the Court know. When it's time to
14 deliberate, the foreperson will preside over the deliberations
15 and sign the verdict. But other than that, the foreperson has
16 no more authority, no more influence, no more importance than
17 any other juror.

18 Now, when you come back in the courtroom, the foreperson
19 will always occupy the first seat on the front row that is
20 closest to the witness stand. The alternates will always
21 occupy the alternate seats where you now sit. The rest of you
22 are at liberty to sit in whatever seat you like. If you want
23 to sit in the same seat throughout the trial of the case, you
24 can do that. If you want to alternate seats, you can do that
25 as well. The only requirement is that the foreperson occupies

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

40

1 the first seat on the front row and the alternates occupy the
2 alternate seats unless and until they become a part of the 12-
3 panel jury.

4 Now, I'm gonna excuse you to go for the remainder of the
5 evening. Please do not discuss the case with anyone. Don't
6 discuss it among yourselves, don't discuss it with any family
7 members or any friends. Don't try to conduct any independent
8 investigation. Don't go looking through the internet or
9 through the newspapers or try to listen to any news reports or
10 news accounts about the case. Everything you need to make a
11 decision in this case will be presented during the trial of
12 this case and you're not to be influenced by anything you
13 might see or hear outside of the courtroom. So, please do not
14 discuss the case or conduct any independent investigations.
15 I'm gonna excuse you for the remainder of the day. Please be
16 back at 9:15 tomorrow morning. Thank you very much.

17 JUROR: How long does it usually run?

18 THE COURT: Okay. Let me tell you this, that's a good
19 idea. I try to start -- I'll put it this -- I try to stop as
20 close to 5 o'clock as I can. Now, if we're in the middle of a
21 witness' testimony, we may go over a little bit later. If we
22 start to run a little short this week, we might need to stay
23 late an evening or two, but I will give you a notice before we
24 do that. In other words, tomorrow, we will not be staying
25 late. If it turns out that the trial is taking longer than we

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

41

1 need to take and I think we'll need to stay late -- say for
2 instance, tomorrow I might tell you to make arrangements for
3 Wednesday, we'll stay a little bit later, or Wednesday I might
4 tell you to make arrangements for Thursday. But as far as
5 right now, I'll try to stop as close to 5:00 as I can, but we
6 don't always know how long it will take a witness to testify.
7 So, it might be between 5:30 and 6:00 or it might be 4:30 if the
8 next witness is gonna be unduly long. So, but 5 o'clock is
9 kind of our checkpoint. Okay?

10 JUROR: Okay. Thank you.

11 THE COURT: Thank you very much. We'll see you tomorrow
12 morning.

13 (REPORTER'S NOTE: Jury exits courtroom.)

14 THE COURT: All right. Let's go ahead and stand this one
15 down. Let me conduct the hearing in this other case and then
16 we'll come back and take the pretrial matters to this.

17 (RECESS.)

18 *****OFF THE RECORD*****

19 (On the Record.)

20 THE COURT: All right. This is 2014-GS-26-1415, State
21 versus Mitchell Monroe Weatherall. Am I pronouncing that
22 correct, Weatherall?

23 MR. BOUCHETTE: Yes, you are, Your Honor.

24 THE COURT: All right. I understand we've got some
25 pretrial motions; is that correct?

State v. Weatherall - 2014-GS-26-01415
MOTIONS

42

1 MR. GARDNER: Yes, Your Honor.

2 THE COURT: All right. Let me hear from you, Mr.

3 Gardner?

4 MOTIONS:

5 MR. GARDNER: I've got one that should be brief and this
6 is normally the type of motion I make during the trial, but
7 since we have this time, I wanted to add it in there. We
8 anticipate that the State is going to provide and play a
9 videotape of what is purported to be the moving of the body
10 from the hotel room to a car, and it's at a great distance and
11 you can't identify who's in the picture or what for sure is in
12 the picture and we think that because of the way it is, the
13 distance and it's just -- it's -- it's just not a high enough
14 quality, we think, to have it played in front of the jury.
15 But more importantly, we'd object to it on the grounds of
16 relevance because moving the body in connection with the case
17 doesn't have anything to do with the murder itself. It's not
18 -- the allegations in this case are that there was a murder
19 and then a number of days later, the body was found hidden in
20 the woods somewhere. So, this moving of it wouldn't have
21 anything to do with whether or not there was a murder.

22 THE COURT: I mean what does the video show; it's a video
23 of?

24 MR. GARDNER: It shows, to the best of my ability --
25 knowledge, it looks like it's -- I don't know the -- how the

State v. Weatherall - 2014-GS-26-01415
MOTIONS

43

1 distance is, but it's a great distance down a hotel corridor
2 outdoors, what it looks like two guys moving a gurney with a
3 -- with a person on it.

4 THE COURT: Oh, this is when law enforcement or ---

5 MR. GARDNER: No, these are two, alleged to be, two co-
6 defendants moving the body.

7 THE COURT: Oh, a video of two co-defendants?

8 MR. GARDNER: Two co-defendants, I'm sorry, a video of
9 two co-defendants moving the body at some point in time after
10 the death, days or day or we don't know, but there's no
11 relevance to that as to the murder. It doesn't have anything
12 to lead about the cause of the murder, the cause of death, who
13 was involved in the murder; it just shows who moved the body.
14 One of these co-defendants is charged with accessory after the
15 fact for that act. This co -- this Defendant, co-defendant,
16 is only charged with murder. So, therefore it would be -- we
17 don't think it would be relevant.

18 THE COURT: But I mean, does the video purport that the
19 people moving the body is your client and another co-
20 defendant?

21 MR. GARDNER: Yes, I believe -- but you can't tell that
22 from the video. We anticipate that they'll have somebody
23 testify that that's what it is, but there's nobody that can
24 identify them from the video. We believe that the co-
25 defendant has been given a deal to testify in exchange for

State v. Weatherall - 2014-GS-26-01415
MOTIONS

44

1 that deal and he may testify that me and co-defendant moved
2 the body; that's us in that picture; you can trust me on it.
3 You can't tell it's me, but trust me, that's me. That would
4 be enough reason not to do it. But number two, the relevancy,
5 assuming that all of that's true, that's not relevant to the
6 murder.

7 THE COURT: All right. Ms. Livesay, let me hear from
8 you.

9 MS. LIVESAY: Thank you, Judge. First of all, two things
10 on this, Judge. It is relevant and there are several cases on
11 point. *State v. Rosemond*, that's 335 S.C. 593, what that says
12 is if a photograph serves to corroborate testimony, it is not
13 an abuse of discretion to admit it. *State v. Johnson* also
14 says the same thing. I've got another case, *State v. Evans*.
15 These cases -- and I'll write down the cites for you, if you'd
16 like me to write them down. What these cases say is the State
17 can use photographs and any kind of video if it's used to
18 corroborate a witness' testimony and that's to say, look, you
19 don't have to just believe Mary Sue, I've got a photograph or
20 a video that actually corroborates what she's saying.

21 THE COURT: All right. Well, what is your witness is
22 gonna say and what does the video show?

23 MS. LIVESAY: Just what Mr. Gardner told you it shows.
24 The video is clear and I think, first of all, Joey Garsow, who
25 is also charged in this case ---

State v. Weatherall - 2014-GS-26-01415
MOTIONS

45

1 THE COURT: That's the co-defendant?

2 MS. LIVESAY: He is accessory after the fact.

3 THE COURT: Okay. All right. Is he one on -- is he on
4 the video?

5 MS. LIVESAY: He is on the video.

6 THE COURT: Okay.

7 MS. LIVESAY: And he can not only corroborate that's him;
8 he can say that's Tonia Wedlock, that's Mitchell Weatherall,
9 that's the car that we took up there, that's me and Mitch
10 taking the body out, that's us putting the body in. And in
11 fact, he can say, see, we're leaning on the door because at
12 that point, the body was stiff and we were having trouble
13 closing the door.

14 THE COURT: All right.

15 MS. LIVESAY: Okay. And it is relevant ---

16 THE COURT: Go ahead.

17 MS. LIVESAY: Oh, thank you, Judge. There's a case on
18 point, *State v. Epps*. What that case says is concealment or
19 destruction of evidence, especially of a body of a person
20 murdered, is regarded as an incriminating circumstance and
21 will be given probative force in the connection with other
22 factors, so it is relevant. This case in fact says, look,
23 when you're trying to conceal the body or you're hiding the
24 body or you're taking the body away, that actually is kinda
25 looked at like flight. This is a circumstance that goes

State v. Weatherall - 2014-GS-26-01415
MOTIONS

46

1 towards the evidence as to whether or not you're guilty of
2 this crime.

3 THE COURT: All right. Thank you.

4 Anything in reply?

5 MR. GARDNER: No, Your Honor.

6 THE COURT: All right. I'm gonna deny your motion in
7 limine. I can't rule as a matter of law that it's
8 inadmissible. They still have to lay the groundwork and
9 everything. But, as a motion in limine, I'm not ruling that
10 it's inadmissible as a matter of law. So, I'll deny your
11 motion.

12 MR. GARDNER: Thank you, Your Honor.

13 THE COURT: All right. What's next?

14 MR. BOUCHETTE: Your Honor, our second motion is gonna
15 deal with -- we're gonna request the Court suppress any
16 evidence that's been supplied to the Defense after this
17 Defendant was arraigned. Your Honor, this case is over three
18 years old. There were two arraignments; one back in November
19 12th of 2013 and another arraignment in October of 2014. Your
20 Honor, as the Court's aware, the Solicitor's office has a
21 program where they will make a plea offer. The Defendant is
22 supposed to respond to that plea offer by the time of the
23 arraignment. If he shows up to the arraignment and formally
24 rejects that plea offer, the plea offer is off the table and
25 we make arrangements going forward to trial.

State v. Weatherall - 2014-GS-26-01415
MOTIONS

47

1 Now, Judge, the concern I have with that is, number one,
2 in terms of being able to advise my client, if we do not have
3 all the evidence at our disposal that the State has at the
4 time of that hearing, at the time of that arraignment, then we
5 can't properly advise him as to whether or not he should
6 reject that offer, whether or not he should go forward with
7 trial, whether or not that is something in his best interest
8 to do and he can't apply that -- that counsel to his decision.
9 And I've prepared a brief memo, Judge, I will bring up to the
10 Court.

11 THE COURT: Okay, but I mean, hasn't the Supreme Court
12 already addressed this issue?

13 MR. BOUCHETTE: Well, Your Honor, I've cited some case
14 law regarding two issues; one we've got under State law and I
15 want to make sure I'm preserving the federal issues as well.
16 Obviously, under Rule 5, anything is supposed to be turned
17 over in 30 days or it can be suppressed. I don't know exactly
18 when this came into the possession of the State. I've
19 included as exhibits, the supplemental sort of summary pages
20 of the discovery that was provided, but on the federal side,
21 Judge, we've got two issues. We've got any kind of delayed
22 production of discovery. I submit to you it affects two
23 rights. One, the Sixth Amendment right to effective
24 assistance of counsel and the Fourteenth Amendment right to
25 due process. And I cite, I believe it's the Tenth Circuit

State v. Weatherall - 2014-GS-26-01415
MOTIONS

48

1 that specifically lays out and has a pretty strong narrative
2 regarding when you have belated disclosure such as this that
3 it can in fact trigger the Fourteenth Amendment due process
4 issue. And I submit to you, in a case like this where we have
5 that's three years old and we're receiving discovery up until
6 the week before trial, I think there's no greater example that
7 could be given than, than that. So, if we acknowledge that at
8 some point, you can be violating due process, then if it -- if
9 it's a three-year-old case and you're getting it the week
10 before, what other case would there be. And like I said, I
11 cite it's *U.S. v. Bird* coming out of the Tenth Circuit and
12 like I say, I submit to you, in addition to the Fourteenth
13 Amendment, we've also got an issue with effective assistance
14 of counsel because I can't properly advise him of ---

15 THE COURT: Let me ask you this, Would your client accept
16 the plea offer at the arraignment if he had what he had now?

17 MR. BOUCHETTE: Well, Judge, we -- honestly, I don't
18 know. I mean, I can't -- I can't conclusively tell you for
19 certain that he would or that he wouldn't, but the point is we
20 don't know whether we would or we wouldn't if we are not
21 provided all the information. Like I say, the case law
22 indicates that that, that right, that Fourteenth and Sixth
23 Amendment applies not to just trial, not when we're just
24 sitting in here with the jury, but at any subsequent
25 arraignment, any court proceedings of that nature, he has that

State v. Weatherall - 2014-GS-26-01415
MOTIONS

49

1 right to be effectively advised as to what his best interest
2 is. And if we don't have all the information that the State's
3 got in their possession, I can't properly advise him as to
4 that.

5 THE COURT: All right. So tell me what is it you're
6 trying to exclude? What was -- when -- what was the date of
7 the arraignment?

8 MR. BOUCHETTE: I've got October 15th and, Your Honor, I
9 included ---

10 THE COURT: October 15th of 2016?

11 MR. BOUCHETTE: 2015.

12 THE COURT: Okay. All right. So, what is it you're
13 seeking to exclude that was produced after October 15th, 2015?

14 MR. BOUCHETTE: Your Honor, I've included as Exhibit B,
15 it's basically the supplemental discovery certificate of
16 service, for lack of a better term, and it outlines the items
17 that we're receiving and it's got received dates going all the
18 way back. So, we'd request that all of those items be
19 suppressed.

20 THE COURT: Okay. All right, Ms. Livesay, let me hear
21 from you.

22 MS. LIVESAY: Yes, Your Honor, my first argument is the
23 State does not have any duty to offer a plea offer at all. We
24 do that to move the cases along in a judicially efficient
25 manner. So that would be number one. This argument has come

State v. Weatherall - 2014-GS-26-01415
MOTIONS

50

1 up before. There is case law on it that the State does not
2 owe any sort of plea offer to the Defense. Now, what I am
3 severely disappointed about, but not shocked, is that we had
4 already given them the bulk of this discovery and in fact,
5 what's in a lot of this are things that we have resent in an
6 abundance of caution.

7 Now, I can tell you how it works and I think this crowd
8 knows how it works. We have sent the abundance, the bulk,
9 everything that the police department has given us, to the
10 Defense. We then say here is the discovery, look at it. Do
11 you want a trial or do you not want a trial? Here is a plea
12 offer to try to move this case along. They then, and this
13 crowd said no, we do not want -- we want a trial, we want a
14 trial. So, at that time, what we do is start preparing for
15 trial. So those items that are already in discovery, yes, Ms.
16 Pop is gonna do a search warrant so when we hand over a
17 statement saying Mitchell Weatherall, after he drug the body
18 out, he went out and used the victim's card all night to
19 party. Yes, we did a search warrant for those records to
20 corroborate that witness' testimony. But, did they already
21 have a statement saying the card was used, absolutely. All we
22 do is go back and corroborate the information we already have
23 in preparation for trial. When we get the information from
24 the police, they've gotten a warrant on probable cause. We
25 are then picking it up from them to corroborate each witness

State v. Weatherall - 2014-GS-26-01415
MOTIONS

51

1 to bring it to trial to beyond a reasonable doubt. So, they
2 had already received the bulk of this -- of the discovery
3 actually on March the 12th of 2014.

4 Now, Lacy Miller, my admin, has sat down with them at
5 least twice, not only with the red file, but with the trial
6 notebook that I use. Here, go through this, it's organized,
7 it's got tabs, tell me if you need anything. This crowd said,
8 no, I don't need anything. But we had given them the bulk of
9 it back in March, back in March. All we did is when they said
10 we want a trial, all we do then is go in and get them things
11 to corroborate whatever evidence they may have.
12 Now, the video, they've had. Now, we resent it to make sure
13 they had it. We resent letters, hey, I know I'm using this,
14 I want to make sure you have it. Come in to the office, look
15 at my trial notebook, make sure you have everything, and it
16 has always been yes, yes, yes.

17 THE COURT: All right. Anything in reply?

18 MR. BOUCHETTE: Your Honor, I certainly did not mean to
19 offend the -- offend the Solicitor in this case and, in fact,
20 she has allowed us to go and review her file, something we're
21 very appreciative of. The issue isn't that we've not been
22 able to review it; the issue is that this case is so old --
23 and by the way, a previous attorney was on this case prior to
24 our appointment. So, some of what she's referencing, I don't
25 know, maybe was turned over way back initially, but whenever

State v. Weatherall - 2014-GS-26-01415
MOTIONS

52

1 we got the file, whenever we started looking at it, I'm
2 looking at the dates they were submitted, and true there
3 probably is some duplication. There's probably some things
4 that were maybe resent that had been sent earlier or some
5 verification of something which is referenced ---

6 THE COURT: But you're asking me to rule categorically
7 that it wasn't provided and therefore should be suppressed.
8 How can I do that?

9 MR. BOUCHETTE: Well, what I'm asking is if it was -- if
10 it was -- unless the State can show that it had been
11 previously provided, all I'm looking at is on its face, the
12 certificate of service is saying, hey, we are mailing you, we
13 are providing you the following documents. For example, an
14 interview of Marcus Bell, who is presumably a jailhouse snitch
15 in this case, looks like we received March 6th of this year.

16 THE COURT: So, you're telling me you did not have it
17 prior to March 6th of 2017?

18 MR. BOUCHETTE: In that particular case, Your Honor, we
19 did not have it prior to March 6th of 2017.

20 THE COURT: And it was not produced to the prior attorney
21 prior to that time?

22 MR. BOUCHETTE: To the best of my knowledge, Your Honor,
23 it was not.

24 THE COURT: Well, not to the best of your knowledge; it
25 was or it wasn't?

State v. Weatherall - 2014-GS-26-01415
MOTIONS

53

1 MR. BOUCHETTE: It wasn't, Judge.

2 THE COURT: Okay.

3 MR. BOUCHETTE: And again, Your Honor, we can have a
4 hearing or a status conference or something if we want to, but
5 I'm just -- at least on its face, anything that's produced
6 after that arraignment I submit to you on both of those
7 grounds, on both the state and the federal grounds that we
8 also have those suppressed.

9 THE COURT: Now, what is this on your Exhibit A? It
10 looks like a letter from the Solicitor dated January 21st,
11 2016 with a plea offer.

12 MR. BOUCHETTE: I'm sorry. I don't understand the
13 question.

14 THE COURT: Your Exhibit A, which is attached to your
15 motion shows that a plea offer was made in writing from the
16 Solicitor's office on January 21st, 2016.

17 MR. BOUCHETTE: That's correct. So, the first offer was,
18 with the previous attorney, was made February 27th of 2015.

19 THE COURT: But you told me in your arguments that the
20 arraignment was October the 15th of 2015, which might be the
21 date of the arraignment but you still had these offers coming
22 in.

23 MR. BOUCHETTE: Your Honor, my notes do indicate that
24 arraignment date of October 15th was correct to the extent
25 that -- it looks like at least on this document, to the extent

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

54

1 it actually was held open past the arraignment, then we would
2 move that date back to it looks like it's supposed to be -- on
3 its face it's supposed to be held open until February 1st of,
4 I guess, 2016, even though I believe he was actually arraigned
5 that previous October but, to clarify, we'd move that back to
6 February 2016 ---

7 THE COURT: All right.

8 MR. BOUCHETTE: --- with the same argument.

9 THE COURT: I'm denying your motion.

10 MR. GARDNER: Thank you, Your Honor.

11 THE COURT: All right.

12 What's next?

13 MR. BOUCHETTE: Nothing further, Your Honor.

14 THE COURT: All right. Anything further from the State?

15 MS. LIVESAY: No, sir, Your Honor.

16 BY THE COURT:

17 THE COURT: All right. We'll come in tomorrow morning
18 then and get started. When the jury comes in, opening
19 charges, opening statements and get straight into the trial.
20 Okay?

21 MR. BOUCHETTE: Sounds good.

22 THE COURT: Let me see the attorneys for a second.

23 (REPORTER'S NOTE: A bench conference was held off the
24 record.)

25 THE COURT: All right. We'll be in recess until 9:30

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

55

1 tomorrow morning.

2 (RECESS.)

3 END OF DAY ONE.

4 *****OFF THE RECORD*****

5 (On the Record.)

6 MARCH 21, 2017 - DAY TWO

7 (REPORTER'S NOTE: The following takes place outside the
8 presence of the Jury.)

9 BY THE COURT:

10 THE COURT: All right. Before we get started, the
11 Bailiff has brought me a note from the jury where they have
12 selected Juror Number 57, Peter A. Brevik, B-R-E-V-I-K, as the
13 foreperson.

14 All right. I'm gonna mark this note as Court's Exhibit
15 1.

16 COURT'S EXHIBIT NUMBER 1

17 MARKED FOR IDENTIFICATION

18 THE COURT: Thank you, ma'am.

19 All right. Anything from the State before we bring the
20 jury in?

21 MS. LIVESAY: No, sir, Your Honor, I was just pre-marking
22 pictures and I know that Mr. Gardner has an objection on one
23 of them. We can handle that now or wait and handle it when
24 that witness is up.

25 THE COURT: We can do it however y'all want to do it.

State v. Weatherall - 2014-GS-26-01415
MOTIONS

56

1 MR. GARDNER: I'd rather do it now because there's a
2 number of them and we can roll right through it.

3 THE COURT: All right.

4 MOTIONS:

5 MR. GARDNER: It's just two pictures, Judge. I think I
6 know how you'll rule, but just to protect the record, I'd like
7 to make an objection.

8 THE COURT: Well, wait a minute. If you're gonna make an
9 objection, then we need to wait until you present so you can
10 lay the groundwork. We can't -- you can't object and have it
11 put into evidence.

12 MR. GARDNER: I understand, but if I prove it in Limine
13 and if you rule against me then I'll probably rethink my
14 strategy when they go to put it into evidence.

15 THE COURT: Wait a minute. Do you agree that these come
16 into evidence now?

17 MR. GARDNER: All of them with the exception of two
18 pictures.

19 THE COURT: Okay. Then let's wait until you call your
20 witness and we'll do it at that time.

21 MS. LIVESAY: Okay. Thank you, Judge.

22 MR. GARDNER: The other -- I'm sorry. The other thing I
23 would bring up is that I don't know how many witnesses there are.
24 The witness list is like three pages long. We'd ask that the
25 witnesses be sequestered.

State v. Weatherall - 2014-GS-26-01415
MOTIONS

57

1 MS. LIVESAY: Yes.

2 THE COURT: Any objection?

3 MS. LIVESAY: No, sir.

4 THE COURT: All right. So, so who gets to -- who's the
5 Chief Investigator and ---

6 MS. LIVESAY: And that's Brian Truex; he'll be right
7 here. He's the only one, and the victim, Avra Woodberry.

8 THE COURT: All right. Excuse me, I apologize.

9 All right. Who is the Chief Investigator?

10 MS. LIVESAY: Brian Truex, Your Honor.

11 THE COURT: Brian Truex?

12 MS. LIVESAY: Yes, sir.

13 THE COURT: And the victim's family?

14 MS. LIVESAY: Avra Woodberry, she's the daughter of the
15 deceased.

16 THE COURT: All right. So all witnesses will be
17 sequestered with the exception of Brian Truex as the Chief
18 Investigator, Avra Woodberry as the victim's daughter you
19 said?

20 MS. LIVESAY: Yes, sir.

21 THE COURT: And the Defendant. Everybody else, the
22 Plaintiff and Defense witnesses have to be sequestered; is
23 that correct?

24 MS. LIVESAY: Yes, sir, Your Honor.

25 THE COURT: Is that correct on the Defense?

State v. Weatherall - 2014-GS-26-01415.
MOTIONS

58

1 MR. GARDNER: Yes, Your Honor.

2 THE COURT: All right. Anything else before we get
3 started?

4 MR. BOUCHETTE: Briefly, Your Honor, again to preserve
5 the record regarding the motion we made yesterday regarding
6 the suppression of the discovery materials, I'd like to not
7 have to object each time each one of those pieces of evidence
8 come in. I don't know if the Court can take notice to a
9 continuing objection.

10 THE COURT: No, because the reason that you objected
11 yesterday was because they were produced after the arraignment
12 and that's the reason I denied it in limine. Now, when they
13 seek to introduce it, if it's hearsay or if they haven't laid
14 the proper groundwork or there is some other grounds for
15 objection, you're gonna need to put your objection on the
16 record.

17 MR. BOUCHETTE: Correct, if I have a different grounds
18 for objection on that evidence whether it be hearsay or not
19 proper foundation, but as in regards to the basis for the
20 motion yesterday, I don't know if I'll be required to still
21 renew my objection on that basis each time. If I am, I'd just
22 like to note the continuing objection.

23 THE COURT: In other words, you do not have to raise the
24 objection that it was produced after the arraignment. I've
25 already ruled on that and said as a matter -- that doesn't ---

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

59

1 MR. BOUCHETTE: Okay.

2 THE COURT: I don't sustain your objection on that
3 ground.

4 MR. BOUCHETTE: Okay.

5 THE COURT: Okay?

6 MR. BOUCHETTE: Okay. Very good. Thank you, Judge.

7 THE COURT: All right. Anything else from the Defense?

8 MR. BOUCHETTE: Nothing further, Judge.

9 THE COURT: Anything else from the State?

10 MS. LIVESAY: No, sir.

11 BY THE COURT:

12 THE COURT: All right. We'll bring the jury in, I'll do
13 the opening charges, opening statements, and we'll get
14 started. Okay?

15 All right. Let's go ahead and bring the jury in.

16 (REPORTER'S NOTE: Jury enters courtroom.)

17 THE COURT: Ladies and gentlemen, welcome back. We're
18 getting ready to start the trial of the case of the State of
19 South Carolina versus Mitchell M. Weatherall.

20 I understand -- is it Mr. Brevik?

21 JUROR 57: Yes, sir.

22 THE COURT: Okay. Mr. Brevik, I understand you've been
23 selected as foreperson; is that correct?

24 JUROR 57: Everybody took a step backwards.

25 THE COURT: Okay. And you stayed up front. All right.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

60

1 Well, thank you for serving in that capacity. If you'd always
2 occupy the seat where you now sit. And as I said, our
3 alternates, Mr. Williams and Ms. Ritch, if you'd always occupy
4 the seats where you now sit unless you become a member of the
5 12-panel jury. The rest of you are at liberty to sit in
6 whatever seat you like, whether it be the same seat, different
7 seats or whatever the case may be.

8 Now, as I told you during qualifications yesterday and
9 during voir dire, just like witnesses, jurors are constantly
10 taking oaths. So, I need all members of the jury to please
11 stand and raise your right hand while the Clerk of Court
12 administers the oath for you to serve as jurors on this
13 particular case.

14 (REPORTER'S NOTE: Jury is duly sworn.)

15 CLERK: If you would agree with this statement, please be
16 seated.

17 THE COURT: Thank you very much. Is there any member of
18 the jury who did not respond to the oath by saying I do? If
19 so, please stand.

20 All right. Thank you very much, ladies and gentlemen.

21 As I said, we're getting ready to start the trial of the
22 case of the State of South Carolina versus Mitchell Monroe
23 Weatherall. Now, I know from watching movies, reading books,
24 T.V. shows, things of that nature, trials are often full of a
25 lot of action, a lot of suspense and, while that might be the

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

61

1 case in this trial, it probably want be. The primary function
2 of this trial is the prosecution of the Defense by the State
3 and that is often a slow repetitive process, the exact
4 opposite of what you might be accustomed to when you watch
5 movies or read books and things of that nature. But, I hope
6 you do find the trial entertaining, I hope you find it
7 educational, and I want to thank you from the outset for
8 serving as jurors in this case.

9 Now, the attorneys appearing before you are advocates for
10 the parties they represent, but first and foremost, they are
11 officers of the Court. They're sworn to uphold the integrity
12 and the fairness of our judicial system. You can expect them
13 to professional, competent and ethical in the representation
14 of their client's interest.

15 And what I now to say to you is intended to serve as an
16 introduction to this trial. These remarks are not a charge on
17 the law in this case. I will instruct you on the law
18 applicable to this case at the end of the trial before you
19 retire to consider your verdict. This is merely an
20 explanation of the procedure that we will follow in the trial
21 of this case so that you can better understand what is
22 happening.

23 Now, the Defendant is charged by an indictment. This is
24 the indictment, and this indictment charges the Defendant with
25 murder. Now, the elements of that crime, I'll explain to you

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

62

1 at a later time. This indictment, however, is simply the
2 charge by which the case is brought into court and it is not
3 in any sense evidence of any of the allegations it contains.
4 The Defendant has pled not guilty to this indictment. The
5 State, therefore, has the burden of proving each of the
6 elements of the indictment beyond a reasonable doubt. It will
7 be your duty, ladies and gentlemen, to decide whether or not
8 the State has met that burden.

9 Your purpose as jurors is to find and determine the facts
10 of this case. You are the sole judge of the facts of this
11 case. If at any time, I make a comment regarding the facts of
12 the case, you must disregard my comments. You are to
13 determine the facts from the testimony you hear and the other
14 evidence introduced in court. It is up to you to determine
15 the emphasis which you feel may properly be drawn from that
16 evidence. It is especially important that you preform your
17 duty of determining of the facts diligently and
18 conscientiously because ordinarily, there is no way to correct
19 an erroneous determination of the facts by a jury.

20 On the other hand, and with equal emphasis, the same law
21 that makes you the judge of the facts in this case, makes me
22 the judge of the law. The law as given by the Court is the
23 only law that you can consider. You must accept and follow
24 the law as I give it to you even though you might disagree
25 with it. Just as I cannot tell you what the facts of this

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

63

1 case are, you cannot disagree with me about the law to be
2 applied in this case. Your job is to take the law as I give
3 it to you and apply it to the facts as you find those facts to
4 be from the testimony of the witnesses and any other evidence
5 that is introduced into evidence. After doing that, you will
6 then render your verdict, a true and just verdict under the
7 solemn oath that you just took as jurors.

8 Until I advise you to begin your deliberations, you must
9 not discuss this case with anyone, including your fellow
10 jurors. Do not discuss it with any friends, family members,
11 or anyone involved in the case. After the case is submitted
12 to you, you can then discuss the case, but only in the jury
13 room with your fellow jurors. The attorneys and parties in
14 this case have been advised that they're not to talk to you at
15 all. So, if they don't speak to you, they're not being rude,
16 they're following the instructions of the Court.

17 Now, during the trial, you are not to read or listen to
18 or watch any news reports about this case, if there is any.
19 This includes anything that may be in the newspapers or on the
20 internet, the radio or television. You cannot consider
21 anything you may have read or heard about the case outside of
22 the courtroom, whether that be before or during the trial of
23 this case. It is important that you keep an open mind and not
24 decide any issue in this case until all of the evidence has
25 been presented to you, the parties have made their closing

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

64

1 arguments and I've instructed you on the law to be applied in
2 the case.

3 It is your solemn responsibility to determine the guilt
4 or innocence of the Defendant and your verdict must be based
5 solely on the evidence as it is presented to you in this trial
6 and on the law as I instruct you during and at the close of
7 the trial.

8 In just a moment, the Solicitor will make what is called
9 an opening statement in which the Solicitor will explain to
10 you the issues in this case or at least what the Solicitor
11 thinks the issues in this case are. The attorney for the
12 Defendant may also make an opening statement although he is
13 not required to do so. What the attorneys tell you during
14 their opening statements is not evidence in this case. It is
15 only their contention as to what the issues in this case are.

16 The evidence in this case will be presented to you by
17 testimony of sworn witnesses from the witness stand and any
18 other exhibits that may be introduced into evidence. In
19 determining what the true facts are in this case, you must
20 decide whether or not the testimony of a witness is
21 believable. It will be my responsibility to rule as a matter
22 of law as to whether certain testimony is admissible at all or
23 not. However, once testimony is admitted into evidence,
24 whether or not you believe it, is solely for you to determine.

25 In deciding whether to believe a witness, you have the

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

65

1 right to consider the interest of any witness, the bias of any
2 witness, the prejudice of any witness, the opportunity for the
3 witness to have seen the matters and things about which the
4 witness may testify and the way the witness acts on the
5 witness stand. You have the right to consider anything that
6 is in the record that will help you evaluate the testimony of
7 the witnesses. That means that it is your duty to pay close
8 attention to the witnesses, to observe them, to listen to them
9 and pay close attention to the attorneys and to the Court.
10 Don't let your thoughts wander, but give strict attention to
11 the testimony in this case. So that at the end of all of the
12 testimony, after the arguments of counsel and a charge on the
13 law by the Court, you will then be in a position to determine
14 what the true facts are and to apply the law to those facts
15 and thus render a true and just verdict.

16 All right. Are there any additional charges or
17 challenges by the State on the opening charges?

18 MS. LIVESAY: I'm ready for opening, Your Honor.

19 THE COURT: All right. Is there any challenges for the
20 opening charges from the Defense?

21 MR. BOUCHETTE: Nothing from the Defense, Your Honor.

22 THE COURT: All right. We'll begin the trial of the case
23 with the opening statements. As I told you, these opening
24 statements are not evidence; it is simply the attorneys'
25 contention as to what they feel the issues in this case are.

State v. Weatherall - 2014-GS-26-01415
OPENING BY LIVESAY

66

1 All right. Ms. Livesay?

2 MS. LIVESAY: Thank you, Judge.

3 OPENING BY LIVESAY:

4 MS. LIVESAY: Ladies and gentlemen of the jury, I am A
5 prosecutor here in Horry and Georgetown County and, as you
6 know, you are here for a murder trial.

7 Now, rest your mind at ease. There is no doubt that this
8 is a murder case. A man was killed at the Atlantic View Motel
9 and his body was dumped in the woods of Carolina Forest. So,
10 we know this because in Room 125 where he was killed, there is
11 blood all over the room and his dead body is found naked in
12 Carolina Forest. So, we already know somebody has killed him;
13 he did not die of natural causes. He died of blunt force
14 trauma. That means he was beat to death; that's how he died.
15 And somebody drove his body from Atlantic View Motel and then
16 put it in Carolina Forest naked, ironically, no wallet, no
17 watch, nothing, but I'll get back to that. So, rest your mind
18 at ease. We are here for a murder. That is as clear cut as
19 it gets.

20 Now, I'm gonna first tell you the bare bone facts and,
21 when I mean bare bone facts, I mean you're gonna see it on
22 tape or you're gonna see a picture or you're gonna see a
23 receipt showing this. In Room 125, Helbert Woodberry checked
24 in, the victim. He's the man that was found in Carolina
25 Forest in the woods. His blood is the one sprayed up all on

State v. Weatherall - 2014-GS-26-01415
OPENING BY LIVESAY

67

1 the room. Well, who did he check in with? This is the easy
2 one, Mitchell Weatherall, that's who he checked in with. And
3 you don't have to believe me. The lady that owns Atlantic
4 View Motel is gonna come in, she's gonna show you a
5 registration, that way you don't have to wonder about it,
6 Helbert Woodberry, Mitchell Weatherall, and you're gonna know
7 Mitchell paid for the room. So, rest your mind at ease; we're
8 gonna have a receipt. Nobody has to wonder about who was in
9 that room. Okay?

10 Now, Mitchell was an older man who got his Social
11 Security check, that was his income, and it went on a card so
12 he could use it for credit and debit. What you will find,
13 because we're gonna show you the man's records so you know
14 when the card is being used. He uses it to check in for about
15 five days at Atlantic View Motel on a Friday. On a Saturday,
16 it hits out on insufficient funds, so you'll see the record on
17 that. And he has to wait until that check loads back up again
18 on the card. The lady is gonna come and say when the money
19 loads back up on the 5th, on that Tuesday. So, something else
20 happens on that Tuesday after the money lays -- rolls up on
21 the check again. Tuesday you're gonna see, on a surveillance
22 footage, so you don't have to wonder, you're gonna see
23 Mitchell Weatherall and another man toting the victim out of
24 the room in a sheet; he's deceased. So, you're gonna see them
25 take him out of the room, put him in a car, you're gonna see

State v. Weatherall - 2014-GS-26-01415
OPENING BY LIVESAY

68

1 Mitchell closing the door trying to get his feet in there
2 because the body is stiff, and then you're gonna see him drive
3 off with the body. You're gonna see that on camera.

4 Then we find his body later at Postal Way. Then you're
5 gonna see on the victim's card, here we go, they're out all
6 night with the victim's card, buying alcohol, buying
7 cigarettes and partying in the room with the blood all over
8 the room where the victim was killed. That's what you're
9 gonna see next. Those are the things that you're gonna see
10 either on paper or video.

11 Now, you're also gonna hear that there was another man in
12 the room, a man named Marvin McElveen. We are not here to try
13 Marvin McElveen today. He is also a Defendant charged with
14 murder for this case. We are here today for Mitchell
15 Weatherall. Today is Mitchell's day because he was the big
16 player in this murder case. He's the one that lured this man
17 from Hemingway. He is the man that ultimately killed the
18 victim. He is the man you're gonna see dragging the victim's
19 body out of the room to dispose of it. He is the man, while
20 the man is laying out in Carolina Forest, he is the one going
21 around all over Myrtle Beach buying alcohol and cigarettes
22 with the victim's card. He's the one that comes back to the
23 room after he's spent all the money and parties in the room.
24 So, this is the man's day; today is Mitchell Weatherall's day.
25 So, don't be concerned about anybody else and it's his day

State v. Weatherall - 2014-GS-26-01415
OPENING BY LIVESAY

69

1 because he's the main player in this murder story.

2 Now, we're gonna show you all those things and what
3 you're gonna find out, because you're gonna meet the man that
4 helped him drag that body out and that's Mitchell Weatherall's
5 boyfriend. And you're gonna find out that he lured that man
6 from Hemingway here to rob him. He wanted to take his money
7 and, in the course of taking his money, the guy fought back
8 and you're gonna know he fought back because the pathologist
9 is gonna come in here and tell you that he had defense wounds
10 from trying to defend himself. Trying to defend himself, try
11 to keep what was his, but he was killed over that money. Even
12 though he fought back, ultimately, he was killed. That card
13 was taken from him and it was used. In the State of South
14 Carolina, that is murder. When you go in somewhere and you
15 try to take something from somebody and rob them and in the
16 course of that robbery, you kill them, then that is murder in
17 the State of South Carolina because you already have malice,
18 you already have an intent.

19 When somebody goes into a bank, they're ultimately trying
20 to rob it and they kill that teller, that is murder. They
21 went in there with an ill intent. They know that more than
22 likely, if this person fights back, I'm going to do what it
23 takes even if it means taking their life and that's what
24 Mitchell Weatherall did in this case.

25 This is an important day for Mitchell, a very important

State v. Weatherall - 2014-GS-26-01415
OPENING BY BOUCHETTE

70

1 day. So, please, I ask you to listen and watch every piece of
2 evidence because I want you to see what went on that night.

3 Now, Avra Woodberry is sitting over there. Could you
4 stand up, Ms. Woodberry? Today is also her day. That is
5 Helbert Woodberry's daughter. It is also important to her
6 because he's not coming back, ever, to see this young woman
7 again.. So, I ask you, please give this all your attention.
8 It is very important. What happened to that man is nothing
9 less than wrong and egregious. He was killed and then, to add
10 insult to injury, his card was being used to party and stay in
11 the room he was killed in.

12 I ask you to listen to the evidence. I will come back in
13 closing and talk with you again. This is a murder case. It's
14 very important to everybody in here. I have no doubt, when
15 you see the evidence in this case, you will find this man
16 guilty of nothing short but taking another man's life.

17 Thank you for your time.

18 THE COURT: Mr. Gardner or Mr. Bouchette?

19 MR. GARDNER: Mr. Bouchette, Your Honor.

20 OPENING BY BOUCHETTE:

21 MR. BOUCHETTE: Addiction, fear, and bad decisions,
22 that's what this case is about, not murder. Now, Judge
23 Culbertson just told you a moment ago that what Ms. Livesay
24 has said is not evidence in this case. So, what I want to do
25 is give you a few tools, give you a way of thinking about this

State v. Weatherall - 2014-GS-26-01415
OPENING BY BOUCHETTE

71

1 case so that you can evaluate the evidence that you are gonna
2 hear this week. To do that, we're gonna have a little
3 election; all right. Now, we just had an election in this
4 country a few months ago; some of you are pretty excited about
5 that, some of you are pretty upset about that, but it won't
6 matter because we're gonna pick a candidate right now, but
7 we're gonna do it with the information I decide to give you,
8 the information that I decide is important. Okay?

9 So, let's see what we got. Candidate Number 1, he
10 consults with ward bosses, seeks wisdom from astrologists, has
11 two mistresses, and drinks 8 to 10 martinis a day. The second
12 candidate, been kicked out of office twice, sleeps till noon,
13 uses opium in college, and drinks a quart of brandy a day.
14 The third candidate, he's a war hero, he's a vegetarian,
15 doesn't smoke or drink, and has had no illicit love affairs.
16 Oh, and by the way, he's a grand speaker, too. Now, based on
17 that information, who do you vote for? I think we all vote
18 for Number 3, right? Well, let's see who they were; let's
19 meet our candidates.

20 Candidate Number 1 is FDR, longest serving President, led
21 America through World War II. Probably would've been a good
22 choice, right? We didn't pick him. Let's see who Candidate
23 Number 2 was. Winston Churchill, also probably would have
24 been a good choice, right other than the fact that he's
25 British. But other than that, he would've been the good

State v. Weatherall - 2014-GS-26-01415
OPENING BY BOUCHETTE

72

1 choice, but we didn't pick him either. So, let's meet
2 Candidate Number 3. Congratulations, we just voted for Adolph
3 Hitler for President.

4 Now, that's not fair, right? Of course not. I didn't
5 give you the information that you needed to make your choice,
6 to make the right choice, and that's what the State is trying
7 to do in this case. They're trying to control the flow of
8 information. For example, Ms. Livesay mentioned about
9 Helbert's hotel room. Yes, it's true. Mitchell was -- that
10 was as much Mitchell's hotel room as Helbert's. She didn't
11 mention that he had stayed there before, that the folks at the
12 hotel knew who he was, that they had his identification on
13 file, and if the State doesn't introduce that information, you
14 better be sure that we're going to.

15 Now why is that important? Well, it's important because
16 you don't go back to your own hotel room where everybody knows
17 who you are, where they know where you're staying for the sole
18 purpose of robbing and/or killing your co-tenant, right?
19 Now, what would make more sense? That the third person that
20 night, excuse me, the third person that was in that room that
21 day, a drug dealer that went by the street name of Chicken,
22 came back to the hotel room for the purposes of doing drugs
23 and drinking, which they did, and at some point an argument
24 ensues between Helbert and Chicken as to who smoked more than
25 their share or who owed, who was supposed to go buy more

State v. Weatherall - 2014-GS-26-01415
OPENING BY BOUCHETTE

73

1 drugs, whatever, something to that effect, an argument ensues.
2 That argument turns physical and in that physical altercation
3 it's Chicken who kills Helbert.

4 Now, you'll notice that Chicken is not sitting there
5 beside my client. And Ms. Livesay says, well, listen, don't
6 worry about Chicken. Well, you better worry about Chicken
7 because the State's own star witness, Joey, says that it was
8 Chicken who actually killed Helbert.

9 Now, let's talk about Joey. In his nearly two-hour long
10 interview with detectives, he says that it's Chicken that
11 committed the crime. And we'll talk about during the trial
12 whether or not you even believe the credibility of Joey. But
13 for right now, we'll assume everything that he said is true.
14 He says it was Chicken that committed the crime. And then
15 after the crime had been committed, after the death had
16 occurred, Joey assisted my client with moving the body from
17 the motel room to the car. All right. That part is
18 undisputed. Now, why would Joey do that? Why would Joey
19 arrive and help move a body from a hotel room to a vehicle?
20 Well, the reality is, he was suffering from the same
21 addiction, was gripped by the same fear, and made the same bad
22 decision that my client did.

23 The reality of it is that Mitchell and Joey are guilty of
24 the same crime. All right. They're guilty of accessory after
25 the fact of something, whether that something is murder or

State v. Weatherall - 2014-GS-26-01415
OPENING BY BOUCHETTE

74

1 manslaughter; they're guilty of doing something after the
2 death was caused by Chicken. All right.

3 Now, folks, if you're gonna judge this case fairly and
4 impartially, which I trust you will, you're gonna have to come
5 to the reality that there's a legal and a factual distinction
6 between moving a body and murder. Folks, I'm not saying that
7 moving a body it is okay; it's not. It's gruesome, it's a
8 terrible thing, and it is a crime, but it's not murder. And
9 you're gonna hear from Mitchell. Mitchell is gonna take that
10 stand right there and he's gonna tell you his story. He's
11 gonna tell how he and Joey came here from Wisconsin, you know,
12 hoping to start over, hoping to have a new life. But
13 unfortunately, they brought their addictions with them, and it
14 wasn't too long before they got into a lifestyle that, you
15 know, I hope you all have not had any exposure to but it is
16 very common in our country and in this area and in Myrtle
17 Beach in particular. They essentially bounce from
18 homelessness to getting together enough money on the streets
19 by whatever means they can, stay in a \$25 a room night hotel,
20 and then eventually, when they're out of -- out of money,
21 they're back on the street waiting for the next hit, waiting
22 till the next room that they can stay in temporarily.

23 And on this night in question, or on this time period in
24 question, Mitchell was staying with somebody he'd met, the
25 decedent, and they'd gotten enough money together to have a

State v. Weatherall - 2014-GS-26-01415
OPENING BY BOUCHETTE

75

1 hotel room. Now, Joey left -- or excuse me -- Mitchell left
2 the hotel room just long enough to be able to go to the --
3 essentially, a nearby crack house, for lack of a better term.
4 There he meets the drug dealer name Chicken, who he had just
5 met, and they say, okay, I've got a place we can smoke that's
6 better than this crack house. They go back to the hotel room
7 where they stay for a period of time smoking, drinking,
8 watching a basketball game. And at some point, which is
9 predictable, the drugs run out. When the drugs run out, an
10 argument ensues between Chicken and Helbert. Now, that
11 argument was, as you can predict, had to do with who was owed
12 money, who smoked more than their share, who needed to go get
13 more drugs. But, at some point, that altercation turns
14 physical and Helbert's getting the best of Chicken. Chicken's
15 able to separate himself enough and he punches Helbert and is
16 able to grab a 40-ounce beer bottle nearby, bashes Helbert to
17 the back of the head and, as he's falling forward, delivers a
18 kick to the front of the head causing his death. And at that
19 point, Chicken leaves the room. Why shouldn't he? It's not
20 his name on the registration. The hotel people don't know
21 him. Mitchell barely even knew who the guy was, so he leaves.
22 And, folks, this is where decisions come in. Okay? What
23 Mitchell should've done right then and there was call the
24 police. I think that's gonna be undisputed. Now, maybe the
25 police would've believed him, maybe they wouldn't. Maybe he

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

76

1 would've still be sitting there, but still, that's what he
2 should have done but he didn't.

3 He's sitting in a room drunk, high, with presumably a
4 dead body sitting there and this is kind of where the insanity
5 of addiction starts to take hold. At that point, he decides
6 that it's not better to call the cops. He decides it's better
7 to call Joey, to find a vehicle, and to dispose of the body,
8 that that's his best way out. Now, folks, what I described
9 there is not a pleasant story, I understand that, but it's
10 also not murder. Mitchell did not commit this murder and
11 that's what the facts are gonna show. And at the end of this
12 trial, whenever we've gone through all the facts, we're gonna
13 come back and we're gonna ask you to render a verdict of not
14 guilty and I trust that's what you're gonna do.

15 I want to thank you for your time here this morning and I
16 want to thank you for your willingness to serve.

17 BY THE COURT:

18 THE COURT: All right, ladies and gentlemen, we'll now
19 begin the evidentiary portion of this trial. The State can
20 call your first witness.

21 MS. LIVESAY: Thank you, Your Honor. At this time, the
22 State calls Missy Baines to the stand.

23 THE COURT: All right. Can you come forward?

24 CLERK: Please raise your right hand and place your left
25 hand on the Bible?

State v. Weatherall - 2014-GS-26-01415
MELISSA ANN BAINES - DIRECT BY LIVESAY

77

1 MELISSA BAINES, HAVING BEEN DULY
2 SWORN TESTIFIES AS FOLLOWS:

3 CLERK: Please state your full name and spell your first
4 and last name for the Court.

5 MS. BAINES: Melissa Ann Baines, M-E-L-I-S-S-A, B-A-I-N-
6 E-S.

7 THE COURT: All right.

8 MS. LIVESAY: Thank you.

9 DIRECT EXAMINATION OF MELISSA ANN BAINES BY MS. LIVESAY:

10 Q: Ms. Baines, tell this jury about how old you are?

11 A: I am 34 -- I mean 44, excuse me.

12 Q: And where are you currently working?

13 A: The Atlantic View Motel.

14 Q: And where were you working in November of 2013?

15 A: The Atlantic View Motel.

16 Q: Okay. And if you don't mind, tell this jury what you do
17 at the Atlantic View Motel?

18 A: I clean the rooms, I do the laundry, I keep the swimming
19 pool up.

20 Q: Okay. And would you recognize the layout of the room?

21 A: Yes, ma'am.

22 Q: Okay. I'm gonna show you now what's been marked as

23 State's Exhibit 64. I already showed it to the Defense. Do
24 you recognize this?

25 A: Yes, ma'am.

State v. Weatherall - 2014-GS-26-01415
MELISSA ANN BAINES - DIRECT BY LIVESAY

78

1 Q: And does this accurately depict the layout of the rooms
2 at Atlantic View Motel?

3 A: Yes; uh-huh (affirmative response).

4 MS. LIVESAY: Your Honor, at this time, the State wishes
5 to enter State's Exhibit 64 into evidence.

6 MR. GARDNER: No objection, Your Honor.

7 THE COURT: State's Exhibit Number 64 admitted into
8 evidence without objection.

9 MS. LIVESAY: Thank you, Your Honor.

10

11 STATE'S EXHIBIT NUMBER 64

12 ADMITTED INTO EVIDENCE

13 BY MS. LIVESAY:

14 Q: At this time, Ms. Baines, can you step down so you can
15 show them the layout of the room on this diagram?

16 A: Yes, ma'am. This particular room, because we have some
17 set this way and some this way.

18 Q: Hold on. If you don't mind, just turn around just a
19 little bit. I'll hold it this way.

20 A: Okay. You come in the door, you walk in, it'll be like a
21 little refrigerator, microwave here, that's a little cubby
22 hole. We've got two beds, a closet area, a bathroom. Here's
23 a table, a nightstand, and a dresser with a T.V. set.

24 Q: Okay. Now, is this diagram accurate of the depiction of
25 Room 125 that you cleaned up?

State v. Weatherall - 2014-GS-26-01415
MELISSA ANN BAINES - DIRECT BY LIVESAY

79

1 A: Yes, ma'am.

2 Q: Okay. And if you don't mind, tell this jury about Room
3 125, what you found in it?

4 A: The day I cleaned it?

5 Q: Yep?

6 A: I come in. Upon coming in, me and another girl was there
7 helping me clean. There was glass on the floor around this
8 area. We thought maybe it was -- at first we assumed it
9 might've been like a microwave tray because it was a thick
10 glass. Upon inspecting it, we noticed it wasn't. We looked
11 at it, it appeared to be like the bottom of some kind of a
12 bottle, liquor bottle, beer bottle, something. We picked it
13 up, we cleaned the room. She did the beds; I did the
14 bathroom. Upon vacuuming, right through here, there was a
15 bunch of white powder. I assumed it was like maybe floor
16 powder to make it smell good. It wouldn't vacuum up, so we
17 shampooed the carpet.

18 Q: And what did you find when you shampooed the carpet?

19 A: Red kept coming up, but upon going and telling my boss
20 and telling her about the broken bottle, we assumed it
21 might've possibly been wine or some type of liquor that might
22 have got spilled; we were not sure.

23 Q: Uh-huh (affirmative response).

24 A: And that was pretty much.

25 Q: Did you see blood anywhere else in the room other than

State v. Weatherall - 2014-GS-26-01415
MELISSA ANN BAINES - DIRECT BY LIVESAY

80

1 the floor?

2 A: I did see some on this bed when I went to strip it. The
3 other girl stripped this one and made the beds, but I did see
4 a little bit there, but I just assumed maybe they might have
5 cut theirselves or something, you know ---

6 Q: Okay.

7 A: --- on the bottle. I wasn't sure.

8 Q: And how about the rest of the room, was it clean, dirty?

9 A: It was pretty clean. It was actually fairly clean.

10 Q: Okay. And were there any clothes, anything left behind
11 that you remember seeing?

12 A: Nothing that I saw.

13 Q: Okay. Now, tell them, how about the door, were there any
14 issues with the door?

15 A: Yes, we go once a week and we clean our weeklies. When
16 the rent's due we check to see if they're gonna pay or if
17 they've left and left the key in the room. Upon going to the
18 room, the door lock was messed up; you could not open or
19 unlock it. I had to get the maintenance guy to get us in the
20 room and that was that they had messed it up I guess trying to
21 get back in. I'm not real sure, but it wouldn't open for me
22 and my key.

23 Q: Okay. And did you see any blood anywhere other than
24 right in here?

25 A: I did not. Just there and on that bed but, yeah, I had

State v. Weatherall - 2014-GS-26-01415
MELISSA ANN BAINES - DIRECT BY LIVESAY

81

1 missed any other that might've been in the room.

2 Q: Okay. Is this the only door that allows you to get in
3 and out?

4 A: Yeah. Yeah, each room has one door.

5 Q: Okay. And was that blood found in Room 125?

6 A: It was. That was the room they were in.

7 Q: Okay. Thank you, Ms. Baines. Have a seat if you don't
8 mind.

9 Did you wipe the walls down or do anything like that when
10 you cleaned it?

11 A: Sometimes we do. They had been there a week and usually
12 when we do that, it's like they've been there a month. We
13 went in, it was just getting it ready for the next person. I
14 did not do any washing of the walls or ---

15 Q: Okay. And other than that area around the bed, you would
16 say the rest of the room was relatively clean?

17 A: From what I saw, it was relatively clean. Like I said, I
18 did see blood on the one box spring. Again, I assumed they
19 might have cut theirselves; I didn't know.

20 Q: Okay. When you shampooed the carpet, Ms. Baines, about
21 how many times did you have to shampoo it?

22 A: I went over it several times because it kept coming up,
23 which is what caused me to tell my boss about it. And then I
24 did tell her about the broken bottle upon assumption, we just
25 assumed it was wine or something.

State v. Weatherall - 2014-GS-26-01415
MELISSA ANN BAINES - CROSS BY GARDNER

82

1 Q: Okay. And do you remember if any of the sheets or linen
2 or anything like that was missing?

3 A: It seems like we had some sheets missing, but I couldn't
4 tell you exactly what was gone out of the room because the
5 other girl is the one who actually stripped the room and she
6 no longer works with us.

7 Q: Okay. And do you know Mitchell Weatherall?

8 A: No, I do not.

9 MS. LIVESAY: Okay. No further questions, Your Honor.

10 THE COURT: All right. Cross examination?

11 MR. GARDNER: Thank you, Your Honor, may it please the
12 Court.

13 CROSS EXAMINATION OF MELISSA ANN BAINES BY MR. GARDNER:

14 Q: Ms. Baines, thank you for coming. In fact, you're under
15 subpoena to be here today from my office, isn't that right?

16 A: I'm not sure who subpoenaed me. I was subpoenaed to come
17 here.

18 Q: It said Johnny Gardner?

19 A: I didn't pay attention.

20 Q: Okay. But you're here and I appreciate you being here.
21 While we've got you here, let's follow up on a couple of
22 things.

23 Are you familiar at all with the video system, like where
24 the cameras are?

25 A: I am not familiar with the video system, the cameras.

State v. Weatherall - 2014-GS-26-01415
MELISSA ANN BAINES - CROSS BY GARDNER

83

- 1 That's the office that does the video.
- 2 Q: All right. Would you know of any reason why it wouldn't
3 be working on somedays and it would be working on other days?
- 4 A: I do not know.
- 5 Q: All right. Then the next question is do you know
6 Chicken?
- 7 A: I do not know Chicken. Hu-huh (negative response). I
8 don't know anybody by that name.
- 9 Q: Have you heard that before?
- 10 A: No, not on the streets, I've not -- I'm not gonna ---
- 11 Q: I think his real name is George McElveen?
- 12 A: No, I can't think of ---
- 13 Q: When you say on the streets, are you familiar that some
14 of these drug people have street names?
- 15 A: Yes, I am because I work at the Atlantic View and we do
16 hear a lot of nicknames from people being called, but I mean,
17 I've never heard that particular nickname.
- 18 Q: Okay. And the Solicitor asked you while ago if you knew
19 Mitchell Weatherall?
- 20 A: Right.
- 21 Q: And I believe you said no?
- 22 A: I do not know him, no.
- 23 Q: Would you know -- would you know whether or not he had
24 stayed there before?
- 25 A: The name sounds familiar and I do know there -- the guy

State v. Weatherall - 2014-GS-26-01415
MELISSA ANN BAINES - CROSS BY GARDNER

84

1 that was in that room, there was an older black gentleman in
2 the room.

3 Q: Right.

4 A: There was another black gentleman in the room and there
5 was a white boy that we always called Surfer Boy because he
6 looked like a little surfer boy.

7 Q: You think that might be Joey?

8 A: I don't know what his real name is.

9 Q: Okay.

10 A: I don't work in the office as far as actually taking the
11 cards.

12 Q: Okay. Is there anything else that you think might help
13 this jury decide what to do with this case, any other
14 information the Solicitor didn't ask or that I didn't ask?

15 A: No, I mean the only thing I can really tell you is the
16 state of the room when I cleaned it.

17 Q: Okay.

18 A: That's really about all I can tell you.

19 Q: Thank you for coming.

20 A: All right.

21 THE COURT: Redirect?

22 MS. LIVESAY: No, sir, Your Honor.

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

24 A: All right. Thank you.

25 MR. GARDNER: And I have no objection to her being

State v. Weatherall - 2014-GS-26-01415
NORMA DAVIS - DIRECT BY LIVESAY

85

1 excused from my subpoena.

2 THE COURT: Any objection?

3 MS. LIVESAY: Norma Davis. Oh, I'd like her excused,
4 Your Honor.

5 THE COURT: All right. She's free to go. Thank you very
6 much.

7 All right. You can call your next witness.

8 MS. LIVESAY: Thank you, Your Honor. At this time, the
9 State calls Ms. Norma Davis.

10 THE COURT: All right.

11 CLERK: Please raise your right hand and place your left
12 hand on the Bible.

13 NORMA DAVIS, HAVING BEEN SWORN

14 TESTIFIES AS FOLLOWS:

15 CLERK: Please state your full name and spell your first
16 and last name for the Court.

17 MS. DAVIS: Norma Davis, N-O-R-M-A, D-A-V-I-S.

18 DIRECT EXAMINATION OF NORMA DAVIS BY MS. LIVESAY:

19 Q: Ms. Davis, where do you currently live?

20 A: 603 North Ocean Boulevard, Myrtle Beach, Sand Bucket
21 Motel.

22 Q: Okay. And do you own any motels here in Myrtle Beach?

23 A: Sand Bucket and the Atlantic View.

24 Q: Okay. And ---

25 COURT REPORTER: Please move up to the microphone.

State v. Weatherall - 2014-GS-26-01415
NORMA DAVIS - DIRECT BY LIVESAY

86

- 1 A: I'm sorry.
- 2 Q: And how long have you owned the Atlantic View?
- 3 A: 1989.
- 4 Q: Okay. And does Atlantic View keep records to show who's
- 5 checking in and who's checking out?
- 6 A: Yes, ma'am.
- 7 Q: And are they kept in the normal course of business?
- 8 A: Yes, ma'am.
- 9 Q: And are they kept in such a manner to keep them from
- 10 being tampered with?
- 11 A: Yes, ma'am.
- 12 Q: Okay. And were y'all keeping these records in November
- 13 of 2013?
- 14 A: Yes.
- 15 Q: And would you recognize the record if I showed it to you
- 16 from Atlantic View?
- 17 A: Sure.
- 18 Q: Okay. I'm gonna show you what's been marked as State's
- 19 Exhibit 65?
- 20 A: Yes, this is our registration card, and we also get the
- 21 ID's of the people registering into the room.
- 22 Q: Okay. And if you don't mind, tell this jury who
- 23 registered into Room 125. Does it indicate what room?
- 24 A: Yes.
- 25 Q: What room?

State v. Weatherall - 2014-GS-26-01415
NORMA DAVIS - DIRECT BY LIVESAY

87

- 1 A: 125.
- 2 Q: Okay. And does it indicate who registered to that room?
- 3 A: Yes, Helbert Woodberry and Michael M. Weatherall.
- 4 Q: Okay. And do you get a license or identification for
- 5 them when they check in?
- 6 A: Yes.
- 7 Q: Okay. And does that license indicate where they're from?
- 8 A: Yes.
- 9 Q: And if you don't mind, tell this jury what their license
- 10 indicated as to where they're from?
- 11 A: Herbert Woodberry, 144 Steama Avenue, Hemingway, South
- 12 Carolina and Michael -- Mitchell M. Weatherall, 224 North Food
- 13 Street, Milwaukee, Wisconsin.
- 14 Q: Okay. So neither one of them were from Horry County?
- 15 A: No, ma'am.
- 16 Q: Okay. And does it indicate how long he paid to stay in
- 17 the room?
- 18 A: Yes, ma'am. They checked in on Friday, which was
- 19 November 1st, 2013. They paid for a week. We have weekly
- 20 rates for 175 a week.
- 21 Q: Okay. I'm gonna show you now what's -- can we mark this
- 22 real quick, Dixie, I'm sorry?
- 23 Norma, this is a dumb question, but I've got to ask you
- 24 to be able to use this. Do you recognize what this is?
- 25 A: It's a calendar of November 2013.

State v. Weatherall - 2014-GS-26-01415
NORMA DAVIS - DIRECT BY LIVESAY

88

1 Q: Okay. Thank you. Let me ask you this, do you mind
2 circling the days that Helbert had paid to stay in that room?

3 A: No, he checked in ---

4 Q: I'll give you a pen. Do you mind stepping down so the
5 jury can see what days you're circling?

6 When did he check in?

7 A: November 1st. He paid for a week and was due to check
8 out on the 8th.

9 Q: Oh, no, I'm sorry, that's not -- okay. So, he paid for
10 the 1st, 2nd all the way through the 8th?

11 A: Yes, ma'am.

12 Q: Okay. And do you know who paid for the room?

13 A: I do not.

14 Q: Okay. Ms. Davis, I'm gonna mark this in red; you tell me
15 if I'm marking it correctly. He checked in on the 1st and
16 check out on the 8th ---

17 A: Yes, ma'am.

18 Q: --- was his plan. And you tell me if I write anything up
19 there wrong. Checked in on the 1st?

20 A: Right.

21 Q: And scheduled to check out on the 8th?

22 A: Yes, ma'am.

23 Q: So, everything I wrote up there is correct?

24 A: Yes.

25 Q: Okay. Now, Missy just testified. Now, when somebody

State v. Weatherall - 2014-GS-26-01415
NORMA DAVIS - CROSS BY GARDNER

89

1 pays to stay a week like that, does Missy go in every day or
2 just at the end of the week?

3 A: No, not on weekly rentals. She only does room service
4 once a week, the day they're due to pay. So that way it will
5 tell us if they're staying another week.

6 MS. LIVESAY: Your Honor, at this time, I'd like to move
7 the receipt of registration into evidence as well as the
8 calendar as State's 65 and State's 66.

9 THE COURT: Any objection?

10 MR. GARDNER: No, Your Honor, no objection.

11 THE COURT: State's Exhibit 65 and State's Exhibit 66
12 admitted into evidence without objection.

13 MS. LIVESAY: Thank you, Judge.

14 STATE'S EXHIBIT NUMBER 65 AND 66

15 ADMITTED INTO EVIDENCE

16 BY MS. LIVESAY:

17 Q: And Ms. Davis, do you know Mitchell Weatherall?

18 A: No, ma'am.

19 MS. LIVESAY: No further questions for this witness, Your
20 Honor.

21 THE COURT: All right. Cross examination?

22 MR. GARDNER: Thank you, Your Honor.

23 CROSS EXAMINATION OF NORMA DAVIS BY MR. GARDNER:

24 Q: Ms. Davis, thank you for coming. You're here under my
25 subpoena as well; is that right?

State v. Weatherall - 2014-GS-26-01415
NORMA DAVIS - CROSS BY GARDNER

90

1 A: I think so.

2 Q: Yes, ma'am. Did the Solicitor ask you -- I didn't hear
3 some of the stuff and some I did, I think she asked you if you
4 knew Mitchell Weatherall?

5 A: I do not.

6 Q: That's the fellow sitting over there by me; you don't
7 know him?

8 A: No, sir.

9 Q: Okay. Are you hands-on at the Atlantic View?

10 A: Not every day, no, I'm not.

11 Q: So ---

12 A: Even though I'm across the street, it's just -- I mean,
13 I'm there every day that I'm in town, but ---

14 Q: I gotcha, and there's nothing wrong with that. Some
15 people are more hands-on and they know ---

16 A: I'm very hands-on; I'm just not there all the time.

17 Q: And some people know the regulars. You have some
18 regulars that come in there maybe?

19 A: We do.

20 Q: Is Joey Garsow one of them?

21 A: Sorry, I don't know the name.

22 Q: That's okay. You probably have a lot of people.

23 A: We do. We stay full.

24 Q: And these people, they, they don't usually go by their
25 own name, do they; are you familiar with that too?

State v. Weatherall - 2014-GS-26-01415
NORMA DAVIS - CROSS BY GARDNER

91

1 A: Yes, that's why we get IDs.

2 Q: The drug culture over at the beach?

3 A: Right. We've tried to eliminate that as much as
4 possible. I'm non-tolerance; I don't put up with anything.

5 Q: So, you get an ID card from them. And you looked at this
6 State's Exhibit 65, you can't really tell the picture, so that
7 probably wouldn't have helped you recognize them and the jury
8 will see this at some point in time. Okay. I'm just trying
9 to get as much information out here as we can.

10 A: I understand.

11 Q: And so they paid, we've got a calendar. I think
12 everybody has probably seen a calendar before. What else have
13 we got here? I think we got that.

14 I'm sorry, Your Honor, that would be, I was just pointing
15 at the State's Exhibits.

16 And let's see we have the date that they came. I'm
17 gonna show you -- can I get this marked Defense Exhibit 1 for
18 ID?

19 DEFENDANT'S EXHIBIT NUMBER 1

20 MARKED FOR IDENTIFICATION

21 Q: I'm gonna you what's been marked as Defense Exhibit 1 for
22 ID and ask you if that document looks familiar?

23 A: Yes, same thing.

24 Q: Same thing as ---

25 A: No, it's not. No, it's not.

State v. Weatherall - 2014-GS-26-01415
NORMA DAVIS - CROSS BY GARDNER

92

- 1 Q: --- different time; the dates are different?
- 2 A: Right, yeah.
- 3 Q: But it's your same type registration card and it's two
- 4 IDs but it's different people?
- 5 A: Right.
- 6 Q: Okay. So that's one of yours in other words, your
- 7 registration, right?
- 8 A: Yes.
- 9 Q: From your Atlantic View Motel?
- 10 A: Yes.
- 11 Q: The people on there, can you make out if one is Mitchell
- 12 and one is Joey?
- 13 A: I see the name, yes.
- 14 Q: I don't know if you can tell by the picture?
- 15 A: No.
- 16 Q: Okay. So they have stayed there before?
- 17 A: Yes, they did come a couple of days earlier.
- 18 Q: And what was the date on that one?
- 19 A: 10/28/13.
- 20 Q: Okay. That's not on here, this is State's Exhibit
- 21 something for the big calendar.
- 22 A: Right. Well, that's when they checked in for a week.
- 23 Q: Okay. But on this one for you, we don't have that on
- 24 here, but it would be sometime prior to ---
- 25 A: Yes.

State v. Weatherall - 2014-GS-26-01415
NORMA DAVIS - CROSS BY GARDNER

93

1 Q: --- the big red is circle. So, if somebody working there
2 had knowledge of the day-to-day, the day-to-day comings and
3 goings, they may have -- may have known who Joey or Mitchell
4 was?

5 A: (Indicates affirmatively.)

6 THE COURT: You need to give a verbal response.

7 A: They may recognize them; it's not to say that we
8 recognize everybody that checks in.

9 Q: I understand.

10 A: I can tell you this, if they're a problem, they won't be
11 back.

12 Q: Gotcha. Okay. Good. All right. So, and it's not
13 unlikely that these people come and go and that people see
14 them and, hey, you -- recognize you and that kind of stuff,
15 but it's also not unlikely that an owner might not recognize
16 the same person that was there a week before?

17 A: (Indicates affirmatively.)

18 COURT REPORTER: Excuse me. You need to answer.

19 A: Right. Yes.

20 Q: All right. I just want to make sure I asked everything
21 because when I get to sit down over there, I don't get to come
22 back. Okay? All right. Do you have any knowledge of the
23 name Chicken, I may have asked you about it, I don't know, the
24 nickname Chicken?

25 A: No, sir.

State v. Weatherall - 2014-GS-26-01415
NORMA DAVIS - CROSS BY GARDNER

94

1 Q: George McElveen?

2 A: No, sir.

3 Q: And we don't know if -- we don't think he's ever stayed
4 there, right?

5 A: I have no idea.

6 Q: Well -- okay. All right. Is there anything else that we
7 should tell the jury about this? Okay. There may not be, I
8 just want to make sure we got it all out there. We want to
9 get everything out there?

10 A: I understand.

11 Q: Okay. Thank you for coming.

12 A: Yes, sir.

13 THE COURT: Redirect?

14 MS. LIVESAY: No, sir, Your Honor.

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

16 MR. GARDNER: Your Honor, we have no objection to her
17 being excused from our subpoena.

18 THE COURT: Any objection?

19 MS. LIVESAY: No, sir, Your Honor.

20 THE COURT: All right. She's free to go. Thank you very
21 much.

22 State can call your next witness.

23 MS. LIVESAY: Thank you. It's gonna be Kelly Matteson,
24 Your Honor.

25 CLERK: Please raise your right hand and place your left

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

95

1 hand on the Bible?

2 KELLY LYNN MATTESON, HAVING BEEN

3 SWORN TESTIFIES AS FOLLOWS:

4 CLERK: Please be seated. Please state your full name
5 and spell your first and last name for the Court?

6 MS. MATTESON: Kelly Lynn Matteson, K-E-L-L-Y, M-A-T-T-E-
7 S-O-N.

8 DIRECT EXAMINATION OF KELLY MATTESON BY MS. LIVESAY:

9 Q: Now, Ms. Matteson, if you don't mind, tell this jury
10 where you currently work?

11 A: I am self-employed at this time. I live in Cleveland,
12 Ohio.

13 Q: Okay. And if you don't mind, tell them where you worked
14 in November in 2013, of November 2013?

15 A: I worked for the Myrtle Beach Police Department.

16 Q: Okay. And at that point, how long had you worked with
17 the police department?

18 A: At that time, it was approximately 10 years.

19 Q: Okay. And that's a long time. And what was -- what were
20 your responsibilities in November of 2013?

21 A: In 2013, I was with the Crime Scene Unit.

22 Q: Okay. And if you don't mind, tell this jury a little bit
23 about what you do in Crime Scene?

24 A: Usually, we'll be notified that there's a crime scene.
25 We will respond to the crime scene. We will document by

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

96

1 photographs, video, or both. We will identify, gather, and
2 collect evidence. We will secure the evidence, bring the
3 evidence back. We will either process it ourselves or if
4 it's something that needs to be sent to the State laboratory,
5 we'll send it out for testing.

6 Q: Okay. And if you don't mind, tell us about how you got
7 involved in this particular case?

8 A: We were contacted by Investigator Truex, who requested
9 Officer Williamson and I to respond to 601 Flag Street to the
10 Atlantic View for a homicide investigation.

11 Q: Okay. And where did you respond to?

12 A: We responded to the Atlantic View to Room 125.

13 Q: Okay. And when you responded to 125, tell this jury a
14 little bit about what you were going to do there to assist in
15 the investigation?

16 A: Truex had advised that the suspect, who is the Defendant,
17 was in the room with the victim at which time -- I believe
18 there was another suspect in the room. There was an assault
19 that took place. The victim was killed in between the beds,
20 had fell to the ground, and at some point, he was wrapped in a
21 sheet, placed near the front door. So, Truex wanted us to
22 process the room. And we were advised there was also video
23 from another date of the removing the body and putting him
24 into a trunk, and we were requested to obtain the video files.

25 Q: Okay. So you were going to process the room and then

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

97

1 collect any video that may show what went on in and out of the
2 room?

3 A: It would only be out of the room. There were no video
4 from the inside.

5 Q: Okay. So it was only surveillance what was going out of
6 the room, that hallway?

7 A: That is correct.

8 Q: Okay. Now, tell this jury how you processed the room,
9 what you did?

10 A: My role, I started with taking exterior photographs of
11 the outside of the hotel to show the location and the address.
12 After taking outside photographs, I took a photograph of the
13 front door showing that I was entering Room 125. I then
14 opened the door and I took what we call overall photographs
15 ---

16 Q: Uh-huh (affirmative response).

17 A: --- of the room from different angles. And then after
18 taking the photographs, I then tested different areas of
19 substances in the room for blood. Some of them came up
20 positive; some of them came up negative.

21 Q: Okay. And let me ask you this, Had they already rented
22 the room to somebody else?

23 A: Yes, I was advised that there were, I believe, a husband
24 and wife, who had been requested to move another location.

25 Q: Okay. So, those people are moved out and you go to

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

98

1 process the room?

2 A: They were no longer there when I arrived.

3 Q: Okay. Now, let me ask you this, what date did you
4 arrive?

5 A: I arrived on November 12th at approximately 1 o'clock.

6 Q: Okay. And if you don't mind, can you just write on this
7 calendar when you got there ---

8 A: Yes.

9 Q: --- CSI, when you began the investigation. Let me get
10 you a pen.

11 A: Okay.

12 Q: Thank you. You mind standing up so this jury can see?
13 I'm sorry.

14 A: That's fine.

15 Q: I'm having her mark on what's been put into evidence as
16 State's evidence Number 66.

17 A: I arrived on November 12th.

18 Q: Okay.

19 A: At approximately 0100 hours.

20 Q: Okay. So you actually arrived several days after the
21 victim had been moved out of the room?

22 A: Correct.

23 Q: Okay. Now, if you don't mind, tell this jury what you
24 found and describe what you saw in the room as part of
25 processing the room?

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

99

1 A: Okay. There were not many items in the room when I
2 arrived. There were two beds. It was a normal hotel room.
3 Miscellaneous items such as a chair, a refrigerator,
4 microwave. Points of interest were there were blood spots on
5 two of the beds, on a dresser, on the wall, and in various
6 spots throughout.

7 Q: Okay. And let me show you this, this is State's
8 evidence, Number 64. Do you recognize what I'm showing you?

9 A: Yes, ma'am; I do.

10 Q: Okay. And what is it?

11 A: This is a drawing that I put together on the computer to
12 represent the inside of Room 125.

13 Q: Okay. And can you show this jury on this diagram where
14 you found blood speckles in the room or blood in the room?

15 A: Yes, ma'am; I can.

16 Q: Can you please step down?

17 Is that okay with you, Judge?

18 THE COURT: Yes, ma'am.

19 MS. LIVESAY: Thank you.

20 BY MS. LIVESAY:

21 Q: Ms. Matteson, and run them first through just what
22 everything is again; sometimes diagrams are ---

23 A: Okay.

24 Q: That's fine. Let her go through it. Even for me they're
25 difficult.

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

100

1 A: Would you mind, can I ---

2 Q: Sure. Sure.

3 A: So this is the front door of the motel room. So, this is
4 where I entered. We walked through here. This is a bed and
5 another bed with just a small space in between the two beds
6 and there's a little table here with two drawers. When you do
7 walk in, there's a small area where a refrigerator and a
8 microwave is. There's a table with the chairs. This is the
9 bathroom. This is a closet. This is a dresser, another
10 chair. There's a picture on the wall here. And I think that
11 covers about everything.

12 Q: Okay. And tell us where you documented evidence in the
13 room?

14 A: There were several different spots of evidence. So there
15 was several blood spots, two out in this area, the area on the
16 lower portion of the mattress and on the mattress leg. There
17 was also spots, blood spots in this area on the mattress.
18 There were several areas that tested positive for blood on the
19 rug area. I have approximately I believe I labeled at least
20 14 different areas to represent the different ---

21 Q: Just the different areas and then we can show them the
22 pictures?

23 A: Correct.

24 Q: Okay. And did you see or did you mark any other areas of
25 evidence in the room?

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

101

1 A: Blood spots?

2 Q: Yes.

3 A: Headboard, headboard, wall, picture, bathroom, trim area,
4 bottom of the dresser.

5 Q: And did you document all of those with photographs?

6 A: Yes, ma'am, I did.

7 Q: And if you don't mind, have a seat, Ms. Matteson. I'm
8 gonna show you now State's Exhibit 1 through 55. If you don't
9 mind, look through those and tell me if you recognize those
10 pictures.

11 A: There's about a hundred, over a hundred pictures. So far
12 I've made it halfway through the stack and these appear to be
13 all the pictures that I took on November 12th from the crime
14 scene.

15 Q: Okay. Your Honor, at this time, the State wishes to put
16 1 through 55 into evidence and publish to the jury?

17 MR. GARDNER: No objection, Your Honor.

18 THE COURT: All right. State's Exhibits 1 through 55
19 admitted into evidence without objection.

20 MS. LIVESAY: Thank you, Judge.

21 STATE'S EXHIBIT NUMBERS 1 THROUGH 55

22 ADMITTED INTO EVIDENCE

23 BY MS. LIVESAY:

24 Q: And at this time, we're gonna show them on the T.V. so it
25 will be easier. And, Ms. Matteson, if you don't mind, as

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

102

1 we're going through 1 through 55, do you mind showing this
2 jury what you're documenting with those pictures?

3 A: No.

4 Q: Okay. Thank you. Could I have her step down, Judge?

5 THE COURT: All right. Now, make sure she's near a
6 microphone. I noticed last time she stepped down it was kind
7 of hard to hear her. So, make sure she's still near a
8 microphone when she's testifying.

9 MS. LIVESAY: Certainly.

10 THE COURT: All right. Thank you.

11 BY MS. LIVESAY:

12 Q: And this is the microphone, so if you could -- Court's
13 indulgence.

14 Ms. Matteson, if you don't mind, just tell us what you're
15 documenting in these pictures.

16 A: This is from the street view of the office of the
17 Atlantic View Motel and the north section of the motel. This
18 is -- I was documenting the name of the hotel on the front of
19 the north building. This photograph, I was documenting 601,
20 which is the address of the hotel. In this photograph, I was
21 documenting the side of the building of Room 125.

22 Q: And that room was on the first floor down towards the
23 end?

24 A: It is, ma'am.

25 Q: Okay.

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

103

1 A: I was documenting the door number.

2 Q: Okay.

3 A: I was documenting the inside of the room as soon as I
4 opened the door. This is another angle of inside prior to me
5 entering. At that time, I'm just taking overall photographs
6 of everything. This is the documenting what I referred to as
7 bed two which would be the furthest bed in the room. This is
8 documentation of the television and the closet area, table,
9 chair, and picture. Documenting the area of the bathroom and
10 the mirror. Documenting the mirror, that's a reflection, and
11 also the refrigerator and the microwave. This is just an
12 additional angle of the refrigerator, the table, and the
13 mirror. At this point, I had moved towards the refrigerator
14 area and it's a photograph of the angle. This is showing bed
15 number 2 and a partial of bed 1. This is bed 1 and the front
16 door. This is the area where the victim was believed to have
17 been placed and laid for approximately three days prior to
18 being removed from the area. This is going to be a photograph
19 of the bottom of bed number 1 in between where the chair,
20 bathroom, and dresser was. This is looking towards bed number
21 1. This is documentation of bed number 1, 2, and front door.
22 Documentation of lower section of the bed and the front door.
23 This is documentation of the carpet in between bed number 1
24 and the table. This is documentation of bed number 1 lower
25 mattress. This is a close-up of the mattress and the blood

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

104

1 spots.

2 At this time, after my overall photographs, I had placed
3 evidence markers at different locations of interest. This
4 right here is marker number 3, which is bed number 1, marker
5 number 4, which is bed number 2. This is going to be the east
6 wall, which is near bed number 2. After photographing, I used
7 a tool that we use in the field to test whether a substance is
8 a human or mammal blood. This is showing that that test came
9 out positive.

10 Q: And that is on the side of the bed or the box springs?

11 A: That is correct. This is a different test, different
12 location, which is evidence marker 4, which is the side of the
13 second bed, the mattress.

14 Q: And did that test positive for blood?

15 A: Yes, ma'am; it did.

16 Q: Okay. And then how about here?

17 A: This did not. This was on the -- there was a picture on
18 the east wall. There was a couple of spots that appeared to
19 be blood. I swabbed this one and it did not test positive.
20 This is another spot on the mirror, I'm sorry, on the picture,
21 the same picture.

22 Q: Okay.

23 A: This is the carpet in between the two beds with the test
24 kit showing positive.

25 Q: And when you say showing positive, showing positive that

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

105

1 that's blood?

2 A: Yes, ma'am. That will indicate to us whether or not we
3 should swab it and send it to the lab if need be to further
4 the investigation.

5 Q: Okay. And this is from the carpet in between the beds?

6 A: Yes, ma'am. This is a close-up of the mattress, lower
7 portion and the frame and leg of the frame with blood stain
8 spots. This is the photograph of the dresser next to the
9 table and chair.

10 Q: And is this dresser at the end? Like there's this area
11 between the two beds and the dresser is at the end of that
12 area?

13 A: That is correct.

14 Q: Okay. And what do you indicate with that?

15 A: There are blood spots on the bottom portion of the
16 dresser. So I put an evidence marker there so I could come
17 back to it and either test it or collect evidence from it.

18 Q: And so you're documenting these -- I guess, you tell me
19 -- you show me, what are you documenting?

20 A: Okay. I'm trying to focus on all these small circular
21 red stains throughout the lower portion of the dresser.

22 Q: And did that indicate -- is that a test there to indicate
23 whether or not it was blood?

24 A: Yes, ma'am.

25 Q: And what did it indicate?

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

106

1 A: It did test positive.

2 Q: Okay. And are those the same speckles off that dresser?

3 A: Yes, ma'am.

4 Q: Now, what is marked on this picture?

5 A: After I did the swabs, I moved on. I took adhesive
6 stickers and I placed them at various locations throughout the
7 room of where I found additional blood spots. So, this
8 picture is representing the adhesive markers that I had
9 placed, which were 1, 2, 3, and 4.

10 Q: And is that what it looked like when you documented it?

11 A: Yes, ma'am.

12 Q: Okay. And so, so these numbers are indicating a speckle
13 of blood?

14 A: That is correct.

15 Q: Okay.

16 A: Or it could be more than one. Some of these stickers,
17 there were several and we grouped them.

18 Q: Okay. And is this, if you don't mind, point out what
19 you're documenting with that?

20 A: This was on the headboard of the bed number 2. This here

21 ---

22 THE COURT: Excuse me, I'm sorry. She's got to get near
23 a microphone. We can't hear what she's saying. I apologize.

24 A: So to the left of the number 2, I was documenting the
25 blood stain.

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

107

- 1 Q: Okay. So, correct me if I'm wrong, right here?
- 2 A: Yes, ma'am.
- 3 Q: Okay. And let me ask you something, are you documenting
- 4 this area here?
- 5 A: Yes, ma'am.
- 6 Q: That one?
- 7 A: Yes, yes.
- 8 Q: Okay. And these are the speckles where the headboards
- 9 are, between the two headboards?
- 10 A: Number 3, I believe is going to be right above headboard,
- 11 bed number 2. This is the -- I don't know how you have the
- 12 order of the pictures, it's going to be, I believe bed number
- 13 2 headboard.
- 14 Q: Okay. And this is again documenting the speckles on the
- 15 headboard?
- 16 A: Yes, ma'am.
- 17 Q: Now, in looking at these numbers on the wall here -- I'm
- 18 gonna point them out and you tell me if I'm pointing right --
- 19 9, 6, 7, 8, what are you documenting with those numbers?
- 20 A: Additional blood stains.
- 21 Q: Okay. And these are indicating more spots that you saw
- 22 on that wall?
- 23 A: Yes, ma'am.
- 24 Q: Okay. And these are again on the same wall?
- 25 A: That is correct.

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

108

1 Q: Okay. So, you've put a number wherever there's a spot?

2 A: That is correct.

3 Q: Now, did you test Item 5?

4 A: Yes, I did.

5 Q: And did it indicate whether or not that was blood?

6 A: Number 5 had two stains on it. I tested one, which
7 revealed negative. The second one, there was not enough for
8 me to test, so I just collected it so it would be sent to the
9 lab.

10 Q: Okay. And these are just close-ups so we can see what
11 you're documenting?

12 A: Correct. I always take an overall photograph so you can
13 see where everything is, and then I go to individual markers
14 and take additional photographs at that time.

15 Q: Okay.

16 A: Number 8 had several small blood stains.

17 Q: And are we looking here, so I know?

18 A: Yes, and there's some down below.

19 Q: Is that what you're documenting?

20 A: Yes, ma'am.

21 Q: Now, let me ask you something. Number 9, you have a
22 measuring device beside it, explain to the jury why?

23 A: The reason we do that is so when you blow something up,
24 especially for court purposes, it'll be able to give you a
25 reference so you have a good idea of what the size of

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

109

1 something is. So, for example, if I were to place a large
2 marker next to me, take a photograph, somebody would be able
3 to look at it and go, oh, I'm familiar with that, that's five
4 feet approximately and so they can have a good perception of
5 what the actual size is.

6 Q: And so these two spikes, 9 and 10, you used the measuring
7 device?

8 A: That is correct.

9 Q: And where is 11 at?

10 A: It is on the ceiling.

11 Q: Okay. And where is 12?

12 A: On the lower portion of the chair.

13 Q: Okay. And 13?

14 A: Left side of door trim for the bathroom.

15 Q: And what is this the doorway to?

16 A: This is also the bathroom. It is the -- if you were
17 walking into it, the right trim.

18 Q: And what is this showing the jury?

19 A: At this point, Officer Williamson used a UV light to
20 light up the carpet area. Blood will absorb the light and it
21 will appear darker.

22 Q: And what is this?

23 A: This is close-up.

24 Q: Okay. And if you don't mind, tell them why this
25 particular area is fluorescent?

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

110

1 A: At this part of the investigation, we had to use Blue
2 Star, which is a chemical that you spray onto an area where
3 you suspect possible blood and it will fluoresce. So, these
4 are the different areas that lit up.

5 Q: So this is -- if I look at this floor and I can't see it
6 with the human eye, this stuff makes it fluoresce so you can
7 see it?

8 A: That is correct.

9 Q: Okay. No further questions. And did that document all
10 the blood that you documented in the room?

11 A: Those are all the areas that I did see.

12 Q: Okay. Now, let me ask you this, did you know whether or
13 not that room had been cleaned before you got in?

14 A: I was advised that it was cleaned.

15 Q: Okay. And so these are -- this is all the stuff that you
16 found even after the room had been cleaned?

17 A: That is correct.

18 Q: I think -- Ms. Matteson, if you don't mind, have a seat.
19 Ms. Matteson, how long had you been in crime scene?

20 A: When this incident took place, I believe I had been there
21 for approximately two years.

22 Q: Okay. And what kind of training had you undergone in
23 crime scene?

24 A: I had various classes. I had a homicide class, crime
25 scene evidence, fingerprinting.

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

111

1 Q: Okay. Now, let me ask you something about, were you
2 called out every time there was a homicide?

3 A: If I was working that day, I was assigned, maybe not to
4 the scene, but to a location involving the incident itself.

5 Q: Okay. And about how many homicides had you assisted in
6 before this one?

7 A: I would say approximately seven, but I went on a lot of
8 calls where the victim did not pass. So, I was out there in the
9 field for shootings and violent crimes continuously over my
10 time in Crime Scene.

11 Q: Okay. So, your job is to look at just the crime scene,
12 not to interview anybody, just to document hard evidence at
13 the crime scene?

14 A: That is correct. I did not interview.

15 Q: Okay. And you take that information to assist Detective
16 Truex in the overall investigation?

17 A: That is correct.

18 Q: Okay. And did documenting the areas of blood on this
19 room assist you in the investigation in learning about what
20 had happened in the room?

21 A: Yes, ma'am.

22 Q: Okay. And were the fact that those blood spots were
23 sprinkles, was that indicative of anything to you?

24 A: It appeared that there was a -- an assault, a violent
25 assault that would've taken place in the room.

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

112

1 Q: Okay. And you gathered that from the different locations
2 of the blood?

3 A: Yes, ma'am.

4 Q: Okay. And the fact that they were sprinkles, did that
5 tell you anything?

6 A: I believed it to be cast-off ---

7 Q: Okay.

8 A: --- from an object.

9 Q: Okay. And if you don't mind, tell this jury what you
10 consider or how you define cast-off?

11 A: Cast-off would be when a object makes contact and the
12 blood is transferred to another location. There's various
13 speeds and angles.

14 Q: Okay. And so basically, when it slung off the item, cast
15 off from whatever weapon you're using?

16 A: Yes, ma'am.

17 Q: Okay. Now, when you were in the room, what you saw, was
18 that consistent of an assault that ultimately ended in a
19 homicide?

20 A: It appeared to be.

21 Q: Okay. Now, let me ask you this, when you see all these
22 stains in there, did you collect any swabs of blood to find
23 out for sure who this blood belonged to?

24 A: I did collect several swabs from different locations
25 which I had went to each location, swabbed the area, placed

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

113

1 them immediately into an envelope, sealed the envelope,
2 secured it with evidence tape and then put my initials on it
3 and the date.

4 Q: And would you recognize your handwriting and the
5 envelopes and how you numbered the evidence you collected?

6 A: Yes, ma'am.

7 MS. LIVESAY: Judge, if I can have just one minute, I'm
8 gonna grab those -- that stuff.

9 THE COURT: To tell you the truth, Ms. Livesay, let's --
10 I hate to interrupt your direct examination, but let's go
11 ahead and take a short break while you're getting that
12 together. Okay?

13 MS. LIVESAY: Sure. Yes, sir, Your Honor.

14 THE COURT: All right. We've been at it a while. It's a
15 good time for us to go ahead and take a break. I'm gonna
16 excuse you back to the jury room, but please do not discuss
17 the case even among yourselves. Don't conduct any independent
18 investigation. Give you an opportunity to get something to
19 drink, use the restroom, whatever the case may be, but don't
20 discuss the case or conduct any investigation. We'll take
21 about a 10 or 15-minute break and then we'll come back and get
22 you.

23 (REPORTER'S NOTE: Jury exits courtroom.)

24 THE COURT: All right, Ms. Matteson, we're still in the
25 middle of your testimony, so you cannot discuss your testimony

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

114

1 with anyone, whether that be what you've testified to thus far
2 or what you anticipate testifying to in the future. Okay?

3 A: Yes, sir.

4 THE COURT: You'll be allowed to step down, but don't
5 discuss your testimony with anyone, even the State's
6 attorneys. Okay?

7 A: Yes, sir.

8 THE COURT: All right. Thank you. Anything from the
9 State before we take a short recess?

10 MS. LIVESAY: No, sir.

11 THE COURT: Anything from the Defense?

12 MR. BOUCHETTE: No, Your Honor.

13 THE COURT: All right. Let's take about a 10 or 15-
14 minute break and then we'll come back.

15 MS. LIVESAY: Thank you, Judge.

16 THE COURT: Thank you.

17 *****OFF THE RECORD*****

18 (On the Record.)

19 THE COURT: All right. Anything from the State before we
20 bring the jury back in?

21 MS. LIVESAY: No, sir.

22 THE COURT: All right. Anything from the Defense?

23 MR. GARDNER: No, Your Honor.

24 THE COURT: All right. Let's go ahead and bring the jury
25 in.

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

115

1 Ms. Matteson, you're still under oath, okay?

2 A: Yes, Your Honor.

3 THE COURT: Thank you.

4 (REPORTER'S NOTE: Jury enters courtroom.)

5 THE COURT: Ladies and gentlemen, welcome back.

6 Ms. Livesay, you can continue with your direct
7 examination.

8 MS. LIVESAY: Thank you, Judge.

9 BY MS. LIVESAY:

10 Q: Ms. Matteson, did you actually collect swabs and put them
11 in evidence to figure out who the blood belonged to?

12 A: I collected the swabs so I could send them to the
13 laboratory so they could be tested.

14 Q: Okay. And now would you recognize your handwriting and
15 how you packaged the swabs?

16 A: Yes, ma'am; I would.

17 STATE'S EXHIBIT NUMBER 67 AND 68

18 MARKED FOR IDENTIFICATION

19 BY MS. LIVESAY:

20 Q: Okay. I'm showing you now State's Exhibit 67 and 68.
21 Can you look in here and tell me whether or not that's your
22 handwriting and you're familiar with that and also State's
23 Exhibit 68?

24 A: Yes, ma'am, this is my handwriting.

25 MS. LIVESAY: And, Your Honor, if you don't mind, I'm

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

116

1 gonna open this SLED bag so she can go through each envelope
2 that's already been tested.

3 THE COURT: All right. Any objection?

4 MR. GARDNER: No, Your Honor.

5 THE COURT: All right. Go ahead.

6 BY MS. LIVESAY:

7 Q: Ms. Matteson, if you don't mind, go through those
8 envelopes and tell me if you recognize that writing?

9 A: Yes, ma'am; I do.

10 Q: Okay. And if you don't mind, tell this jury what is
11 indicated on those envelopes.

12 A: Okay. I do have a correction though. This one here is
13 not my writing.

14 Q: Okay.

15 MR. GARDNER: For the record, which one was that?

16 THE COURT: Which one was that?

17 MS. LIVESAY: They're gonna be marked separate, Your
18 Honor. None of them as even been marked yet.

19 THE COURT: Okay.

20 A: Okay. When I collect swabs and I place them into
21 envelopes, I use a grouping number. I also place the file
22 number on the envelope so I know which case it belongs with.
23 I do that, the file number and the item that I put into the
24 envelope, immediately. This one is swabs from the west bed,
25 Evidence Marker Number 3. I sealed it with evidence tape and

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

117

1 I have my initials and a date on the back.

2 The next one is swabs from carpet, Evidence Marker Number
3 2. There's evidence tape on the back and my initials. Swabs
4 from east bed, Evidence Marker 4. There's evidence tape on
5 the back and my initials. Swab from picture, east wall,
6 Evidence Marker 5. There's evidence tape on the back, my
7 initials and the date. Swabs from dresser, Evidence Marker 6.
8 Evidence Tape, my initials, the date. Also, I notice that
9 there is also an additional initials with another date on
10 these envelopes also.

11 Q: Okay.

12 A: This one is swab from suspect's left shoe. Secured with
13 Evidence Tape, my initials and the date.

14 Q: Okay. And are those the swabs that you collected for
15 this case?

16 A: Yes, ma'am.

17 Q: Okay. And if you don't mind, I'm gonna give these to the
18 Court Reporter so she can mark them as State's exhibits. You
19 want to do them separately or ---

20 COURT REPORTER: 68 through 73.

21 BY MS. LIVESAY:

22 Q: And are those the envelope that you put the swabs in?

23 A: Yes, ma'am.

24 Q: And are those the indicators on the outside that you
25 actually wrote on the outside?

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - DIRECT BY LIVESAY

118

1 A: Yes, ma'am.

2 MS. LIVESAY: Your Honor, at this time, I'm wishing to
3 move those into evidence.

4 THE COURT: All right.

5 MR. GARDNER: No objection, Your Honor.

6 THE COURT: All right. State's Exhibits 68 through 73
7 admitted into evidence without objection.

8 STATE'S EXHIBITS NUMBERS 68 THROUGH 73

9 ADMITTED INTO EVIDENCE

10 BY MS. LIVESAY:

11 Q: And, Ms. Matteson, did you take swabs from different
12 areas of the room?

13 A: Yes, ma'am.

14 Q: Okay. And was that to ensure that those were all blood
15 in different parts of the room?

16 A: Yes.

17 Q: Okay. And was that to assure that that blood belonged to
18 the same person on all those different areas of the room?

19 A: No, I took the blood swabs so that it could be sent to
20 the lab so that they were able to reveal whose blood it
21 actually was.

22 Q: Okay. Ms. Matteson, did you collect anything else while
23 you were at Atlantic View Motel?

24 A: I did not collect anything else.

25 Q: Okay. And what did, you said earlier that another

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - CROSS BY GARDNER

119

1 investigator went with you; who is -- what is his name?

2 A: Officer Scott Williamson.

3 Q: Okay. And what, if anything, did he collect?

4 A: He obtained the video files.

5 Q: Okay. So, while you were doing the room, he was
6 collecting the surveillance tape?

7 A: We processed the room together.

8 Q: Okay.

9 A: After the fact is when he went and collected the video
10 files.

11 Q: Okay. Perfect. Thank you, Ms. Matteson.

12 No further questions, Your Honor.

13 THE COURT: All right. Cross examination?

14 MR. GARDNER: Thank you. May it please the Court?

15 CROSS EXAMINATION OF KELLY LYNN MATTESON BY MR. GARDNER:

16 Q: Ms. Matteson, thanks for coming. I understand you came a
17 long way.

18 A: Yes, sir.

19 Q: Ms. Livesay asked you earlier about the -- getting called
20 out when there's a homicide?

21 A: Yes, sir.

22 Q: And you did that a lot in Myrtle Beach?

23 A: Yes, sir.

24 Q: Or you got called out a lot in Myrtle Beach?

25 A: Correct.

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - CROSS BY GARDNER

120

1 Q: Homicide, not all homicides are murders, right? Are you
2 familiar with that term? Homicide just means a death, right?

3 A: Yes, sir.

4 Q: And a homicide doesn't equal murder?

5 A: Correct.

6 Q: Okay. Because sometimes it manslaughter?

7 A: Correct.

8 Q: Sometimes, it's accident?

9 A: Yes, sir.

10 Q: Sometimes it just means a death. So, when she asked you
11 about that, all that meant was you collect evidence from the
12 scene where there's a dead body?

13 A: That is correct.

14 Q: Okay. I just want to get that cleared up.

15 Now, how many years did you work at Myrtle Beach?

16 A: Approximately twelve-and-a-half.

17 Q: So, would it be fair to ask you if you are familiar with
18 some of those hotels on the boulevard area and the drug scene
19 and that culture.

20 A: Yes, sir; I am.

21 Q: And you are familiar with that?

22 A: Yes, I am.

23 Q: Okay. All right. Are you familiar with the nickname
24 Chicken? Have you come across that, Chicken?

25 A: No, I have not.

State v. Weatherall - 2014-GS-26-01415
KELLY LYNN MATTESON - CROSS BY GARDNER

121

1 Q: George McElveen was his -- is his real name?

2 A: I'm unfamiliar with him.

3 Q: Okay. All right. Are you familiar -- all you do is
4 collect evidence, so you wouldn't know who the suspects or
5 anything were; you just know what was ---

6 A: It's irrelevant to me.

7 Q: Excellent. Is there anything else that we could've done
8 or should've done or anything like that -- you did a great
9 job. It looks like you got -- I stopped counting the pictures
10 there were so many of them, but it looks like you did
11 everything you could do. Is there anything else that we
12 could've done or should've done?

13 A: Not that I'm aware of.

14 Q: Okay. Thanks for coming.

15 A: Thank you very much.

16 THE COURT: Redirect?

17 MS. LIVESAY: No, sir, Your Honor.

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

19 A: Thank you.

20 THE COURT: Thank you.

21 The State may call your next witness.

22 MS. LIVESAY: Thank you, Your Honor. At this time, I'm
23 calling a agent from SLED, who handles AFIS. He'll pronounce
24 his name once he gets in here.

25 THE COURT: All right.

State v. Weatherall - 2014-GS-26-01415
SERAPHIM HAFTOGLOU - DIRECT BY LIVESAY

122

1 CLERK: Please raise your right hand and place your left
2 hand on the Bible.

3 SERAPHIM HAFTOGLOU, HAVING BEEN DULY
4 SWORN TESTIFIES AS FOLLOWS:

5 CLERK: Please be seated. State your full name and spell
6 your first and last name.

7 MR. HAFTAGLOU: My name is Seraphim Haftoglou. That's S-
8 E-R-A-P-H-I-M, H-A-F-T-G-L-O-U.

9 DIRECT EXAMINATION OF SERAPHIM HAFTOGLOU BY MS. LIVESAY:

10 Q: Okay. And do you go by Sammy?

11 A: Yes.

12 Q: Thank you. Sammy, if you don't mind, tell this jury ---

13 MR. GARDNER: I apologize for interrupting. I couldn't
14 hear what you said your last name was. do you mind saying
15 that again?

16 A: Yes, my last name is Haftoglou. That's H-A-F-T-O-G-L-O-
17 U.

18 BY MS. LIVESAY:

19 Q: And where are you currently employed?

20 A: I work for the South Carolina Law Enforcement Division
21 also known as SLED.

22 Q: Okay. And how long have you been at SLED?

23 A: I've been at SLED for almost 10 years.

24 Q: Okay. And what are your responsibilities at SLED?

25 A: My current responsibilities, I am the supervisor of our

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

123

1 Automated Fingerprint Identification System also known as SLED
2 and I am the keeper of the records.

3 Q: Okay. And if you don't mind, explain to this jury a
4 little bit about what AFIS is?

5 A: AFIS is our, as I said, Automated Fingerprint
6 Identification System. It stores ---

7 THE COURT: You're gonna need to slow down. I apologize.

8 A: Yes, sir. I apologize.

9 THE COURT: All right.

10 A: So, AFIS is our Automated Fingerprint Identification
11 System. It stores all our criminal prints, some applicant
12 prints and everything processed through that for
13 identifications and it also sends it to the FBI to be
14 identified, all prints.

15 Q: Okay. Now, does each fingerprint have a specific
16 identification number?

17 A: Yes, when a print is submitted to us or we hand it and
18 send it in, it has its own unique identification number.

19 Q: Okay. And does ---

20 MR. GARDNER: Your Honor, I apologize. I'm sorry, I
21 don't know who this is and I need to take up a matter of law.
22 Maybe we can do at the bench with you so we don't have to ---

23 BY THE COURT:

24 THE COURT: Okay. Well, we'll go ahead. Ladies and
25 gentlemen, let me excuse you back to the jury room for just a

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

124

1 few minutes while I address this matter of law with the
2 attorneys. And I tell you why we excuse you back to the jury
3 room. It's not that we're trying to hide anything from you,
4 but as I told you, you and you alone decide the facts of the
5 case and you decide it based upon the testimony of the
6 witnesses. I decide the law. When issues of law and what law
7 to be applied comes up, it often requires me as the judge and
8 the attorneys to reference factual matters. Well, what we say
9 is not evidence but we don't want you to be influenced by
10 anything that I might say or that the attorneys might say.
11 When we speak about the facts, we don't want that to influence
12 your decision on what you find the facts to be and that's why
13 we excuse you back to the jury room. If I may excuse you back
14 to the jury room for just a few minutes and we'll bring you
15 out in just a second. Okay?

16 (REPORTER'S NOTE: Jury exits courtroom. The following takes
17 place outside the presence of the Jury.)

18 THE COURT: All right.

19 MR. GARDNER: Thank you, Judge. I'm not trying to make a
20 mountain out of a mole hill, I just want to -- this is a
21 murder case and I'm trying to make sure I'm doing everything
22 right. I, I saw his name on the witness list that we were
23 provided yesterday and we've combed through this box of
24 discovery and we don't know what his -- we don't have anything
25 on him. I don't know what his ---

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

125

1 MS. LIVESAY: Oh, I can explain, Judge. There's a case
2 on point and Candy McSpadden had to fingerprint Herbert
3 Woodberry in order to identify him as indeed Helbert, I'm
4 sorry Herbert Woodberry, the person we were looking for. And
5 the case law says in order for me to be able to get that
6 identification in, I have to authenticate the fingerprints she
7 compared it to, to say indeed this comparison was to Herbert
8 Woodberry's fingerprint. She used AFIS, which they all use.
9 They get the fingerprint off and make the comparison. So, all
10 I'm doing is authenticating, yes, she made a comparison and
11 this comparison is indeed this match belongs to Helbert
12 Woodberry, the victim. It's for authentication purposes.

13 MR. GARDNER: And that's -- I'm not gonna necessarily
14 object to that, I just had no idea what he was here for ---

15 MS. LIVESAY: Okay.

16 MR. GARDNER: --- and what he was going into and I
17 thought it would be better to get this before we'd have a
18 potential mistrial. So, if I understand the Solicitor, he's
19 here to authenticate a fingerprint that matches with the
20 victim.

21 MS. LIVESAY: Give me the card.

22 MR. GARDNER: And I have no objection to that.

23 MS. LIVESAY: See, Judge ---

24 THE COURT: He's just saying that he -- this witness is
25 to authenticate the fingerprint matches that of the victim; is

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

126

1 that correct?

2 MS. LIVESAY: Yes, sir.

3 MR. GARDNER: And that will be fine, Your Honor, we have
4 no objection.

5 THE COURT: All right.

6 MS. LIVESAY: I'm sorry, I thought you ---

7 A: Not necessarily to match the ---

8 THE COURT: Wait a minute. No, it's just for them.

9 That's -- the purpose of this witness, according to the State,
10 is to authenticate that the fingerprint matches that of the
11 victim?

12 MS. LIVESAY: That's right. Yes, sir.

13 THE COURT: Okay.

14 MS. LIVESAY: And just so Johnny knows, see, this is
15 Helbert's fingerprint, Woodberry?

16 MR. GARDNER: Okay.

17 MS. LIVESAY: He's just gonna say this is the one in AFIS
18 and this Ms. McSpadden is gonna come in and say, I took the
19 victim's fingerprint and compared it to this and indeed it was
20 a match.

21 MR. GARDNER: Okay. Thank you.

22 MS. LIVESAY: Sorry about that, Judge.

23 MR. GARDNER: Thank you, Judge.

24 MS. LIVESAY: I'm sorry, Judge, that may have been my
25 fault.

State v. Weatherall - 2014-GS-26-01415
SERAPHIM HAFTOGLOU - DIRECT BY LIVESAY

127

1 COURT REPORTER: 74.

2 MS. LIVESAY: Thank you.

3 THE COURT: All right. Let's bring the jury back in.

4 (REPORTER'S NOTE: Jury enters courtroom.)

5 THE COURT: Ms. Livesay, you can continue with your
6 direct examination.

7 MS. LIVESAY: Thank you, Judge.

8 BY MS. LIVESAY:

9 Q: And just to get us back on track, you work at SLED and
10 you handle AFIS, which is where they store all the
11 fingerprints?

12 A: Yeah, we store all criminal prints and some applicant
13 prints.

14 Q: Okay. And are they kept in a manner where they're not
15 tampered with?

16 A: Yes.

17 Q: And are they assigned a special number for identification
18 purposes?

19 A: Yes, they are.

20 Q: Okay. And did you bring a fingerprint here today?

21 A: Yes, I brought a fingerprint card.

22 Q: Okay. And has it been marked? Would you please tell the
23 Court what exhibit it's been marked as?

24 A: It's marked as Exhibit 74.

25 Q: Okay. And if you don't mind, tell this jury whose

State v. Weatherall - 2014-GS-26-01415
SERAPHIM HAFTOGLOU - DIRECT BY LIVESAY

128

1 fingerprint card that belongs to?

2 A: This fingerprint card belongs to a Helbert Woodberry.

3 Q: Okay. And is that kept in the normal, ordinary course of
4 business at SLED?

5 A: Yes, it is.

6 Q: And is it kept in a way that it cannot be tampered with?

7 A: Yes, that is correct.

8 Q: Okay. And is that used for police agencies to compare
9 fingerprints to?

10 A: Yes, that's correct.

11 MS. LIVESAY: Okay. No further questions, Your Honor.
12 I'm sorry, at this time, we'd like to put that fingerprint
13 card into evidence for authentication purposes.

14 THE COURT: Any objection?

15 MR. GARDNER: No, Your Honor.

16 THE COURT: All right. State's Exhibit 74 admitted into
17 evidence without objection.

18 STATE'S EXHIBIT NUMBER 74

19 ADMITTED INTO EVIDENCE

20 MS. LIVESAY: Thank you. Your further questions for this
21 witness, Your Honor.

22 THE COURT: All right. Cross examination?

23 MR. GARDNER: Thank you. Very briefly.

24 CROSS EXAMINATION OF SERAPHIM HAFTOGLOU BY MR. GARDNER:

25 Q: I want to apologize because of the confusion a while ago.

State v. Weatherall - 2014-GS-26-01415
SERAPHIM HAFTOGLOU - CROSS BY GARDNER

129

1 I didn't know who you were.

2 A: Yes, sir.

3 Q: You're not in any of my discovery and -- but work at
4 SLED, so we're willing to listen to whatever you got to say.
5 Okay?

6 A: Yes, sir.

7 Q: Tell me what is AFIS?

8 A: AFIS is our -- it's a Automated Fingerprint
9 Identification System.

10 Q: Okay. And that's kept by SLED?

11 A: Yes.

12 Q: Is that connected to other states or just us?

13 A: No, it's only connected to the FBI.

14 Q: Okay. Is everybody's fingerprint in there?

15 A: Only criminals and particular applicants based on their
16 -- state statute, we're allowed to store them.

17 Q: Well, my next question is, how did y'all have Mr.
18 Woodberry?

19 MS. LIVESAY: Your Honor, at this time the State has an
20 objection.

21 THE COURT: All right. What's the objection?

22 MS. LIVESAY: I hate to ask the jury to leave, but this
23 is gonna be an objection I need to do outside the presence of
24 the jury.

25 BY THE COURT:

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

130

1 THE COURT: All right. Ladies and gentlemen, I'll have
2 to excuse you back to the jury room for a just a few minutes.
3 (REPORTER'S NOTE: Jury exits courtroom. The following takes
4 place outside the presence of the Jury.)

5 THE COURT: All right.

6 MS. LIVESAY: My objection is, he's obviously trying to
7 use this witness to get out the fact that the reason the
8 victim's fingerprint is in SLED is because he has a conviction
9 and I don't think that's relevant and I don't think the rules
10 allow for it. This man is called in every case we do
11 fingerprints to authenticate the fingerprint card. And I
12 think if he does ask that question, it would rightfully open
13 the door for me to ask this man if Mitchell Weatherall's
14 fingerprints are in AFIS because they would be, but I don't
15 believe that this is relevant that the man's fingerprint is in
16 AFIS because he's had a conviction. He's trying to basically
17 dirty up the victim by saying, look, this is some guy with a
18 prior record and it's not admissible. You can't just slander
19 his character through a fingerprint witness.

20 MR. GARDNER: I just followed where the evidence went. I
21 mean, it was the next logical question. She put a witness up
22 that I wasn't expecting. I asked him what AFIS stood for. I
23 asked him who all was in there; he said criminals and people
24 making applications, and I said well the next logical question
25 is, what was Mr. Woodberry in there for? I mean, they've

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

131

1 certainly opened the door to this information. Now the jury
2 is gonna wonder why he's in there. I wasn't trying to do
3 anything other than follow the evidence for a witness that I
4 wasn't anticipating testifying.

5 THE COURT: All right. Well, without getting into what
6 the crime is or what he was in there for, I'll allow the
7 question as to whether or not he was in there because he was
8 convicted of a crime or whether he was making an application
9 for a job or some position. Okay?

10 MR. GARDNER: And I guess I should've addressed what she
11 said a while ago about going into my client, he's the
12 Defendant. He hasn't opened the door about anything and I
13 would obviously object to that right now if she's gonna try to
14 do that.

15 THE COURT: If they get into that, I'll sustain that.

16 MS. LIVESAY: Your Honor, as crazy as this is, I just
17 want to know what rule Mr. Gardner believes allows him to get
18 out the fact that the victim has a prior criminal record
19 through the AFIS person. And whatever that rule is, I'm
20 assuming it also allows me to let this guy go back to SLED,
21 and I'm going to recall him to open the door to the fact that
22 Mitchell Weatherall also has prints in AFIS.

23 THE COURT: If you've got a print of his from this crime
24 scene and you're gonna introduce it into evidence, then I'll
25 address that issue, but I'm not gonna allow you to just come

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

132

1 back and say, is his fingerprint in the AFIS System? You're
2 the one that introduced this fingerprint from this person into
3 the system through the AFIS System and you brought it up. You
4 opened the door for him to examine as to why the fingerprint
5 that you put into evidence is in the AFIS System. I'm gonna
6 allow that.

7 Now, if you have the Defendant's fingerprint taken from
8 the crime scene and you're gonna put that into evidence, then
9 I'll address that issue.

10 MS. LIVESAY: I understand what you're saying, Judge, and
11 this is all I want to say. I would agree with you, but for
12 the victim's fingerprint wasn't at the crime scene. We found
13 him dead and it was used only for identification purposes.
14 So, to take the fact that we're using a man's body that was
15 found at Postal Way and because we have to identify the body
16 in a murder case, it now opens up the fact that he's a
17 criminal. I'm just not sure that that meets 403. I would
18 certainly believe it's more prejudicial than probative. I
19 agree with you if it was found at the crime scene ---

20 THE COURT: Okay. Let me hear that. What is the
21 probative value?

22 MR. GARDNER: Well, other than it's following the
23 questions, you know. I was just following what happened up
24 here. She introduced this guy as a AFIS guy who collects and
25 matched, and the obvious question is what does it stand for

State v. Weatherall - 2014-GS-26-01415
SERAPHIM HAFTOGLOU - CROSS BY GARDNER

133

1 and who's in there?

2 THE COURT: And he answered the question, the people in
3 there have either been convicted of a crime or applying for a
4 position. So, I'll sustain the objection. We'll leave it at
5 that.

6 All right. Let's bring the jury back in.

7 (REPORTER'S NOTE: Jury enters courtroom.)

8 THE COURT: All right, Mr. Gardner, you can continue with
9 your cross examination.

10 MR. GARDNER: Thank you, Judge.

11 BY MR. GARDNER:

12 Q: All right. I think we were asking what AFIS was and you
13 told me what those initials for something and that you have
14 fingerprints in there; is that right?

15 A: Yes.

16 Q: And that you had matched a card of the data base that you
17 have and that data base contains criminals or applicants and
18 this victim's fingerprint matched that and that's where we
19 were; is that pretty much it?

20 A: Yeah, pretty much.

21 Q: Okay. Is there anything else that you think we should
22 tell the jury, anything else about this case?

23 A: No, sir.

24 Q: Okay. Thank you. Nice meeting you.

25 THE COURT: All right. Redirect?

State v. Weatherall - 2014-GS-26-01415
SERAPHIM HAFTOGLOU - REDIRECT BY LIVESAY.

134

1 MS. LIVESAY: Yes, sir, Your Honor.

2 REDIRECT EXAMINATION OF SERAPHIM HAFTOGLOU BY MS. LIVESAY:

3 Q: Why are peoples' prints put in AFIS; are there multiple
4 reasons?

5 A: Yes. As I said earlier, the reason for it, if you're a
6 criminal or if you're an applicant applying for a particular
7 position that our statute requires you to be fingerprinted.
8 Law Enforcement Officers, when they're hired, must be
9 fingerprinted and we store those prints.

10 Q: Okay. And do you know if a person's prints are put in
11 there for a certain reason or do you just know this person's
12 print is in AFIS?

13 A: I can tell if it's in there for a certain reason, yes,
14 ma'am.

15 MS. LIVESAY: No further questions, Your Honor.

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

17 MS. LIVESAY: Thank you.

18 THE COURT: The State can call your next witness.

19 MS. LIVESAY: Your Honor, my next witness is gonna be
20 Michelle McSpadden and she will be a lengthy witness where I'm
21 gonna bring out the T.V. and show some more pictures.

22 THE COURT: All right. Let me see the attorneys for a
23 second.

24 MS. LIVESAY: I don't know, I know they were thinking
25 12:30 for lunch.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

135

1 (REPORTER'S NOTE: A bench conference was held off the record
2 in the presence of but out of hearing of the Jury.)

3 BY THE COURT:

4 THE COURT: All right. You can go ahead and call your
5 next witness.

6 MS. LIVESAY: Your Honor, can we excuse the agent from
7 SLED from his subpoena?

8 THE COURT: Any objection?

9 MR. GARDNER: No, Your Honor.

10 THE COURT: All right. He's free to go.

11 Thank you.

12 MS. LIVESAY: And it's gonna be just a few minutes for
13 Ms. McSpadden, Your Honor. She's coming in.

14 THE COURT: All right.

15 MS. LIVESAY: Judge, I apologize, we're just waiting for
16 her to get here, I'm sorry.

17 THE COURT: All right.

18 MS. LIVESAY: She's walking in now, Judge.

19 THE COURT: All right.

20 MS. LIVESAY: About another minute.

21 THE COURT: All right. All right, ladies and gentlemen,
22 while we're waiting on this next witness, it might be a little
23 while, so I'm gonna excuse you back to the jury room rather
24 than keeping you sitting here. I'll excuse you back to the
25 jury room, give you an opportunity to stretch your legs, use

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

136

1 the restroom, whatever the case may be and we'll bring you out
2 as soon as the witness gets here. Thank you very much.

3 (REPORTER'S NOTE: Jury exits courtroom. The following takes
4 place outside the presence of the Jury.)

5 THE COURT: All right, Mr. Gardner, I understand you have
6 an objection?

7 MR. GARDNER: I do, Your Honor. The Solicitor just
8 informed me that one of the exhibits she wants to put into
9 evidence is part of the decedent. We would object to that. I
10 don't see any probative value to putting that up there. I
11 think it would absolutely outrage the sensitivities of
12 everybody in this courtroom including the jury.

13 THE COURT: All right.

14 Ms. Livesay?

15 MS. LIVESAY: Your Honor, I don't have another way other
16 than to introduce that than through the evidence. I have to
17 show that the victim's DNA matched the DNA in the room.

18 THE COURT: Well, I'm assuming you're gonna have somebody
19 testify to that.

20 MS. LIVESAY: I have to create the chain. I can't
21 without creating the chain.

22 THE COURT: But, the -- no, now, there's been
23 identification of DNA without introducing body parts in trials
24 before. Who is gonna be the witness that testifies?

25 MS. LIVESAY: Michelle McSpadden will testify that she

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

137

1 collected the jaw bone.

2 THE COURT: Okay.

3 MS. LIVESAY: And that it was sent to SLED. SLED would
4 not test it like that. They sent it back and told her to pull
5 the teeth. They would only test from the teeth. So, they
6 sent it back and Michelle McSpadden has to pull the teeth and
7 send the teeth back, which they then used that to make the
8 comparison to say yes, this DNA from the body matches the DNA
9 in the room.

10 THE COURT: Okay. And are you objecting to the chain or
11 any of that testimony?

12 MR. GARDNER: No, Your Honor. I believe she's
13 established parts of it by saying they got a fingerprint match
14 of the guy. There's no defense that he's not the person dead
15 or it's a different dead person.

16 MS. LIVESAY: Your Honor, the fingerprint doesn't ID the
17 blood in the room. I have to show them that that is the
18 victim's blood to nullify that anybody else in the room was
19 bleeding or had been assaulted.

20 THE COURT: But I mean, I guess the question is, does the
21 Defense object to the witness testifying that the jaw bone was
22 taken from the decedent, that it was sent to SLED, that it was
23 sent back from SLED, she extracted the teeth and sent it, and
24 that those teeth matched -- the DNA on the teeth matched that
25 of the decedent?

State v. Weatherall - 2014-GS-26-01415.
BY THE COURT

138

1 MR. GARDNER: We are not -- we have -- I don't even think
2 they have to go that far about sending body parts and all
3 that, but we don't object to that. We don't object -- we just
4 don't -- we object to the actual body parts being introduced
5 into evidence as an exhibit.

6 THE COURT: But you don't object to the witness
7 testifying that the body part was extracted from the body.

8 MR. GARDNER: They've identified him based on the blood
9 that they took from the hospital, it matched up to his DNA.
10 They don't have to be as gruesome. We would say, Judge, that
11 they don't even have to be as gruesome to say is that they
12 shipped body parts to Columbia; they could just say they
13 tested his DNA and it's him.

14 THE COURT: Well, no, the question is, I think they can
15 testify about the body parts. The question is, is do we
16 actually introduce the body part into evidence?

17 MR. GARDNER: And that's where we object.

18 THE COURT: Okay. But you don't object to the testimony
19 about the body part?

20 MR. GARDNER: No, Your Honor.

21 THE COURT: Okay. So, if they don't object to the
22 testimony about the body part, then what is the probative
23 value?

24 MS. LIVESAY: Your Honor, two things. I don't need to
25 show the teeth and the jaw bone, but I absolutely have to put

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

139

1 in that it was used because the pathologist is gonna come in
2 and say the body was in such shape you could not take a swab,
3 you could not take blood. So, these people are gonna be
4 wondering, well, how do you know that that was him.

5 THE COURT: Well, the witness is gonna testify, we took
6 the jaw bone, we took the teeth, we sent it off for testing.

7 MS. LIVESAY: That's all we want, Your Honor, is for
8 Michelle to say we collected these things to be tested.

9 THE COURT: For what the -- yeah, she can testify we
10 collected these things.

11 MS. LIVESAY: And put them in evidence, but I'm not gonna
12 how them, but it's got to be in evidence. I mean, I can't
13 create the appropriate chain without it being in evidence. I
14 mean these are just the rules of ---

15 THE COURT: I mean they'll stipulate -- are you objecting
16 to the chain of evidence?

17 MR. GARDNER: No, Your Honor.

18 THE COURT: They're stipulating to the chain.

19 MS. LIVESAY: I'm sorry, Your Honor.

20 THE COURT: They're stipulating to the chain of evidence.

21 MS. LIVESAY: He can stipulate to it, but I'm putting --
22 the chain can be stipulated to, but the actual evidence, I've
23 got to put in. And now, if he wants to stipulate to the
24 chain, nobody is gonna be taking the jaw bone out, nobody's
25 gonna be taking the teeth out, but I have got to have in

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

140

1 evidence what was tested by SLED and what was collected by
2 SLED.

3 THE COURT: Okay. Let's do this. I'm gonna sustain the
4 objection. I'm gonna let you proffer it. So it's gonna be in
5 the record if the Appellant Court says I messed up and I
6 should've done something different. So, I will let you -- she
7 can testify to it, it'll come in as what would be ---

8 COURT REPORTER: We can do them for ID, Judge.

9 THE COURT: Okay. What would be the ID?

10 COURT REPORTER: The next number for ID?

11 THE COURT: Yeah.

12 COURT REPORTER: Would be 75.

13 MS. LIVESAY: Your Honor, I think I'm confused. Are we
14 proffering it to give Mr. Gardner the heads-up or are we
15 proffering because we're not gonna be able to tell that to the
16 jury.

17 THE COURT: We're gonna -- all right. The witness can
18 testify.

19 MS. LIVESAY: Okay.

20 THE COURT: To the body parts taken, what was sent to
21 SLED ---

22 MS. LIVESAY: Okay.

23 THE COURT: --- DNA match. You're not gonna be able to
24 pull out a jaw bone and teeth and show it to the jury.

25 MS. LIVESAY: Oh, I agree. I agree. I'm just gonna do

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

141

1 it in the bag just like that, I'm not unsealing any of that.

2 It's gonna be sealed up just like that.

3 THE COURT: Oh, okay. So, if it stays sealed, and she
4 just says this is the jaw bone and this is the teeth.

5 MR. GARDNER: If she puts it into evidence, they've got
6 the right to take it back into the jury room and they're gonna
7 open it up, I promise you.

8 THE COURT: Yeah, if it's evidence, they're gonna be able
9 to take it back there and open it up.

10 MS. LIVESAY: Normally, how we've done it or how it's
11 been done for me in the past is anything that's considered a
12 biological hazard is not unsealed. So, this would be, I would
13 think, considered a biological hazard to the jury. So,
14 honestly, I would think they would understand that that this
15 is in evidence, it is sealed, this is what it is but due to
16 the fact of this concern, it will not be unsealed.

17 THE COURT: Okay.

18 COURT REPORTER: Judge, if we just mark it for ID, it
19 won't go back anyway.

20 THE COURT: Yeah. What is -- and so is it -- how many --
21 how many articles are they?

22 MS. LIVESAY: How many jaw bones?

23 THE COURT: If you were gonna mark it as exhibits, how
24 many exhibits would you have?

25 MS. LIVESAY: Just two. It's gonna be -- this box right

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

142

1 here, which is sealed up. This is just the jaw bone. And
2 this which is sealed up is just the teeth. So, it would just
3 be two separate items.

4 THE COURT: All right. So, we'll mark the jaw bone as
5 State's Exhibit 75, the teeth as State's Exhibit 76. I'm
6 sustaining the objection. They don't come into evidence, but
7 they're gonna be proffered so they don't go back to it. The
8 witness can testify this is what we did, but you're not gonna
9 be able to hold up a box and hold that up.

10 MS. LIVESAY: I don't -- okay, I don't -- my only concern
11 is not for that I want to show it, because I don't want to
12 show it. I have no concerns there. But my concern is the
13 only thing that is accepted as this is evidence and we can
14 talk about it are things in evidence. Like I can't come up
15 here and just wave around some pictures, so I'm not sure that
16 I'm gone be able to legally tell you the results of these
17 items without them being in evidence. That's just -- I mean,
18 I don't want to open them, I don't want to show them; I'm just
19 concerned about the rules of evidence. I can't technically
20 tell what the results are. Does that make sense?

21 THE COURT: I understand what you're saying.

22 MS. LIVESAY: Okay.

23 THE COURT: I would agree with you a hundred percent but
24 for the fact that the Defense is stipulating that the
25 decedent's jaw bone was taken, that the decedent's teeth were

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

143

1 taken, that the jaw bone and teeth were sent to SLED and that
2 the jaw bone and teeth that were sent to SLED that's gonna be
3 testified to by your witness, the DNA matched that of the
4 decedent. As I understand, that's your stipulation, correct?

5 MR. GARDNER: Yes, Your Honor.

6 THE COURT: So since they're stipulating to that, what is
7 the probative value of presenting it to the jury.

8 MS. LIVESAY: I don't think I'm concerned -- I'm not
9 concerned about the probative value issue. I'm just concerned
10 about I know that they're stipulating to it, but I don't --
11 I'm gonna be honest, I don't think that's enough. I don't
12 think you can stipulate to something to kind of circumvent the
13 rules. Does that make -- what I'm trying to say is, this is a
14 rule and I don't know that Johnny agreeing to it makes --
15 allows me to circumvent that rule. Because like I said, I
16 don't want to show it, I don't want them to open it; I just
17 want to make sure I'm protected, that I've done what's
18 appropriate.

19 THE COURT: Well, you'll be protected because it's gonna
20 be proffered in evidence.

21 MS. LIVESAY: Okay.

22 THE COURT: And so it's gonna be part of the record that
23 the Appellant Court can review.

24 MS. LIVESAY: Okay. So part of the record -- it's gonna
25 be evidence is what you're saying. I'm considering this as in

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

144

1 evidence for the State, I'm just not ---

2 THE COURT: No, it is not in evidence, but it is part --
3 it is not in evidence to the extent that the jury is gonna be
4 able to look at it or review it, but it is in the record for
5 the Appellant Court so they can easily say rather than coming
6 back and retrying the whole thing, they're gonna say, well,
7 the evidence was proffered, it could've come in and this is
8 what it would've shown.

9 MS. LIVESAY: Okay. I'm just -- my only hesitation is, I
10 mean, I know y'all appreciate my -- my concern is just that I
11 want to make sure the chain is correct and protected; that's
12 my only thing.

13 THE COURT: And they're stipulating to it.

14 MS. LIVESAY: Okay.

15 THE COURT: I understand if the Defense stipulates to the
16 chain of evidence ---

17 MS. LIVESAY: Okay.

18 THE COURT: --- you don't have to put any of this in.

19 MS. LIVESAY: Okay. Okay. So, I'll have all my people
20 come, we just won't be showing them these items. We'll just
21 be saying I collected it and he's saying he's good on the
22 chain?

23 THE COURT: That's correct.

24 MS. LIVESAY: Is that ---

25 MR. GARDNER: Yes, Your Honor. For the record, my

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

145

1 objection would be to the mention of the jaw bone or any of
2 that stuff because it's not necessary, but I understand you
3 would overrule that. So, therefore, we're stipulating to
4 whatever chain she wants to. She doesn't have to -- that is
5 -- she said herself she's not so concerned about the probative
6 value of that. The argument is the prejudicial effect
7 outweighs the probative value.

8 THE COURT: And I don't think so if you're objecting to
9 even the mention of teeth and the jaw bone. They're gonna be
10 able -- if you're -- if you're gonna -- if your objection is
11 that they can't even mention that, then the probative value
12 outweighs the prejudicial effect because they're gonna be able
13 to say this is how we got the DNA.

14 MS. LIVESAY: Right.

15 THE COURT: Now, if you're saying I'm not objecting to
16 any of that, then that kind of kills the probative value too
17 then and it's more prejudicial. But if you're contesting --
18 if you're saying they can't even mention how they got the DNA,
19 then I'm gonna allow it in to show that.

20 MR. GARDNER: And I was just setting the record. We
21 object to that and you ruled against me and I respect that
22 ruling. I've also said that I would stipulate to a new
23 objection, that we would stipulate to the chain; therefore it
24 doesn't need to be admitted into evidence. My understanding
25 is that that was sustained.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

146

1 THE COURT: Now, you've got me confused now. What's your
2 first objection?

3 MR. GARDNER: My first objection is the admitting of a
4 body part into evidence, the prejudicial value outweighs the
5 probative value.

6 THE COURT: Okay. I overrule your objection because they
7 say that it's necessary to establish the chain.

8 MR. GARDNER: Therefore, I respect your ruling and I
9 stipulate to the chain.

10 THE COURT: So, why not just withdraw your objection?

11 MR. GARDNER: I thought I had to have it on the record in
12 case, but ---

13 THE COURT: Well, you can't have it both ways. You can't
14 keep your objection on there ---

15 MR. GARDNER: Well, I -- because it was overruled, but
16 we'll stipulate to the chain and as to it not being entered
17 into evidence, that she proffer it like she said, but no
18 waving around or putting into evidence or anything like that.

19 THE COURT: But do you object to the witness testifying
20 that we obtained DNA from a jaw bone and teeth extracted from
21 the decedent?

22 MR. GARDNER: I don't object to that. We would stipulate
23 to that. In fact, we would go one further and say they can
24 say we had his DNA and we took steps to get it and it matches
25 and you won't have any objection from us.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

147

1 THE COURT: And we got the DNA from the jaw bone and we
2 got DNA from the teeth that were extracted from the decedent.

3 MR. GARDNER: We don't have any problem with that.

4 THE COURT: Okay. So, I -- this will come in. State's
5 Exhibit 75 and 76 are proffered, but I sustain his objection
6 because they're stipulating that the jaw bone was extracted,
7 the teeth were extracted, they were sent to SLED for DNA
8 match; they're not objecting to the chain.

9 MS. LIVESAY: Okay. So the testimony comes in, I'm just
10 not putting the actual items in.

11 THE COURT: Exactly.

12 MR. GARDNER: Or waving it around.

13 THE COURT: Excuse me?

14 MR. GARDNER: Or waving it around.

15 THE COURT: Well, if it's not coming in, then they can't
16 show it to the jury or anything.

17 MR. GARDNER: Okay.

18 THE COURT: So, you want it taken down all the way.

19 MR. GARDNER: It's like going to the funeral home with a

20 ---

21 THE COURT: Okay. Well, it's gonna be proffered into
22 evidence, but let's go ahead and move it down where it's not
23 on the witness stand.

24 COURT REPORTER: I need to mark it, Judge.

25 MS. LIVESAY: I think Dixie is gonna keep it. She's

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

148

1 gonna mark it, so she can just put it down with her, but she's
2 got to keep it once she marks it.

3 THE COURT: Exactly.

4 COURT REPORTER: Which is the jaw bone, the box?

5 THE COURT: The jaw bone, yeah. The jaw bone is the box?

6 MS. LIVESAY: Yes, sir, Your Honor, we're ready.

7 THE COURT: Okay.

8 MS. LIVESAY: Oh, it is, Your Honor, and it's in a can in
9 the box and the can is sealed up.

10 STATE'S EXHIBIT NUMBER 75 AND 76

11 MARKED FOR IDENTIFICATION

12 THE COURT: Well, now that we've done that, there's
13 another delay. I've been told that lunch is here. So, before
14 we call the next witness ---

15 MS. LIVESAY: Okay.

16 THE COURT: --- we'll go ahead and break for lunch.
17 Okay? I hate to do that and make your witness rush down here,
18 but it took so long, we've got lunch here in the interim.

19 So, let's go ahead and bring the jury in right quick so I
20 can tell them that we'll break for lunch.

21 (REPORTER'S NOTE: Jury enters courtroom.)

22 THE COURT: Ladies and gentlemen, welcome back. Given
23 the time of day and before we proceed with the next witness, I
24 wanted to let you know that we do have lunch for you. And so,
25 we're gonna go ahead and take our lunch break now. You do not

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

149

1 have to stay here to eat lunch if you choose not to, but if
2 you leave and go eat lunch elsewhere, you'll need to be back
3 at 1:15. So, that's gonna be a little bit less than an hour.
4 I'll give you plenty of time to eat lunch if you're here. If
5 you leave you might be rushed a little bit, but I'm not gonna
6 make you stay here and eat the lunch that we've provided for
7 you if you want to go elsewhere, but you would need to be back
8 at 1:15.

9 Do not discuss the case, do not conduct any independent
10 investigation into the case. I hope everybody has a good
11 lunch and we'll resume -- we'll shoot for about 1:15 getting
12 started back. Okay?

13 Thank you very much.

14 (REPORTER'S NOTE: Jury exits courtroom.)

15 THE COURT: All right. Anything from the State before we
16 recess for lunch?

17 MS. LIVESAY: No, sir, Your Honor.

18 THE COURT: Anything from the Defense?

19 MR. GARDNER: No, sir, Judge.

20 THE COURT: All right. Well, I told them to be back at
21 1:15. I'll probably take the bench between 1:15 and 1:30.
22 Okay?

23 MR. GARDNER: Yes, sir.

24 MS. LIVESAY: Yes, sir.

25 (RECESS.)

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

150

*****OFF THE RECORD*****

(On the Record.)

BY THE COURT:

THE COURT: All right. Anything from the State before we bring the jury in?

MS. LIVESAY: No, sir.

THE COURT: Anything from the Defense?

MR. GARDNER: No, sir.

THE COURT: All right. Let's bring the jury in.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right, ladies and gentlemen, welcome back. I hope everybody had a good lunch. We're ready to resume the trial of the case.

Ms. Livesay, the State can call your next witness.

MS. LIVESAY: Thanks, Your Honor. At this time, the State calls Michelle McSpadden to the stand.

THE COURT: All right.

CLERK: Please raise your right hand and place your left hand on the Bible.

MICHELLE MCSPADDEN, HAVING BEEN DULY

SWORN TESTIFIES AS FOLLOWS:

CLERK: Please state your full name and spell your first and last name for the Court.

MS. MCSPADDEN: Michelle McSpadden, M-I-C-H-E-L-L-E, M-C-S-P-A-D-D-E-N.

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

151

1 DIRECT EXAMINATION OF MICHELLE MCSPADDEN BY MS. LIVESAY:

2 Q: Ms. McSpadden, where are you currently employed?

3 A: I'm a Deputy Coroner with the Horry County Coroner's
4 Office.

5 Q: Okay. And where were you employed in November of 2013?

6 A: I was with the Myrtle Beach Police Department.

7 Q: Okay. And if you don't mind, tell them how long you had
8 been with the police department?

9 A: I was with the police department since December of 2000,
10 assigned to the Crime Scene Unit since December 2005.

11 Q: Okay. And tell them a little bit about the trainings you
12 had undergone with the police department?

13 A: I was a certified police officer, so I worked the road a
14 couple of years before going to Crime Scene. In Crime Scene,
15 my duties were anything that had to do with evidence;
16 collecting evidence, processing for fingerprints, for DNA,
17 anything that had to do with evidence.

18 Q: Okay. And what were your current responsibilities in
19 this case in November of 2013?

20 A: I was assigned to the Crime Scene Unit, so I had a couple
21 of different actions that I took processing evidence from body
22 collection.

23 Q: Okay. And if you don't mind, what are you referring to
24 on your laptop?

25 A: It's my note or my report from around the time of the

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

152

1 incident.

2 Q: Okay. And is that just to refresh your memory?

3 A: Yes.

4 Q: Okay. Now, what time were you called out to or what day
5 were you called out to assist in this case?

6 A: My first assist in this case was November 12th, 2013.
7 Around 3:00 P.M. I went to the Atlantic View Motel and I
8 collected a carpet shampooer, that was my first dealings.

9 Q: Okay. And did you collect any evidence?

10 A: A carpet shampooer, which I took back to the lab to be
11 processed later.

12 Q: Okay. And what did you do next to assist in this
13 investigation?

14 A: The next thing was video collection. I went to a
15 supermarket, the Save-Mart at 6th North and Kings Highway
16 looking for video. I had been given a description of a
17 possible person involved in the case. I looked at their
18 surveillance video and did not find him.

19 Q: Okay. And that video was from a local gas station?

20 A: Yes.

21 Q: And you didn't find anything on that that was of
22 interest?

23 A: Correct.

24 Q: Okay. Now, did you keep assisting with this case?

25 A: Yes.

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

153

1 Q: Okay. And what else did you do to assist?

2 A: So, later that same day at 4:46 P.M., I was notified that
3 a body had been discovered off Postal Way at Carolina Forest.
4 So, I went out for the body collection or recovery.

5 Q: And if you don't mind, mark on this calendar when you
6 went out for the location of the victim's body?

7 A: Okay. It would've been November 12th.

8 Q: If you don't mind, just put your name and that that's the
9 date you went out for the location of the body.

10 (REPORTER'S NOTE: Witness complies.)

11 Q: Now, where did you go?

12 A: This was Postal Way. It is off of -- it runs between
13 Carolina Forest Boulevard and Gardner-Lacy Road. So, we
14 turned onto a little dirt access trail off of Postal Way and
15 went down, it's for a power line, utility power lines, went
16 down this little access road for the utilities. It's not a
17 marked -- you know, it doesn't have a name, it's just a little
18 dirt path kind of thing.

19 Q: Okay. Now, did you document where you located the
20 victim's body?

21 A: Yes.

22 Q: I'm gonna show you State's Exhibit 56 and 57.

23 A: Yes.

24 Q: Tell me if you recognize these.

25 A: These are maps that I generated with the location of the

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

154

1 body.

2 MS. LIVESAY: Okay. Your Honor, at this time, the State
3 wishes to put that in evidence and publish it to the jury.

4 THE COURT: Any objection?

5 MR. GARDNER: No, sir.

6 THE COURT: Okay. State's Exhibits 56 and 57 admitted
7 into evidence without objection.

8 STATE'S EXHIBIT NUMBER 56 AND 57

9 ADMITTED INTO EVIDENCE

10 BY MS. LIVESAY:

11 Q: Okay. Ms. McSpadden, while we're waiting on publishing
12 that picture to the jury, I'm gonna ask you a few more
13 questions.

14 A: Okay.

15 Q: How -- was the body able to be seen from this dirt road?

16 A: No, it was not.

17 Q: Okay.

18 A: I was told that officers looking for the body found it
19 based on the smell.

20 Q: Okay. And but you could not visually see it from the
21 path?

22 A: You could not see it from the path, no.

23 Q: Now, how far was this path from like a main paved road?

24 A: Oh, I would say probably less than a quarter of a mile,
25 but it was wooded.

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

155

1 Q: Okay. And about how many people would you say when you
2 got out there were present that had been looking for the body?

3 A: Approximately six.

4 Q: Okay. And now did, why were they in that particular
5 area?

6 A: My understanding is there had been some intelligence that
7 the body had been placed in Carolina Forest. So, officers
8 were there looking trying to locate it.

9 Q: Okay. And do you know when the search for the body
10 began?

11 A: I do not know that, sorry.

12 Q: No, you're fine. Now, when you got there, what was your
13 responsibilities at that time?

14 A: My responsibilities were evidence collection of anything
15 that could lead us to what happened to this man and
16 identifying him.

17 Q: Okay. And if you don't mind, what did you see when you
18 get out there?

19 A: Okay. It's a wooded area, so there's a wood line
20 underneath the power lines, and the body was located just kind
21 of in some weeds, just in the edge of the woods. He was a
22 black man, nude, he was lying on his stomach with his arms
23 extended up over his head and there was quite a bit of insect
24 activity present.

25 Q: Okay. And would you able to identify him just by -- was

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

156

1 he able to be identified by just looking at his face?

2 A: No.

3 Q: Okay. Now, if you don't mind, did you find any clothes
4 on or around the victim?

5 A: No clothing.

6 Q: Did you find any kind of a watch, jewelry, anything on or
7 around the victim?

8 A: No, none of that.

9 Q: Did you find the victim's wallet ---

10 A: No.

11 Q: --- on or around the victim? Okay. Did you find
12 anything that belonged to the victim in that area?

13 A: No.

14 Q: Now, did you document what you saw when you went out
15 there?

16 A: Yes, multiple photographs.

17 Q: Okay. And why did you document it by way of photograph?

18 A: That's standard for a crime scene. You document the
19 scene before you collect or process anything.

20 Q: Okay. So, that was considered a portion of the crime
21 scene?

22 A: Yes.

23 Q: Okay. And did you collect anything there in an effort to
24 collect evidence?

25 A: There were three items of potential evidence that were

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

157

1 collected. We did not know if they were related or not.

2 There was a piece of duct tape, a red plastic Solo style
3 drinking cup, and a blue plaid comforter.

4 Q: And the area that you were describing, tell me if these
5 pictures, State's Exhibit 58 through 63, depict that area?

6 A: Yes, these are my photos.

7 Q: Okay. And are those the pictures you took?

8 A: Yes.

9 Q: And are those pictures taken at the time you located the
10 body?

11 A: Yes.

12 Q: And do they depict the area the body was found?

13 A: Yes.

14 Q: And do they depict how the body was found?

15 A: Yes.

16 Q: Okay. And did you consider this part of your
17 investigation and the crime scene?

18 A: I did.

19 Q: Okay. And do you collect evidence off the victim as part
20 of your responsibilities in crime scene?

21 A: If there is anything to collect, yes.

22 MS. LIVESAY: Your Honor, at this time, the State wishes
23 to put in State's Exhibit 58 through 63 into evidence and
24 publish it to the jury.

25 THE COURT: Any objection?

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

158

1 MR. GARDNER: No objection, Your Honor.

2 THE COURT: State's Exhibits 58 through 63 admitted into
3 evidence without objection.

4 STATE'S EXHIBITS NUMBERS 58 THROUGH 63

5 ADMITTED INTO EVIDENCE

6 BY MS. LIVESAY:

7 Q: At this time, Ms. McSpadden, we're gonna put up those
8 items in evidence 56 and 57 and if you don't mind, step down
9 and show them that you -- where you were documenting the
10 victim was located.

11 THE COURT: Make sure she's near a microphone now so that
12 the Court Reporter can pick it up.

13 BY MS. LIVESAY:

14 Q: It's right here. The microphone is right here.

15 A: Okay. This is Carolina Forest Boulevard. Postal Way
16 runs here and this is the little dirt access road. There's a
17 cell tower here, power lines run along here, and the body was
18 just past the cell tower.

19 Q: I'm sorry. Let me make sure I'm clear about this. This
20 road here is paved and it's Postal Way?

21 A: Correct.

22 Q: And you take a right off Postal Way?

23 A: Yes.

24 Q: Now, is this road that we're looking at here a paved
25 road?

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

159

- 1 A: No, it's coquina/gravel kind of stuff.
- 2 Q: Okay. And when you take a left, is this a paved area?
- 3 A: No, that's dirt.
- 4 Q: Okay. Okay. So, we're talking about off the main
5 stretch?
- 6 A: Correct.
- 7 Q: And is there a paved road running behind here?
- 8 A: I don't know the answer to that.
- 9 Q: Okay. Would you show that next photograph so we can --
10 So, now, is this the paved road that you take a left onto?
- 11 A: This is just a dirt path.
- 12 Q: Okay.
- 13 A: The cell tower is here. That's just the little dirt path
14 for the utility lines.
- 15 Q: Okay. And is this where y'all located the body?
- 16 A: Yes.
- 17 Q: Okay. Now, is all -- was all of this wooded just like on
18 this picture?
- 19 A: Yes.
- 20 Q: And all of this over here was a wooded area?
- 21 A: More woods over there, yes.
- 22 Q: Okay. Now, can you -- did you document this area through
23 photographs?
- 24 A: Yes.
- 25 Q: And were those photographs accurate of exactly how you

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

160

1 found it when you got out there?

2 A: Yes.

3 Q: Okay. Had anything been touched or tampered with before
4 you got out there?

5 A: Not that I'm aware of.

6 Q: Okay. Now, did you collect or assist in collecting the
7 body from that area?

8 A: Yes.

9 Q: Okay. And while you collected the body, did you look
10 around the body for additional evidence?

11 A: Yes.

12 Q: And tell this jury what additional evidence you found
13 that you collected.

14 A: Once the body was removed -- he had been face down and
15 the insect activity was substantial around his head. So his
16 jaw bone had come loose and was located beneath the body. So,
17 after we moved him, we found his jaw bone.

18 Q: And why did you collect the jaw bone?

19 A: It's part of human remains. I mean, the intention was it
20 would go with the body for autopsy, returned to the family
21 unless it was needed for additional evidence, and in this it
22 was.

23 Q: And could the jaw bone be used for DNA purposes?

24 A: Yes. Teeth are very good sources for DNA.

25 Q: Now, is this a picture and let me get the number for the

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

161

1 Court Reporter.

2 Mr. Gardner, do you have any objection to these pictures?

3 MR. GARDNER: No, none at all.

4 BY MS. LIVESAY:

5 Q: State's evidence Number 58, what are we looking at here?

6 A: We are facing, there's a school out there, I forget which
7 one it is, but we're -- our back is to Carolina Forest
8 Boulevard, Postal Way is to our left, and we are looking down
9 that dirt path.

10 Q: Okay. Now, is he located in these woods some downward?

11 A: It would've been over here (indicating).

12 Q: Okay. And can we now show State's evidence Number 59?
13 Now, what are we looking at here?

14 A: Okay. So we've just turned towards the woods at this
15 point and photographed that. There is a blanket here that
16 would've been relatively close to the body.

17 Q: And can you see the body from this picture?

18 A: No.

19 Q: Okay. And now, let me ask you this, is the body beyond
20 this ---

21 A: Yes.

22 Q: --- wood line?

23 A: Yes.

24 Q: Okay. Now, did you process that blanket in this picture?

25 A: It was collected there at the scene and processed in the

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

162

1 lab, yes.

2 Q: Okay. And did you find anything of evidentiary value
3 from the blanket?

4 A: No.

5 Q: I'm gonna show you now what's in State's evidence, 59?

6 A: Uh-huh (affirmative response). Again, just zoomed in a
7 little, this is the blanket again.

8 Q: Okay. Now, what we're looking at now, show us where the
9 body was located.

10 A: I think he was back right down here.

11 Q: But even standing right in the wood line, you could not
12 visually see him?

13 A: Correct.

14 Q: Okay. I'm showing now State's Exhibit 61. Now, what are
15 we looking at here?

16 A: That was his body; head here, arms extended up over the
17 head, pelvis back this way.

18 Q: Okay. So this is showing that you had to move, kind of
19 move this back to be able to see him?

20 A: Yes.

21 Q: Okay. Now let me ask you, but for moving this back, would
22 you have been able to see him?

23 A: No.

24 Q: Now, tell me, were these kinda thick woods, or were they
25 kind of ---

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

163

- 1 A: No, it was fairly thick with the undergrowth there.
- 2 Q: Okay. Now I'm gonna show you State's Evidence Number 62,
3 what are we looking at here?
- 4 A: Just a different, I kind of stepped towards his pelvis a
5 little, so legs extended here, his head would be up here.
- 6 Q: Okay. Now, let me ask you this, but for -- are you moving
7 woods here?
- 8 A: We had to move brush as we tried to get to him.
- 9 Q: Okay. But for moving that, could you see the victim?
- 10 A: No.
- 11 Q: Okay. But for moving that, could you have even seen the
12 victim at all?
- 13 A: No.
- 14 Q: Okay. Now about how far did you walk in; do you
15 remember?
- 16 A: It wasn't far, maybe 15 feet.
- 17 Q: Okay. And tell us a little bit about how it was getting
18 back to this body?
- 19 A: I wouldn't go dressed like I am today. We were in boots,
20 BDU style pants, and had to kind of clear the underbrush to
21 get back to him.
- 22 Q: Okay. And I'm gonna show you now what's been marked as
23 State's Evidence Number 60; what are we looking at here?
- 24 A: Just another view of him. We've cleared out some more of
25 the underbrush. His head is here, this is his back, legs down

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

164

1 at the bottom corner.

2 Q: Okay. Now, could you have seen him like this from the
3 road?

4 A: No.

5 Q: Could you have seen him without moving the bushes?

6 A: No.

7 Q: Okay. So, would you say his body was concealed from the
8 road?

9 A: Yes.

10 Q: Okay. Now, I'm looking around him. Did you find anything
11 around him that belonged to the victim?

12 A: No.

13 Q: Okay. Did you find anything in that area, period, that
14 belonged to the victim?

15 A: No.

16 Q: Okay. Thank you, Ms. McSpadden, have a seat.

17 Now were there some items found around the body?

18 A: There were those three items we talked about; a piece of
19 duct tape, a plastic cup, and that comforter that you saw in
20 the photograph.

21 Q: Okay. And did you process all the items around the body?

22 A: I did.

23 Q: Okay. And what, if anything, did you find?

24 A: Nothing that was usable for either identifying him or
25 determining what happened to him.

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

165

1 Q: Okay. And if you don't mind, tell this jury what you did
2 to identify the body?

3 A: Before we removed him from the scene, I had took
4 fingerprints from him. And we had a name for him, so once I
5 left the scene, I went back to the police department, I pulled
6 up his fingerprints and did a direct comparison of the
7 fingerprints that I took from him.

8 Q: Okay. Before you tell me that ---

9 A: Yes.

10 Q: --- let me ask you a few questions.

11 A: Okay.

12 Q: So this jury knows that you are qualified to compare
13 fingerprints.

14 A: Sure.

15 Q: If you don't mind, tell them a little bit about what
16 training you've done to compare fingerprints?

17 MR. GARDNER: We'll stipulate that she's qualified to
18 take fingerprints or compare them.

19 MS. LIVESAY: I'm gonna lay the foundation, Judge, for
20 the purposes of the jury and the record.

21 BY MS. LIVESAY:

22 Q: What training do you have in fingerprints?

23 A: Okay. I have -- if you do fingerprints in South Carolina,
24 you have to be certified through SLED. So, that requires a
25 forty-hour class in Columbia, then practical practice, I

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

166

1 guess, underneath a Certified Fingerprint Examiner. And then
2 there is an eight-hour test. You go to Columbia, you take a
3 written test and then you identify 100, I think it's 100
4 prints for the exam. And then once you're done with that, you
5 come back and you work with an examiner, another examiner, to
6 learn the -- the computer system part of it.

7 Q: And did you actually receive a certification to compare
8 fingerprints?

9 A: I did. October 16th, 2012 is when I was certified.

10 Q: Okay. And who issued that certification?

11 A: SLED.

12 Q: Okay. And about how many fingerprints did you compare
13 before this case?

14 A: I would have done probably a couple hundred latent
15 fingerprints, where you put them into the computer system and
16 search against unknowns, and then dozens of direct comparisons
17 where we know or we believe we know who the fingerprint
18 belongs to and it's just a comparison.

19 Q: Okay. And so hundreds of fingerprints and would you say
20 this was something you did in your daily work?

21 A: It was, yes.

22 Q: And this is something you had done for about a year?

23 A: Yes.

24 Q: Almost two years?

25 A: Yes.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

167

1 Q: Okay. And the certification from SLED says what, you're
2 qualified to compare fingerprints?

3 A: Yes.

4 MS. LIVESAY: Okay. Your Honor, at this time, I'd like
5 to offer Ms. McSpadden as a expert in fingerprints so she can
6 offer her opinion as to the comparison?

7 THE COURT: All right. Any challenges or objections?

8 MR. GARDNER: No, we offered to stipulate, Your Honor,
9 that she's an expert at it.

10 BY THE COURT:

11 THE COURT: All right. I find this witness to be an
12 expert in the field of fingerprint analysis.

13 Now, ladies and gentlemen, I'll give you some
14 instructions on expert testimony when I charge you on the law
15 to be applied to this case, but all you need to know for the
16 time being is that ordinarily, a witness can only testify as
17 to their personal observations; what they saw, what they
18 tasted, what they smelled, things of that nature. There is an
19 exception for witnesses who are qualified as experts, which
20 means that in addition to testifying to her personal
21 observations, she can render an opinion in the field in which
22 she's qualified as an expert. All right.

23 MS. LIVESAY: Thank you, Judge.

24 BY MS. LIVESAY:

25 Q: Ms. McSpadden, did you make a comparison in this case?

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

168

1 A: I did.

2 Q: And tell this jury about the comparison you made and
3 ultimately what your opinion was as to the identification of
4 the victim.

5 A: Okay. So, I told you I collected fingerprints from the
6 body at the scene. I collected prints from the right hand, so
7 there were five prints taken. Once I got back to the police
8 department, I was able to compare two of those that were of
9 the best quality to known prints from Mr. Woodberry from a
10 previous arrest and they were a match; both fingers were a
11 match.

12 Q: Okay. And they matched who?

13 A: Mr. Helbert Woodberry.

14 Q: Okay. And at that time, you identified the victim as
15 Helbert Woodberry?

16 A: Yes.

17 Q: Okay. Now, at that time, were you aware of anything that
18 was going on at the Atlantic View Motel as far as crime scene
19 investigation goes?

20 A: No.

21 Q: Okay. And so all your job was to do was to collect the
22 evidence surely from the victim?

23 A: Correct.

24 Q: Okay. Now did you collect any other evidence from the
25 victim to assist in the case?

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - DIRECT BY LIVESAY

169

1 A: There was -- at autopsy, the jaw was collected for a DNA
2 standard. That jaw bone was sent to SLED and they sent it
3 back saying that we needed to have the teeth pulled; that they
4 could work with the teeth but not with the jaw bone. So, the
5 next thing that I did would have been in -- I'm sorry, let me
6 get the date for you. July of 2014, once that jaw bone was
7 back at our police department, I contacted one of our Deputy
8 Coroner's, Tamara Willard, she came out, and we pulled the
9 teeth from the jaw bone so that they could be sent back to
10 SLED for DNA purposes.

11 Q: Okay. And were those teeth and everything sealed,
12 packaged, and put into evidence with the ordinary procedures
13 at Myrtle Beach Police Department?

14 A: Yes, they were.

15 Q: Okay. And to your knowledge, was any of that stuff ever
16 tampered with while in your custody?

17 A: No.

18 Q: Okay. And when you say for DNA, is that for DNA
19 comparison?

20 A: It is, yes.

21 Q: Okay. Now, Ms. McSpadden, did you do anything else with
22 to assist in the investigation of this case?

23 A: No.

24 Q: Okay. And what you told this jury, is that everything
25 you investigated and documented in this particular case?

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - CROSS BY GARDNER

170

1 A: Yes, it is.

2 MS. LIVESAY: No further questions for this witness, Your
3 Honor, and we're gonna move this out of Mr. Gardner's way.

4 THE COURT: All right.

5 All right. Cross examination?

6 MR. GARDNER: Thank you.

7 CROSS EXAMINATION OF MICHELLE MCSPADDEN BY MR. GARDNER:

8 Q: Good afternoon, Ms. McSpadden. Congratulations on your
9 new job.

10 A: Thank you.

11 Q: But your old job, you had a lot of experience, road work
12 and CSI work in the Myrtle Beach area on the Boulevard area,
13 right?

14 A: Correct, yes.

15 Q: So you're familiar a little bit of the drug culture down
16 there?

17 A: Yes.

18 Q: And a lot of those guys go by fake names or alias names,
19 I guess?

20 A: Sure.

21 Q: Okay. Did you ever come across the name Chicken?

22 A: I'm not familiar with that name.

23 Q: Okay. Well, it's just been pointed out to me and I've
24 been calling him George all day; his real name is Marvin,
25 Marvin McElveen?

State v. Weatherall - 2014-GS-26-01415
MICHELLE MCSPADDEN - CROSS BY GARDNER

171

1 A: Okay.

2 Q: I said earlier, George McElveen. The name Marvin
3 McElveen, does that ring a bell with you?

4 A: I have it listed on one of my reports as being a suspect,
5 but I do not know his involvement at all.

6 Q: Okay. All right. And you were looking at your report
7 there and that's fine with me. I just want to make sure it's
8 the same one I've got. Is it the one that's, I'm looking for
9 a date on it. November 12th?

10 A: Yes.

11 Q: 2013?

12 A: Uh-huh (affirmative response).

13 Q: Okay. All right. Did you take the finger -- well, I
14 guess if you didn't know who Marvin McElveen was, you probably
15 didn't take his fingerprints?

16 A: No, I did not. Not that I know of.

17 Q: All right. Is there anything else that we need to tell
18 the jury about this case to help them make their decision?

19 A: Not from my involvement.

20 Q: Okay. Thank you for coming.

21 A: Thank you.

22 THE COURT: All right. Redirect?

23 MS. LIVESAY: No, sir, Your Honor.

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

25 A: Thank you.

State v. Weatherall - 2014-GS-26-01415
WILLIAM STAIR - DIRECT BY LIVESAY

172

1 MS. LIVESAY: At this time, Your Honor, the State calls
2 Bill Stair.

3 THE COURT: All right.

4 CLERK: Please raise your right hand and place your left
5 hand on the Bible.

6 WILLIAM STAIR, HAVING BEEN SWORN
7 TESTIFIES AS FOLLOWS:

8 CLERK: If you'll state your full name and spell your
9 first and last name for the Court.

10 MR. STAIR: William Stair, W-I-L-L-I-A-M, S-T-A-I-R.

11 DIRECT EXAMINATION OF WILLIAM STAIR BY MS. LIVESAY:

12 Q: And I see your badge, but just so the jury knows, where
13 are you currently employed?

14 A: City of Myrtle Beach.

15 Q: And how long have you been employed there?

16 A: Approximately 11 years.

17 Q: Okay. And if you don't mind, just tell them a little bit
18 about the training you've undergone to be a policeman and to
19 handle your current responsibilities.

20 A: I went through the South Carolina Police Academy. Prior
21 to that, I was actually at University of Maryland, where I
22 graduated with a bachelor's degree and was an intern in a
23 crime scene unit for a little over a year. And with -- since
24 being with Myrtle Beach Police Department, I have gone through
25 several trainings such as school resource officer, field

State v. Weatherall - 2014-GS-26-01415
WILLIAM STAIR - DIRECT BY LIVESAY

173

1 training officer, fingerprint examiner, AFIS examiner for
2 fingerprints, several different crime scene classes, homicide
3 investigations, death investigations.

4 Q: And just so we're clear, what are your current -- what
5 were your current responsibilities in November of 2013?

6 A: At that time, I was assigned to the crime scene unit and
7 I had been there for approximately four years.

8 Q: Okay. And just so the jury knows, what were your
9 responsibilities as part of the crime scene?

10 A: We respond to any call for service. When we respond
11 there, we would document the scene via photographs, dust for
12 fingerprints, collect DNA evidence, weapons.

13 Q: Okay. And did you assist in the case we're here today
14 for against Mitchell Weatherall?

15 A: Yes, I did.

16 Q: Okay. And if you don't mind, tell this jury what you did
17 to assist in this case?

18 A: In this case, I responded to the scene by request of
19 Detective Quinn, who -- they had said evidence that or
20 property that was disposed of, I guess by employees of the
21 hotel, they needed processed. I also collected a DNA sample
22 from another subject at request of a different detective, and
23 I also attended the autopsy.

24 Q: Okay. Now, what, if anything, did you collect from
25 Atlantic View Motel?

State v. Weatherall - 2014-GS-26-01415
WILLIAM STAIR - DIRECT BY LIVESAY

174

1 A: They had some damaged property or at least that was left
2 in a maintenance room was a toilet seat lid that got ripped
3 off the toilet.

4 Q: Okay. And did you do anything to process it?

5 A: I brought it back to our lab. There was a stain on it
6 that they wanted tested, which I did. It did not end up being
7 DNA, and I also dusted for prints and located a couple of
8 partial prints on the lid.

9 Q: Okay. So, you weren't able to collect anything off that
10 that was relevant to this case?

11 A: No.

12 Q: Okay. Now, when you went back to the Atlantic View, when
13 was that?

14 A: I went on the 12th of November.

15 Q: Okay. And do you know whether or not the room had
16 already been rented out?

17 A: I do not; I didn't actually go to the room.

18 Q: Okay. All you went to was where they were holding this
19 evidence?

20 A: Yes.

21 Q: Okay. After you collected that which was just the toilet
22 seat lid?

23 A: Yes.

24 Q: Okay. And you didn't find any prints belonging to anybody
25 on that?

State v. Weatherall - 2014-GS-26-01415
WILLIAM STAIR - DIRECT BY LIVESAY

175

1 A: I found two partial fingerprints and a partial palm print
2 and I was not able to match them to anybody.

3 Q: Okay. And then after you did that, what did you do next?

4 A: Later -- the next day I responded to Grand Strand
5 Hospital for the autopsy of the victim.

6 Q: Okay. And did you document anything at the autopsy?

7 A: I took photographs of the victim and I also collected a
8 lower jaw bone.

9 Q: Okay. And when you photographed, who else was there?

10 A: I was present along with Dr. Proctor, who conducted the
11 autopsy, and his assistant, Leroy Rush.

12 Q: Okay. And Dr. Proctor is the pathologist that the
13 conducts the autopsies?

14 A: Yes, he is.

15 Q: Now, when you're there with him, is he telling you about
16 the injuries?

17 A: Yes, he -- as he goes over the body, if he comes across
18 anything, whether it be an injury or anything medical, he
19 points it out to me and advises and I will take photographs of
20 what he advises me of.

21 Q: Okay. Now, did he point any injuries to you on this
22 victim?

23 A: Yes, he did.

24 Q: Okay. And if you don't mind, tell this jury the injuries
25 that he pointed out that you documented?

State v. Weatherall - 2014-GS-26-01415
WILLIAM STAIR - DIRECT BY LIVESAY

176

1 MR. GARDNER: Your Honor, I'm gonna object. I think that
2 might be hearsay.

3 THE COURT: Sustained.

4 MR. GARDNER: Because he's talking about what somebody
5 else said.

6 THE COURT: Sustained.

7 BY MS. LIVESAY:

8 Q: When you were there, did you collect any evidence other
9 than documentation of the injuries?

10 A: Lower jaw bone.

11 Q: Okay. And when you collected the jaw bone, was it sealed
12 and placed into evidence?

13 A: Yes, it was.

14 Q: Okay. And to your knowledge, during the time it was in
15 your custody and control, was it ever tampered with in any
16 form or fashion?

17 A: No, it was not.

18 Q: Okay. Now when you were at the autopsy, could you please
19 describe the victim to the jury?

20 A: When I arrived at the autopsy, the lower jaw bone was --
21 had already been removed and was in a bag with the victim.
22 His upper torso, neck, and head region were severely
23 decomposed due to insect life. The rest of his extremities
24 were in an advanced state of decomposition.

25 Q: Could you have identified him in any other form or

State v. Weatherall - 2014-GS-26-01415
WILLIAM STAIR - CROSS BY GARDNER

177

1 fashion other than through the fingerprint?

2 A: Not that I'm aware of, no.

3 Q: Okay. And could you have collected any DNA other than
4 the jaw bone?

5 A: No.

6 Q: Okay. So, you collected what was available there for you
7 to collect as far as the evidence?

8 A: That is correct. The, at that point, the blood had been
9 -- it had been such a timeframe had past that any blood
10 evidence would be contaminated.

11 MS. LIVESAY: Okay.. No further questions for this
12 witness.

13 THE COURT: All right. Cross examination?

14 MR. GARDNER: Thank you, Judge.

15 CROSS EXAMINATION OF WILLIAM STAIR BY MR. GARDNER:

16 Q: Mr. Stair, I'll try to be brief. I only have a couple of
17 things. I think she cleared it up, but I was confused
18 earlier. The question was about the partial prints on the
19 toilet seat lid, and I believe your response was not relevant
20 to this case, but then later she went back and said or you
21 said you weren't able to match them to anybody?

22 A: I got no matches through the AFIS System.

23 Q: No matches period. So, are you familiar with the name
24 Marvin McElveen?

25 A: No, I'm not.

State v. Weatherall - 2014-GS-26-01415
WILLIAM STAIR - CROSS BY GARDNER

178

1 Q: You might know him better as Chicken?

2 A: Yeah, I've been told that, yes.

3 Q: Now, you've got some experience down there. You've been
4 in the drug area of the Myrtle Beach area where the Boulevard
5 is and all that stuff and you know how these guys go by
6 nicknames or aliases; you've heard that, right?

7 A: Yes.

8 Q: Okay. And they are living a lifestyle that's completely
9 different than what we might be used to, right?

10 A: (Indicates affirmatively.)

11 Q: I think you have to answer yes or no for her.

12 A: If you say so, yes.

13 Q: Well, I can't say so. If you -- you can say so or you
14 cannot say so. Okay? I'm just trying to be fair. Based on
15 your experience, you've been down there on the Boulevard area
16 of these hotel rooms and conducted some of your
17 investigations?

18 A: Yes.

19 Q: Okay. And you're familiar with the drug culture that
20 exists down there?

21 A: Yes.

22 Q: And you're familiar that these people use nicknames or
23 aliases?

24 A: Yes.

25 Q: And you've heard of Chicken?

State v. Weatherall - 2014-GS-26-01415
WILLIAM STAIR - CROSS BY GARDNER

179

- 1 A: Yes, I have.
- 2 Q: And did you take Chicken's fingerprints?
- 3 A: I was unaware of Chicken until just recently.
- 4 Q: Okay.
- 5 A: So, at the time that I ran the prints through the AFIS
- 6 terminal and got no matches.
- 7 Q: From Chicken?
- 8 A: If his fingerprints are in the National Database, did I
- 9 did not get his matched to him.
- 10 Q: I want to -- and I'm just trying to make sure I didn't
- 11 get lost there. If Chicken is in the National Database ---
- 12 A: I ran the fingerprints through AFIS, which is a National
- 13 Fingerprint Database, and received no matches.
- 14 Q: Does that mean Chicken is not in there or ---
- 15 A: If he is in there, I did not get a match to him. I do
- 16 not know if he's in there or not.
- 17 Q: Do you how long ago it was that you took that
- 18 approximately?
- 19 A: If I can refer to my notes, I can tell you the date.
- 20 Q: Yeah, if it will help you; I just wonder if it was like
- 21 in the last couple of years or ---
- 22 A: It was on November the 12th and through the 21st is when
- 23 the prints were run through the AFIS System.
- 24 Q: Of what year?
- 25 A: 2013, I'm sorry.

State v. Weatherall - 2014-GS-26-01415
WILLIAM STAIR - CROSS BY GARDNER

180

1 Q: Oh, okay. So, you haven't done anything -- all right.
2 Yeah, that makes sense. Okay. All right. Let me follow-up
3 on that. Is there anything else that we should've done or
4 could've done that would help the jury make the decision about
5 this case?

6 A: I don't know -- in regards to what I've done to the case?

7 Q: Yeah; did we leave anything out?

8 A: No.

9 Q: We put it all out there?

10 A: Yes.

11 Q: Thank you for coming.

12 THE COURT: Redirect?

13 MS. LIVESAY: No further questions, Your Honor.

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

15 A: Thank you.

16 THE COURT: Thank you.

17 Okay. You can call your next witness.

18 MS. LIVESAY: Thank you, Your Honor. At this time, the
19 State calls Malinda Shadoan..

20 THE COURT: All right.

21 CLERK: Please raise your right hand and place your left
22 hand on the Bible.

23 MALINDA SHADOAN, HAVING BEEN SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Please state your full name and spell your first

State v. Weatherall - 2014-GS-26-01415
MELINDA SHADOAN - DIRECT BY LIVESAY

181

1 and last name for the Court.

2 MS. SHADOAN: It's Malinda Shadoan, M-A-L-I-N-D-A, S-H-A-
3 D-O-A-N.

4 DIRECT EXAMINATION OF MALINDA SHADOAN BY MS. LIVESAY:

5 Q: Thank you. And we see the uniform, but where are you
6 currently employed?

7 A: The City of Myrtle Beach Police Department.

8 Q: And how long have you been there?

9 A: I'm in my ninth year.

10 Q: And what kind of training have you undergone with the
11 police department?

12 A: I did work for the jail for four years, and now I am the
13 Property and Evidence Technician and there's a series of
14 training for both.

15 Q: Okay. And how long have you been in property and
16 evidence?

17 A: It will be five years.

18 Q: Okay. And tell this jury what your responsibilities are.

19 A: I house all the evidence and the lost property of the
20 city and I store it in a current and secure location in my
21 office.

22 Q: Okay. And while things are in the evidence room, is
23 there something to assure that it's not tampered with?

24 A: I am one of the only people; there's one other person in
25 my room that has access to my room. Everything is labeled and

State v. Weatherall - 2014-GS-26-01415
MELINDA SHADOAN - DIRECT BY LIVESAY

182

1 secured in my room with a door, a padlock, things of that
2 nature, but there's nobody else in that department that's able
3 to get in there.

4 Q: Okay. And you take evidence in from police officers and
5 make sure it's locked up in the appropriate place?

6 A: I do.

7 Q: Okay. Now, do you ever take items to SLED?

8 A: I do.

9 Q: And is that part of your responsibility?

10 A: It is.

11 Q: Now, did you take in any evidence in this case against
12 Mr. Weatherall?

13 A: I did. Yes, ma'am.

14 Q: And if you don't mind, tell this jury what evidence you
15 took into -- into the evidence room in this case?

16 A: I believe I took in approximately -- it's really 99
17 percent of it, and there are roughly 52-some odd pieces.

18 Q: Okay. And did you take any of those items to SLED?

19 A: I did.

20 Q: Okay. And if you don't mind, tell this jury what items
21 you sent to SLED?

22 A: May I refer to my notes?

23 Q: Yes.

24 A: I took in swabs to the west bed, Marker 3; swabs to the
25 carpet, Marker 2; swabs to the east bed, Marker 4; and then

State v. Weatherall - 2014-GS-26-01415
MELINDA SHADOAN - DIRECT BY LIVESAY

183

1 swabs to the picture, Marker 5; and swabs to the dresser,
2 Marker 6; and I also took in the jaw bone to SLED.

3 Q: Okay. And are those the only items that you took to
4 SLED?

5 A: I believe so.

6 Q: Okay. Now, when you took these items in and then you
7 took them to SLED, were they ever tampered with while they
8 were in your custody and control?

9 A: No, ma'am, not at all.

10 Q: Okay. And when you drop them off at SLED, what happens
11 in order to insure their integrity?

12 A: I'm there in person with the login techs who put it into
13 another sealed compartment and I seal it once I watch them
14 seal it and initial it, and then there from there it goes to
15 one of the forensic techs.

16 Q: Okay. Now, do you have a list of all the items that you
17 took into evidence?

18 A: Yes.

19 Q: Okay. And out of all of those, did you take anything
20 else to SLED or anywhere else for further processing?

21 A: No, ma'am.

22 Q: Okay. And if you don't mind, could you tell this jury
23 what you took in as far as just evidence, not tapes, but as
24 far as hard evidence from either the crime scene or an
25 investigator?

State v. Weatherall - 2014-GS-26-01415
MELINDA SHADOAN - DIRECT BY LIVESAY

184

1 A: You want me to go through the whole list?

2 Q: Yes, please?

3 A: I took a Miranda form in from Weatherall; a Miranda form
4 in for Garsow; a Consent to Search from Garsow; buccal swabs
5 from Garsow; crime scene related paperwork; another Consent to
6 Search; a crime scene log; it looks like a DVD-R video office;
7 a CDR video Part I and Part II; photos from the scene; buccal
8 swabs; the swabs that I had mentioned prior to; looks like a
9 Carolina Gamecock sweatshirt of the suspect's; a knitted
10 sweater of the suspect's; Coastal Carolina University t-shirt
11 from the suspect; Levi-Straus jeans of the suspect; white left
12 and right sock of the suspect; a Catapult left shoe and right
13 shoe of the suspect; another CDR with photos from the lab;
14 swabs of the left shoe of the suspect; buccal swabs for Justin
15 Green; another Consent to Search form; a toilet seat lid;
16 another Consent to Search Form; latent cards; CDR photos from
17 lab number 2; autopsy photos and a CDR; the jaw bone; Wedlock
18 interview disc; Wedlock Miranda Rights; CD with photos (Postal
19 Way); inked fingerprint cards from the deceased; paper from
20 top of blanket; foil debris located beneath the blanket;
21 debris from the blanket; the blanket itself; duct tape; a
22 plastic cup; Miranda form for McElveen; CD footage from Circle
23 K; original Miranda form; Miranda form McElveen with pics; and
24 there are teeth as well.

25 Q: And did you do anything else in this case, Ms. Shadoan,

State v. Weatherall - 2014-GS-26-01415
MELINDA SHADOAN - CROSS BY GARDNER

185

1 other than collect evidence and take it to SLED?

2 A: No, ma'am.

3 Q: Okay. Was any evidence ever brought back from SLED for
4 further processing?

5 A: The jaw bone did come back and they had to take the teeth
6 off of the jaw bone and then those teeth went at a separate
7 time.

8 Q: Thank you.

9 No further questions, Your Honor.

10 THE COURT: All right. Cross examination?

11 MR. GARDNER: Thank you, Judge.

12 CROSS EXAMINATION OF MALINDA SHADOAN BY MR. GARDNER:

13 Q: Good afternoon, ma'am.

14 A: Hi.

15 Q: My list has 47 items on it; did you say yours has 52?

16 A: Yes, sir.

17 Q: Okay. I don't know why that is, but it is. All right.

18 A: It depends on when you got the -- the date that should be
19 on top; what date is that?

20 Q: Looks like January.

21 A: Yeah, other items had come in since then, and we had to
22 add the teeth as a different group number because we did have
23 to separate them from the jaw bone.

24 Q: Well, let me follow up on that. Items 47 or 52 or
25 however many it is, let me just paint the picture and make

State v. Weatherall - 2014-GS-26-01415
MELINDA SHADOAN - CROSS BY GARDNER

186

1 sure I understand everything. Police get a call, they go to a
2 scene, they do investigations, and a CSI person identifies
3 things that needs to be collected, it gets collected and gets
4 brought to the evidence room; is that right?

5 A: If it doesn't go to Crime Scene first, yes, sir, then it
6 comes to me ultimately.

7 Q: And then from there it may go to SLED, which is up in
8 Columbia?

9 A: It may go, yes.

10 Q: They may do some testing on it?

11 A: Correct.

12 Q: And they may send it back here?

13 A: Uh-huh (affirmative response).

14 Q: And we may get a series of police officers to testify in
15 a trial about their portion of it?

16 A: Right.

17 Q: So not everybody knows everything about it?

18 A: Correct.

19 Q: But everybody should not what their part was?

20 A: Correct.

21 Q: Okay. And that's what we've been doing all day, I think.
22 Of the stuff that you collected, 47 or 52, or however many
23 items it was, some of that was sent up to Columbia to be
24 checked by SLED?

25 A: Correct.

State v. Weatherall - 2014-GS-26-01415
MELINDA SHADOAN - CROSS BY GARDNER

187

- 1 Q: Is there anything else, anything that didn't go to SLED
2 that maybe we should've sent or do you feel comfortable with
3 everything that we sent, collected and sent?
- 4 A: I have nothing to do with the authorization of what goes
5 and what doesn't go; I'm just the custodian of this evidence.
- 6 Q: Okay. All right. Well, let me ask you this, I see on my
7 list 46, which may be a different one on yours. My 46 says
8 Miranda form, McElveen?
- 9 A: No, sir; mine says duct tape.
- 10 Q: Okay. Do you have a Miranda form McElveen on your list?
- 11 A: I believe I said that at one point.
- 12 Q: You may have, but you listed off so many?
- 13 A: I've got it as Group 48, sir.
- 14 Q: Forty-eight, okay. All right. And is it -- is it listed
15 as Miranda form McElveen?
- 16 A: Correct.
- 17 Q: All right. That is and I've apologized to everybody,
18 I've been saying George McElveen, but it's actually Marvin
19 McElveen. That refers to Marvin McElveen; do you know that?
- 20 A: I have no idea about that, sir.
- 21 Q: You just know it's a Miranda form that's says McElveen.
- 22 A: Yes, sir; it's sealed in an envelope.
- 23 Q: Okay. Do you know, based on your nine years as a police
24 officer, do you know what Miranda forms or what the purpose of
25 why we have Miranda forms?

State v. Weatherall - 2014-GS-26-01415
MELINDA SHADOAN - CROSS BY GARDNER

188

1 A: Yes, sir.

2 Q: Okay. Normally, it's because there's been a statement
3 taken, right?

4 A: Procedures, correct, yes, sir.

5 Q: Miranda -- we've all seen T.V., Miranda says you have a
6 right to remain silent so on and so forth, right?

7 A: Okay.

8 Q: Is that right?

9 A: Yes, sir. Uh-huh (affirmative response).

10 Q: And that's what we have in evidence as McElveen's either
11 George or Marvin, Chicken -- have you heard the name Chicken?

12 A: I have nothing to do with this.

13 MS. LIVESAY: Your Honor?

14 THE COURT: Hold on for a second.

15 MS. LIVESAY: I just have to object. This lady has
16 already said she is just the evidence custodian. Miranda is
17 read every time whether a statement is given or not.

18 THE COURT: Okay. Overruled. I'll allow it. Go ahead.

19 MR. GARDNER: Thank you.

20 BY MR. GARDNER:

21 Q: I think I was asking you if you had heard of Chicken;
22 have you heard of Chicken?

23 A: No, sir. I mean, not other than the animal.

24 Q: Okay. I won't go there. Is there anything else that we
25 left out, anything else that you want to tell the jury about

State v. Weatherall - 2014-GS-26-01415
MELINDA SHADOAN - CROSS BY GARDNER

189

1 this case, 47 items or anything else that was tested or needed
2 to be tested?

3 A: No, sir; I have nothing to do with the testing.

4 Q: Okay. Thank you for coming.

5 THE COURT: All right. Redirect?

6 MS. LIVESAY: Thank you. No further questions.

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

8 A: Thank you.

9 THE COURT: The State can call your next witness.

10 MS. LIVESAY: Thank you, Your Honor. We're gonna call
11 Diane Roberts. And just for the record, I'm assuming these
12 witnesses as they come down are excused from their subpoena
13 unless Mr. Gardner says different.

14 MR. GARDNER: Absolutely.

15 THE COURT: Is there any objection?

16 MR. GARDNER: No, that's sounds fair.

17 THE COURT: All right. They're free to go.

18 CLERK: Please raise your right hand and place your left
19 hand on the Bible.

20 DIANE PHILLIPS, HAVING BEEN SWORN

21 TESTIFIES AS FOLLOWS:

22 CLERK: Please be seated. State your full name and spell
23 your last and first name for the Court.

24 MS. PHILLIPS: Diane Phillips, D-I-A-N-E, P-H-I-L-L-I-P-
25 S.

State v. Weatherall - 2014-GS-26-01415
DIANE PHILLIPS - DIRECT BY LIVESAY

190

1 DIRECT EXAMINATION OF DIANE PHILLIPS BY MS. LIVESAY:

2 Q: Ms. Phillips, are you currently employed anywhere?

3 A: No, I am not.

4 Q: Are you retired?

5 A: Yes.

6 Q: And where are you currently living; tell these jurors.

7 A: Florida.

8 Q: That's very nice. Where were you living in November of
9 2013?

10 A: '13, in Conway.

11 Q: Okay. And where were you working?

12 A: Myrtle Beach Police Department.

13 Q: Okay. And tell this jury what you were doing when you
14 were employed with the police department?

15 A: At the time I was in the Property and Evidence Division.

16 Q: And how long had you worked with Myrtle Beach Police
17 Department?

18 A: It was a total of almost 12 years.

19 Q: Okay. And if you don't mind, what were your
20 responsibilities in that position?

21 A: Okay. I would secure the evidence that had been dropped
22 from the officers or investigators the day or the night
23 before, and I would log it in and assign it a number with its
24 case number and store it.

25 Q: Okay. And basically, it was kept in an evidence room to

State v. Weatherall - 2014-GS-26-01415
DIANE PHILLIPS - DIRECT BY LIVESAY

191

1 assure that it wasn't tampered with?

2 A: That's correct.

3 Q: Okay. Now, as part of your responsibilities, did you
4 also have to take items to SLED, to South Carolina Law
5 Enforcement Division?

6 A: Yes.

7 Q: Okay. And while those items were in your custody and
8 control, was there ever a time you tampered with them in any
9 way?

10 A: No.

11 Q: Okay. Now, in this particular case against Mitchell
12 Weatherall, did you take any items to SLED?

13 A: If my memory serves me correct, it may have been the jaw
14 bone.

15 Q: Okay. Did you take any teeth to SLED?

16 A: I may have taken that also, yes.

17 Q: Okay. Now, would you remember if you tampered with any
18 of these items when they were in your possession ---

19 A: I did not.

20 Q: --- or custody?

21 A: I did not.

22 Q: And so all you basically do is take these items out of
23 evidence and then drive them to SLED?

24 A: That's correct.

25 Q: Okay. And tell this jury a little bit, when you get to

State v. Weatherall - 2014-GS-26-01415
DIANE PHILLIPS - CROSS BY GARDNER

192

1 SLED, what happens?

2 A: I give it to them and they in turn assign it a number,
3 get a number, and then they store it or send it to their
4 analysis office or whatever they do.

5 Q: Okay. And do you remember taking those items to SLED for
6 this case?

7 A: Yes, I do.

8 Q: Okay. Now, Malinda Shadoan, do you know her?

9 A: Yes, I do.

10 Q: Okay. And that was the lady that was up here previously;
11 is that who you worked with?

12 A: Yes, it is.

13 Q: Okay. And to your knowledge, did you do anything else in
14 this case other than run those items to SLED?

15 A: That's all. That's all I did.

16 MS. LIVESAY: No further questions, Your Honor.

17 THE COURT: All right. Cross examination?

18 MR. GARDNER: Thank you.

19 CROSS EXAMINATION OF DIANE PHILLIPS BY MR. GARDNER:

20 Q: Good afternoon, ma'am, I will be brief. I'm gonna ask
21 you the same question I believe I've asked everybody so far,
22 and I know what the answer probably is, but we just need to
23 make a record of it. Do you know anything about Chicken or do
24 you know who Chicken is?

25 A: No.

State v. Weatherall - 2014-GS-26-01415
DIANE PHILLIPS - CROSS BY GARDNER

193

1 Q: One of the Defendants, Marvin McElveen?

2 A: No.

3 Q: And you and I'm not -- your job is very important, but if
4 I understand it right and tell me if I'm wrong, your job is --
5 you were given some stuff or got some stuff and you brought it
6 somewhere and you don't -- it doesn't matter what it was, it
7 was just stuff that you brought?

8 A: That's correct.

9 Q: So my next question to you would be is there anything
10 else that we should've brought or could have brought and you
11 probably wouldn't be able to answer that?

12 A: No.

13 Q: That's okay. We're all doing the best we can. Thank you
14 for coming.

15 A: You're welcome.

16 THE COURT: Redirect?

17 MS. LIVESAY: No further questions, Your Honor.

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

19 The State can call your next witness.

20 MS. LIVESAY: Thank you, Judge. At this time, the State
21 calls Angie Gunter to the stand.

22 THE COURT: All right.

23 CLERK: Please raise your right hand and place your left
24 hand on the Bible.

25 ANGIE GUNTER, HAVING BEEN SWORN

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - DIRECT BY LIVESAY

194

1 TESTIFIES AS FOLLOWS:

2 CLERK: State your full name and spell your first and
3 last name for the Court?

4 MS. GUNTER: Angie T. Gunter, A-N-G-I-E, G-U-N-T-E-R.

5 DIRECT EXAMINATION OF ANGIE GUNTER BY MS. LIVESAY:

6 Q: And, Ms. Gunter, where do you currently work?

7 A: Atlantic View Motel in Myrtle Beach.

8 Q: Okay. And about how long have you worked there?

9 A: Three years.

10 Q: And what are your kind of job duties there?

11 A: I manage the office.

12 Q: Okay. And do you, when you say manage the office, you
13 mean that front desk where people come in and check in?

14 A: Correct.

15 Q: Okay. Now, do y'all keep registration cards?

16 A: Yes, ma'am; we do.

17 Q: Okay. And would you recognize one from Atlantic View?

18 A: Yes, ma'am.

19 Q: I'm gonna show you State's evidence Number 65. Do you
20 recognize that?

21 A: Yes, I do.

22 Q: And is that a registration card?

23 A: Yes, ma'am; it is.

24 Q: Okay. And who is that room registered to?

25 A: Woodberry.

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - DIRECT BY LIVESAY

195

- 1 Q: Okay.
- 2 A: Herbert Woodberry.
- 3 Q: Okay. And is anybody else on it staying in the room?
- 4 A: Yes, a Mitchell Weatherall or something of that sort.
- 5 Q: Okay. Now let me ask you something, were you working at
- 6 Atlantic View when the police came and investigated this case?
- 7 A: Yes, I was.
- 8 Q: Okay. Now, let me ask you something, you've been there
- 9 you say three years?
- 10 A: Yes.
- 11 Q: And you were back there back in November 2013?
- 12 A: Yes.
- 13 Q: You work full-time?
- 14 A: Yes.
- 15 Q: So you're there a lot, all the time almost?
- 16 A: (Indicates affirmatively.)
- 17 Q: Okay. Now, did you know Mr. Woodberry?
- 18 A: I had met him at a previous job I had.
- 19 Q: Okay. And what previous job was that?
- 20 A: I was manager of Hardee's in Brittons Neck.
- 21 Q: Okay. And where was he working?
- 22 A: I don't know.
- 23 Q: Okay.
- 24 A: He lived in Hemingway.
- 25 Q: Okay. You just remember seeing him. Okay. Now, how

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - DIRECT BY LIVESAY

196

1 about Mitchell Weatherall, do you know him?

2 A: No.

3 Q: Okay.

4 A: I do not.

5 Q: Now, do you -- had you, at that time in November of 2013,
6 did Atlantic View have surveillance cameras?

7 A: Yes, we did.

8 Q: Okay. And were those surveillance cameras recording what
9 was going on outside the business place?

10 A: Yes, ma'am.

11 Q: Okay. And about how long would it hold that footage?

12 A: Seven days, so I was told, seven days.

13 Q: Okay. And then it just kinda starts writing over itself?

14 A: Uh-huh (affirmative response).

15 Q: Okay. Now, do you remember the police coming to ever to
16 get any of this footage?

17 A: Yes, I do.

18 Q: Okay. And did you assist them in any way you could to
19 make sure they got what they needed?

20 A: Sure.

21 Q: Okay. Now, I'm gonna show you State's Exhibit 77. Do
22 you recognize it?

23 A: Yes, I do.

24 Q: And whose initials are those?

25 A: Mine.

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - DIRECT BY LIVESAY

197

1 Q: Okay. Now, is this surveillance footage from Atlantic
2 View Motel?

3 A: Yes, ma'am; it is.

4 Q: Okay. And have you seen this footage?

5 A: Yes, ma'am; I have.

6 Q: Okay. And did you initial to say this is the footage I
7 saw?

8 A: Yes, I did.

9 Q: Okay. Now, is this the footage you saw back when the
10 police were there in the Atlantic View Motel?

11 A: Yes, it is.

12 Q: Okay. And could you see what was going on outside at the
13 Atlantic View Motel?

14 A: Yes, ma'am.

15 Q: Okay. And this is the same as what you saw when the
16 police were there?

17 A: Yes.

18 MS. LIVESAY: Okay. Your Honor, at this time, I'd like
19 to put State's Exhibit 77 into evidence.

20 THE COURT: Any objection?

21 MR. GARDNER: No, Your Honor, no objection.

22 THE COURT: State's Exhibit 77 admitted into evidence
23 without objection.

24 STATE'S EXHIBIT NUMBER 77

25 ADMITTED INTO EVIDENCE

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - DIRECT BY LIVESAY

198

1 BY MS. LIVESAY:

2 Q: And you'd been there working full-time three years; is
3 that right?

4 A: Yes, ma'am.

5 Q: So you are very familiar with the grounds of Atlantic
6 View Motel?

7 A: Yes.

8 Q: Okay. Now, tell this jury what you saw on that tape?

9 A: I seen the car as it drove up. I seen somebody getting
10 out going into the room. Then I seen them bring something
11 out, sit it down beside of a post, pick it back up, put it in
12 the car. It looked like they couldn't get it in, so somebody
13 went around to the other side ---

14 MR. GARDNER: Your Honor, I'm gonna object. It sounds
15 like she's describing what she watched on the video.

16 MS. LIVESAY: We're gonna ---

17 MR. GARDNER: If that's what she's doing ---

18 A: Well, that's what happened.

19 THE COURT: Ma'am. She testified that this is what she
20 personally observed. That's her testimony.

21 MR. GARDNER: Okay. Well, then I misunderstood her.

22 MS. LIVESAY: I'm just trying to authenticate it, Judge,
23 before I play it.

24 THE COURT: Well, that's fine. I mean, is this what you
25 personally observed?

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - DIRECT BY LIVESAY

199

1 A: Yes, sir, it is.

2 THE COURT: Or you watched it on the video?

3 A: That's what I seen on the video. I did not see it
4 happening, no.

5 THE COURT: Okay.

6 MR. GARDNER: That's my objection, Your Honor.

7 THE COURT: Okay. Well, I overrule the objection, but
8 now we've got the testimony clear that she did not personally
9 see this, but she saw it from the video.

10 MR. GARDNER: Right.

11 THE COURT: All right. Go ahead.

12 MR. GARDNER: I really hope we can watch the video and
13 they can make their own decision about what's on it would be
14 the objection, Your Honor.

15 THE COURT: All right.

16 MS. LIVESAY: What I'm doing, Judge, is just putting in
17 what was seen on the video ---

18 THE COURT: By her.

19 MS. LIVESAY: --- so when we watch the video, she's gonna
20 say this is what I saw, this is what -- I was there with the
21 police, this is indeed the same day what I saw then.

22 THE COURT: Well, she has identified Plaintiff's Exhibit
23 Number 77. It's introduced into evidence without objection.
24 You can just play the video and the jury can see for
25 themselves what it shows rather than relying on what her

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - DIRECT BY LIVESAY

200

1 telling them what it shows, they're gonna be able to look at
2 it.

3 MS. LIVESAY: Certainly, Your Honor.

4 THE COURT: All right.

5 MS. LIVESAY: Let me -- I've got just a couple more
6 questions, Judge.

7 THE COURT: All right.

8 BY MS. LIVESAY:

9 Q: Now, did you see two different camera views?

10 A: Yes.

11 MR. GARDNER: It's the same objection, Your Honor.

12 MS. LIVESAY: I'm just authenticating what she saw, Your
13 Honor.

14 THE COURT: It's already authenticated. It's already in
15 evidence. You don't have to authenticate it anymore. It's in
16 evidence now. The jury can watch it right now.

17 MS. LIVESAY: Okay.

18 THE COURT: So it needs no further authentication.

19 MS. LIVESAY: Okay. At this point, Judge, I'm gonna put
20 evidence 77 in and play it for the jury.

21 THE COURT: It's already in evidence. You can go ahead
22 and play it for the jury.

23 (REPORTER'S NOTE: State's Exhibit 77 published for jury.)

24 MS. LIVESAY: Judge, can we have just a few minute break.
25 We need to switch to another camera view. Surveillance camera

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

201

1 picked it up on two different views. Just a few minutes so we
2 can get it to the next camera view.

3 THE COURT: All right.

4 MS. LIVESAY: Thank you, Judge.

5 BY THE COURT:

6 THE COURT: All right, ladies and gentlemen, we're gonna
7 go ahead and take about a 10 or 15-minute break to give you an
8 opportunity to stretch your legs. It's a good time for us to
9 take our afternoon break.

10 Do not discuss the case even among yourselves. Don't
11 conduct any independent investigation. We'll take a short
12 break and we'll bring you back when we finish up here in a
13 second. Thank you very much.

14 (REPORTER'S NOTE: Jury exits courtroom.)

15 THE COURT: All right. Ms. Gunter, we're still in the
16 middle of your testimony, so you cannot discuss your testimony
17 with anyone; the State's attorney, Defense attorney or anyone.
18 You can't discuss what you've testified to thus far and you
19 cannot discuss what you anticipate testifying to in the
20 future. Okay?

21 A: Okay.

22 THE COURT: All right. I'll allow you to step down, but
23 please do not discuss your testimony with anyone.

24 Anything from the State before we recess?

25 MS. LIVESAY: No, sir.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

202

1 THE COURT: All right. Anything from the Defense?

2 MR. GARDNER: No, Your Honor.

3 THE COURT: All right. Let's take about a 10 or 15-
4 minute recess.

5 (RECESS.)

6 *****OFF THE RECORD*****

7 (On the Record.)

8 THE COURT: All right. Anything from the State before we
9 bring the jury in?

10 MS. LIVESAY: No, sir, Your Honor, we're ready.

11 THE COURT: Anything from the Defense?

12 MR. GARDNER: No, Your Honor.

13 THE COURT: All right. Let's bring the jury in.

14 (REPORTER'S NOTE: Jury enters courtroom.)

15 THE COURT: Ladies and gentlemen, welcome back. Ms.
16 Livesay, continue.

17 MS. LIVESAY: Thank you, Judge. Judge, this video, this
18 is at night and it's kinda hard to see. Can we -- could we
19 ---

20 THE COURT: I can't see it at all; so, I don't know.

21 MS. LIVESAY: There we go. Thank you, Judge.

22 THE COURT: All right.

23 (REPORTER'S NOTE: State's Exhibit 77 published for jury.)

24 BY MS. LIVESAY:

25 Q: Ms. Gunter, the time of that tape is 11/5/2013. To your

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - DIRECT BY LIVESAY

203

1 knowledge is -- the date, I'm sorry, the date on the video is
2 11/5. To your knowledge, is that date correct?

3 A: Yes.

4 Q: Okay. And how about the time, the time says around 8:27;
5 was the time correct, or did y'all justify for the time
6 change?

7 A: The time was off one hour.

8 Q: Okay. Because y'all -- did y'all not take it back to
9 7:30?

10 A: No, we didn't.

11 Q: Okay. And why was that, you just didn't know how?

12 A: Didn't know how.

13 Q: Okay. So, for this calendar, November, 2013, so the date
14 of this video is right here on the 5th?

15 A: Right.

16 Q: So, if I put the video on the 5th, I would be correct?

17 A: Right.

18 Q: Thank you, Ms. Gunter. I don't have any more questions
19 for you.

20 THE COURT: You need to move this?

21 MS. LIVESAY: We're gonna use it on the next witness. Is
22 it okay, Johnny, or ---

23 MR. GARDNER: I think I can work around it.

24 MS. LIVESAY: Thank you. Thank you.

25 MR. GARDNER: All right.

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - CROSS BY GARDNER

204

1 THE COURT: Cross examination?

2 MR. GARDNER: Thank you, Judge.

3 CROSS EXAMINATION OF ANGIE T. GUNTER BY MR. GARDNER:

4 Q: I'll be real brief because of this contraption.

5 Do you know Surfer Boy?

6 A: No, I do not.

7 Q: Have you heard that term before?

8 A: I've heard it.

9 Q: Around the motel, one of the customers?

10 A: No, the only time I've heard it is with this.

11 Q: With -- today?

12 A: No, with this case.

13 Q: What did you hear?

14 A: Just the name.

15 Q: Okay. Did you hear that from the Solicitor?

16 A: Might've heard it from my boss lady; might've heard it
17 from some of the workers. I don't know.

18 Q: Okay. Well, I'm gonna show you a couple of things, I
19 don't know if the Solicitor showed you.

20 Defense Number 1 for ID. All right.

21 I'm gonna show you what's been marked as Defendant's
22 Exhibit Number 1 for identification purposes. Do you
23 recognize that registration card?

24 A: Yes, sir, I do, and that's my handwriting.

25 Q: That is?

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - CROSS BY GARDNER

205

- 1 A: Yes, sir.
- 2 Q: Okay. All right. Do you -- I know these pictures aren't
3 real good, but do you recognize those fellows by the picture
4 or by the name?
- 5 A: I do the Woodberry; this guy, I don't.
- 6 Q: Okay. The guy on the left?
- 7 A: No.
- 8 Q: You don't know who that is?
- 9 A: No, I don't.
- 10 Q: This guy here is Garsow; do you recognize him?
- 11 A: I don't know him.
- 12 Q: But you checked him in?
- 13 A: That's the same.
- 14 Q: It's not?
- 15 A: No.
- 16 Q: It's not what?
- 17 A: That's not the Woodberry.
- 18 Q: No, ma'am; this is not Woodberry. This is a different
19 exhibit. This is a different exhibit altogether. I can show
20 you and you can look at them, but it -- let's start all over.
- 21 A: Okay.
- 22 Q: There's no trick questions, okay, and there's no wrong
23 answers. All right. We'll do the best we can. This is a
24 registration card. And that's from your hotel; is that right?
- 25 A: Right.

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - CROSS BY GARDNER

206

1 Q: Is that your handwriting?

2 A: That's their handwriting. This is mine.

3 Q: Okay. So, you have handwriting on it. So, does that
4 mean more likely than not that you checked these two boys in?

5 A: Yes.

6 Q: Okay. Do you recognize these two fellows?

7 A: No, sir.

8 Q: All right. But how about by name?

9 A: No, sir.

10 Q: Okay. All right. The date for this, and I believe
11 that's your handwriting, is 10/28?

12 A: Yes, sir.

13 Q: Does that mean that these two guys stayed in your hotel
14 on the 28th?

15 A: Yes, sir, or they registered to stay there.

16 Q: Okay. All right. And how many rooms does that hotel
17 have?

18 A: Forty-two.

19 Q: Forty-two. We heard testimony earlier from a lady, who
20 might be the lady you were referring to as your boss, the lady
21 that, what, owns the place; do you know her?

22 A: Yes, sir; I do.

23 Q: Okay. She basically would probably not know everybody
24 that comes there and you might not know everybody that comes
25 there either, right?

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - CROSS BY GARDNER

207

- 1 A: Right.
- 2 Q: Forty-two rooms, that's a lot of people, a lot of rooms,
3 right?
- 4 A: Right.
- 5 Q: And this hotel room has a lot of turnover or does it?
- 6 A: The hotel room or the hotel itself?
- 7 Q: The hotel rooms, people come and visit and then they
8 leave, and then other people come and visit and then they
9 leave?
- 10 A: We don't allow visitors to weeklies.
- 11 Q: Okay. I'm just using the wrong word and I'm sorry. I'll
12 use a better word. Customers, tenants?
- 13 A: Yes.
- 14 Q: Okay. The tenants come in for a day or two at a time and
15 then leave or maybe a week and then leave?
- 16 A: Both. We have people that come for a day, people that
17 come for a week.
- 18 Q: And when they leave, other people come?
- 19 A: Right.
- 20 Q: Okay. And then when they leave, other people come?
- 21 A: Right.
- 22 Q: So, over the course of a year or three years with 42
23 rooms and somebody staying a day or two or a weekly and it
24 rotating over, it would be hard to keep track of some of these
25 guys?

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - CROSS BY GARDNER

208

1 A: Sure.

2 Q: Okay. But you wouldn't dispute that some of the people
3 there knew who Surfer Boy was?

4 A: Right.

5 Q: Because you've heard that name yourself?

6 A: Right.

7 Q: And you wouldn't -- you have no reason to dispute that
8 Surfer Boy is not Joey Garsow?

9 A: (Indicates negatively.)

10 Q: Okay. Now ---

11 THE COURT: Excuse me. You need to give a verbal
12 response.

13 A: Oh, I'm sorry.

14 BY MR. GARDNER:

15 Q: Remember I told you there's no wrong answers; you have to
16 say it.

17 A: I don't know that I've ever seen him.

18 Q: That's okay. Just whatever it is because she's gonna be
19 writing down everything you say.

20 A: Okay.

21 Q: Just to compare, I want to show you, this is State's
22 Exhibit 65, so you don't -- did you get showed this one
23 earlier?

24 A: Yes.

25 Q: That's the same registration card -- type card that your

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - CROSS BY GARDNER

209

- 1 hotel uses?
- 2 A: Yes, sir; it is.
- 3 Q: Just different people?
- 4 A: Right.
- 5 Q: And a different date?
- 6 A: Right.
- 7 Q: This date that has Weatherall and Woodberry on it is
- 8 November 1st. The one that has Weatherall and Garsow,
- 9 November -- I'm sorry, October 28th beforehand, right?
- 10 A: Uh-huh (affirmative response).
- 11 Q: All right. Okay.
- 12 A: That's right.
- 13 Q: All right. Now, I'm gonna ask you the same thing I've
- 14 asked everybody up here. Do you know a guy named Marvin
- 15 McElveen?
- 16 A: No, sir.
- 17 Q: Have you heard anybody referred to by the name of
- 18 Chicken?
- 19 A: No, sir.
- 20 Q: Okay. All right. Through all your records and
- 21 information -- did you meet Bill Beam, an investigator that
- 22 works for me?
- 23 A: Not that I'm aware of.
- 24 Q: Did he come to your office?
- 25 A: Not that I'm aware of.

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - CROSS BY GARDNER

210

1 Q: Okay. Do you know if he came and talked to -- do you
2 know a couple of other people that worked, the owner, what's
3 her name?

4 A: Norma Davis.

5 Q: Norma Davis. And there was another lady that cleans or
6 works there?

7 A: Missy.

8 Q: Missy. Okay. Do you know of your personal knowledge,
9 did they talk to Bill Beam?

10 A: I do not know; I cannot say.

11 Q: All right. So, you don't know if Chicken has ever stayed
12 at your -- at that hotel?

13 A: No, I don't.

14 Q: Okay. All right. But we don't have any registration
15 that shows he does, right?

16 A: No, sir.

17 Q: So, he probably did not. We do, on the other hand, have
18 information that shows that, this is Weatherall, by the way,
19 Mitchell Weatherall. Okay?

20 A: Okay.

21 Q: He has stayed at that hotel prior and on several
22 occasions but at least one prior to this November incident,
23 right?

24 A: Right.

25 Q: Okay. And I have you show on this calendar that the

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - CROSS BY GARDNER

211

1 Solicitor made, but we don't have an October for it. Okay?

2 We got a few days here, but we don't have enough to go back.

3 So, if I understood it right, your testimony is the video was
4 on the 5th?

5 A: Yes, sir.

6 Q: Okay. And check in was on the 1st. Did you say we do or
7 do not have video of the 1st?

8 A: We do not.

9 Q: And that's because it only goes back seven days?

10 A: Right.

11 Q: Okay. All right. I'm not trying to trick you or
12 anything, but one, two, three, four, five; it looks like we
13 were good for two more days. Do they start on a different --
14 how does it start?

15 A: You could start it wherever you want to.

16 Q: How do y'all start it at your hotel?

17 A: Whatever I need to look at, I go back to that date.

18 Q: Okay. All right. Okay. Is there anything that I might
19 have left out, anything you want to tell the jury about this
20 case?

21 A: I don't know anything to tell them.

22 Q: Thank you, ma'am. Thank you for coming.

23 THE COURT: Redirect?

24 MS. LIVESAY: Just a couple of questions, Judge.

25 REDIRECT EXAMINATION OF ANGIE T. GUNTER BY MS. LIVESAY:

State v. Weatherall - 2014-GS-26-01415
ANGIE T. GUNTER - REDIRECT BY LIVESAY

212

1 Q: All right. Ms. Angie, we've asked you at length about
2 this registration. I'm showing you now State's Evidence
3 Number 65; it's a registration card. Now, it's only Herbert's
4 name on the registration card; do you see that?

5 A: Yes.

6 Q: Then why are there two licenses on it; why do y'all take
7 a license?

8 A: Because there are two people gonna be in that room.

9 Q: Okay. Okay. So, you take a license of whoever is gonna
10 be in the room?

11 A: Correct.

12 Q: Okay. And why don't y'all allow visitors?

13 A: Because you try to keep out drug dealers and prostitutes.

14 Q: Okay. Now, you said that, that this video only keeps for
15 about seven days?

16 A: Correct.

17 Q: Okay. Maybe a little longer. And this was the date of
18 the video was the 5th?

19 A: Yes.

20 Q: Okay. Now, do you remember the police showing up on the
21 12th or you don't remember what date they showed up?

22 A: I don't know what day. I know they woke me up. We had
23 already closed up for the day.

24 Q: That's fair enough. Thank you, Ms. Angie.

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

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

213

1 MS. LIVESAY: No further questions.

2 THE COURT: All right.

3 MS. LIVESAY: Yes, please, Your Honor, could she be
4 excused?

5 THE COURT: Any objection?

6 MR. GARDNER: No objection.

7 THE COURT: All right. She's free to go.

8 All right. State can call their next witness.

9 MS. LIVESAY: Your Honor, at this time, the State calls
10 Tonya Wedlock to the stand.

11 THE COURT: All right.

12 CLERK: Please raise your right hand and place your left
13 hand on the Bible?

14 TONYA LYNN WEDLOCK, HAVING BEEN DULY
15 SWORN TESTIFIES AS FOLLOWS:

16 CLERK: Please state your full name and spell your first
17 and last name for the Court.

18 MS. WEDLOCK: Tonya Lynn Wedlock, T-O-N-Y-A, W-E-D-L-O-C-
19 K.

20 DIRECT EXAMINATION OF TONYA WEDLOCK BY MS. LIVESAY:

21 Q: Ms. Wedlock, you want a cup of water?

22 A: No, ma'am.

23 Q: Just in case.

24 A: Thank you.

25 Q: Now, Ms. Wedlock, if you don't mind, tell this jury how

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

214

- 1 old you are?
- 2 A: Thirty-seven.
- 3 Q: Do you have any kids?
- 4 A: Yes, ma'am.
- 5 Q: And how old; girl or a boy?
- 6 A: Three girls.
- 7 Q: Okay. And how old are they?
- 8 A: Sixteen, eighteen and twenty.
- 9 Q: Okay. Now, are you currently working anywhere?
- 10 A: No.
- 11 Q: Do you currently have stable housing anywhere?
- 12 A: No.
- 13 Q: Okay. Now, have you -- do you know Mitchell Weatherall?
- 14 A: Yes.
- 15 Q: Now, have you ever stayed or been at the Atlantic View
- 16 with him and Joey Garsow?
- 17 A: Yes.
- 18 Q: Now, do you remember what went on when you were staying
- 19 with them at the Atlantic View?
- 20 A: Yes, ma'am.
- 21 Q: Now, at this time, do you have a car?
- 22 A: No.
- 23 Q: Now, at that time, did you have a car?
- 24 A: Yes, ma'am.
- 25 Q: Okay. And what kind of car was it?

State v. Weatherall - 2014-GS-26-01415

215

TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

1 A: It was a white Honda. I had just bought it; it had 30
2 day tags on it.

3 Q: Okay. Now, have you seen the surveillance footage of
4 y'all being at Atlantic View?

5 A: Yes, ma'am.

6 Q: Now, do you remember all what happened that day when
7 y'all were together?

8 A: Most of it.

9 Q: Okay. Most of it. Okay. If you don't mind, start off
10 by just telling this jury about how long you had known Mitch?

11 A: Prior to the incident?

12 Q: Uh-huh (affirmative response).

13 A: Roughly like six months, eight months or so.

14 Q: About how long?

15 A: Six to eight months or so.

16 Q: Okay. And how long had you known Joey Garsow?

17 A: About the same because I met them at the same -- about
18 the same time.

19 Q: Okay. Now, at that time, where were you living?

20 A: In the streets.

21 Q: Okay. And do you know where they were living?

22 A: The same other than like a couple of times they would
23 have hotel rooms.

24 Q: Okay. Now, if you don't mind, tell this jury how you
25 first came across them that day?

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

216

1 A: When I met them that day?

2 Q: Uh-huh (affirmative response).

3 A: We was all at the park beside the library.

4 Q: And who came up to you first?

5 A: Joey.

6 Q: Okay. And tell me a little bit about how that came
7 about.

8 A: Joey was just mentioning how Mitch had a playoff of what
9 was it called, Craig's List for sexual favors and the guy was
10 coming down on a Greyhound.

11 Q: And how did it come about that y'all were all going to
12 the Atlantic View that night?

13 A: It didn't. They was explaining how Mitch was -- was
14 supposed to meet the guy and go to the hotel with him. I got
15 involved ---

16 MR. BOUCHETTE: Objection, Your Honor, I'm pretty sure
17 everything she's saying is hearsay; somebody else saying what
18 my client said.

19 THE COURT: Sustained.

20 BY MS. LIVESAY:

21 Q: Did you know whether or not he had a room at the Atlantic
22 View?

23 A: Yes.

24 Q: How did you know that?

25 A: The day that the gentleman got there, he called me and

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

217

- 1 another guy.
- 2 Q: Who called?
- 3 A: Mitch.
- 4 Q: Okay.
- 5 A: Called the guy I was with for some drugs for him and the
- 6 gentleman.
- 7 Q: Okay. And that's how you knew where they were at?
- 8 A: Yes, ma'am.
- 9 Q: Okay. And so, he told you where he was at?
- 10 A: Yes, ma'am.
- 11 Q: Okay. Now, did you know the other man?
- 12 A: No.
- 13 Q: Okay. Did you go over there?
- 14 A: That day, no.
- 15 Q: Okay. Not that day?
- 16 A: No, ma'am.
- 17 Q: Did you see him or the other guy that day?
- 18 A: No, ma'am.
- 19 Q: When do you see or hear from him again?
- 20 A: Mitch?
- 21 Q: Yes.
- 22 A: Later in the week.
- 23 Q: Okay. Later on?
- 24 A: Yes, ma'am.
- 25 Q: And tell me about that; tell this jury about that.

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

218

- 1 A: It was later at nighttime. I ran into Joey first. We
2 was buying drugs and we ran into Mitch, and Mitch said that he
3 needed to use my car to take the gentleman back to the
4 Greyhound so he can go home.
- 5 Q: So, he told you he needed a car to take the guy home or
6 back to the bus station?
- 7 A: Yes, ma'am.
- 8 Q: Okay. Was anybody with him?
- 9 A: With Mitch?
- 10 Q: Uh-huh (affirmative response).
- 11 A: No, because I already had Joey.
- 12 Q: Okay. Okay. So, it was him and Joey?
- 13 A: It was me and Joey and we ran into Mitch.
- 14 Q: Okay. So, you and Joey ran into Mitch?
- 15 A: Yes, ma'am.
- 16 Q: Okay. And Mitch tells you at that time, I need a car to
17 take this man back?
- 18 A: Yes.
- 19 Q: Okay. Okay. Now, what do you know to be the
20 relationship between Mitch and Joey?
- 21 A: They was lovers. They was together.
- 22 Q: Okay. So, you mostly saw them together?
- 23 A: Yes.
- 24 Q: Okay. So, you and Joey bump into Mitch -- well, how long
25 had you been with Joey that day?

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

219

1 A: About an hour or so because we was -- I bought some
2 liquor and we was doing crack.

3 Q: Okay. And did Joey know where Mitch was?

4 A: Yes.

5 Q: So, Mitch runs into you and Joey and needs the car. So,
6 then what happens?

7 A: I said okay, so we bought some more liquor and we bought
8 some more drugs and I drove to the Atlantic View.

9 Q: Okay. And who was in the car with you?

10 A: Me, Mitch, and Joey.

11 Q: Okay. Where was Mitch sitting?

12 A: In the passenger seat.

13 Q: And where was Joey sitting?

14 A: In the back on the passenger side.

15 Q: Okay. So, what happens once y'all get back to the
16 Atlantic View?

17 A: Okay. When we -- I pulled in, Mitch got out and went
18 into the room and my car, my driver's door was messed up, so I
19 had -- I shimmied across it and me and Joey was sitting out --
20 was standing outside taking some shots and then Mitch told me
21 I had to walk down the -- the little walkway on the corner
22 because he didn't like to see women because they was supposed
23 to keep the room for a couple of days because he was supposed
24 to have the room for a week. So, I took my bottle and went to
25 the corner where the seats was and I sat there for a little

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

220

1 while.

2 Q: So, you never saw who came in or out as far as visually
3 of the room?

4 A: No, ma'am.

5 Q: Okay. Now, at that point, do you give Mitch your keys?

6 A: They was already in the car.

7 Q: Okay. And does he take the car somewhere?

8 A: Yes, ma'am.

9 Q: Okay. Do you know where he went?

10 A: He told me he was taking him to the bus station, but
11 later on through the evidence of the video and everything --
12 not the video, but the lawyers and stuff told me exactly what
13 happened.

14 MR. BOUCHETTE: Objection again, Your Honor.

15 THE COURT: Sustained.

16 BY MS. LIVESAY:

17 Q: Let me ask you this, did Joey go with him or did he stay
18 with you?

19 A: He stayed with me.

20 Q: Okay. So, you and Joey hang out together while Mitch is
21 gone with your car?

22 A: Yes, ma'am.

23 Q: Okay. Now, does he come back with the car?

24 A: Yes, ma'am.

25 Q: Okay. Then what happened?

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

221

1 A: He comes in the room. We was all drinking and smoking
2 crack.

3 Q: Now, so while he's gone, you and Joey are in the room?

4 A: Yes, ma'am.

5 Q: Okay. What, if anything, do you see in the room?

6 A: What you mean?

7 Q: Do you see -- we showed some pictures earlier of spots on
8 the walls; did you see those spots?

9 A: Later on when I sat on the bed ---

10 MR. BOUCHETTE: Objection, Your Honor, I don't think the
11 witness has grounds to ---

12 THE COURT: Overruled, I'll allow that. Go ahead.

13 BY MS. LIVESAY:

14 Q: What did you see in the room?

15 A: The room was just basically normal like one bed had no
16 sheets on it, the other bed looked like it was slept in. The
17 room always looked -- the rooms there always look dirty
18 because it ain't like an upper class hotel.

19 Q: Okay.

20 A: They was kinda like dirt and stuff in the sink, you know,
21 there was trash in the trashcan. But when me -- later on in
22 that day or that night, another guy came with us was named
23 Pocket. We was sitting on the bed talking and smoking and we
24 noticed there was like behind us, there was a picture and
25 there was like not a lot, but little -- it looked like ketchup

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

222

- 1 to me, like something on the wall.
- 2 Q: Okay.
- 3 A: But nothing really out the norm besides a hotel that's
- 4 been slept in.
- 5 Q: Okay. So, you saw it on the walls and the picture?
- 6 A: Yes, it was behind us because we sat on the bed on the
- 7 far wall.
- 8 Q: Okay. And it looked like speckles?
- 9 A: Uh-huh (affirmative response).
- 10 Q: Okay. And you thought it was ketchup?
- 11 A: Yeah.
- 12 Q: Okay. Did you see speckles anywhere else on the walls?
- 13 A: No, ma'am.
- 14 Q: Now, what do y'all -- do y'all go anywhere that night
- 15 together, you, Joey and Mitchell?
- 16 A: Mitch, no; but me and Joey, yes.
- 17 Q: Okay. Where do y'all go?
- 18 A: We to several different convenience stores and stuff and
- 19 also purchased drugs.
- 20 Q: Okay. And what were y'all buying?
- 21 A: We bought cigarettes, we bought gas, we bought other
- 22 things for the drug dealer. Like if they wanted an outfit or
- 23 diapers or clothes, we purchased different items so we can get
- 24 drugs.
- 25 Q: Okay. And who -- how were y'all getting around, your

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

223

1 car?

2 A: My car.

3 Q: Okay. And who was driving it?

4 A: Me.

5 Q: And I'm sorry, I didn't catch it the first time. Who was
6 all in the car at that time?

7 A: The first time I left, it was me and Joey.

8 Q: Okay.

9 A: And we ran into a friend of mine named Pocket ---

10 Q: Okay.

11 A: --- at the convenience store, and I asked him, I was like
12 hey, we have a card, you know, can we -- do you know anybody
13 we can buy or trade things with for drugs, and he was like
14 yeah. So, after that, it was me, Joey, and Pocket.

15 Q: Okay. And did you, Joey, and Mitch ever go out anywhere?

16 A: No, Mitch always stayed behind.

17 Q: Okay. Now, who stayed in the room that night?

18 A: That night, me, Mitch, and Joey. We didn't sleep, they
19 just like the whole -- for like two days I was there. We just
20 in and out doing drugs. We never really slept. We just in
21 and out, back and forth purchasing drugs.

22 Q: Okay. So for two days, once you got there, the three of
23 you were just in and out of the room?

24 A: The three of us would be Mitch, Joey, and Pocket.

25 Q: Yes.

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

224

- 1 A: Yes, ma'am.
- 2 Q: Okay. So, it was you, Joey, Mitch, and Pocket?
- 3 A: Yes.
- 4 Q: Okay. Were in and out of that room?
- 5 A: Yes.
- 6 Q: For two days?
- 7 A: Yes, ma'am.
- 8 Q: Now, why did y'all end up leaving the room?
- 9 A: Me and Pocket? We was on another drug run and we was
- 10 hungry and so we went to the soup kitchen.
- 11 Q: Now, during this period when you're going in and out of
- 12 the room, do you ever see a guy named Chicken?
- 13 A: No.
- 14 Q: Okay. Now, when you go into the room, you're going in
- 15 and out, is there any clothes or anything like that in the
- 16 room?
- 17 A: No, I mean, they had like book bag.
- 18 Q: Okay.
- 19 A: I didn't -- I just assumed like that's what they kept
- 20 their stuff in because when they walk around, that's what they
- 21 always had stuff in.
- 22 Q: Did you ever see the victim Helbert Woodberry?
- 23 A: No.
- 24 Q: Okay. Had you ever met him before?
- 25 A: No, ma'am.

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

225

1 Q: Now, have you seen a surveillance tape of when the three
2 of y'all were at Atlantic View?

3 A: Yes, ma'am.

4 Q: Okay. And can you identify your car, yourself, Mitch,
5 and Joey on the video?

6 A: Yes, ma'am.

7 Q: Okay. And can you see Joey, you, and Mitch moving around
8 on the video until finally your car leaves?

9 A: Yes, ma'am.

10 MR. GARDNER: Your Honor, same objection that we had at
11 the last witness talking about watching the video tape. She's
12 describing now what she watched a video tape of.

13 MS. LIVESAY: Can I ask her one follow-up question?

14 THE COURT: I'll allow it.

15 MS. LIVESAY: Yes, this might clear it up.

16 THE COURT: All right.

17 BY MS. LIVESAY:

18 Q: Could you, to this jury, identify who is Mitch, who is
19 Joey, and who you are on the video?

20 A: Yes, ma'am.

21 Q: Okay. And can you point out to the jury who those people
22 are on the video?

23 A: Yes, ma'am.

24 Q: Okay. And can you identify your vehicle?

25 A: Yes, ma'am.

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

226

1 MS. LIVESAY: Okay. Your Honor, at this time, I'm gonna
2 ask that this young lady be allowed to identify these people
3 on the video to assist the jury.

4 THE COURT: Okay. This is Defendant's Exhibit -- excuse
5 me ---

6 MS. LIVESAY: State's evidence, Your Honor.

7 MR. BOUCHETTE: Your Honor, I'm gonna have to object. We
8 just sat through and watched this entire video. I think going
9 through it again is -- I think it is repetitive. I don't
10 think you can see -- I mean, you see figures on the video. At
11 this point, we've got the testimony from her, we've seen the
12 video, know what the allegation is, I don't see any benefit to
13 going back through the video with the witness corroborating
14 what she just said in accordance with the video we just
15 watched.

16 THE COURT: All right. Overruled. I'll allow it. So
17 this is State's Exhibit -- I'm trying to see which one ---

18 MS. LIVESAY: This is State's Evidence Number 77, Your
19 Honor, is what I've got.

20 THE COURT: Oh, okay. I see it. All right. It's
21 already in evidence.

22 BY MS. LIVESAY:

23 Q: Now, Tonya, if you don't mind, we're gone ask you to step
24 down and you have seen the two different views and you can
25 identify them on both?

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

227

1 A: Yes, ma'am.

2 Q: Okay. If you don't mind, we're gonna play it and I'm
3 gone ask you to step down and identify yourself, Mitch, and
4 Joey on the tape. Thank you.

5 THE COURT: Make sure she's still by a microphone so the
6 Court Reporter can pick everything up.

7 MS. LIVESAY: Yes, sir, Judge.

8 COURT REPORTER: That's the microphone right there.

9 THE COURT: She's gonna need to stay and testify from
10 right there. She'll have to -- I don't know how she's gonna
11 be able to point.

12 (REPORTER'S NOTE: State's Exhibit 77 published for the jury.)

13 MS. LIVESAY: Can we lower the lights, Bobby? I'm sorry.
14 This thing is hard to see.

15 A: That white car is my car. That is Mitch getting out of
16 the passenger side door.

17 THE COURT: All right. Now, I apologize. You're gonna
18 need to speak up loud and clearly so we can we can hear you
19 way over here, too.

20 A: That was Mitch getting out the passenger side door.

21 BY MS. LIVESAY:

22 Q: Can you point that out a little closer when you see it.

23 I know, just speak up kinda ---

24 A: Okay.

25 Q: --- so they can hear you, but you can point it out. You

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

228

1 can get close and point it out.

2 A: That's Joey walking around the front now. In the figure
3 by the -- this figure, that's Mitch and that's Joey. Right
4 now we're just smoking cigarettes and we was drinking.

5 Q: Who is that opening the door; do you recognize them?

6 A: Mitch.

7 MR. BOUCHETTE: Your Honor, I'm afraid I'm gonna have to
8 object. If you could pause the video, please. Your Honor,
9 I'm standing -- this is about a, I don't know, about a five
10 foot wide T.V. screen and I'm walking all the way up to it and
11 I can't make out anything other than a shadow. This witness
12 testified earlier that she was away from the car when they
13 were moving -- supposedly moving the body.

14 A: They didn't ---

15 MR. BOUCHETTE: Her lack of -- if she doesn't have any
16 personal knowledge, to be able identify who's doing what at
17 this time, I don't -- I don't think she can see can enough to
18 recognize them -- and based on her recollection, what she just
19 said, she wasn't around the car at the time that these
20 incidents were occurring, if I understand what -- what she's
21 saying this timeframe captures.

22 THE COURT: Overruled. I'll allow it. Go ahead.

23 MS. LIVESAY: Thank you.

24 BY MS. LIVESAY:

25 Q: Tonya, did you have a concern about what you saw?

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

229

- 1 A: Yes.
- 2 Q: Okay. Go ahead.
- 3 A: Okay. He's -- what I just witnessed right now is not
4 when he was moving the body. Mitch was just checking the back
5 seat. Moving the body is later. So, that was not -- we was
6 just standing around the vehicle, then talking and smoking
7 cigarettes. They was checking my trunk. At the time, I
8 didn't know why, and he was in the back seat. That was not
9 the incident where they was sticking the body in the backseat.
- 10 Q: Okay. Let me ask you something, who was opening the
11 trunk earlier?
- 12 A: Mitch.
- 13 Q: Okay. And what was in the trunk?
- 14 A: All my belongings. I was homeless and I had all my
15 clothes and stuff.
- 16 Q: And was he getting something out for you or for himself?
- 17 A: No.
- 18 Q: Okay. Okay. So, he was just opening the trunk?
- 19 A: Yes, ma'am.
- 20 Q: Okay. Now, Tonya, I'm gonna give you this. This is a
21 little laser pointer so you can point. Would this be helpful
22 to you?
- 23 A: Yes.
- 24 Q: Would you like to use it to point things out?
- 25 A: Okay.

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

230

1 Q: Just push right there.

2 A: Okay. That, the person that just -- I can't use it.

3 Q: Who is that?

4 A: The person that just walked behind the trunk to the
5 driver's side door, passenger door, that's Joey, and Mitchell
6 was already on that side.

7 Q: So just -- I'm -- I -- where is Mitch right now? Come up
8 here and point it out.

9 A: He's right here.

10 Q: Okay. And where is Joey at?

11 A: I think over here.

12 Q: Okay. And are you up here right now?

13 A: No.

14 Q: Okay.

15 A: By this time, I had done walked down the end of the
16 walkway.

17 Q: Okay. Who is this, Tonya?

18 MR. BOUCHETTE: Your Honor, I'm gonna have to object
19 again. I think if I understood the witness, I think at this
20 point, she's saying that this was when she made it down past
21 the walkway. So, she's not testifying on recollection, and I
22 don't think she can identify based on what's on this -- this
23 screen.

24 THE COURT: Overruled. Overruled. I'll allow it, go
25 ahead.

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

231

1 MS. LIVESAY: Thank you, Judge.

2 BY MS. LIVESAY:

3 Q: First, let me ask you this, do you know who this is?

4 A: Yes.

5 Q: Who is this?

6 A: That's Mitch.

7 Q: Okay.

8 A: That's Mitch opening the door.

9 Q: Getting in the passenger side?

10 A: Yes, ma'am.

11 Q: Now, Tonya, how did you get in and out of your car?

12 A: I had to shimmy across the driver's side to the passenger
13 side because my driver's side door messed up.

14 Q: Okay. Okay. Now, have you seen the view looking
15 straight down the hallway?

16 A: Yes, ma'am.

17 Q: And can you identify the people on the tape then; you,
18 Mitch, and Joey?

19 A: Yes, ma'am.

20 Q: Okay. We're gonna move over to that view now. Now, let
21 me ask you something, did you ever see -- the other guy that
22 was staying in the room with Mitch, did you ever see him on
23 that video?

24 A: No.

25 Q: Okay.

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

232

1 A: That's my car again. The first person walking was Mitch
2 in the light-colored coat.

3 Q: What did you say, Tonya? I'm sorry.

4 A: That was Mitch. Mitch is right in the front in the
5 light-colored coat, and this is Joey.

6 Q: Okay.

7 COURT REPORTER: Move over just a little; you've got your
8 back to the microphone, please. You have the microphone to
9 your back; you need to be on the other side. Thank you.

10 A: Mitch, I mean ---

11 MS. LIVESAY: Stop it so she can talk.

12 BY MS. LIVESAY:

13 Q: Go ahead?

14 A: Okay. This is something that they're carrying. Joey is
15 at the head or the front of the body and Mitch is at the back.

16 Q: Okay.

17 A: That's Mitch here.

18 THE COURT: Excuse me, ma'am, I'm sorry. If you can use
19 the pointer, you need to stay near the microphone so the Court
20 Reporter can pick up what you're saying. When you get near
21 the screen, we can't hear you.

22 A: Okay. You see the number 3 in the P.M., the light-
23 colored coat, that's Mitch.

24 Q: Hold on, let's see if you ---

25 A: I can't get it to work right.

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

233

1 Q: You got it?

2 A: I got it down here, but it won't show on there. See, it
3 don't show on the screen.

4 MS. LIVESAY: You can't see it on the screen, Judge, that
5 laser. Can she just point?

6 THE COURT: It would be better to pull the screen closer
7 here. She's got to be near a microphone so that she can
8 testify and the Court Reporter can pick it up. So, you can
9 either pull the screen over here -- she can use this
10 microphone or you can get a microphone up there on the screen
11 or something of that nature, but every time she walks up to
12 the screen without a microphone, we cannot hear what she's
13 saying and the Court Reporter cannot take down what she's
14 saying.

15 A: Just stick it on the ---

16 MS. LIVESAY: There we go put it right here.

17 A: Yeah, so when I walk up -- okay.

18 THE COURT: All right.

19 A: Okay. The white-colored coat here between the 4 and the
20 3:00 P.M., that's Mitch. And that'll be -- that is the back
21 passenger side door, I mean, the driver's side door.

22 Okay. The person that walked from here around here now
23 going that way is Joey.

24 BY MS. LIVESAY:

25 Q: Go ahead.

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

234

- 1 A: And the person standing right here by the passenger side
2 door, that's Mitch, and Joey is standing here going...
- 3 Q: Is that your car that drove off?
- 4 A: Yes, ma'am.
- 5 Q: Now, did you ever see on that tape anybody other than
6 you, Mitch, and Joey get in and out of your car?
- 7 A: No.
- 8 Q: Okay. Now, at the time, were you working anywhere?
- 9 A: No.
- 10 Q: Was Joey working anywhere?
- 11 A: Yes, but I don't recall where.
- 12 Q: Okay. But he was working?
- 13 A: Yes, ma'am.
- 14 Q: Okay. And was Mitch working?
- 15 A: He was pulling calls off of that -- I mean, Craig's List.
- 16 Q: Now, and I know it's been a long time ago, do you
17 remember when y'all were out whether or not anybody used any
18 kind of credit or debit card?
- 19 A: Yes.
- 20 Q: Okay. And tell me who all was around when the cards was
21 being used?
- 22 A: Me and Joey.
- 23 Q: And where were y'all going with the card?
- 24 A: Different places.
- 25 Q: And how did you get the card?

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - DIRECT BY LIVESAY

235

1 A: Mitch gave it to Joey.

2 Q: And so you saw Mitch give it to Joey?

3 A: Yes, we was in the room, and he got it out of a backpack.

4 Q: Okay. And who did the card belong to?

5 A: It was told to me it was Mitch's.

6 Q: So, you thought it was Mitch's card?

7 A: Yes, ma'am.

8 Q: Okay. Now, at the time, where were Mitch and Joey living
9 that you know of?

10 A: In the streets.

11 Q: Streets. Did you use or did you and Joey use the card
12 for anything other than alcohol, cigarettes, things like that?

13 A: We used it to purchase a cell phone for a drug dealer,
14 some diapers because his girlfriend was having a child,
15 clothes, things of those natures, so yes.

16 Q: Okay. At some point, did the card stop working?

17 A: I don't know because me and Pocket just stopped because
18 we was hungry, and we left it with Joey and we left to go get
19 something to eat at the soup kitchen.

20 Q: Okay. So, you don't know?

21 A: No.

22 MS. LIVESAY: Judge, I don't have any more questions for
23 Ms. Wedlock, and we're gonna move the T.V. for Mr. Gardner.

24 THE COURT: All right.

25 MR. GARDNER: Judge, if we may have a few minutes while

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - CROSS BY BOUCHETTE

236

1 she's doing that?

2 THE COURT: All right.

3 Cross examination?

4 MR. BOUCHETTE: Court's indulgence, Your Honor.

5 THE COURT: All right.

6 CROSS EXAMINATION OF TONYA WEDLOCK BY MR. BOUCHETTE:

7 Q: Good afternoon, Ms. Wedlock.

8 A: Hi.

9 Q: Ms. Wedlock, we sat through and we just watched this
10 video now for the second time, but I just want to make sure.
11 Essentially, you have no idea what went on in that hotel room
12 prior to your arrival that we saw from the video, correct?

13 A: No, sir.

14 Q: Okay. And then you exited the -- I think you said the
15 trail or the path away from the hotel room while the body was
16 being moved into your car, correct?

17 A: Yes.

18 Q: So, you don't have any idea about the moving of the body
19 or anything to that effect, correct?

20 A: No, sir.

21 Q: Okay. Then your car is a -- they drive your car and you
22 and Joey stay in the hotel room, correct?

23 A: Yes, sir.

24 Q: Okay. All right. I want to talk briefly, you mentioned
25 earlier in your discussion about there was some mention that

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - CROSS BY BOUCHETTE

237

1 you believe for some reason that Mitchell was advertising on
2 Craig's List or something to that effect; is that right?

3 A: Yes.

4 Q: Okay. Have you ever told anybody prior to today that
5 that was the case?

6 A: Yes.

7 Q: Okay. You did?

8 A: Yes.

9 Q: Okay. Did you bring anything to substantiate that he was
10 advertising on Craig's List or was involved in some way in
11 selling of services on Craig's List?

12 A: No.

13 Q: Has that been brought with you, anything to that effect?

14 A: No.

15 Q: Okay. Now, I want to talk about this, this credit card
16 and the purchases that were made. That was made after you
17 arrived to the hotel, correct?

18 A: Yes.

19 Q: All right. And as I understand it, you were saying that
20 you and Joey stay in the hotel after Mitchell leaves, and
21 y'all are doing drugs and staying there for some period of
22 time, right?

23 A: Yes, it was roughly about 15, 20 minutes before Mitch got
24 back.

25 Q: Fifteen or 20 minutes, so he's leaving the south end of

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - CROSS BY BOUCHETTE

238

1 the beach to Carolina Forest and got back in 15 or 20 minutes?

2 A: I was told -- he told me he was taking the gentleman back
3 to the Greyhound bus station.

4 Q: Okay.

5 A: So, I don't know nothing at that time about the Carolina
6 Forest.

7 Q: Okay. Well, I'm just asking, but your position is that
8 it was 15 to 20 minutes?

9 A: Yes.

10 Q: Okay. All right. Well, what I want to know is, when did
11 -- when did you first become aware of this credit card that
12 you used to buy these different items?

13 A: When Mitch and Joey was talking and Mitch handed it to
14 Joey to go get cigarettes and more alcohol.

15 Q: To your knowledge, did Joey ever use that credit card?

16 A: Yes.

17 Q: Okay. Had he used that credit card prior to you seeing
18 this transfer from Mitch to Joey?

19 A: I don't know.

20 Q: Okay. Well -- all right. How, I mean, Ms. Wedlock, you
21 were saying earlier that you stayed at a park in Myrtle Beach,
22 correct, near the library?

23 A: That's where we was all at, yes.

24 Q: That's where y'all stayed. Okay. You know that to be
25 called Chapin Park?

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - CROSS BY BOUCHETTE

239

- 1 A: Yes.
- 2 Q: Okay. Did you -- and again, I'm gone remind you that
3 you're under oath -- did you retrieve any items from the
4 trashcan at Chapin Park around the time of this incident?
- 5 A: Me? No.
- 6 Q: Do you know of anybody having retrieved certain items
7 from the trashcan at Chapin Park around the time of this
8 incident?
- 9 A: Yes.
- 10 Q: And who was that?
- 11 A: That was Joey. He got a backpack.
- 12 Q: So, so the backpack was in the trashcan at Chapin Park,
13 correct?
- 14 A: Yes.
- 15 Q: And to your knowledge, Joey retrieved it, correct?
- 16 A: Yes.
- 17 Q: Now, is this the backpack which contained the credit
18 card?
- 19 A: And other items, yes.
- 20 Q: Okay. Very good. Now, so at the time when Joey
21 retrieves the backpack that contains the credit card, where he
22 purchased all these items and the funds were used to buy all
23 these items, it had been dumped there previously, correct?
- 24 A: Yes.
- 25 Q: Okay. So, at some point; somebody had discarded that

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - CROSS BY BOUCHETTE

240

1 backpack, presumably with the intent not to use the funds
2 contained on that credit card, correct? Is that safe to say?

3 A: Yes.

4 MR. BOUCHETTE: Court's indulgence, Judge?

5 THE COURT: All right.

6 BY MR. BOUCHETTE:

7 Q: And did you tell anybody else about the use of a
8 Greyhound bus or the -- if anybody was traveling by way of a
9 Greyhound bus; have you told anybody that prior to today?

10 A: What you mean?

11 Q: Well, you mentioned earlier something about a Greyhound
12 bus, I can't recall exactly what your testimony was, but the
13 reason why I asked, I have not seen anything in my discovery
14 indicating somebody traveled by way of a Greyhound bus. So,
15 I'm asking if you've ever ---

16 A: The victim, yes, I was told by Mitch and Joey that's how
17 he was traveling here.

18 Q: Ma'am, if I may stop you ---

19 MS. LIVESAY: Judge, can she just answered the question?
20 He's asked it; she's trying to answer it. That's all I ask,
21 Judge.

22 THE COURT: No, she was not answering it. Ask your
23 question again. Answer the question, then after you answer
24 the question, if you need to explain your answer, you can
25 explain your answer, but you must answer the question first.

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - REDIRECT BY LIVESAY

241

1 Okay?

2 All right. Ask your question again.

3 BY MR. BOUCHETTE:

4 Q: Ms. Wedlock, regarding testimony that somebody had
5 traveled -- I believe you're saying that the decedent in this
6 case traveled by Greyhound; is that correct?

7 A: Yes, sir.

8 Q: You never told anybody prior to today that that was the
9 case, correct?

10 A: No.

11 Q: Okay.

12 No further questions at this time, Judge.

13 THE COURT: All right. Redirect?

14 MS. LIVESAY: Thank you, Judge, just a couple.

15 REDIRECT EXAMINATION OF TONYA LYNN WEDLOCK BY MS. LIVESAY:

16 Q: Now, Tonya, before you and Joey met up with Mitch, just
17 you and him were hanging out?

18 A: Yes, ma'am.

19 Q: Where were y'all hanging out at?

20 MR. BOUCHETTE: Objection, Your Honor, I think that is
21 beyond the scope of my cross.

22 THE COURT: Sustained.

23 BY MS. LIVESAY:

24 Q: About how long were y'all together?

25 MR. BOUCHETTE: Objection, Your Honor. I think it's the

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - REDIRECT BY LIVESAY

242

1 same objection.

2 MS. LIVESAY: Your Honor, I'm following up on the
3 questions he asked.

4 THE COURT: Which one; which question did he ask?

5 MS. LIVESAY: About the ones when the backpack was seen,
6 when the card was used and ---

7 MR. BOUCHETTE: I don't think I asked about the card.

8 MS. LIVESAY: He asked several questions about the card.

9 THE COURT: That has nothing to do with how long they
10 were together. Ask the question ---

11 MS. LIVESAY: I'm leading up to it, Judge.

12 THE COURT: Well go ahead and ask it.

13 MS. LIVESAY: Okay.

14 BY MS. LIVESAY:

15 Q: Tonya, when it was just you and Joey, tell these people
16 how many times you used that card before you met up with
17 Mitch?

18 MR. BOUCHETTE: Objection, same objection.

19 A: Zero.

20 MS. LIVESAY: Okay.

21 THE COURT: Overruled. Go ahead.

22 BY MS. LIVESAY:

23 Q: I'm sorry, Judge, we were slightly interrupted. Before
24 you met up with Mitch, how many times did you and Joey use
25 that card?

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - REDIRECT BY LIVESAY

243

1 A: Zero.

2 Q: Okay. Now, who gave Joey the card?

3 A: Mitch. We was the room and he got it out the book bag
4 and handed it to Joey.

5 Q: Okay. And then about how many times did you use it?

6 A: Several.

7 Q: Okay. There we go.

8 Thank you, Judge. No further questions.

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

10 A: I can step down?

11 THE COURT: Yes.

12 The State can call your next witness.

13 MS. LIVESAY: Thank you, Judge. I'm gonna call Dr.

14 Proctor to the stand.

15 THE COURT: All right.

16 MR. BOUCHETTE: Your Honor, also, I'd like to reserve the
17 right to call that last witness back to the stand in our case
18 in chief.

19 THE COURT: Okay. Is she under subpoena?

20 MR. GARDNER: We couldn't find her.

21 MR. BOUCHETTE: Your Honor, I don't think we were able to
22 serve her.

23 THE COURT: Is she under a subpoena by the State?

24 MS. LIVESAY: What's wrong, Judge?

25 THE COURT: The last witness, is she under a subpoena.

State v. Weatherall - 2014-GS-26-01415
TONYA LYNN WEDLOCK - REDIRECT BY LIVESAY

244

1 from the State?

2 MS. LIVESAY: I'm sure -- well, Judge, that's a long
3 story to be honest with you. I -- did we hand her one? Yes.

4 THE COURT: Okay. If she's under a subpoena from the
5 State, she's still under subpoena and she has to stay here.
6 If there is not a subpoena, then you're gonna have to get her
7 subpoenaed.

8 MR. BOUCHETTE: I understand. Thank you, Judge.

9 THE COURT: All right. So make sure she knows that she
10 can't leave, she's still subject to the subpoena.

11 MS. LIVESAY: But she's excused from our standpoint.

12 THE COURT: No. She's got to stay here; they may call
13 her. She's still under subpoena. She cannot leave until ---

14 MS. LIVESAY: Okay. We'll take up after this witness
15 some issues with just keeping her. Thank you, Judge.

16 THE COURT: All right.

17 CLERK: Please raise your right hand and place your left
18 hand on the Bible.

19 EDWARD LEROY PROCTOR, JR., HAVING
20 BEEN DULY SWORN TESTIFIES AS FOLLOWS:

21 CLERK: Please state your full name and spell your first
22 and last name for the Court.

23 DR. PROCTOR: Yes, ma'am. Edward Leroy Proctor, Jr., and
24 that's Edward, E-D-W-A-R-D, Proctor, P-R-O-C-T-O-R.

25 DIRECT EXAMINATION OF EDWARD LEROY PROCTOR, JR. BY MS.

State v. Weatherall - 2014-GS-26-01415
DR. EDWARD LEROY PROCTOR, JR. - DIRECT BY LIVESAY

245

1 LIVESAY:

2 Q: Dr. Proctor, if you don't mind, tell this jury a little
3 bit about where you're currently working.

4 A: I am a medical doctor engaged in the practice of
5 pathology, and my office is at Grand Strand Medical Center in
6 Myrtle Beach.

7 Q: Okay. And if you don't mind, tell this jury what you do
8 as a pathologist?

9 A: Okay. I am pathologist board certified in clinical
10 pathology, anatomic pathology, and forensic pathology. As a
11 regular pathologist doing anatomic and clinical, we run the
12 lab, the clinical lab, and we also run the surgical pathology
13 lab where we look at specimens taken out of patients. As a
14 forensic pathologist, I do autopsies in conjunction with law
15 enforcement for the medical legal determination of cause and
16 manner of death.

17 Q: Okay. And if you don't mind, tell this jury a little bit
18 about your education?

19 A: I received my B.S. degree at Clemson University, my
20 medical degree at the Medical University of South Carolina,
21 and completed a combined residency in pathology at Walter Reed
22 Army Medical Center in Washington, D.C., and upon completion
23 of that training, I sat for and was certified by the American
24 Board of Pathology and anatomic, clinical, and forensic
25 pathology.

State v. Weatherall - 2014-GS-26-01415
DR. EDWARD LEROY PROCTOR, JR. - DIRECT BY LIVESAY

246

1 Q: Okay. And let me ask you something, how long have you
2 been certified as a forensic pathologist?

3 A: Over 20 years.

4 Q: Okay. And if you don't mind, tell this jury a little bit
5 about what makes you a forensic pathologist?

6 A: In forensic pathology, we work with law enforcement and
7 the legal community to investigate any death under suspicious
8 or unusual circumstances and, as part of that, we get the
9 information that they can provide us at the time we do a
10 complete exam to include autopsy, toxicologic evaluation and
11 then, based upon all the information we gather, we determine a
12 cause and manner of death.

13 Q: Okay. And you've been doing that for 20-plus years?

14 A: That's correct.

15 Q: Okay. And if you don't mind, tell this Court how many
16 times you've testified as a forensic pathologist?

17 A: Probably 3' or 400.

18 Q: Okay. And in what court did you testify?

19 A: I have testified in this court, I've testified in federal
20 court, and once in North Carolina in district courts up there.

21 Q: And have you been qualified as an expert?

22 A: I have.

23 Q: And how many times?

24 A: On each of those occasions.

25 MS. LIVESAY: Okay. Your Honor, at this time, the State

State v. Weatherall - 2014-GS-26-01415
DR. EDWARD LEROY PROCTOR, JR. - DIRECT BY LIVESAY

247

1 wishes to recognize Dr. Proctor as a expert in forensic
2 pathology?

3 THE COURT: Any questions?

4 MR. GARDNER: Absolutely none, Your Honor.

5 THE COURT: All right. I find this witness to be an
6 expert in the field of forensic pathology.

7 MS. LIVESAY: Thank you, Judge.

8 BY MS. LIVESAY:

9 Q: Now, Mr. Proctor -- Dr. Proctor, sorry, Dr. Proctor, did
10 you happen to have an occasion to perform an autopsy on
11 Helbert Woodberry, the victim in this case?

12 A: Yes, I did.

13 Q: Okay. And if you don't mind, tell us what date you
14 performed the autopsy?

15 A: This autopsy was performed by me on the 13th of November,
16 2013.

17 Q: Okay. And if you don't mind, give a brief description of
18 the victim to the jury.

19 A: Okay. I was asked by the Deputy Coroner to do an
20 examination on this victim. At the time of autopsy, this
21 gentleman was badly decomposed, probably been dead at the
22 minimum of 10 to 14 days, lots of loss of the skin, visceral
23 tissues, exposure of bone, lots of insect bite activity, that
24 kind of stuff.

25 Q: Okay. Now, was this a black or white male?

State v. Weatherall - 2014-GS-26-01415
DR. EDWARD LEROY PROCTOR, JR. - DIRECT BY LIVESAY

248

1 A: This was a black male.

2 Q: Okay. And do you know how old the victim was?

3 A: I do not know how old he was. I was told after he was
4 identified that he was about 57 years of age.

5 Q: Okay. But was he an adult male?

6 A: Yes, he was.

7 Q: Okay. Now, tell this jury, did you find any injuries on
8 the victim?

9 A: Okay. The injuries that I found, he had a couple of
10 lacerations on the left occipital area, which is the backside
11 of the head. He had a laceration with an underlying blunt
12 force injury, which fractured the skull causing what we call
13 an eggshell fracture. The point on impact with fractures
14 radiating out from that site. The only other injury I found
15 on this gentleman were what we call defense wounds, like
16 putting your hands up to defend yourself, they were about the
17 right arm and the forearm and the left hand.

18 Q: Okay. And if you don't mind, tell this jury what was the
19 cause of this victim's death?

20 A: The cause of this man's death was the blunt force trauma
21 to the skull causing skull fracture and brain injury.

22 Q: Okay. Now, did you do some bloodwork on the victim?

23 A: We did an examination on the fluid that we could get out
24 of the body, which we call purge fluid, which is blood
25 decomposition fluid, yes.

State v. Weatherall - 2014-GS-26-01415
DR. EDWARD LEROY PROCTOR, JR. - CROSS BY GARDNER

249

1 Q: Okay. And was there anything in that blood or
2 decomposition fluid?

3 A: Yes. Yes, we found the presence of blood alcohol, and
4 cocaine, cocaine metabolite.

5 Q: Okay. Now, did any of those things contribute to his
6 death?

7 A: No, I do not think so.

8 Q: Okay. When we we're talking about blunt force trauma to
9 the head, what are we talking about is how long after that
10 that this man was deceased?

11 A: It's hard to give a timeframe, but with that type of
12 injury, it would cause swelling of the brain. It would be
13 fairly rapid. Can I say seconds or minutes? It'd be hard to
14 say.

15 Q: Okay.

16 A: But he was probably unconscious fairly rapidly.

17 Q: Okay. Thank you, Dr. Proctor.

18 THE COURT: Cross examination?

19 MR. GARDNER: Thank you.

20 CROSS EXAMINATION OF EDWARD LEROY PROCTOR, JR. BY MR. GARDNER:

21 Q: Good afternoon, Dr. Proctor. How are you, sir?

22 A: Doing well; how are you doing?

23 Q: The Solicitor asked you about the blood alcohol content;
24 do you know how much was in there?

25 A: The blood alcohol content was 185 milligrams per

State v. Weatherall - 2014-GS-26-01415
DR. EDWARD LEROY PROCTOR, JR. - CROSS BY GARDNER

250

1 deciliter. To put it in terms of breathalyzer tests, it'd be
2 .185.

3 Q: .185, that's like three times or two times the limit?

4 A: Two times; that's correct.

5 Q: And that's a good hunk. And there was also cocaine
6 there?

7 A: That's correct.

8 Q: So that's consistent if somebody -- since you're an
9 expert witness, if somebody told you that this death occurred
10 where people were using cocaine and alcohol, this would be --
11 your findings would be consistent with that?

12 A: Yes, sir.

13 Q: Okay. We anticipate the Solicitor is gonna call a
14 witness that's gonna describe Chicken killing this young man
15 or this man, this gentleman, in a manner with hitting --
16 getting taken advantage of, and then getting a beer bottle and
17 hitting the victim over the head, and I think he hit him again
18 on his way down. Is that consistent with your findings?

19 A: An object such as a beer bottle could cause that type of
20 injury, yes.

21 Q: And we'll hear from the witness, but if he testifies
22 similar to what I just described, would that be consistent
23 with your findings?

24 A: Yes, sir.

25 Q: Thank you, Dr. Proctor.

State v. Weatherall - 2014-GS-26-01415
DR. EDWARD LEROY PROCTOR, JR. - REDIRECT BY LIVESAY

251

1 THE COURT: Redirect?

2 MS. LIVESAY: Just a couple, Your Honor.

3 THE COURT: All right.

4 REDIRECT EXAMINATION OF EDWARD LEROY PROCTOR, JR. BY MS.

5 LIVESAY:

6 Q: Did the alcohol and cocaine contribute to his death?

7 A: It was present and, no, I do not think so.

8 Q: Now, Mr. Gardner just asked you about some things, would
9 this be consistent with his injuries. Just so I'm clear, were
10 any of his injuries at the front of his head?

11 A: The injuries that I have documented were in the occipital
12 area on left and right.

13 Q: Okay. So, towards the back of the head?

14 A: That's correct.

15 Q: Okay. And there were no injuries to the front of the
16 skull or to the front of the head indicated?

17 A: Not that I demonstrated, no.

18 Q: Okay. And the only injuries to the front were defense
19 wounds?

20 A: That's correct.

21 Q: And why are they called defense wounds?

22 A: They're called defense wounds because someone is trying
23 to prevent an attack.

24 Q: Trying to defend themselves?

25 A: Yeah, uh-huh (affirmative response).

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

252

1 MS. LIVESAY: Thank you, Judge. No further questions.

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

3 A: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MS. LIVESAY: Thank you, Dr. Proctor.

6 BY THE COURT:

7 THE COURT: The State can call your next witness.

8 MS. LIVESAY: Your Honor, at this time, the State asks to
9 recess until tomorrow morning. We have several witnesses
10 coming from Columbia that will be here first thing in the
11 morning.

12 THE COURT: All right. Any objection?

13 MR. GARDNER: No, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, we'll go
15 ahead and break for the day. I'm gonna let you go home for
16 the evening. Please be back in the jury room at 9:15 tomorrow
17 morning. We'll try to get started at 9:30, but that will give
18 you an opportunity to get you a cup of coffee, biscuit,
19 whatever they might have for you.

20 Again, I caution you, do not discuss the case with
21 anyone, even among yourselves. Don't conduct any independent
22 investigations into the case, don't go looking for any news
23 reports about the case or anything of that nature. I hope you
24 have a good evening and we'll see you back at 9:15 tomorrow
25 morning.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

253

1 Thank you very much.

2 (REPORTER'S NOTE: Jury exits courtroom. The following takes
3 place outside the presence of the Jury.)

4 THE COURT: Anything from the State before we recess for
5 the evening?

6 MS. LIVESAY: Yes, sir, Your Honor.

7 THE COURT: All right.

8 MS. LIVESAY: Ms. Wedlock is under our subpoena.

9 THE COURT: Right.

10 MS. LIVESAY: Because of her situation with housing, we
11 had to keep her last night. Our plan was obviously she has
12 testified now and we have no obligation to make any sort of
13 arrangements for her. So, I don't know if Mr. Gardner wants
14 to make arrangements for her because we were planning on
15 taking her back to the beach where she wanted to go back to
16 and dropping her back off.

17 THE COURT: All right. You want to make arrangements?

18 MR. GARDNER: I'll call my investigator and see if he can
19 go pick her up from Street Reach or wherever y'all drop her
20 off.

21 THE COURT: Is she still here? All right. Let's do
22 this. Can you have your investigator pick her up tomorrow
23 morning?

24 MR. GARDNER: Yes, sir.

25 THE COURT: All right. Let's bring her back in and find

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

254

1 out where she's gonna be and I'll tell her she's still under
2 subpoena for the investigator where he can pick her up.

3 MR. GARDNER: Some of my witnesses, we've been unable to
4 find, but we're finding them as the trial develops.

5 THE COURT: Ms. Wedlock?

6 MS. WEDLOCK: Yes.

7 THE COURT: Hi. If you'd come up here for a second.
8 Yeah, you can just come right up here, I just want to make
9 sure you can hear me.

10 I understand you're under subpoena to be here, correct?

11 MS. WEDLOCK: Yes, sir.

12 THE COURT: Okay. The Defense, I don't know if they're
13 going to, but they want to hold you under the subpoenas in
14 case they want to call you as a witness later on. Okay?

15 MS. WEDLOCK: Okay.

16 THE COURT: Now, what they're gonna do is they're gonna
17 send someone to pick you up tomorrow morning. Where should he
18 go to pick you up?

19 MS. WEDLOCK: They have me at the hotel, Sleep Inn, on
20 the 501.

21 THE COURT: Okay. But are you gonna be there tonight?

22 MS. WEDLOCK: Yes, I'm supposed to check out tomorrow
23 morning.

24 THE COURT: Tomorrow morning?

25 MS. WEDLOCK: Yes, sir.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

255

1 THE COURT: Okay. So, the Sleep Inn.

2 MS. WEDLOCK: On 501.

3 THE COURT: Sleep Inn Hotel on 501.

4 MS. LIVESAY: Judge, she won't be there tonight because
5 she's already testified.

6 THE COURT: Okay. So, they're saying they're not gonna
7 have a room for you there.

8 MS. WEDLOCK: The lady out there said -- the victim lady,
9 said I'd leave in the morning. So, I didn't know.

10 MS. LIVESAY: I tell you what, Judge, you don't have
11 anywhere to go, do you?

12 MR. GARDNER: Check out has already past.

13 MS. LIVESAY: We'll -- I'm assuming Mr. Gardner probably
14 don't have the issue with leaving her at the Sleep Inn and
15 just having his firm cover it.

16 MR. GARDNER: No, checkout has already past, the victim's
17 advocate has already paid for -- they're gonna have to pay for
18 the room no matter what if she hasn't checked out.

19 MS. WEDLOCK: That's what she said. It was after
20 checkout time, so I don't check out until tomorrow at 11:00 is
21 what she just said.

22 THE COURT: Okay. So, it's already -- they've already
23 paid for the room for another night?

24 MS. WEDLOCK: I'm under that assumption, yes.

25 THE COURT: Okay. All right. Well, then someone will be

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

256

1 there. What time do you want her ready?

2 MR. GARDNER: Well, we have about -- I don't know if the
3 SLED witnesses, I'll stipulate to the chain of custody. I
4 think I already have and that ought to speed things up. I've
5 got about three or more, probably about four witnesses
6 altogether, I'm kind of streamlining as we go, so maybe 10
7 o'clock. You think you'll be done by 10:00?

8 THE COURT: Well, I'm not asking, I mean, the question is
9 is what time does she check out and I want to make sure you
10 pick her up before she checks out.

11 MR. GARDNER: We'll pick her up at -- do you know what
12 time checkout is?

13 MS. WEDLOCK: 11:00.

14 MR. GARDNER: We'll have somebody pick you up at 11
15 o'clock.

16 THE COURT: Let's have them there at 10:00. Okay? Can
17 you be ready to go at 10:00?

18 MS. WEDLOCK: Yes, sir.

19 THE COURT: All right. Someone will pick you up at 10
20 o'clock tomorrow. Okay?

21 MS. WEDLOCK: Okay.

22 THE COURT: Thank you very much. I appreciate it.

23 MS. WEDLOCK: Thank you.

24 THE COURT: Well, I mean, what was she gonna do? They
25 got the room for her for the remainder of the night. So,

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

257

1 let's say she was released from her subpoena, as I understand
2 she was going back to the hotel to spend the night.

3 VICTIM'S ADVOCATE: That's correct, Your Honor.

4 THE COURT: Okay. So, let's just leave that in place?

5 VICTIM'S ADVOCATE: Usually, our office, when they're
6 under our subpoena we would make sure that they're covered as
7 food and things like that. So, from this point forward, I
8 think it's Mr. Gardner's Law Firm will ---

9 THE COURT: Well, no, starting at 10 o'clock tomorrow, he
10 will be, but from right now until 10:00 A.M. tomorrow morning,
11 what would y'all be doing if she was released from her
12 subpoena.

13 VICTIM'S ADVOCATE: We -- honestly I'm not sure. I know
14 once they're finished and they're done with us, that's it.
15 But since the room is already covered by us, we were planning
16 on taking her back and then, as soon as checkout time, we
17 would've taken her ---

18 THE COURT: Okay. So you're not providing her any meals
19 or anything tonight.

20 VICTIM'S ADVOCATE: Out of courtesy, I probably would've.
21 Probably not under the State since she was done with subpoena,
22 but given the circumstances I would've accommodated that out
23 of my pocket.

24 THE COURT: Okay. Well I'm not gonna require you to do
25 that. So, you provide her a place to stay, nothing requires

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

258

1 them to provide meal or anything, but you've got a place to
2 stay, because it's already paid for. Starting at 10 o'clock
3 tomorrow morning when you pick her up, if the Defense wants to
4 hold her, you're gonna need to provide all that for her.
5 Okay?

6 MR. GARDNER: Yes, sir.

7 THE COURT: All right. Thank you very much.

8 MR. GARDNER: That's it from the Defense, Your Honor.

9 THE COURT: All right. All right. We'll be in recess
10 until -- I've got the jury coming back at 9:15; I'll probably
11 take the bench at 9:30.

12 All right.

13 (RECESS.)

14 END OF DAY TWO.

15 *****OFF THE RECORD*****

16 (On the Record.)

17 MARCH 22, 2017 - DAY THREE

18 (REPORTER'S NOTE: The following takes place outside the
19 presence of the Jury.)

20 BY THE COURT:

21 THE COURT: Thank you very much. Please be seated.
22 All right. Anything from the State ---

23 MS. LIVESAY: Good morning, Judge.

24 THE COURT: Good morning. Anything from the State before
25 we bring the jury in?

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

259

1 MS. LIVESAY: No, sir; we're ready.

2 THE COURT: Anything from the Defense?

3 MR. GARDNER: One thing, Your Honor, that I have. We
4 anticipate that the State is gonna call from the prison a
5 Defendant named -- or a witness named Bell. We'd ask the
6 Court to inquire about any prior record that we use for
7 impeachment. That way we would know about it and we don't
8 have to burden the Court during the middle of his testimony.

9 THE COURT: I gotcha. Y'all got a ---

10 MS. LIVESAY: I can have my Admin run his NCIC, Judge,
11 and bring it up.

12 THE COURT: Okay. I mean are you -- are you calling --
13 what's the witness ---

14 MR. GARDNER: Bell, Your Honor.

15 THE COURT: Bell? When are you calling him?

16 MS. LIVESAY: First. First, Judge.

17 THE COURT: Okay. Well, let's take a break, get this up
18 here and give them an opportunity to take a look at it. Okay?

19 Tell the jury it's gonna be a little while because we got
20 to get the NCIC up here for them to take a look at it before
21 we get going.

22 MS. LIVESAY: It shouldn't take but just a few minutes.

23 THE COURT: All right. Sounds good.

24 MR. GARDNER: Thank you, Your Honor.

25 THE COURT: All right. Let's stay in recess. Let me

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

260

1 know when you get it and when you're ready.

2 MR. GARDNER: We just need a few minutes and we're good.

3 THE COURT: Sounds good. All right. Thank you.

4 (RECESS.)

5 *****OFF THE RECORD*****

6 (On the Record.)

7 THE COURT: Mr. Gardner, you've gotten the NCIC Report

8 ---

9 MR. GARDNER: Yes, sir.

10 THE COURT: --- for, let's see, what's the witness' name?
11 Marcus Bell.

12 MR. GARDNER: Yes, Your Honor.

13 THE COURT: All right. And I've been provided a copy,
14 too. We need to ---

15 MR. GARDNER: It's lengthy.

16 THE COURT: All right.

17 MR. GARDNER: I think the only thing that we'll probably
18 go into is possession of -- a conviction for possession of a
19 firearm by a convicted felon, and possession of a -- or, I'm
20 sorry, conviction for trafficking in heroin, which he's doing,
21 I think, 13 years on. The rest of this -- I can't ever read
22 these things, but it looks like the rest of them are just
23 arrests, I don't know.

24 THE COURT: Well, let's see, starting on Page 1 of 4,
25 just following down, first drug charge, I've got disposition

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

261

1 non-conviction or nolle pros. Then the next, nolle pros. You
2 talking about the third one down?

3 MR. GARDNER: Yes, sir.

4 THE COURT: Trafficking in heroin more than 4 less than
5 14 grams first offense; received 13 years on March 24th, 2015.

6 MR. GARDNER: Yes, sir.

7 THE COURT: All right. I think that would be admissible
8 to attack credibility. The next one is a non-conviction. All
9 right. January 8th, 2015 arrested on a drug charge. It looks
10 like possession of cocaine first. I don't see a disposition.
11 I don't see a disposition on any of these posted on Page 2
12 with the exception of down at the bottom, there's a heroin
13 trafficking that was a nolle pros non-conviction. Then a
14 possession of cocaine, which was a nolle pros or non-
15 conviction. Then on Page 3, this was -- is that the same
16 conviction down at the bottom of trafficking in heroin that's
17 on Page 1, convicted 3/24/15.

18 MR. GARDNER: I believe that one on Page 1 refers to
19 another one concurrent -- concurrent with 14-36. I don't know
20 if that's ---

21 THE COURT: Well, this one -- oh, on the left, it says
22 Kirkland received. So, that's the day he entered Kirkland to
23 start serving because that's ---

24 MR. GARDNER: Okay.

25 THE COURT: All right. So that's what that is. That's

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

262

1 the -- the conviction is on Page 1, conviction on 3/24 and
2 then he reported to Kirkland on 3/26 to start serving that
3 sentence. And then I was thinking there was something else.
4 Let's see ---

5 MR. GARDNER: On top of Page 4 of 4, Your Honor, is a
6 court charged '02, convicted violent felon, five years.

7 THE COURT: I'm looking for a conviction date.

8 MR. GARDNER: It might be the same one that's at the
9 bottom. The bottom of the last Page 4 of 4, down at the
10 bottom it says court date 03/24/2015.

11 THE COURT: What page?

12 MR. GARDNER: The very last page they gave us, it's
13 titled 4 of 4 at the top.

14 THE COURT: All right. I see court charge possession of
15 a firearm, court disposition, convicted five years. Where are
16 you seeing the date?

17 MR. GARDNER: On the page that I've got, it's the very
18 last page that was handed to us, up about -- I don't know how
19 many pages this is, but it's right underneath it court
20 disposition, convicted five years to run concurrent with 14-
21 36, 27, credit for time served 76 days, court date 03/24/2015.

22 THE COURT: I don't -- I don't have that. That doesn't
23 -- let me see what you got. I don't have that on my 4 of 4,
24 but I do see where it says convicted.

25 MR. GARDNER: It's the very last page I got. At the top,

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

263

1 it's got the same number 4 of 4 but ---

2 THE COURT: Oh, okay. So that's this ---

3 MR. GARDNER: I'm sorry, the very, very last page.

4 THE COURT: Yeah.

5 MR. GARDNER: And they refer to another sentence, but I
6 don't know -- or another charge concurrent with, but I don't
7 know what that one is, Your Honor.

8 THE COURT: Ms. Livesay, are you aware of any other
9 conviction besides the trafficking in heroin and the
10 possession of a firearm by a convicted felon.

11 MS. LIVESAY: Yes, sir, there is. It looks like on, if
12 you look on this second set on the NCIC.

13 THE COURT: Right.

14 MS. LIVESAY: And I'm trying to get you a page number,
15 it's 2 of 4 on August 27th of 2004, Marcus Bell was charged
16 with CSC first and kidnapping. It looks like what they did
17 was they pled the CSC to accessory after the fact and he pled
18 guilty to the kidnapping. This is what I'm looking at, Judge.
19 He was charged ---

20 THE COURT: Right. But where do you see disposition?

21 MS. LIVESAY: Right here. He was -- on the second page.
22 See, he was convicted of kidnapping and they pled that ---

23 THE COURT: I see.

24 MS. LIVESAY: --- and they pled that CSC to an accessory
25 after the fact, so he was guilty of accessory after the fact.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

264

1 THE COURT: So, we have a trafficking in heroin,
2 possession of a firearm by a convicted felon, kidnapping, and
3 accessory after the fact of a felon?

4 MS. LIVESAY: Yes, sir, Your Honor.

5 THE COURT: All right.

6 MS. LIVESAY: That's my understanding from looking at
7 this. I didn't see anything else.

8 THE COURT: Okay.

9 MR. GARDNER: I don't see anything else either, Judge.

10 MS. LIVESAY: And he's in there now on the drug charges.

11 THE COURT: But this kidnapping and accessory after the
12 fact, those -- well, has that been within 10 years? Was he
13 released from incarceration less than 10 years ago?

14 MR. GARDNER: It looks like he had a 15-year sentence in
15 2005.

16 THE COURT: But when was he -- do we know when he was
17 released?

18 MS. LIVESAY: Your Honor, the kidnapping, I'm looking at
19 the charge now. That kidnapping, he got one year and it looks
20 like -- let me look back at it. I just had it pulled out.
21 Okay. It says 15 years, Your Honor, I can ---

22 THE COURT: I mean, am I right? My understanding is that
23 ---

24 MS. LIVESAY: He didn't serve the full 15. You want to
25 know when he was actually released?

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

265

1 THE COURT: Yeah, well, I don't think they can use it for
2 impeachment if he was convicted and released from
3 incarceration more than 10 years ago unless it involves a
4 crime of dishonesty?

5 MR. GARDNER: I would agree with that, Judge. I just
6 think that he might -- if he got a 15-year sentence in 2005.

7 THE COURT: That would make sense.

8 MR. GARDNER: It makes sense that it would be within the
9 10 years, but I don't know that.

10 THE COURT: Yeah, because -- I mean, I've got to believe
11 that he served more than two years on a 15-year sentence. But
12 the kidnapping, if he just got one year on the kidnapping and
13 that was in 2005, then I don't think you can use that. Yeah,
14 I don't think you can use the kidnapping because he got
15 convicted August of 2005 and received a one-year sentence.

16 MR. GARDNER: Kidnapping would be out, Judge.

17 THE COURT: That would've been out, yeah.

18 MR. GARDNER: So accessory after the fact of a felony,
19 trafficking heroin, and possession of a firearm by a convicted
20 felon.

21 THE COURT: If I'm reading this right, then yeah.

22 MS. LIVESAY: You want me to call SCDC, Judge or ---

23 THE COURT: Well, unless you're willing to acknowledge
24 that if he got a 15-year sentence in 2005, then in 2007 he was
25 still in jail.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

266

1 MS. LIVESAY: In 2007, I would say so, Judge.

2 THE COURT: Yeah, so see that puts it within the 10
3 years, so they can use it.

4 MS. LIVESAY: Yes, sir.

5 THE COURT: Now, the kidnapping, he was sentenced in 2005
6 and he received a one-year sentence.

7 MS. LIVESAY: That's right. And I'm gonna be honest, he
8 was waiting a year for the disposition. It happened the year
9 before. So, I'm sure they gave him credit for whatever time
10 he was in there.

11 THE COURT: Credit for time served?

12 MS. LIVESAY: Yeah, I think they've got to.

13 THE COURT: Okay. So, I've got to believe that you can
14 use the accessory after the fact, the possession of a firearm,
15 and the trafficking in heroin.

16 MR. GARDNER: Yes, sir.

17 THE COURT: All right. All right.

18 MS. LIVESAY: Judge, my only objection is to the
19 accessory after the fact.

20 THE COURT: Well, he got a 15-year sentence in 2005.

21 MS. LIVESAY: I understand, Judge, but my objection is
22 not on the time limit. I don't really see where it's
23 probative as to whether or not this guy is telling the truth
24 today. I don't know that it goes towards his truth and
25 veracity as to his testimony, but I do under -- I'm accepting

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

267

1 the time thing, yes, sir. I'm just arguing under 609. This
2 portion (b) also says in the interest of justice that the
3 probative value of the conviction supported by specific facts
4 and circumstances substantially outweighs its prejudicial
5 effect.

6 THE COURT: All right.

7 MS. LIVESAY: And I'm just not sure that the probative
8 value substantially outweighs the prejudicial effect.

9 THE COURT: Okay. And I disagree. I think I'm gonna
10 allow it, I mean, particularly when he's already got a
11 trafficking in heroin and a possession of a firearm that
12 they're gonna be able to use. I don't know how much more
13 prejudicial it is to him to show there's an accessory after
14 the fact. So, I'm gonna allow them to use that.

15 MS. LIVESAY: And I guess we're just gonna be able to say
16 that it was accessory after the fact, not accessory after the
17 fact of any particular crime?

18 THE COURT: Well, it's accessory after the fact of a
19 felony.

20 MS. LIVESAY: Okay.

21 MR. GARDNER: Yes, sir.

22 THE COURT: All right. All right.

23 Anything from the State before we bring the jury in?

24 MS. LIVESAY: No, sir.

25 THE COURT: Anything from the Defense?

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

268

1 MR. GARDNER: No, Your Honor.

2 THE COURT: All right. Let's go ahead and bring the jury
3 in.

4 (REPORTER'S NOTE: Jury enters courtroom.)

5 THE COURT: Now, ladies and gentlemen, welcome back. I
6 apologize for keeping you so long in the jury room, but we did
7 have matters that we needed to address. I want to thank you
8 also for your promptness and being on time. As I told you
9 during jury qualifications, we need you to be back so that we
10 can conduct the court's business even though that doesn't mean
11 we get right to you as soon as you get back. But I do want to
12 thank you for being on time the last couple of mornings and
13 for being prompt and conscientious in that regard and I want
14 to apologize for keeping you in the jury room for so long, but
15 that happens and that's -- that's just the way the court
16 system works. But and that's the way it is.

17 We are ready to resume the trial of the case. The State
18 can call your next witness.

19 MS. LIVESAY: Thank you, Judge. At this time, the State
20 calls Marcus Bell.

21 THE COURT: All right.

22 CLERK: Please raise your right hand and place your left
23 hand on the Bible.

24 MARCUS BELL, HAVING BEEN DULY SWORN

25 TESTIFIES AS FOLLOWS:

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - DIRECT BY LIVESAY

269

1 CLERK: Please be seated. State your full name and spell
2 your first and last name for the Court.

3 MR. BELL: Marcus Bell, M-A-R-C-U-S, B-E-L-L.

4 DIRECT EXAMINATION OF MARCUS BELL BY MS. LIVESAY:

5 Q: And, Marcus, if you don't mind, first of all, tell this
6 jury what you're incarcerated for.

7 A: Trafficking heroin first degree, first offense 4 to 14.

8 Q: Okay. And are you currently at SCDC, South Carolina
9 Department of Corrections?

10 A: Yes, ma'am.

11 Q: Okay. Now, if you don't mind, tell this jury a little
12 bit about how old you are?

13 A: I am 33 years of age.

14 Q: Okay. Now before you were locked up, did you ever work
15 anywhere?

16 A: Ma'am?

17 Q: Did you ever work anywhere?

18 A: Yes, ma'am.

19 Q: Where did you work?

20 A: I actually owned a coffee shop in North Myrtle Beach in
21 the Windy Hill Section called Fresh Cup Café.

22 Q: Okay. And what's your highest grade level of education?

23 A: Eleventh.

24 Q: Okay. And where did you go to high school?

25 A: North Myrtle Beach High.

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - DIRECT BY LIVESAY

270

- 1 Q: Okay. Okay. Now, are you married or do you have any
2 kids?
- 3 A: I am married and I do have children.
- 4 Q: Okay. Now, did you have stable housing and things like
5 that before you were locked up?
- 6 A: Yes, ma'am.
- 7 Q: Okay. So, you had somewhere to live?
- 8 A: Yes, ma'am.
- 9 Q: And who lived with you?
- 10 A: My wife and my children.
- 11 Q: Okay. Now, do you know why we're here today?
- 12 A: Yes, ma'am.
- 13 Q: Okay. Now, do you know the Defendant in this case?
- 14 A: I know him somewhat from us, you know, living together in
15 a cell.
- 16 Q: Okay. So, about when did you -- how did you come about
17 first coming in contact with him?
- 18 A: When I was detained at J. Reuben Long Detention Center
19 back in January of 2015.
- 20 Q: Okay. And was he in the same area, the same room, the
21 same jail?
- 22 A: He was my roommate. He was in the same room with me.
- 23 Q: Okay. Now, while y'all were roommates, did he ever talk
24 to you about this case?
- 25 A: Yes, pretty briefly, but he -- he spoke on a good little

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - DIRECT BY LIVESAY

271

1 -- a good little bit about the situation and the case that he
2 was facing.

3 Q: Okay. And how did this -- just so the jury understands,
4 how did this even come about, him talking to you?

5 A: I like to call it kind of like pillow talk, you know, you
6 kind of want to know who you're in the cell with, you know.
7 It was -- there was four people in the cell including myself
8 and, you know, when you come in, you ask, you know like, well
9 what are you here for, what are you here for, blasé, blah and
10 like I said, I was there for trafficking heroin and, you know,
11 him, the guy, he being from a different -- a different part of
12 town, you know, like we didn't know each other, so, you know,
13 we started talking about, you know, drugs and females and
14 music and just really just kicking the bobo, I guess you'd
15 call it.

16 Q: Okay. Just general conversation you would have with the
17 person you were in there with?

18 A: Yeah.

19 Q: Okay. And about how many people are in a room together?

20 A: Four.

21 Q: Okay. Okay. Now, did he tell you anything about what he
22 did in regards to his charge?

23 A: Bits and pieces.

24 STATE'S EXHIBIT NUMBER 78

25 MARKED FOR IDENTIFICATION

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - DIRECT BY LIVESAY

272

1 Q: Okay. Now, let me ask you something, I'm gonna show you
2 what's been marked as State's Exhibit 78; do you recognize it?

3 A: Yes, ma'am.

4 Q: And is that your handwriting?

5 A: Yes, ma'am; it is.

6 Q: Okay. And if you don't mind, tell this jury what you're
7 looking at?

8 A: I'm looking at a letter that I wrote to the Solicitor
9 basically giving a brief description of what was told to me as
10 far as what we're here today discussing as far as this murder
11 trial.

12 Q: Okay. And if you don't mind, tell this jury today what
13 he told you.

14 A: Basically, I'm not gonna lie to you, I don't remember
15 exact word for word verbatim, but I can give you a pretty much
16 a overview summary. Basically, he told me was I don't want to
17 say an altercation, but a misunderstanding about the victim
18 having some money to purchase more drugs, this, that, and the
19 third because they were all in the room, Mr. Weatherall and a
20 couple of other people were having, you know, just sitting
21 down, getting high, just enjoying themselves, and the drugs
22 were running out, the money was getting low, and the victim
23 supposedly claimed he had more money to get more drugs. Come
24 to find out, that wasn't the case. Mr. Weatherall said, hey,
25 you know, kind of got angry and something ensued to the point

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - DIRECT BY LIVESAY

273

1 to where a bottle was grabbed and hit the victim across the
2 head, and come to find out, like they didn't even notice that
3 the victim was, was deceased until some days later and which
4 was ironic to me because I was like, well, dang, how did you
5 not know that the person was dead, you know, in the room with
6 you. But to make a long story short, when they did realize it
7 that the victim was dead, you know, they tried to clean it up,
8 I guess. I don't -- I don't know, when I say they, I don't
9 know exactly how many people were left at that moment, but I'm
10 just using the words that were used to me. He was like we, so
11 I don't know exactly who all was still left there, but they
12 tried to clean the place up a little bit, and they end up
13 taking the -- from what was told to me, he ended up taking the
14 -- him and someone else ended up taking the body out and
15 trying to put inside of a car that he had borrowed -- that Mr.
16 Weatherall had borrowed from a friend of his, a female friend
17 of his, and he said they were gonna try to take the car and
18 dispose of the car like a the scrap metal yard or something
19 like that out in Carolina Forest, which struck me ironic,
20 because I'm born and raised here and I was like, well, where
21 is there a scrap metal yard at in Carolina Forest. And I
22 remember Mr. Weatherall always like, you know, like kinda like
23 downplaying it because, you know, you don't want to get too
24 nosey when it comes to, you know, dealing with someone's case
25 or whatever so I just kinda like let him tell me as much as he

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - DIRECT BY LIVESAY

274

- 1 wanted to tell me.
- 2 Q: So, that's what he told you happened?
- 3 A: Yes, ma'am.
- 4 Q: Okay. Now, if you don't mind, did he ever mention a guy
- 5 named Chicken?
- 6 A: Yes, he did.
- 7 Q: Okay. Tell this jury about that?
- 8 A: I remember he was -- he was kind of angry like at first
- 9 like, oh, it was all Chicken's fault. I met the guy through
- 10 Chicken. And you know like, pretty much just, just resentful,
- 11 you know, like resentful towards Chicken. He never -- at one
- 12 point in time, he tried to say Chicken, Chicken did it. And
- 13 then you know, as we're talking, you know, as the time goes
- 14 by, you know like, I guess it was kinda like he seen that
- 15 okay, well, I can get a little more comfortable, you know, and
- 16 then chicken didn't do it. So, I mean I didn't really ask him
- 17 any questions. I was like all right, well, it is what it is.
- 18 Q: So, in the beginning, he first tells you Chicken did it?
- 19 A: Yes, ma'am.
- 20 Q: And as he become more comfortable, he says no, I did it?
- 21 A: He didn't -- he didn't -- I'm not gone lie. He didn't
- 22 exactly say no, I did it; but he -- he threw it out there to
- 23 the point to where Chicken didn't do it.
- 24 Q: Okay.
- 25 A: And the co-defendant -- and the other co-defendant didn't

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - DIRECT BY LIVESAY

275

1 do it and then it only leaves him, so -- well, and the
2 deceased and so the deceased didn't hit hisself, so ---

3 Q: Let me ask you this, when you were in the room with him,
4 did he ever show you how he struck the victim?

5 A: Not exactly like in a whole bunch of different moves, but
6 he just was like I smacked him across the head with the
7 bottle. I'm not laughing at the deceased; I apologize, but
8 ---

9 Q: Okay.

10 A: Just, I'm just thinking about it back in my mind like I
11 remember, you know, because we did kind of joke, you know,
12 every now and again, you know, like I said, we were roommates,
13 you know, we got to live with each other, so ---

14 Q: Right. Now, that letter that you wrote, do you mind
15 reading over it?

16 A: Sure.

17 MR. GARDNER: I'm gonna object to that, Your Honor. I
18 don't know why he would get to read the letter while he's on
19 the witness stand. I don't know if the rules allow for that.

20 THE COURT: I mean he can review it to refresh his
21 memory.

22 MR. GARDNER: I don't know if he's established that his
23 memory needs to be refreshed; she just asked did he mind
24 reading it.

25 THE COURT: Okay. Overruled, I'll allow it.

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - DIRECT BY LIVESAY

276

1 MS. LIVESAY: I just want him to read over it, Judge, not
2 out loud.

3 THE COURT: Exactly.

4 BY MS. LIVESAY:

5 Q: Thank you, Marcus.

6 A: Uh-huh (affirmative response). You said out loud,
7 correct?

8 Q: No, sir, just read it to yourself.

9 A: Okay.

10 Q: Now, when did you write that letter?

11 A: To be honest, I think I wrote it around the time when I
12 had just gotten moved out of the room with Mitch, which would
13 have been around February of 2015.

14 Q: Okay. And is what's in that letter what you told this
15 jury?

16 A: Yes.

17 Q: Okay. And is what's in this letter and what you told the
18 jury the truth?

19 A: Yes.

20 Q: Okay. Now, are you expecting anything in exchange for
21 writing that letter or coming up here and telling them what
22 Mitch told you?

23 A: Not at all.

24 Q: Okay. Now, if you don't mind, tell this jury what made
25 you decide to write that letter?

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - DIRECT BY LIVESAY

277

1 A: Well, at first I'm gonna be totally honest with you, I,
2 I, I felt that it was -- I felt that possibly it could help me
3 when I was facing time, but then I later on found out that it
4 didn't help me. And, as the time went on down the road, I
5 figured out that it was pretty much the right thing to do
6 because of the simple fact that it could've been my dad, it
7 could've been my brother, it could've been my, you know, it
8 could've been a family member on mine and, you know, I'd want
9 somebody to do it for me -- you know what I'm saying, to do it
10 for a family member of mine, but this me being here today
11 don't help me none, so -- at all, not one bit.

12 Q: Now, that letter is your handwriting?

13 A: Yes, ma'am.

14 Q: Okay. And does it tell what area you were staying in
15 with the Defendant?

16 A: Yes, it does.

17 Q: And what area?

18 A: Yeah, I was in D-4.

19 Q: Okay.

20 A: Yeah, I remember specifically.

21 Q: Okay.

22 A: Because when I came in, he -- he pretty much told me how
23 things worked in D-4.

24 Q: Okay. And y'all were roommates for about a week or two?

25 A: Uh-huh (affirmative response). About two and a half

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - DIRECT BY LIVESAY

278

1 weeks.

2 MS. LIVESAY: Okay. Judge, at this time, the State
3 wishes to put the letter into evidence.

4 THE COURT: Any objection?

5 MR. GARDNER: I don't see any rule that would allow them
6 to do that --

7 THE COURT: Sustained.

8 MR. GARDNER: --- so I would object.

9 THE COURT: I sustain.

10 MS. LIVESAY: Just to corroborate his statement, Your
11 Honor.

12 THE COURT: Sustained. He's testified as to what it
13 said.

14 BY MS. LIVESAY:

15 Q: Mr. Bell, is there anything in that letter you didn't
16 tell this jury about?

17 A: No, ma'am.

18 Q: Okay. Now, by any chance, do you know else is charged
19 with Mitchell?

20 A: I don't know the individual's name. I have seen him, but
21 I don't know his name.

22 Q: Okay. And how have you seen him?

23 A: When I end up moving to another dorm in -- in the jail, I
24 seen the individual and, you know, it was a lot of
25 speculating, a lot of people saying hey, that's Mitch's co-

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - DIRECT BY LIVESAY

279

1 defendant right there, and the person was a very, very
2 distinctive looking person like they had -- the person had
3 long hair the guy looked like a woman.

4 Q: Okay.

5 A: And there had been some speculation that Mitch was
6 homosexual, had homosexual activities, blasé, blah. That's
7 not neither here nor there. So, when they pointed him out, I
8 was just like, oh, okay, because the word was that they put
9 the guy over there because the guy was trying to have a sex
10 change type of thing and he looked like it.

11 Q: Okay.

12 A: So, that's how I remember that person vaguely, but I
13 don't know the person's name, but I do know that that person
14 was also from Wisconsin.

15 Q: Okay.

16 A: So ---

17 Q: And how did you know that Mitch was from or the Defendant
18 was from Wisconsin?

19 A: Because Mitch told me that himself.

20 Q: Okay.

21 A: Mitch told me himself that his -- that his co-defendant
22 was on the -- was on another wing and they were both from
23 Wisconsin.

24 Q: Okay. And did he tell you who represented the co-
25 defendant?

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - CROSS BY GARDNER

280

- 1 A: Yeah, he said Morgan Martin.
- 2 Q: Okay. And did you ever see any of the Defendant's
- 3 paperwork about his case?
- 4 A: No, no.
- 5 Q: Okay. And did you ever see any of the -- were you ever
- 6 roommates with the white guy?
- 7 A: No.
- 8 Q: The co-defendant?
- 9 A: No.
- 10 Q: Okay. And did you ever talk to him?
- 11 A: No.
- 12 Q: So, the only person you talked to was this Defendant?
- 13 A: Yes.
- 14 MS. LIVESAY: Okay. No further questions, Your Honor.
- 15 THE COURT: All right. Cross examination?
- 16 MR. GARDNER: Thank you, Your Honor.
- 17 CROSS EXAMINATION OF MARCUS BELL BY MR. GARDNER:
- 18 Q: Good morning, Mr. Bell.
- 19 A: Good morning.
- 20 Q: Do you know who I am?
- 21 A: I'm assuming Johnny Gardner.
- 22 Q: Where did you get that name from?
- 23 A: Your client.
- 24 Q: Okay. When?
- 25 A: Back when he showed me your letter of representation back

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - CROSS BY GARDNER

281

1 when we were roommates.

2 Q: Back in 2000 and ---

3 A: '15.

4 Q: '15?

5 A: Yeah.

6 Q: Okay. And in fact, you told that information to
7 Investigator Ginger Pop earlier this year when y'all were
8 getting ready for your testimony, correct?

9 A: Yes.

10 Q: Okay. So, you have some information about this case that
11 was provided to you, right?

12 A: Yes.

13 Q: So, when you say phrases like this, that and the third,
14 you're being modest a little bit, aren't you?

15 A: I might guess you could call it that.

16 Q: Because you know what's going on out there at the jail --
17 the jailhouse people talk about things that are going on, big
18 cases, interesting cases; isn't that fair to say?

19 A: I guess you could -- yeah. Yeah, that is fair to say
20 because some people ---

21 Q: Somebody comes in and they're accused of some bazaar
22 crime, people, hey, did you hear about this, that's the guy.
23 I think you mentioned earlier, I think that's the guy that's
24 Mitchell's whatever it was you said earlier. People talk is
25 the point, right?

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - CROSS BY GARDNER

282

- 1 A: Yeah, of course people talk.
- 2 Q: All right.
- 3 A: That's true.
- 4 Q: And in fact, that guy I think he looks like a surfer boy,
5 right, with long hair, I think you said?
- 6 A: Yeah, he does have -- he does have long hair.
- 7 Q: All right.
- 8 A: From what I've seen.
- 9 Q: Okay. All right. Let me get a couple of things --
10 excuse me for a second, I left it on the desk. I'm sorry for
11 turning my back, Judge. This is your NCIC; do you know what
12 that is, rap sheet?
- 13 A: Yes, I do.
- 14 Q: Okay. Now, the Solicitor asked about why you're in
15 uniform or where you're serving time, and I believe you said
16 it was trafficking heroin; is that right?
- 17 A: Yes.
- 18 Q: Okay. The truth of the matter is, you're serving time
19 for trafficking heroin now. How many -- you said it earlier,
20 but I didn't hear what you say. Did you say it earlier?
- 21 A: Did I say ---
- 22 Q: How many years?
- 23 A: Oh, 13.
- 24 Q: --- 13 years, okay. The truth of the matter is, you're
25 also convicted of possession of a firearm by a convicted

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - CROSS BY GARDNER

283

- 1 felon?
- 2 A: Yes.
- 3 Q: So, that means that before you got arrested for that, you
4 had already had a felony, right?
- 5 A: I had already been incarcerated for a felony.
- 6 Q: Okay. And you were also convicted of accessory after the
7 fact of committing a felony?
- 8 A: Uh-huh (affirmative response). That was my first, my
9 very first sentence.
- 10 Q: Okay. That's not in connection with this incident?
- 11 A: No, that -- that was in 2004.
- 12 Q: 2004?
- 13 A: Yes.
- 14 Q: This is 2000 -- when did you go to prison, 2004?
- 15 A: I went to prison in 2004.
- 16 Q: But I mean for this?
- 17 A: Oh for this charge, 2015, March.
- 18 Q: So, you've been around the block as they say; you know --
19 you have a little bit -- you know what's happening out there,
20 right? You're not a stranger to the system, are you?
- 21 A: No.
- 22 Q: Okay. In fact, have you heard the term motion for
23 discovery or motion of discovery?
- 24 A: Rule 5.
- 25 Q: Okay. Well, sounds like you have been around the block.

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - CROSS BY GARDNER

284

1 But have you heard the term motion of discovery or motion for
2 discovery?

3 A: Yes.

4 Q: That's what the jail people call their evidence, right?

5 A: Yes.

6 Q: Okay. But really the motion is something that the lawyer
7 files to get that evidence?

8 A: Yes.

9 Q: But for some reason, the lingo at the jail is -- and I
10 don't know why this is, but is that the truth, that for some
11 reason the lingo at the jail is motion for discovery, right?

12 A: Yeah, I don't know what -- I have yet to figure out why
13 they call it that.

14 Q: But that's the most important thing once you're sitting
15 out at J. Reuben is you want your motion, right?

16 A: True.

17 Q: You had a lawyer?

18 A: Yes, I did.

19 Q: Your lawyer came to see you and what was the first words
20 out of your mouth? You got my motion?

21 A: Yeah.

22 Q: Okay. Because you want to see that evidence, right?

23 A: Yeah.

24 Q: All right. And the lawyers give the people a copy of the
25 evidence and the inmates have a copy of their discovery with

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - CROSS BY GARDNER

285

1 them and it's actually the evidence, it's not the motion, but
2 it's the information that the Solicitor has against them, it's
3 the evidence against them, right?

4 A: Correct.

5 Q: Okay. And you watch T.V. before, old T.V. shows when
6 they're about the prison, you know, Johnny Cash and Jimmy
7 Cagney and all those, and cigarettes was the commodity back
8 then, trading for favors and things like that. The commodity
9 today is the discovery, right?

10 A: Right.

11 Q: People trade on that, right?

12 A: (Indicates affirmatively.)

13 Q: I'm sorry, this lady ---

14 THE COURT: You've got to give a verbal response.

15 A: Oh, I'm sorry, yes. Yes, I apologize, Your Honor.

16 Q: It's okay. It's not a normal thing. People talk like
17 that. So, she's writing it down and we need to make sure we
18 have a good record. Okay. So, where were we? Oh, the
19 discovery, that's a commodity at the jail; people trade it,
20 people use it, and things like that. And that's how
21 information gets passed around to the jailhouse, right?

22 A: Yes.

23 Q: All right. I want to make sure I didn't leave anything
24 out. I was gonna ask you, you had mentioned in your other
25 interview, the one earlier this year with Investigator Ginger

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - CROSS BY GARDNER

286

1 Pop about the junkies out of the street at Myrtle Beach. You
2 have a little bit of familiarity of that because I think there
3 was some talk about people staying in the hotel after the --
4 the death; is that right?

5 A: Uh-huh (affirmative response).

6 Q: Okay. If I get something wrong, tell me. Okay?

7 A: Sure.

8 Q: Okay. Good. Good. All right. The junkie people stay
9 in a -- in a hotel that's not clean, it's not -- it would be
10 nothing for them, they wouldn't think twice about it, would
11 they?

12 A: No.

13 Q: I think you used the term, it's not hard to get people to
14 come together with the junkies.

15 A: I'm sorry.

16 Q: You were talking about -- the context I think you were
17 talking about was that people were having a party at the hotel
18 room?

19 A: Uh-huh (affirmative response).

20 Q: And they got some other people to come join up with them.

21 A: Uh-huh (affirmative response).

22 Q: And I believe that the phrase you used was it's not hard
23 to get a bunch of junkies come to a hotel room?

24 A: It's not.

25 Q: Okay. And why is that, they need a place to stay or ---

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - CROSS BY GARDNER

287

1 A: Yeah, they need a place to stay and at the same time they
2 -- they -- you know, junkies feel like they're gonna be able
3 to get high for free.

4 Q: What -- you just read my mind. What is the first -- what
5 is the only thing on their mind?

6 A: To get high.

7 Q: To get high, that's right. I'll lay down in a puddle of
8 blood if you'll give me some crack cocaine?

9 A: Yeah.

10 Q: Okay. All right. Oh, and Mitchell had his discovery or
11 motion to discover with him while he was at the jail, right?

12 A: I've never seen it. He never -- I never asked for it; he
13 never showed it to me.

14 Q: Well, it's a big thing. Why do you think the Solicitor
15 asked you that question about the discovery?

16 A: Possibly maybe thinking that I may have seen it, but I
17 never seen it.

18 Q: Okay. And, and Ginger Pop asked you -- the investigator
19 asked you that earlier today or earlier this year at the
20 prison?

21 A: Okay.

22 Q: Is that -- did she?

23 A: I'm pretty sure she did. I don't remember exactly
24 verbatim.

25 Q: Okay. We talked about it and that's probably because

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - REDIRECT BY LIVESAY

288

1 Mitchell, like every other inmate out there, has a copy of his
2 that stays in the cell?

3 A: Uh-huh (affirmative response).

4 Q: Right?

5 A: Uh-huh (affirmative response).

6 Q: Is that right?

7 A: Yeah.

8 Q: Okay. Unfortunately, the inmates don't get to stay in
9 the cell all the time, do they? They have to go to places,
10 lunch and yard, and things like that, right?

11 A: This is correct.

12 Q: All right. Anything else that we left out?

13 A: I don't think you did.

14 Q: Thank you.

15 THE COURT: All right. Redirect?

16 MS. LIVESAY: Just a few questions, Judge.

17 THE COURT: All right.

18 REDIRECT EXAMINATION OF MARCUS BELL BY MS. LIVESAY:

19 Q: Mr. Bell, did you ever see this Defendant's discovery?

20 A: Never, not once. I remember, I specifically remember Mr.
21 Weatherall saying that he didn't even have a discovery at the
22 time when I was in his room.

23 Q: Okay. And did he ever just leave it sitting out for
24 anybody to look at?

25 A: No, because he rarely came out the room.

State v. Weatherall - 2014-GS-26-01415
MARCUS BELL - REDIRECT BY LIVESAY

289

1 Q: Okay. And so, he was basically in there holding his
2 stuff, making sure weren't nobody looking at it?

3 A: Pretty much.

4 Q: Okay. Now let me ask you this, would you have messed
5 with his discovery?

6 A: Definitely not.

7 Q: Okay. Now did you know this thing that you told us about
8 scrapping a car was never in the discovery?

9 A: No, I didn't.

10 Q: Okay. Did you know the fact that Joey Garsow was
11 represented by Morgan Martin was not in the discovery?

12 A: Didn't know.

13 Q: Did you know why the reason he hit the victim was never
14 in the discovery?

15 A: I didn't know.

16 Q: So you have no idea what's in his discovery?

17 A: Not at all.

18 Q: Okay. And in fact, you didn't know that we didn't know a
19 lot of things you wrote us until we got the letter from you?

20 A: Not at all.

21 Q: Thank you, Mr. Bell.

22 MR. GARDNER: One follow-up, Your Honor, please?

23 THE COURT: No, that's enough. You may step down.

24 All right. The State can call your next witness.

25 MS. LIVESAY: Sandy Lowe, Judge.

State v. Weatherall - 2014-GS-26-01415
SANDY LOWE - DIRECT BY LIVESAY

290

1 THE COURT: All right.

2 SANDY LOWE, HAVING BEEN DULY SWORN

3 TESTIFIES AS FOLLOWS:

4 CLERK: Please state your full name and spell your first
5 and last name for the Court.

6 MS. LOWE: Sandy Lowe, S-A-N-D-Y, L-O-W-E.

7 DIRECT EXAMINATION OF SANDY LOWE BY MS. LIVESAY:

8 Q: Ms. Lowe, where are you currently employed?

9 A: At J. Reuben Long Detention Center.

10 Q: And how long have you been there?

11 A: Twenty-five years.

12 Q: Okay. And so, you work at the jail?

13 A: Yes.

14 Q: And that's the county jail?

15 A: Yes.

16 Q: Okay. And what kind of training have you undergone to
17 work at the jail?

18 A: I have went through the basic jail at the academy and all
19 the annual training that the jail requires me to go through.

20 Q: And what is your current position at the jail?

21 A: I am the Sergeant over the Classification Records
22 Department.

23 Q: Okay. Now, are you familiar with the records that are
24 kept in the jail?

25 A: Yes.

State v. Weatherall - 2014-GS-26-01415
SANDY LOWE - DIRECT BY LIVESAY

291

1 Q: Okay. And are records kept at the jail to document what
2 room an inmate is in?

3 A: Yes.

4 Q: Okay. And is that kept as part of the ordinary course of
5 business at the jail?

6 A: Yes.

7 Q: And would you recognize those records if I showed them to
8 you?

9 A: Yes.

10 Q: I'm showing you now State's Exhibit 79?

11 A: Yes, this is showing an inmate's housing location.

12 Q: Okay. And are those records that are kept in the
13 ordinary course of business?

14 A: Yes.

15 Q: And to your knowledge, have those records been tampered
16 with?

17 A: No.

18 MS. LIVESAY: Okay. Your Honor, at this time, the State
19 wishes to put State's Exhibit 79 into evidence and have Ms.
20 Lowe testify regarding those records.

21 THE COURT: Any objection?

22 MR. GARDNER: May I just take a look at it?

23 THE COURT: All right.

24 MR. GARDNER: I think we have that. If it's just the
25 jail record, we don't -- I don't see any reason why we

State v. Weatherall - 2014-GS-26-01415
SANDY LOWE - DIRECT BY LIVESAY

292

1 shouldn't.

2 MS. LIVESAY: Sure.

3 MR. GARDNER: No objection, Your Honor.

4 THE COURT: All right. State's Exhibit Number 79
5 admitted into evidence without objection.

6 STATE'S EXHIBIT NUMBER 79

7 ADMITTED INTO EVIDENCE

8 BY MS. LIVESAY:

9 Q: Now, Ms. Lowe, do those records document the rooms and
10 movements of this Defendant, Mitchell Weatherall and Marcus
11 Bell?

12 A: Yes.

13 Q: Okay. And can you look at those records and tell me
14 whether or not Marcus Bell and Mitchell Weatherall were indeed
15 roommates?

16 A: Yes, they were.

17 Q: Okay. And if you don't mind, tell this jury when they
18 were roommates?

19 A: It looks like Marcus was moved into the same cell as
20 Mitchell on January the 14th, 2015..

21 Q: Okay. And if you don't mind, is there any documentation
22 as to the cell or pod that they were in together?

23 A: Yes, D-4, 103.

24 Q: D-4. Now how long were they together in there?

25 A: Marcus was in that cell until January the 30th of 2015.

State v. Weatherall - 2014-GS-26-01415
SANDY LOWE - CROSS BY GARDNER

293

1 Q: Okay. So, they were in the same cell together for about
2 two weeks in January of 2015?

3 A: Yes.

4 Q: And they were in D-4?

5 A: Yes.

6 MS. LIVESAY: No further questions, Your Honor.

7 THE COURT: All right. Cross examination?

8 CROSS EXAMINATION OF SANDY LOWE BY MR. GARDNER:

9 Q: Just the records, right? This is the records of ---

10 A: Yes.

11 Q: Is there anything else that we -- could help us with this
12 case?

13 A: No.

14 Q: Thank you, no questions.

15 THE COURT: All right. Redirect?

16 MS. LIVESAY: Thank you, Judge. Thank you, Ms. Lowe.

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

18 The State can call your next witness.

19 MS. LIVESAY: Thank you. At this time, the State calls
20 Doris Yarborough to the stand.

21 CLERK: Please raise your right hand and place your left
22 hand on the Bible.

23 DORIS YARBROUGH, HAVING BEEN DULY

24 SWORN TESTIFIES AS FOLLOWS:

25 CLERK: State your full name and spell your first and

State v. Weatherall - 2014-GS-26-01415
DORIS YARBROUGH - DIRECT BY LIVESAY

294

1 last name for the Court.

2 MS. YARBROUGH: My name is Doris Yarbrough, Y-A-R-B-R-O-
3 U-G-H.

4 DIRECT EXAMINATION OF DORIS YARBROUGH BY MS. LIVESAY:

5 Q: Thank you, Ms. Yarbrough. If you don't mind, tell this
6 jury where you're currently employed?

7 A: I'm employed with the South Carolina Law Enforcement
8 Division, also known as SLED.

9 Q: And how long have you been employed there?

10 A: Almost nine years.

11 Q: Okay. And what are your responsibilities at SLED?

12 A: I'm a Forensic Technician in the Evidence Control
13 Department. We receive, package, transfer, and store evidence
14 that needs a forensic analysis.

15 Q: Okay. And did you receive any items for this case?

16 A: I did.

17 Q: And if you don't mind, tell this jury what items you
18 received. And I'm referencing Lab Number L13-15-051.

19 A: Item Number 1 was logged in as a buccal swab from a
20 suspect, Joey Garsow. Item Number 2 was a buccal swab for
21 elimination buccal swab, from a Jeffery Christy. This also
22 states that the Christy's checked into the hotel room, which
23 the homicide occurred after the suspect checked out. Item
24 Number 3 was a buccal swab from a Loey Christy and the same
25 thing, a person who had checked in after the other person

State v. Weatherall - 2014-GS-26-01415
DORIS YARBROUGH - DIRECT BY LIVESAY

295

1 checked out. Item Number 4 was a swab of supposed blood
2 spatter on the west bed in the motel room in which the
3 homicide occurred. Item Number 5 was swabs of supposed blood
4 on carpet between the beds in the motel room in which the
5 homicide occurred. Item Number 6 was swabs of supposed blood
6 spatter on the east bed in the motel room in which the
7 homicide occurred. Item Number 7 is a swab of supposed blood
8 spatter on the dresser in the motel room in which the homicide
9 occurred. Item Number 8 is a swab from a red stain on the
10 left shoe of a suspect Weatherall. And, Item Number 9 was a
11 buccal swab for elimination of Justin Lamont Green. Green is
12 believed to have been inside the motel room in which the
13 homicide occurred while the suspect and victim were staying
14 there. Item Number 10 was a bone, a mandible with teeth to be
15 used as DNA standard for a victim, Helbert Woodberry. The
16 victim's body was highly decomposed as it was not discovered
17 for approximately 10 days after death. Therefore, a buccal
18 swab or the blood were not available to be used as standards.
19 Q: Okay. And when you received those items, had they been
20 tampered with, to your knowledge?
21 A: Not to my knowledge, no.
22 Q: Did they appear, looking at them, that they had been
23 tampered with?
24 A: We take things on a said to contain basis, so I don't
25 actually see the particular item because it's packaged with a

State v. Weatherall - 2014-GS-26-01415
DORIS YARBROUGH - DIRECT BY LIVESAY

296

1 label on it.

2 Q: Okay. And once you got it, what happened to it?

3 A: I take those packages and put them into our SLED
4 packaging. For the swabs for the individual people, they are
5 packaged into a separate pouch that is heat sealed with a
6 number and given a unique barcoded label that is tracked
7 throughout the lab. And for the -- I think all of these would
8 have probably would have been put in that heat-sealed pouch.

9 Q: Okay. So eventually, were they ever tampered with while
10 they were in your custody?

11 A: Not to my knowledge, no.

12 Q: Okay. And they went from you straight to the forensic
13 analyst?

14 A: Actually, they went into storage.

15 Q: Okay.

16 A: They went into an intake shelf. We have a secure
17 evidence room in our office and it's only has limited access
18 and so it's put on a storage shelf until it's requested from
19 the analyst.

20 Q: Okay. So, they go in there until the analyst gets to
21 this lab number and then she gets ---

22 A: They send us an email when they're ready to pick
23 something up. Whoever is available, not just myself, but any
24 one of the other technicians, will go into the evidence room,
25 pull that evidence room -- evidence, respond to the email, and

State v. Weatherall - 2014-GS-26-01415
DORIS YARBROUGH - CROSS BY GARDNER

297

1 they'll come down to pick it up.

2 Q: Okay. And is that evidence a secured area?

3 A: It is.

4 Q: And are there limitations on who can enter that room?

5 A: Absolutely. We have -- we have to use our security code,
6 our bar -- our evidence room has a security box on it. We
7 have to use a key once we scan that box and we have to use our
8 passwords to get into the evidence room.

9 Q: Okay. And that is to insure nobody tampers with that
10 item until it's analyzed by the forensic analyst.

11 A: That would be correct.

12 MS. LIVESAY: No further questions from this witness,
13 Your Honor.

14 THE COURT: All right. Cross examination?

15 CROSS EXAMINATION OF DORIS YARBROUGH BY MR. GARDNER:

16 Q: If I understand it right, you got some evidence from
17 somebody and you put it somewhere so somebody else could get
18 it?

19 A: That's correct, sir.

20 Q: Is there anything else that we need to talk about?

21 A: Not that I'm aware of, sir.

22 MR. GARDNER: No more questions, Judge, thank you.

23 THE COURT: All right. Redirect?

24 MS. LIVESAY: No, sir, Your Honor.

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

State v. Weatherall - 2014-GS-26-01415
JENNIFER AYCOCK - DIRECT BY LIVESAY

298

1 A: Thank you, sir.

2 THE COURT: Thank you.

3 State may call your next witness.

4 MS. LIVESAY: Thank you, Judge. At this time, the State
5 calls Jennifer Aycock.

6 MR. GARDNER: Your Honor, we're still willing to
7 stipulate to the chain of custody of her witnesses if that
8 would help speed things up.

9 THE COURT: Okay. We'll go ahead and let her proceed as
10 she wishes.

11 CLERK: Please raise your right hand and place your left
12 hand on the Bible.

13 JENNIFER AYCOCK, HAVING BEEN DULY
14 SWORN TESTIFIES AS FOLLOWS:

15 CLERK: Please state your full name and spell your first
16 and last name for the Court.

17 MS. AYCOCK: My name is Jennifer Aycock, J-E-N-N-I-F-E-R,
18 last name, A-Y-C-O-C-K.

19 DIRECT EXAMINATION OF JENNIFER AYCOCK BY MS. LIVESAY:

20 Q: Now, Ms. Aycock, where are you currently working?

21 A: I am working for the State of South Carolina for the
22 Labor, Licensing, and Regulations Division as investigator for
23 the Medical Board.

24 Q: Okay. Now, before this job, where were working around
25 November 2013 and 2014?

State v. Weatherall - 2014-GS-26-01415
JENNIFER AYCOCK - DIRECT BY LIVESAY

299

1 A: I worked for -- in 2014, I worked for the South Carolina
2 Law Enforcement Division, commonly known as SLED, as a
3 forensic technician assigned to Evidence Control.

4 Q: Okay. And if you don't mind, tell this jury what you did
5 for SLED?

6 A: Login, package, store, and transfer evidence for forensic
7 analysis.

8 Q: Okay. And you basically took things in from law
9 enforcement agencies?

10 A: Correct, everything we handled, we handled -- it was
11 sealed when it came to us and basically what we did was we
12 brought in the evidence, we assigned it a lab number and an
13 item number, which is unique to that item.

14 Q: Okay. And then once you take it in, where do you put it?

15 A: It goes into our secured evidence room, which is only --
16 only the technicians have access to it and you have to get in
17 there with a key and an access card.

18 Q: Okay. And is that room a room that only certain people
19 are allowed to go into?

20 A: Correct, only the forensic technicians assigned to
21 Evidence Control.

22 Q: Okay. And is that to ensure that nothing is tampered
23 with?

24 A: Yes.

25 Q: Okay. Now, did you take anything in on this case, which

State v. Weatherall - 2014-GS-26-01415
JENNIFER AYCOCK - DIRECT BY LIVESAY

300

1 is Lab Number L13-15051?

2 A: May I look at the Chain of Custody, please?

3 Q: Yes.

4 A: Yes, ma'am; I did.

5 Q: And if you don't mind, tell this jury what you took in?

6 A: I took in what we assigned Item Number 11, which is a
7 heat-sealed pouch containing teeth described as Helbert
8 Woodberry.

9 Q: Okay. And then once you took them in, they went where
10 next? Did that chain indicate?

11 A: They went into, I'm sorry, the Evidence Room on a DNA
12 Intake Shelf 83.

13 Q: Okay. And after there, where did this item go?

14 A: After that, it was retrieved by Forensic Technician
15 Jackie Davis, on 4/6/2015 and she transferred it to Forensic
16 Scientist Jennifer Bartman.

17 Q: Okay. And so, during these transfers, is this all within
18 SLED?

19 A: Yes, it is.

20 Q: Okay. And this all within an area where only certain
21 people have access to?

22 A: Correct, only the forensic technicians have access to the
23 evidence room. At that point in time, they will take that
24 evidence, once requested, they will scan it into their names
25 showing to maintain the chain of custody, then they're gonna

State v. Weatherall - 2014-GS-26-01415
JENNIFER AYCOCK - CROSS BY GARDNER

301

1 scan it to whoever is receiving the evidence.

2 Q: Okay. Thank you, Ms. Aycock.

3 A: Thank you.

4 THE COURT: Cross examination?

5 CROSS EXAMINATION JENNIFER AYCOCK BY MR. GARDNER:

6 Q: You just got evidence from somebody and put it somewhere
7 for somebody else to look at; is that pretty much what
8 happened?

9 A: Yes, sir.

10 Q: Anything else that we need to know about?

11 A: No, sir.

12 Q: Thank you. Oh, one question. Have you ever heard of the
13 term stipulation with regards to the chain of custody?

14 A: Yes, sir.

15 Q: Okay. So, you know what that means. Have you testified
16 many times about the chain of custody?

17 A: Yes, sir, I've testified several times with reference to
18 chain of custody.

19 Q: Have you also stipulated for the chain of custody before
20 or heard lawyers that they would stipulate to it?

21 A: Yes, sir; I've heard of stipulation.

22 Q: Okay. All right. Thank you, ma'am.

23 A: Yes, sir.

24 THE COURT: Redirect?

25 MS. LIVESAY: Thank you, Ms. Aycock.

State v. Weatherall - 2014-GS-26-01415
JENNIFER BARTMAN - DIRECT BY LIVESAY

302

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

2 A: Thank you, sir.

3 THE COURT: Call your next witness.

4 MS. LIVESAY: At this time, the State calls Jennifer
5 Bateman to the stand?

6 THE COURT: All right.

7 CLERK: Please raise your right hand and place your left
8 hand on the Bible.

9 JENNIFER BARTMAN, HAVING BEEN DULY

10 SWORN TESTIFIES AS FOLLOWS:

11 CLERK: Please state your full name and spell your first
12 and last name for the Court.

13 MS. BARTMAN: My name is Jennifer Bartman, J-E-N-N-I-F-E-
14 R, B-A-R-T-M-A-N.

15 DIRECT EXAMINATION OF JENNIFER BARTMAN BY MS. LIVESAY:

16 Q: Okay. And where are you currently employed?

17 A: I'm currently employed with the South Carolina Law
18 Enforcement Division, which is commonly known as SLED.

19 Q: Okay. And how long have you been employed at SLED?

20 A: I've been employed for about 24-and-a-half years.

21 Q: Okay. And what are your current responsibilities?

22 A: I am a DNA analyst in the DNA Casework Department. We
23 receive evidence from crimes that occur across the State of
24 South Carolina. We screen these items for possible body
25 fluids as well as perform DNA analysis on these evidence and

State v. Weatherall - 2014-GS-26-01415

303

JENNIFER BARTMAN - DIRECT BY LIVESAY

1 then we can then compare them to known DNA standards.

2 Q: Okay. And what kind of education have you undergone to
3 be able to meet these responsibilities?

4 A: I have a bachelor's degree in biology from Hope College
5 in Michigan and I also have a master's degree in forensic
6 science with a concentration in forensic biology from Virginia
7 Commonwealth University in Richmond, Virginia.

8 Q: And have you ever been qualified as an expert in DNA
9 comparisons?

10 A: Yes, I have.

11 Q: And how many times have you been qualified as an expert?

12 A: Seventeen times.

13 Q: Okay. And in what court have you been qualified?

14 A: In courts across South Carolina.

15 MS. LIVESAY: Okay. Your Honor, at this time, the State
16 asks that she be recognized as an expert in DNA comparisons.

17 THE COURT: All right.

18 MR. GARDNER: Eighteen, Your Honor, we have no objection
19 to it.

20 THE COURT: All right. I find this witness to be an
21 expert in DNA comparisons.

22 MS. LIVESAY: Thank you, Judge.

23 BY MS. LIVESAY:

24 Q: Now, did you receive some items in this case ---

25 A: Yes.

State v. Weatherall - 2014-GS-26-01415
JENNIFER BARTMAN - DIRECT BY LIVESAY

304

1 Q: --- which is L13-15051?

2 A: Yes, I did.

3 Q: Okay. And did you test those items?

4 A: Yes, I did.

5 Q: Okay. And if you don't mind, before we get started, tell
6 this jury a little bit about DNA comparisons; what are you
7 doing?

8 A: DNA stands for deoxyribonucleic acid, and basically, it's
9 just a chemical that is found in our bodies. It makes up who
10 we are. We get half of our DNA from our mother and half of
11 our DNA from our father.

12 Q: Okay. And do any two people have the same DNA?

13 A: With the exception of identical twins, no.

14 Q: Now, do you assign a certain statistic to these
15 comparisons?

16 A: If we do match a DNA known standard with a DNA profile
17 generated from evidence, we are required to put a statistic,
18 which basically just gives weight to our statement of the
19 match.

20 Q: Okay. And if you don't mind, tell this jury, did you do
21 any comparisons in this particular case?

22 A: Yes, I did.

23 Q: Okay. And if you don't mind, tell them about that.

24 A: I received SLED Item 4, which was swabs from the west bed
25 in the motel room; SLED Item 5, which are swabs from carpet

State v. Weatherall - 2014-GS-26-01415
JENNIFER BARTMAN - DIRECT BY LIVESAY

305

1 between beds in the motel room; SLED Item 6, which are swabs
2 from the east bed in the motel room; and Swabs from the
3 dresser in the motel room, which was SLED Item 7.

4 And the DNA profile that I developed from the swabs from
5 the west bed, the swabs from the east bed, and the swabs from
6 the dresser matched the DNA profile of Helbert Woodberry, and
7 the probability of randomly selecting an unrelated individual
8 having a DNA profile matching these items is approximately 1
9 in 3.6 quadrillion.

10 For SLED Item 7 -- the DNA profile for SLED Item 5, I'm
11 sorry, which is swabs from the carpet between the beds, the
12 DNA profile that was developed is a mixture of at least two
13 individuals. The DNA profile for the major contributor to
14 that mixture also matched the DNA profile of Helbert
15 Woodberry. The probability of randomly selecting an unrelated
16 individual having a DNA profile matching the major contributor
17 to that mixture was approximately 1 in 3.6 quadrillion. The
18 DNA profile of the minor contributor to that mixture was
19 insufficient for interpretation.

20 Q: Okay. So, you tested some swabs from a bed in a motel
21 room; is that correct?

22 A: That is correct.

23 Q: The carpet between the beds in a motel room?

24 A: That's correct.

25 Q: The -- another bed in the motel room?

State v. Weatherall - 2014-GS-26-01415
JENNIFER BARTMAN - DIRECT BY LIVESAY

306

- 1 A: That's correct.
- 2 Q: And a dresser in the motel room?
- 3 A: That's correct.
- 4 Q: Okay. And all of those came back that that was -- and
- 5 was that blood?
- 6 A: I did a presumptive test which was positive for blood.
- 7 Q: Okay. So, all of that was indeed blood?
- 8 A: It was indicative of blood.
- 9 Q: And then when you tested it, you found out that it
- 10 belonged to Helbert or Herbert Woodberry?
- 11 A: Yeah, the -- there was a mixture on Item 5, which is the
- 12 carpet, but the other three, yes, matched Helbert.
- 13 Q: Okay. And which item was there a mixture on?
- 14 A: The swabs from the carpet between the beds.
- 15 Q: Okay. Now, when there's a mixture, do you know if that
- 16 is a mixture of two different peoples' blood or is that a
- 17 mixture of possible saliva and blood; do you know what the
- 18 mixture is made of?
- 19 A: No, we don't.
- 20 Q: Okay. You just know somehow this -- there's DNA there
- 21 from blood, saliva, possibly touch?
- 22 A: Yes, that's correct.
- 23 Q: Okay. And the major contributor of the mixture was
- 24 Herbert Woodberry?
- 25 A: That's correct.

State v. Weatherall - 2014-GS-26-01415

307

JENNIFER BARTMAN - CROSS BY GARDNER

1 Q: Okay. And there was no way to figure out who the minor
2 contributor was?

3 A: That's correct.

4 Q: Okay. But for the other items in the room, there was no
5 mixture?

6 A: That is correct.

7 Q: And that was only DNA from the victim?

8 A: From Helbert Woodberry, yes.

9 Q: Okay. So, on the bed and the dresser was just Herbert
10 Woodberry?

11 A: Yes, that's correct.

12 MS. LIVESAY: Okay. No further questions for this
13 witness, Your Honor.

14 THE COURT: All right. Cross examination?

15 MR. GARDNER: Thank you, Judge.

16 CROSS EXAMINATION OF JENNIFER BARTMAN BY MR. GARDNER:

17 Q: Did y'all -- do you know Chicken; have you heard that
18 name, Chicken? I think his real name is Marvin McElwain
19 [sic].

20 A: That name, I believe appears on my report, but ---

21 Q: I don't think y'all tested him. Do you know if y'all
22 tested him?

23 A: I did not receive a DNA standard from him, no.

24 Q: So, all these witnesses -- you weren't here, but would it
25 surprise -- you wouldn't be surprised to hear that we had a

State v. Weatherall - 2014-GS-26-01415
JENNIFER BARTMAN - CROSS BY GARDNER

308

1 bunch of witnesses testify about getting evidence, giving a
2 person and getting it up to you, chain of custody stuff, so
3 you got all the stuff that you got, but you didn't get
4 anything about Marvin McElwain [sic]?

5 A: That's correct.

6 Q: Okay. So, what you did get though establishes beyond a
7 reasonable doubt that the decedent, the dead person, is Mr.
8 Woodberry, right; is that right?

9 A: I found his DNA.

10 Q: His DNA ---

11 A: That's correct.

12 Q: --- that's pretty good deal, 1 in a gazillion trillion or
13 something like that I think you said.

14 A: 3.6 quadrillion.

15 Q: I missed it by a couple, right. So, his -- that just
16 means it was him; we don't have anything else that means
17 anybody else was there?

18 A: No. There was another item that I tested, which was SLED
19 Item 8.

20 Q: Has this been testified to about already?

21 A: No, it has not.

22 Q: Okay. All right. Okay. But nothing about Chicken? I
23 apologize, I got the name wrong all week long. His name is
24 Marvin McElveen, okay. Thank you, ma'am.

25 THE COURT: Redirect?

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

309

1 MS. LIVESAY: Just one question. Did you receive a
2 sample from Mitchell Weatherall?

3 A: No, I did not.

4 Q: No further questions.

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

6 MS. LIVESAY: Your Honor, I'm assuming these people are
7 safe to go back to work?

8 THE COURT: Any objection?

9 MR. GARDNER: None, Your Honor.

10 THE COURT: All right. You're free to go.

11 MS. LIVESAY: Thank you, Judge.

12 BY THE COURT:

13 THE COURT: All right. The State can call your -- well
14 let me see the attorneys for a second.

15 (REPORTER'S NOTE: A bench conference was held off the record
16 in the presence of but out of hearing of the Jury.)

17 MS. LIVESAY: Thank you, Judge.

18 THE COURT: All right. Thank you. All right. Ladies
19 and gentlemen, we're gonna go ahead and take our morning
20 break. I'm gonna excuse you back to the jury room. Do not
21 discuss the case even among yourselves. Don't conduct any
22 independent investigation. Also, it will give you an
23 opportunity to get something to drink and use the restroom,
24 stretch your legs, whatever the case may be.

25 I also think the Clerk of Court is gonna step in and take

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

310

1 a lunch order so we can get lunch for you again today. Okay?

2 So, we'll take about a 10 or 15-minute break and we'll
3 come back and get started again. Thank you.

4 (REPORTER'S NOTE: Jury exits courtroom. The following takes
5 place outside the presence of the Jury.)

6 THE COURT: All right. Anything from the State before we
7 take a short break?

8 MS. LIVESAY: No, sir.

9 THE COURT: Anything from the Defense?

10 MR. GARDNER: Administratively, Your Honor, we would
11 request a couple of orders of transportation from the jail.
12 Maybe we could give them to your office. It looks like we
13 might getting into our case this afternoon.

14 THE COURT: All right.

15 MR. GARDNER: I'm just guessing.

16 THE COURT: That'll be fine.

17 MR. GARDNER: That way the jail can bring them over here.

18 THE COURT: All right. That would be good. Whatever you
19 need to me to sign, that'll be good.

20 MR. GARDNER: We'll get them to you.

21 THE COURT: Have you got them? These are people housed
22 at the detention center?

23 MR. GARDNER: Yes, sir.

24 THE COURT: All right. So, if I -- I mean this is
25 specified as trial this week. You don't ---

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

311

1 MR. GARDNER: I think ---

2 THE COURT: It just says that they'll provide safe
3 transportation. Is this gonna do what you need it to do?

4 MR. GARDNER: I need them probably be here at 2 o'clock
5 today. Maybe I can redo an order.

6 THE COURT: Does anybody know what we need to do? The
7 order of transport just says that this trial is going on this
8 week and that the Sheriff's Department is responsible for the
9 transportation of these inmates to the courthouse.

10 SHERIFF: If Transportation can ---

11 MR. BOUCHETTE: My understanding is that once you have
12 that, then upon request they go get -- that's my
13 understanding.

14 THE COURT: All right. That's good.

15 MR. GARDNER: Good.

16 THE COURT: The day is the 22nd; is that correct?

17 CLERK: Yes, sir.

18 THE COURT: All right. There you go.

19 MR. GARDNER: Thank you, Judge.

20 THE COURT: Anything further from the Defense before we
21 break?

22 MR. GARDNER: No, Your Honor.

23 THE COURT: All right. Let's take about a 10 or 15-
24 minute break. Thank you.

25 (RECESS.)

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

312

*****OFF THE RECORD*****

(On the Record.)

THE COURT: Anything from the State before we bring the jury in?

MS. LIVESAY: No, sir.

THE COURT: Anything from the Defense?

MR. BOUCHETTE: No, Your Honor.

THE COURT: All right. Let's go ahead and bring the jury in.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: Ladies and gentlemen, welcome back. We're ready to proceed.

Ms. Livesay, the State can call your next witness.

MS. LIVESAY: Thank you, Judge. At this time, the State calls Sarah Hicks to the stand.

THE COURT: All right.

CLERK: Please raise your right hand and place your left hand on the Bible.

SARAH HICKS, HAVING BEEN DULY SWORN

TESTIFIES AS FOLLOWS:

CLERK: Please state your full name and spell your first and last name for the Court.

MS. HICKS: My name is Sarah Hicks, S-A-R-A-H, last name Hicks, H-I-C-K-S.

DIRECT EXAMINATION OF SARAH HICKS BY MS. LIVESAY:

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

313

- 1 Q: And, Ms. Hicks, where are you currently employed?
- 2 A: I work for Conduit State and Local Solutions.
- 3 Q: And how long have you been employed there?
- 4 A: Four years.
- 5 Q: Okay. And what are your responsibilities?
- 6 A: I'm a subpoena compliance analyst; therefore, the records
- 7 custodian.
- 8 Q: Okay. And do they keep records in the ordinary course of
- 9 business?
- 10 A: Yes.
- 11 Q: And your job is basically to when you receive a subpoena
- 12 or search warrant, to give those records to that agency?
- 13 A: Correct.
- 14 Q: Okay. Now, are those records kept in a way they cannot
- 15 be tampered with?
- 16 A: Yes.
- 17 Q: Would you recognize the records if you saw them?
- 18 A: Yes.
- 19 Q: I'm gonna show you now State's Exhibit 80. Do you
- 20 recognize those records?
- 21 A: I do.
- 22 Q: And who do they belong to?
- 23 A: These are cardholder's name was Avra Woodberry.
- 24 Q: Hold on one second, Ms. Hicks. I'm gonna ask if you
- 25 recognize what I'm showing you now?

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

314

1 A: Yes.

2 Q: And what is this?

3 A: This is a summary of the records for the Direct Express
4 account. It'll have the cardholder's name; it will also have
5 the benefit recipient's name.

6 Q: Okay. And does it indicate who those records belong to?

7 A: Yes.

8 Q: Okay. And who do they belong to?

9 A: So, the Direct Express account was in the name of Avra
10 Woodberry for Helbert Woodberry.

11 Q: Okay. And if you don't mind, tell us what those records
12 indicate for Mr. Woodberry?

13 A: So, this is the transaction history starting November --
14 November 1st through the 3rd.

15 Q: Okay. And are those records kept for everyone in the
16 ordinary course of business?

17 A: Yes.

18 Q: Okay. And have they been tampered with?

19 A: No.

20 MS. LIVESAY: Your Honor, at this time, the State wishes
21 to put those into evidence?

22 THE COURT: Any objection?

23 Q: She stapled them --

24 A: It's actually through November 6th.

25 Q: Sorry about that, Dixie, I should've stapled it.

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

315

1 MR. GARDNER: I don't think we have an objection. I
2 think we just need some clarification. I didn't know that
3 this is -- is this somebody's else's account or is this Mr.
4 Woodberry's account or ---

5 MS. LIVESAY: I'm sorry, what's he asking, Judge?

6 THE COURT: She stated -- whose account -- who does it
7 show that this account belongs to?

8 A: So, Direct Express cards are Social Security benefits,
9 federal benefits. If the benefit recipient, the person who
10 actually receives the funds is not capable of managing those
11 funds themselves, they can choose to have a rep payee. So, a
12 card will be issued in the rep payee's name. However, the
13 funds still belong to the benefit recipient and a benefit
14 recipient has full access to the card.

15 BY MS. LIVESAY:

16 Q: So, who is that person?

17 A: So, in this situation, Avra Woodberry is the rep payee;
18 Helbert Woodberry is the person who is receiving the funds.

19 Q: Okay. Does that clear it up?

20 MR. BOUCHETTE: That clears it up, Judge. No further --
21 we don't object to the exhibit.

22 THE COURT: All right. State's Exhibit Number 80
23 admitted into evidence without objection.

24 MS. LIVESAY: Thank you, Judge.

25 STATE'S EXHIBIT NUMBER 80

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

316

ADMITTED INTO EVIDENCE

BY MS. LIVESAY:

Q: Now, Ms. Hicks, so, is there any other funds put on this card, to your knowledge?

A: No.

Q: Okay. So, basically, just so I'm clear, this can be used, the card itself can be used as like a credit card or a debit card?

A: Yes.

Q: And the only thing that's loaded on it is his Social Security, whatever money he's getting through Social Security?

A: Yes.

Q: Okay. And that's the only thing that can be loaded on the card?

A: Correct.

Q: Okay. And Helbert had, what did you call that, I'm sorry, somebody that cannot handle ---

A: So there's a representative payee.

Q: Okay. And he had a representative?

A: Correct.

Q: Okay. So, and who was that person?

A: Avra Woodberry.

Q: Okay. Now, but the actual money belonged to Herbert or Helbert?

A: Correct.

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

317

- 1 Q: Okay. And could he use the card?
- 2 A: Yes.
- 3 Q: Okay. And could she use the card?
- 4 A: Yes.
- 5 Q: Okay. So, both could use it; she was just the kind of
- 6 one in control?
- 7 A: Correct.
- 8 Q: Okay. Now, what are the dates of the transactions you
- 9 have? And you can unstaple that if you want; we'll staple it
- 10 back.
- 11 A: Certainly. So, we pulled transactions starting on 11/1
- 12 and going through 11/6 of 2013.
- 13 Q: Okay. And is that November of 2013?
- 14 A: Yes.
- 15 Q: Okay. And could use this calendar to go through the
- 16 transactions that are shown on those records?
- 17 A: Sure.
- 18 Q: And if you don't mind, step down.
- 19 Now, if you don't mind, was there -- was the card ever
- 20 used at Atlantic View Motel?
- 21 A: It was.
- 22 Q: And tell me about what date was that?
- 23 A: November 1st, 2013.
- 24 Q: Okay. And if you don't mind, just write on the calendar
- 25 where that transaction was and for how much?

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

318

- 1 A: Okay.
- 2 Q: Okay. And were there any other transactions on that day?
- 3 A: There were.
- 4 Q: Okay. And if you don't mind, tell this jury about those
- 5 transactions.
- 6 A: So, prior to the card being used at the Atlantic View
- 7 Motel, there is a cash purchase at 9:59 Central Time at Food
- 8 Shop. There is an ATM balance inquiry at 11:02 at a Save-Mart
- 9 in Myrtle Beach. There is a preauthorization at 11:21,
- 10 Maryland Fried Chicken in Myrtle Beach, and an ATM cash
- 11 withdrawal at 13:54 Save-Mart in Myrtle Beach. Those times
- 12 are all Central.
- 13 Q: Okay. How much was that cash withdrawal for?
- 14 A: The cash withdrawal is for 202.50.
- 15 Q: Okay. And if you don't mind, can you add that to the
- 16 calendar. And that was on the 1st as well?
- 17 A: Yes.
- 18 Q: Okay. Was there any other transactions on the card on
- 19 the 1st?
- 20 A: There is another ATM cash withdrawal, 22:27 in Myrtle
- 21 Beach for \$64.
- 22 Q: Okay. And any other transactions?
- 23 A: Nothing else on the 1st.
- 24 Q: Okay. And how about on the 2nd?
- 25 A: On the 2nd, we have a preauthorization at Grandma's

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

319

- 1 Kitchen in Myrtle Beach at 6:40; we have a cash purchase at
2 Save Mart Liquor in Myrtle Beach at 9:56 A.M.; a cash
3 withdrawal at 9:57 A.M. at Save Mart in Myrtle Beach.
- 4 Q: And are these times Eastern Time?
- 5 A: Central, all times are Central.
- 6 Q: Okay. And then if you don't mind, tell this jury what is
7 the difference -- convert Central Time to Eastern Time?
- 8 A: So, for instance this last ATM withdrawal at 9:57 A.M.
9 Central would be 10:57 A.M. Eastern.
- 10 Q: So, we're one hour ahead?
- 11 A: Correct.
- 12 Q: Okay. So just add an hour to those records and you've
13 got Eastern Time?
- 14 A: Yes.
- 15 Q: Okay.
- 16 A: On the 2nd, we also have a cash purchase at Save-Mart in
17 Myrtle Beach at 15:16. That purchase was declined for an
18 invalid PIN. There is one again at 15:17 same location that
19 goes through at the Save-Mart in Myrtle Beach. We have a cash
20 purchase at Save-Mart Liquor in Myrtle Beach at 15:19 and an
21 ATM withdrawal at 15:20 at the Save-Mart in Myrtle Beach. And
22 then on 11/2 at 19:37, we have an attempted ATM withdrawal at
23 the Save-Mart in Myrtle Beach and it is declined for
24 insufficient funds.
- 25 Q: Okay. Now what time would that have been Eastern Time?

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

320

1 A: It would be 20:37 Eastern Time.

2 Q: And what time is that?

3 A: 7:00, I'm terrible at converting military time to ---

4 Q: So, around 7:20 Eastern Time?

5 A: It would've been 7:37 Eastern Time.

6 Q: Okay. Okay. And so, on the 2nd of November he had
7 insufficient funds?

8 A: Correct.

9 Q: That night and he couldn't draw any more money off the
10 card?

11 A: Correct.

12 Q: Do you mind adding that to the calendar? Now, what is
13 insufficient funds, like on my card, I can use it again and it
14 will kind of draw from another account; is that possible on
15 this card?

16 A: It is not.

17 Q: Okay. So, when you're out, you're out?

18 A: You're out.

19 Q: Okay. So, he was out Saturday night?

20 A: Yes.

21 Q: Okay. What is the next either purchase or deposit on the
22 card?

23 A: It looks like on 11/4, a deposit is loaded onto the
24 account and then funds are available midnight on 11/5.

25 Q: Okay. So, when would he actually be able to have access

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

321

1 to the money?

2 A: 11/5, November 5th, 2013 is when the money would have
3 been available.

4 Q: Okay. And do you mind adding that to the calendar? So,
5 how much money loaded on the card?

6 A: 524.50.

7 Q: Now, once that money loads on the card, are there any
8 more transactions on the card?

9 A: There's quite a few.

10 Q: Okay.

11 A: On 11/5 at 20:53 Central, so 21:53 Eastern, there is a
12 preauthorization 1101 North Kings Highway in Myrtle Beach;
13 20:53 the same location, another preauthorization; 21:16,
14 another preauthorization at Wilco in Myrtle Beach; 21:21,
15 another preauthorization at Kangaroo Express Myrtle Beach;
16 then on 11/6 just after midnight, there is a preauthorization
17 at CVS in Myrtle Beach; 11/6 at 12:03, there is another
18 preauthorization at CVS in Myrtle Beach; 11/6 we have at
19 12:13, an Exxon Mobil preauthorization Myrtle Beach; 11/6 at
20 1:57, we have a preauthorization at a BI-LO Grocery in Myrtle
21 Beach; there is another preauthorization at the same location
22 2:44, BI-LO Grocery in Myrtle Beach.

23 Q: And when you say 2:44, you mean A.M. in the morning?

24 A: A.M.

25 Q: Okay. So that's in the middle of the night?

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

322

- 1 A: Yes.
- 2 Q: Okay. So, these transactions are going from Tuesday
3 night into literally Wednesday 1:00, 2 o'clock in the morning?
- 4 A: Correct.
- 5 Q: Okay.
- 6 A: And the last approved transaction was a preauthorization
7 at 3:40 A.M. at Wilco in Myrtle Beach.
- 8 Q: Okay. And was there still money on the card?
- 9 A: The next transaction is declined for insufficient funds.
- 10 Q: So, basically that \$524 was spent between Tuesday night
11 and when did you say that last transaction was Wednesday
12 morning?
- 13 A: So then the last approved transaction was on November
14 6th, 2013 at 3:40 A.M. Central Time.
- 15 Q: Okay. So 3:40 in the morning and the card is already
16 out, insufficient funds?
- 17 A: Correct.
- 18 Q: Okay. So, within a matter of hours, \$500 is gone?
- 19 A: Yes.
- 20 Q: Okay. And if you don't mind, just put on that calendar
21 what time the last transaction was when it hit insufficient
22 funds.
- 23 A: The last approved transaction ---
- 24 Q: Now, I know when I go out of town, like I've done in the
25 past and I've tried to use my card and it's declined, and when

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

323

1 I called, they said it was detected fraud because it was an
2 unusual purchase. Does this card do the same thing or no?

3 A: It will.

4 Q: Okay. And in this case, did it ever detect any kind of
5 fraud?

6 A: Not during this time period, no.

7 Q: Okay. Did it any time after this time period?

8 A: Beyond the records I have in front of me, I can't say.

9 Q: Okay. Okay. How -- normally about how long would it
10 take to detect fraud?

11 A: The system scans the account every 15 minutes and pulls
12 any unusual activity at that point. Things like that however
13 would be draining the account in two or three minutes, some
14 incredibly large ATM withdrawals are usually what would
15 trigger it to put a suspension on the account. Again,
16 transactions done a great distance from the cardholder's
17 actual home would cause that as well.

18 Q: Okay. Have a seat, Ms. Hicks, thank you.

19 Does it show where they were trying to use that card the
20 last time and drew insufficient funds?

21 A: Yes.

22 Q: Okay. Where is that?

23 A: At the same Wilco location. Just two minutes after the
24 approved transaction there is another attempt that is declined
25 for insufficient funds.

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

324

1 Q: How quick, two minutes?

2 A: Two minutes.

3 Q: Okay. Now, once it hits insufficient funds, do they try
4 to use it again?

5 A: They did. At 3:46 A.M., so four minutes later, same
6 location, they attempted again. It was also declined for
7 insufficient funds.

8 Q: And how quick was that?

9 A: So, the last approved one is at 3:40, and then we have an
10 insufficient funds at 3:42, and an insufficient funds at 3:46,
11 all at the same location.

12 Q: Okay. So, just within a few minutes, they're swiping the
13 card at the same location?

14 A: Yes.

15 Q: Okay. And after it gets declined one time, a couple
16 minutes later they try to use it again to see if it will work?

17 A: Yes.

18 Q: And does it work?

19 A: No.

20 Q: Can I look at those records real quick, please?

21 Just because these are in evidence, I want to be sure
22 everybody is on the same page about how you read them. When
23 it says approved or success, what does that mean?

24 A: It means the transaction went through.

25 Q: Okay. And when it says insufficient funds?

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - DIRECT BY LIVESAY

325

1 A: Not enough funds to cover the attempted purchase.

2 Q: Okay. And what if it says transaction not permitted?

3 A: That means that that particular card, the Direct Express
4 Card, cannot be used for that transaction. That is typically
5 an attempt to pay at the pump for gasoline.

6 Q: It's an attempt ---

7 A: To pay at the pump.

8 Q: Okay.

9 A: With the card.

10 Q: Okay. Now, over here, it also has like preauthorization,
11 preauthorization for settlement; tell me a little bit about
12 that because I know sometimes it shows up the card's been used
13 and then later on it shows up like the transaction, like the
14 money has been taken out; just explain that real briefly.

15 A: So, a preauthorization is the moment when you actually
16 use the card, whether you are swiping it through a card reader
17 or you are entering it in to make a purchase online. That is
18 the moment that you use the card. The other two transactions,
19 the preauthorization release for settlement and the
20 preauthorization settlement are simply banking transactions.
21 That is when the merchant presents to the bank that they want
22 the funds and that's when that transaction settles. But the
23 preauthorization is when the card is being used.

24 Q: Okay. So, one is when you're swiping and one is when the
25 bank is taking it out; is that correct?

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - CROSS BY BOUCHETTE

326

1 A: Correct.

2 Q: So, for example, like on 11/1 it shows Atlantic View
3 Motel approved success, that's when the card was swiped?

4 A: Yes.

5 Q: And then when it shows on 11/3 Atlantic View Motel
6 preauthorized settlement, that's just when the bank is taking
7 the money?

8 A: Correct.

9 Q: Nobody is actually using the card?

10 A: Nobody is using the card at that time.

11 Q: No further questions.

12 THE COURT: All right. Cross examination?

13 CROSS EXAMINATION OF SARAH HICKS BY MR. BOUCHETTE:

14 Q: Good morning, Ms. Hicks?

15 A: Good morning.

16 Q: Just a few questions. I'm trying to follow your records
17 here. We're looking between November 1 and November 6; is
18 that correct?

19 A: Yes.

20 Q: It looks like, if I understand you correctly, Mr.
21 Woodberry made the purchase rather at the Atlantic View Motel,
22 correct?

23 A: Yes.

24 Q: Okay. And it looks like around that same time, he
25 must've taken out a cash withdrawal of less than 202, correct?

State v. Weatherall - 2014-GS-26-01415
SARAH HICKS - CROSS BY BOUCHETTE

327

1 A: Yes.

2 Q: So, he checks into the hotel, he gets some cash and then
3 we've got a series of other -- basically the whole rest of
4 these records are various either cash withdrawals or purchases
5 at liquor stores or gas stations or something of that effect,
6 correct?

7 A: Yes.

8 Q: And I think you mentioned earlier that, you know, it
9 stopped with regards to what you called credit -- withdrawals.
10 It doesn't like we had any of those, right; these were, like I
11 say, at gas stations or liquor stores or something like that?

12 A: Correct.

13 Q: Now, we heard yesterday -- I know you weren't here, but
14 we heard yesterday from a young lady, a Tonya Wedlock, that
15 indicated that she did use this card at some point to
16 purchase, I believe she said, diapers or something to that
17 effect, relatively small items, and I think that it was her
18 belief that another individual had used this card to again buy
19 similar type items around this timeframe. Nothing in the
20 records that you've brought here today or that you've been
21 asked to bring, would indicate whether Ms. Wedlock or Mr.
22 Garsow or anybody else was using this card during these
23 transactions; is that right?

24 A: No, there was nothing.

25 MR. BOUCHETTE: No further questions of this witness,

State v. Weatherall - 2014-GS-26-01415
AVRA WOODBERRY - DIRECT BY LIVESAY

328

1 Judge.

2 THE COURT: All right. Redirect?

3 MS. LIVESAY: No further questions, Your Honor.

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

5 Call your next witness.

6 MS. LIVESAY: Thank you, Your Honor. At this time, the
7 State calls Avra Woodberry.

8 CLERK: Please raise your right hand and place your left
9 hand on the Bible.

10 AVRA WOODBERRY, HAVING BEEN DULY
11 SWORN TESTIFIES AS FOLLOWS:

12 CLERK: Please state your full name and spell your first
13 and last name for the Court.

14 MS. WOODBERRY: Avra Woodberry, A-V-R-A, Woodberry, W-O-
15 O-D-B-E-R-R-Y.

16 DIRECT EXAMINATION OF AVRA WOODBERRY BY MS. LIVESAY:

17 Q: Now, Ms. Woodberry, how old are you?

18 A: Thirty.

19 Q: And where are you currently living?

20 A: Atlanta, Georgia.

21 Q: Okay. And are you married or have any kids?

22 A: I have a six-year-old little girl.

23 Q: Okay. And where are you currently working?

24 A: First Data Corporation.

25 Q: Okay. And how long have you been there?

State v. Weatherall - 2014-GS-26-01415
AVRA WOODBERRY - DIRECT BY LIVESAY

329

- 1 A: Five years.
- 2 Q: Okay. Now, what is your relation to the victim in this
3 case?
- 4 A: He's my father.
- 5 Q: Okay. Now, the lady that we just saw, testified about
6 his Social Security card; are you familiar with that?
- 7 A: Yes.
- 8 Q: And if you don't mind, tell this jury how you're familiar
9 with it?
- 10 A: My name was on the card. I would basically be
11 responsible for his funds and, you know, make purchases that
12 he needed. I was basically in charge of his funds.
- 13 Q: And was your name on the card as well?
- 14 A: Only my name was on the card.
- 15 Q: Okay. Now, did he -- was this a situation where he went
16 to you to get money sometimes from the card?
- 17 A: Yes.
- 18 Q: Now, did he have any sort of other income?
- 19 A: No.
- 20 Q: So, the only money he had was the income of the card?
- 21 A: Yes.
- 22 Q: Did you ever use the card?
- 23 A: Yes, to make purchases for him.
- 24 Q: Okay. But never for your own purposes?
- 25 A: No.

State v. Weatherall - 2014-GS-26-01415
AVRA WOODBERRY - DIRECT BY LIVESAY

330

1 Q: And was it only you and him that took control of the
2 card?

3 A: Yes.

4 Q: Okay. And you were the only person that was kind of his
5 guardian?

6 A: Yes.

7 Q: Now, those purchases that you just heard that lady
8 testify to, did you make any of those purchases?

9 A: No.

10 Q: Were you even in Myrtle Beach at the time?

11 A: No.

12 Q: Okay. During that time of 11 -- you know November, early
13 November of 2013, where was your dad living full-time at that
14 time?

15 A: Hemingway, South Carolina.

16 Q: Okay. Now, at some point, did you try to contact him and
17 couldn't get up with him?

18 A: Yeah, it was -- it was right after my birthday, so we
19 spoke then, and then I didn't -- we were calling his cell
20 phone and couldn't get a hold of him after that.

21 Q: And so he had his cell phone and you and him would talk
22 on your cell phone?

23 A: Yes.

24 Q: Now, when you didn't hear from him and couldn't get up
25 with him, was that unusual?

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

331

1 A: Yes, any time I couldn't get a hold of him, his brother
2 would -- I would call his brother and either his brother had
3 heard from him or I would have.

4 Q: Okay. So, once that happened, what did you do to try to
5 see if you could figure out where he was?

6 A: We called around to family and friends and then we
7 discovered that our friend -- his longtime friend Evie had
8 dropped him off on Myrtle Beach.

9 Q: Okay. And did you know anything else about where he was
10 staying in Myrtle Beach or what was going on?

11 A: No.

12 Q: Okay. But at the time, he did not live in Myrtle Beach
13 full-time?

14 A: No.

15 MS. LIVESAY: No further questions, Your Honor.

16 THE COURT: All right. Cross examination?

17 MR. GARDNER: No, sir. We're sorry for your loss.

18 A: Thank you.

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

20 The State can call your next witness.

21 MS. LIVESAY: Your Honor, at this time, the State rests.

22 BY THE COURT:

23 THE COURT: All right. All right, ladies and gentlemen,
24 the State has rested their case. So, now is the time when I
25 have to address some matters of law with the attorneys. I'm

State v. Weatherall - 2014-GS-26-01415
MOTIONS

332

1 gone excuse you back to the jury room. We do have lunch
2 coming for you. So, we'll probably go ahead and take a nice
3 long break at this point in time. We'll wait for lunch to get
4 here, you can eat lunch, and then we'll come back and resume a
5 little bit later.

6 As I said earlier, if you don't want to stay at eat
7 lunch, you can leave, but you need to be back at 1:15. We'll
8 try to get started as soon as after that as we can. Okay?

9 Do not discuss the case even among yourselves; it's too
10 early for deliberations. Don't conduct any independent
11 investigations. We'll take our lunch break now and then we'll
12 bring you back probably in about an hour. All right?

13 Thank you very much.

14 (REPORTER'S NOTE: Jury exits courtroom. The following takes
15 place outside the presence of the Jury.)

16 THE COURT: All right. Any motions at this time?

17 MS. LIVESAY: No, sir, Your Honor.

18 THE COURT: All right. Any motions from the Defense?

19 MOTIONS:

20 MR. BOUCHETTE: Your Honor, at this time, we'd move --
21 the Defense would move for a directed verdict on the charge.
22 Your Honor, quite frankly, prepared for a directed verdict
23 motion and with the testimony that I was anticipating coming
24 forth, but even that didn't come forth. We heard extensively
25 from the chain of evidence witnesses. We heard from the

State v. Weatherall - 2014-GS-26-01415
MOTIONS

333

1 daughter of the decedent. We heard from custodian's record
2 regarding that there was transactions made, I guess, shortly
3 after the death of the decedent or at least with the
4 implication that it was shortly after the death of the
5 decedent. We heard from one witness with any kind of
6 knowledge as to or any kind of, I guess, just knowledge of
7 what would have happened in the room that night. And again,
8 because Ms. Wedlock admitted on the stand that she didn't know
9 what happened in the room. She didn't even really know what
10 happened with regards to transporting of the body after the
11 fact. She just knew that they used her car -- her car around
12 that time.

13 So, the only person whose made any testimony of any sort
14 regarding what happened in the room and what caused the death
15 was the -- was Mr. Bell. According to Mr. Bell's testimony,
16 Mitchell tells him that it was Chicken who killed him.
17 Chicken being the co-defendant that's not here. And, to the
18 extent we were to even believe what Mr. Bell says, the State
19 has to show intent, they have to show malice aforethought,
20 they have to show what happened in that room at least enough
21 of a theory for the jury to come back with a murder
22 conviction.

23 In this case, they've only -- they've presented one
24 witness who says that some other -- that our client said some
25 other guy did it. And other than that, they're just verifying

State v. Weatherall - 2014-GS-26-01415
MOTIONS

334

1 that a death occurred, that a card was used after the fact,
2 and that's been the only testimony presented. I don't think
3 it's enough to submit a murder charge to the -- to the jury
4 and I don't -- I can't quite tell what the State's theory is.
5 I had planned to discuss it on an accomplice analysis. So, if
6 we are to assume that what Marcus Bell says is correct, that
7 Chicken killed him, then we'd have to go through an accomplice
8 analysis on what they were planning to do when they went
9 there, and was it an actual and probable result of what they
10 were planning to go and do there. He didn't present any
11 testimony as to they were planning to go rob him and, you
12 know, one guy had a gun or anything like that. He just says
13 that the other guy killed him by virtue of a beer bottle with
14 no explanation as to what my client said the circumstances
15 were. So, that's literally the only thing for the State to
16 present or has presented in this case is that a death
17 occurred. We have no evidence at all indicating any kind of
18 murder or, excuse me, any kind of intent that would be the
19 prerequisite for the murder conviction. So, on that basis, I
20 would ask that the Court direct the verdict on the murder
21 charge.

22 THE COURT: All right. Ms. Livesay?

23 MS. LIVESAY: Thank you, Judge. Just very briefly. I
24 think what's in the record as evidence is that Mr. Woodberry
25 was not here. He came here from out of town. He was dropped

State v. Weatherall - 2014-GS-26-01415
MOTIONS

335

1 off by a friend obviously to meet Mitchell Weatherall. They
2 obviously checked into the room together. At that time, Mitch
3 obviously knew this man had money and had access to money
4 because he had also had an ATM cash withdrawal the same day
5 for \$200. So, they were in the room together, he knew how
6 much money he had, he knew that he had a card and could access
7 money.

8 We also had a witness come and say that he was being
9 toted out of the room at a later time. That was Tonya
10 Wedlock. Here is him and Joey Garsow. Then after that, Mitch
11 then pulls out the victim's card and hands it to Joey. The
12 only people that would have had that card is the victim or his
13 daughter, Avra. So, the only way Mitch could have gotten that
14 card, was to have gotten it off the victim.

15 Now, we know that victim was killed and murdered in the
16 room. His blood is spattered all over the room. SLED came in
17 and said, look, this is this man's blood, there's nobody else.
18 There's a mixture on the floor that's so weak, we can't tell
19 it's anybody else but him. The lady from Atlantic View came
20 in and say, hey, these are the two people staying in the room
21 and we don't even allow visitors. We like to keep this
22 riffraff out.

23 There has been no evidence in this record to show anybody
24 was even in the room other than this Defendant and the victim.
25 We can ask every witness that comes in here about Chicken, but

State v. Weatherall - 2014-GS-26-01415
MOTIONS

336

1 it doesn't produce any evidence that Chicken was ever in the
2 room, more or less that he was in the room when the incident
3 happened. We've got this man brings him down, checks into the
4 room with him. He is obviously killed in the room. And then
5 we've got the same man toting his body out, and then we've got
6 the same man in possession with his credit card. There's no
7 evidence that anybody else was in the room.

8 There is definitely enough to get past directed verdict
9 that this Defendant killed the victim, and he killed him over
10 the card because once he gets the card, he -- I mean, he's in
11 there laid up with this man dead, blood spattered all on the
12 wall and he is willing to sit in there -- and I can only
13 imagine what that room smelled like -- sitting in there with a
14 dead man and blood all over the room waiting for some money to
15 load up on this card. That's what he was waiting for and soon
16 as he got the card, he gave it to somebody and they used it up
17 within a few hours' time.

18 So, this man had ill intent. He knew what he wanted and
19 he wanted this money from the victim. This is a man who had
20 no residence, he had no job, he had no other way to get money
21 other than the way he got it from this victim.

22 The second thing I wanted to touch on, is that I do
23 believe we have enough to get past directed verdict. The
24 second thing I want to touch on, is Chicken is charged with
25 murder. This is two co-defendants and an accessory after the

State v. Weatherall - 2014-GS-26-01415
MOTIONS

337

1 fact, Joey Garsow. What that means is this is a hand of one,
2 hand of all case. This is not a Chicken did it case and
3 Mitchell Weatherall didn't do it. If Chicken was in the room,
4 which is what they're arguing, all three of them were in the
5 room, it doesn't make Mitchell Weatherall any less guilty.
6 Third-party guilt, which is what they are trying to put in,
7 isn't even appropriate in a case like this because hand of one
8 hand of all says, me and Ginger are both in this together.
9 Whether Ginger does more than I do, doesn't make me any less
10 guilty of hand of one hand of all. So, I think that only goes
11 more towards there is enough for directed verdict, because if
12 you're arguing that they're all in the room, hand of one hand
13 of all says you're still guilty. You're still guilty. You
14 brought the man down, you're in the room, y'all are all doing
15 whatever you're doing, this happens, the altercation breaks
16 out, you stay in the room, you're the one left moving the body
17 and using the car. Mitchell isn't any less guilty because
18 there was a third party in the room.

19 So, I think that only goes towards that we have not only
20 met directed verdict, but this goes towards the fact that this
21 third-party defense that they're trying to convey, doesn't
22 make it any less appropriate to present it to the jury.
23 Legally, it is hand of one hand of all.

24 THE COURT: All right. Anything in reply?

25 MR. BOUCHETTE: Your Honor, I'm trying to take notes here

State v. Weatherall - 2014-GS-26-01415
MOTIONS

338

1 and I couldn't quite figure out, which one was it? Was it
2 nobody, was it nobody else in the room or was there somebody
3 else in the room that was maybe was equally as guilty as he
4 is. One of those -- there's a co-defendant in this case
5 that's charged with murder. If I understood the Solicitor
6 correct, he's charged with murdering the same victim under the
7 same circumstances. Perhaps her theory is some slightly less
8 involvement, but what she's saying is, yes, there was a third
9 party in there and she's claiming hand of one hand of all,
10 then okay, well, you go to the accessory analysis.

11 It's undisputed that he did cause the death or at least
12 that we can concede that there was no evidence submitted tying
13 him directly to causing the death then, okay, the State's
14 theory is he's guilty by virtue of involvement in some way.
15 There's been no evidence, at least direct evidence, as to what
16 they were intending to do. It may be circumstantial regarding
17 the fact the card was used after the fact, but the State's own
18 witness says that he got out of the trashcan at Chapin Park
19 after the fact. Okay. Then even if we get beyond that and we
20 say all right, well, we're doing -- he's hand of one hand of
21 all. He'd have to be analyzed under an accessory type
22 analysis and you'd have to say, all right, well what were they
23 intending to do whenever they got there and if what happened
24 was an actual and probable result of what they intended to do,
25 then yes, you could submit it to the jury, but they have not

State v. Weatherall - 2014-GS-26-01415
MOTIONS

339

1 presented if they're proceeding under a theory of an accessory
2 type analysis. They've not presented anything regarding what
3 the intent was of Chicken and Mitchell whenever they entered
4 the room.

5 And like I say, I'm having a hard time grasping which
6 theory is it. Are they saying Chicken was in the room or he
7 was in the room, but maybe did something else? So, I'm trying
8 to kinda argue both points, but I think whichever way you go
9 to it, it's still not enough to submit to the jury on murder.
10 If the State had chosen to indict him for accessory after the
11 fact, then we'd be having a different conversation. They
12 chose to present him on murder and they haven't presented any
13 evidence regarding, one, what actually caused or who caused
14 the death. And then, two, if they're saying well maybe he
15 didn't cause the death, he was involved with somebody else,
16 they had this plan that resulted in the death; well, what was
17 the plan?

18 I would just challenge the Court to be able to answer
19 those questions and I don't think we'll be able to. And, on
20 that basis, we'd ask for the directed verdict.

21 THE COURT: All right. All right. I'm gonna deny the
22 motion for directed verdict. I think all I have to do is go
23 on whether the existence of any evidence and I think there's
24 enough there to submit to the jury. So, I'm gonna deny your
25 motion for directed verdict.

State v. Weatherall - 2014-GS-26-01415
MITCHELL MONROE WEATHERALL - BY THE COURT

340

1 Anything else?

2 MR. BOUCHETTE: Nothing further from the Defense?

3 THE COURT: All right. We want to go ahead and -- and
4 I'm not gonna make him decide now, but now is a good time
5 before we break for lunch, let me go ahead and question your
6 client on his right to testify?

7 MR. GARDNER: Yes, sir.

8 THE COURT: And then when we come back, I'll decide how
9 -- I'll find out from you how he wants to proceed. Okay?

10 MR. GARDNER: And it might be a good time to see if
11 there's anything, any criminal record to impeach him on.

12 THE COURT: We will. All right.

13 All right, sir, if you'd please raise your right hand.

14 MITCHELL MONROE WEATHERALL, HAVING
15 BEEN DULY SWORN TESTIFIES AS FOLLOWS:

16 THE COURT: All right. Sir, your name is Mitchell Monroe
17 Weatherall?

18 MR. WEATHERALL: Yes, sir.

19 THE COURT: All right. You can put your hand down now,
20 Mr. Weatherall.

21 At this time, I'm going to explain to you certain rights
22 that you have pursuant to the United States Constitution. If
23 you do not understand what I'm telling you, let me know. Do
24 you understand that? Do you understand that?

25 MR. WEATHERALL: Yes, sir.

State v. Weatherall - 2014-GS-26-01415
MITCHELL MONROE WEATHERALL - BY THE COURT

341

1 THE COURT: All right. If you want me to explain
2 anything in more detail, stop me and let me know and I'll
3 explain it to you in more detail; do you understand that?

4 MR. WEATHERALL: Yes, sir.

5 THE COURT: All right. Now, we've now reached the stage
6 of the trial where you may present your defense. You have the
7 right to claim protections given to you by the Fifth Amendment
8 of the United States Constitution which states in part, that
9 no person shall be compelled in any criminal case to be a
10 witness against himself. This means that you cannot be
11 requires to testify in this case. You have the right to
12 testify on your own behalf. However, no one can make you
13 testify. This is a personal right and no one can waive this
14 right except for you.

15 If you decide to testify, you will be subject to the same
16 rules that govern other witnesses and you may be examined and
17 cross examined on any relevant issue in this case. In
18 addition, if you have any convictions involving dishonesty or
19 false statement or for crimes punishable by imprisonment for
20 more than one year and this Court determines that the
21 probative value of admitting the evidence outweighs its
22 prejudicial effect to you, the Solicitor will be able to
23 introduce your record to attack your credibility.

24 Are you aware of any prior convictions that would be used
25 to attack his credibility if he took the stand?

State v. Weatherall - 2014-GS-26-01415
MITCHELL MONROE WEATHERALL - BY THE COURT

342

1 MS. LIVESAY: Your Honor, we've got his NCIC and we will
2 be addressing whatever convictions are on it.

3 THE COURT: All right. Well, let's address them now.
4 What have we got?

5 MS. LIVESAY: We've got it, Judge. Here it is, Judge.
6 Hold on, Judge, I need just a second. I'm trying to look
7 through and catch up to the recent years.

8 THE COURT: All right.

9 MS. LIVESAY: Judge, it looks like he has a lot of
10 misdemeanors, but this NCIC is 26 pages long, so, I'll look at
11 it over lunch. But as of right now, I don't see anything we
12 can use. It looks like a lot of misdemeanors out of
13 Milwaukee, Wisconsin, and probation violations. So, right now
14 I don't see anything.

15 THE COURT: All right. All right. Well, they're gonna
16 look over lunch, Mr. Weatherall, but at this time, they don't
17 see anything that could be used to attack your credibility.
18 However, they will let us know and before I make you or before
19 I ask you decide whether or not you wish to testify, I will
20 make sure that they let us know whether or not you have any
21 convictions that they intend to use against you to attack your
22 credibility. Okay?

23 MR. WEATHERALL: Yes, sir.

24 THE COURT: But, I need to let you know at this time, if
25 you do have any convictions involving dishonesty or false

State v. Weatherall - 2014-GS-26-01415
MITCHELL MONROE WEATHERALL - BY THE COURT

343

1 statement or for crimes punishable by imprisonment for more
2 than one year and this Court determines that the probative
3 value of admitting the evidence outweighs its prejudicial
4 effect and then the Solicitor will be able to introduce your
5 record to attack your credibility. Do you understand that?

6 MR. WEATHERALL: Yes, sir.

7 THE COURT: All right. Now, if you decide to testify,
8 this decision on your part must be freely, voluntarily, and
9 intelligently made with knowledge of the protections given to
10 you by the Fifth Amendment to the United States Constitution
11 and the consequences of your decision to testify.

12 If you decide not to testify, I will instruct the jurors
13 that they cannot give the fact that you did not testify any
14 consideration whatsoever and that there is to be absolutely no
15 prejudice to you because you did not testify. It is left
16 entirely up to you whether or not you testify. You may talk
17 with your attorney, any family or friends or anyone else you
18 want to, but the final decision will be left entirely up to
19 you.

20 Now, do you understand what I've explained to you?

21 MR. WEATHERALL: Yes, sir.

22 THE COURT: Do you have any questions about what I've
23 explained to you?

24 MR. WEATHERALL: No, sir.

25 THE COURT: All right. We're gonna go ahead and break

State v. Weatherall - 2014-GS-26-01415
MITCHELL MONROE WEATHERALL - BY THE COURT

344

1 for lunch. I'm not gonna make you let -- advise me now
2 whether or not you wish to testify. But, when we come back
3 after lunch, I'm gonna go over these issues with you again
4 and, at that time, I'm gonna ask you whether or not you wish
5 to testify in this case. Okay?

6 MR. WEATHERALL: Okay.

7 THE COURT: All right. Anything further, Mr. Gardner or
8 Mr. Bouchette, y'all want placed on the record in that regard?

9 MR. GARDNER: Not in that regard.

10 THE COURT: All right. Anything further the State wants
11 placed on the record in that regard?

12 MS. LIVESAY: I'm sorry, Judge?

13 THE COURT: Anything further you want placed on the
14 record with regard to his right to testify?

15 MS. LIVESAY: No, sir, Your Honor.

16 THE COURT: All right. Anything further from the Defense
17 before we break for lunch?

18 MR. GARDNER: I believe I have my witnesses coming from
19 that jail at 2 o'clock. I know you probably want to do this
20 before then and I don't know what time the jury is coming
21 back. We might need a little bit of extra time, more than an
22 hour. I don't know for sure.

23 THE COURT: Okay. Well, it's 12:30. Let's put it --
24 I'll try to -- is lunch here yet or do we know?

25 CLERK: Yes.

State v. Weatherall - 2014-GS-26-01415
MITCHELL MONROE WEATHERALL - BY THE COURT

345

1 THE COURT: All right. I'll be back about 1:30.

2 MR. GARDNER: Okay.

3 THE COURT: And we'll do it then. Okay?

4 MS. LIVESAY: And just briefly, Judge, the Defense has
5 some witnesses on the witness list, of course I have no idea
6 what they're gonna say. What I'd like to do is get some idea
7 of that on the record before we just put a witness up there
8 and I'm kind of objecting non-stop if it's just a bunch of
9 hearsay. So, is there any way we can proffer some of that?

10 THE COURT: Give me the rule that says you're entitled to
11 know it and I'll make them disclose it to you. I'm not aware
12 of anything.

13 MS. LIVESAY: Well, we'll talk to them before they get up
14 there, Judge.

15 THE COURT: All right. Sounds good.

16 MR. GARDNER: Thank you, Judge.

17 THE COURT: All right. We'll be in recess until 1:30.

18 (RECESS.)

19 *****OFF THE RECORD*****

20 (On the Record.)

21 (REPORTER'S NOTE: The following takes place outside the
22 presence of the Jury.)

23 THE COURT: All right, Mr. Weatherall, if I could get
24 you to raise your right hand again, please.

25 MITCHELL MONROE WEATHERALL, HAVING

State v. Weatherall - 2014-GS-26-01415
MITCHELL MONROE WEATHERALL - BY THE COURT

346

1 BEEN DULY SWORN TESTIFIES AS FOLLOWS:

2 THE COURT: All right, sir, do you recall, and you can
3 put your hand down. Do you recall before we broke for lunch
4 that I went over with you your rights regarding whether or not
5 you testify in this case and the protections afforded to you
6 by the Fifth Amendment of the United States Constitution. Do
7 you recall what we went over?

8 MR. WEATHERALL: Yes, sir.

9 THE COURT: Do you have any questions about what we went
10 over?

11 MR. WEATHERALL: No, sir.

12 THE COURT: Do you want me to go over those rights and
13 instructions again?

14 MR. WEATHERALL: No, sir.

15 THE COURT: Okay. Have you an ample opportunity to
16 discuss with your attorney or whoever else you want to discuss
17 the issue with, have you had an ample opportunity to discuss
18 with them and ask them any questions you might have regarding
19 your right to testify?

20 MR. WEATHERALL: Yes, Your Honor.

21 THE COURT: All right. Now, before we proceed, is there
22 any prior criminal convictions that would be used to impeach
23 him with?

24 MS. LIVESAY: No, sir.

25 THE COURT: So, there's no prior criminal activity that

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

347

1 would be used to impeach you. I ask you at this time, do you
2 wish to testify in this case?

3 MR. WEATHERALL: No, Your Honor.

4 THE COURT: All right. Is this your decision?

5 MR. WEATHERALL: Yes, Your Honor.

6 THE COURT: All right. Anything you wish to put on the
7 record in that regard any further, either Mr. Gardner or Mr.
8 Bouchette?

9 MR. WEATHERALL: No, sir.

10 THE COURT: Okay. Anything further y'all would like to
11 say?

12 MR. BOUCHETTE: No, Your Honor.

13 MR. GARDNER: The only thing I would like -- and I think
14 you did a great job doing it, it's just that my two cents
15 would be he knows that there is no impeachment value out there
16 and that despite that, he has made his decision freely and
17 voluntarily.

18 THE COURT: Okay. And this is what you want to do?

19 MR. WEATHERALL: Yes, sir.

20 THE COURT: Okay. Anything further the State wants
21 placed on the record in that regard?

22 MS. LIVESAY: No, sir.

23 BY THE COURT:

24 THE COURT: All right. Now, does the Defendant intend to
25 present a defense in this case?

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

348

1 MR. GARDNER: Based on this information, we are going to
2 rest.

3 THE COURT: Okay. All right. Because I'm trying to
4 decide whether we want to -- I haven't -- do we want to hold
5 the jury back there while I come up with closing charges and
6 try to go ahead and do it today or just come back -- release
7 them for the remainder of the day, come back tomorrow morning
8 and do closing arguments, charges, and deliberations?

9 MS. LIVESAY: What you want to do Johnny?

10 MR. GARDNER: I'm okay either way. do you have a
11 preference?

12 THE COURT: It would certainly help me and I would feel
13 less rushed if we would go ahead and cut them loose for today
14 and then come back first thing tomorrow morning with -- and do
15 closing arguments ---

16 MS. LIVESAY: Judge ---

17 THE COURT: --- charges and deliberations.

18 MR. GARDNER: Yes, sir.

19 MS. LIVESAY: My only concern is not about doing the
20 closings this afternoon, it's just that once we close, then
21 we're stuck with them deliberating into the evening hours. I
22 don't know if we want to do that or if we just want to bring
23 them back and let them deliberate throughout the day tomorrow.

24 THE COURT: That's what I'm talking about.

25 MS. LIVESAY: Yes, sir, I think that would probably be

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

349

1 better. I mean, they seem to -- I know in the past I've run
2 into issues when we start deliberating into the evening hours
3 and nobody planned for it. So, a lot of times, the next day
4 is better.

5 THE COURT: All right. Then that's what we'll do. What
6 I'll do is ---

7 MR. GARDNER: I thought I understood you, but I may have
8 gotten confused.

9 THE COURT: No. No, I think she was confused. You were
10 correct. What we're gonna do is bring the jury back in. I'm
11 gonna let you rest on the record.

12 MR. GARDNER: Yes, sir.

13 THE COURT: Then I'm gonna advise them that the State has
14 rested their case, the Defense has rested, that the only thing
15 left is closing arguments, a charge on the law and
16 deliberations. But, because of the time, it's gonna take a
17 while to get this together and we think it'd be best to come
18 back tomorrow morning and do it all tomorrow morning and do it
19 that way.

20 MR. GARDNER: Yes, sir.

21 THE COURT: Is that agreeable?

22 MR. GARDNER: Yes, sir.

23 THE COURT: All right. That agreeable with the State?

24 MS. LIVESAY: Yes, sir.

25 THE COURT: All right.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

350

1 MS. LIVESAY: Thank you.

2 THE COURT: Anything from the State before we bring the
3 jury in?

4 MS. LIVESAY: No, sir.

5 THE COURT: Anything from the Defense?

6 MR. GARDNER: You want us to go and do our directed
7 motion to keep the record straight or do you want to wait
8 until ---

9 THE COURT: Well, I mean you can make it again, but where
10 you made a directed verdict at the close the State's case and
11 there's no defense presented, I don't know that there's any
12 real need.

13 MR. BOUCHETTE: I wasn't real sure what the ---

14 MR. GARDNER: I've done it -- done it both ways and
15 hopefully we're good, we're covered.

16 THE COURT: Yeah, you're covered because there's nothing
17 else to present. Had there been something presented ---

18 MR. GARDNER: Yes, sir.

19 THE COURT: --- then I think you could.

20 All right. Let's go ahead and bring the jury in.

21 (REPORTER'S NOTE: Jury enters courtroom.)

22 THE COURT: Welcome back, ladies and gentlemen. I hope
23 everybody had a good lunch. The State has rested their case.

24 Mr. Gardner, Mr. Bouchette, does the Defense wish to
25 present anything?

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

351

1 MR. GARDNER: Your Honor, based on the developments here
2 today, we will rest.

3 THE COURT: All right. All right, ladies and gentlemen,
4 the State has presented their case. The Defense has rested in
5 their case. So, all the evidence has been presented to you.
6 The only thing remaining is for the attorneys to make their
7 closing arguments to you, for me to charge you on the law to
8 be applied in this case and then for you to deliberate on the
9 verdict. I've discussed with the attorneys and everybody is
10 agreeable, we're gonna let you go ahead and go home for the
11 evening and we're gonna do all this first thing tomorrow
12 morning. We're gonna ask that you be back in the jury room
13 tomorrow morning at 9:15.

14 Again, it's still too early for deliberations, so do not
15 discuss the case with anyone, even among yourselves. Don't
16 conduct any independent investigations.

17 I hope everybody has a good evening. We'll see you back
18 at 9:15 tomorrow morning.

19 Thank you very much.

20 (REPORTER'S NOTE: Jury exits courtroom. The following takes
21 place outside the presence of the Jury.)

22 THE COURT: All right. I'm gonna draw up some charges
23 and I'll have them ready for you first thing tomorrow morning,
24 possibly even a little bit later this afternoon. I give you
25 -- I'll give you two opportunities to, to object to my

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

352

1 charges. Number one, when I give them to you, you can read
2 them, and then again after I charge the jury, I'll give you a
3 second opportunity because sometimes it does sound differently
4 when you hear me charge the jury versus when you read it on a
5 sheet of paper. So, I will give you two opportunities to
6 raise any objections or challenges of that nature. If you
7 have anything special you want me to charge or know of
8 anything special you want me to charge, email it to me or get
9 it to me later this afternoon.

10 Now, as I understand, closing arguments, what was that
11 last Supreme Court case that came out?

12 MR. BOUCHETTE: Your Honor, unless I'm mistaken, I think
13 since we didn't introduce any -- put any items into evidence,
14 that we still got last closing.

15 MS. LIVESAY: That's right.

16 THE COURT: Okay.

17 MR. BOUCHETTE: We had some for identification.

18 THE COURT: So, you have to ---

19 MS. LIVESAY: Here's what happened, Judge. The only
20 thing that changed is when they put evidence in. Justice
21 Beatty put something out saying that it was never meant for us
22 to have last close. So, even when they put evidence in, we're
23 supposed to basically do our entire closing and then we can
24 reply to anything they say.

25 But as far as if they didn't put any evidence in, they

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

353

1 have last close.

2 THE COURT: Okay. So, you close in full.

3 MS. LIVESAY: I close first.

4 THE COURT: And then they close in full.

5 MS. LIVESAY: Yes, sir.

6 THE COURT: And there is no reply.

7 MS. LIVESAY: That's right. That's correct.

8 THE COURT: Okay.

9 MS. LIVESAY: There's nothing changed about that.

10 THE COURT: Okay. All right. Is that agreeable with
11 everybody?

12 MR. GARDNER: Yes, sir.

13 MS. LIVESAY: We can get you the case law, Judge.

14 THE COURT: All right. Well ---

15 MS. LIVESAY: I'm just throwing that in there.

16 THE COURT: To tell you the truth, I couldn't tell what
17 they were wanting to do.

18 MR. GARDNER: All I can say is, I'm glad y'all work on
19 the committee that went back and forth with this.

20 MS. LIVESAY: If you want to give me an opportunity to
21 reply, there's a first time for everything, Judge.

22 THE COURT: But, if they had put something in, then you
23 could've -- you still have to close in full, but then you do
24 get a brief reply ---

25 MS. LIVESAY: Right.

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

354

1 THE COURT: Is that correct?

2 MS. LIVESAY: Yes, sir.

3 THE COURT: Okay.

4 MR. GARDNER: But that is not the case.

5 THE COURT: That is not the case here. Okay. So you'll
6 close in full and then they'll close in full and then they'll
7 deliberate.

8 MS. LIVESAY: That's correct.

9 THE COURT: So, if you've got anything, special charges
10 you want me to consider, email them to me or just bring the up
11 to the office. I'll be working on them this afternoon.

12 MS. LIVESAY: Yes, sir. I can already tell you we're not
13 gonna have any special charges.

14 THE COURT: Okay. All right.

15 MR. GARDNER: Administratively, just for the record,
16 everybody is worried, I saw the young lady out on the sidewalk
17 earlier, the witness, the Wedlock lady.

18 MS. LIVESAY: What now?

19 MR. GARDNER: We're getting a chicken filet sandwich and
20 we're gonna try to get her somewhere to the beach or something
21 but we're not gonna get her another room or anything.

22 THE COURT: All right. Well, just let her know that she
23 is now released from her subpoena. Everybody is released from
24 their subpoena and they can go.

25 MS. LIVESAY: Johnny, we'll take her if you want us to.

State v. Weatherall - 2014-GS-26-01415
CHARGE CONFERENCE

355

1 MR. GARDNER: That would be great. Thank you.

2 MS. LIVESAY: Okay.

3 THE COURT: Okay. Sounds good.

4 All right. Anything from the State before we recess for
5 the evening?

6 MS. LIVESAY: No, sir.

7 THE COURT: Anything from the Defense?

8 MR. BOUCHETTE: Nothing further, Judge.

9 THE COURT: All right. We'll be in recess until 9:00 --
10 well, I've got them coming in at 9:15. We'll recess until
11 9:30 tomorrow morning.

12 MR. BOUCHETTE: Thank you, Judge.

13 THE COURT: All right.

14 (RECESS.)

15 END OF DAY THREE.

16 *****OFF THE RECORD*****

17 (On the Record.)

18 MARCH 23, 2017 - DAY FOUR

19 (REPORTER'S NOTE: The following takes place outside the
20 presence of the Jury.)

21 CHARGE CONFERENCE:

22 THE COURT: All right. I think my clerk provided
23 everyone a copy of my proposed charges. As I said earlier,
24 I'll give you two opportunities to raise any challenges,
25 objections, or requests for additional charges. At this

State v. Weatherall - 2014-GS-26-01415
CHARGE CONFERENCE

356

1 point, once now and then after I actually charge the jury.

2 At this point in time, are there any challenges or
3 additional charges from the State?

4 MS. LIVESAY: No, sir, Your Honor.

5 THE COURT: Any from the Defense?

6 MR. GARDNER: Yes, sir, very briefly. Number one, the
7 reasonable doubt, we would request that you just use
8 reasonable doubt is the kind of doubt that would cause a
9 reasonable person to hesitate to act and do not use the old
10 one about the firmly convinced. We'd ask that you just use
11 the hesitate to act.

12 THE COURT: What's the State's position on that?

13 MS. LIVESAY: Your Honor, firmly convinced has been used
14 over and over again throughout not only Horry County, but
15 Columbia, Spartanburg, and the reason that was added was
16 because there was some case law that came down to help define
17 what reasonable doubt was. That's where we got firmly
18 convinced. So, of course, I want to keep it firmly convinced
19 because I want everybody to have the same trial and that's
20 what's read in every other murder trial.

21 THE COURT: Okay. All right. I note your objection.
22 I'm gonna leave the firmly convinced charge in there.

23 MR. GARDNER: Thank you, Your Honor.

24 THE COURT: All right.

25 MR. GARDNER: The other one, Your Honor, is hand of one.

State v. Weatherall - 2014-GS-26-01415
CHARGE CONFERENCE

357

1 We'd ask that that not be charged. I've looked through my
2 notes, I don't see any evidence of any conspiracy or multiple
3 defendants acting in concert or anything like that.

4 THE COURT: All right. What's the State's position on
5 that?

6 MS. LIVESAY: It was actually Mr. Gardner that brought up
7 where we're at now with hand of one hand of all. It was him
8 and his associate that brought up that there was two people in
9 the room and that two people were there when all of this
10 happened. He repeatedly went over, have you seen Chicken, do
11 you know Chicken, he's also charged with murder. Therefore,
12 we have now two people in the room. So, now we are left with
13 having to read hand of one hand of all. Mitchell Weatherall
14 is on trial. So, there's no way around reading hand of one is
15 the hand of all. Both are in the room, both are acting,
16 there's circumstantial evidence around Mr. Weatherall bringing
17 him here and there's circumstantial evidence about him using
18 the card afterwards.

19 THE COURT: All right.

20 MS. LIVESAY: So I think we have to read it.

21 THE COURT: All right.

22 MR. GARDNER: There's no evidence that there was more
23 than person was in the room at the time of the homicide.

24 THE COURT: All right. All right. I think there is.
25 I'm gonna leave it in. I note your objection, but I overrule

State v. Weatherall - 2014-GS-26-01415
CHARGE CONFERENCE

358

1 it.

2 MR. GARDNER: The other one is an addition that I would
3 request. This is -- I've requested this with you before.
4 It's 17-625-65. I request that you charge this to the jury.
5 This is the law that the Solicitor will get the prisoner's
6 prison sentence reduced to testify, and since he testified he
7 wasn't expecting anything from the Solicitor, I ask you to
8 charge this because this would be a fair statement of what
9 he's gonna get.

10 THE COURT: All right. What's the State's position?

11 MS. LIVESAY: Your Honor, this has absolutely nothing to
12 do with instructing whether or not this Defendant, in looking
13 at the trial, whether or not he's guilty or not guilty. I
14 believe that it would have been appropriate to ask Marcus Bell
15 just about this downward departure issue. It would've been
16 for cross examination and I think that's what it would have
17 been used for. But, for a jury instruction, we're just
18 instructing them on reasonable doubt, guilt, innocence, and
19 what you're supposed to be looking at when you're finding
20 whether or not this man is guilty. We have already included
21 instructions about a prior record, which is right on point for
22 Marcus Bell and goes towards his credibility. I do not find
23 this instruction to be appropriate and, in fact, I think it's
24 more confusing than anything else.

25 MR. GARDNER: Your Honor, if she's gonna file a motion

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

359

1 for this young man's sentence to be reduced, I will withdraw
2 this request. If she will tell the Court that her office is
3 not gonna try to get this sentence reduced and that would be a
4 fair presentation to the jury and I will withdraw this
5 request. If they are planning on doing it, then it's not fair
6 to the jury and I'd ask that you charge it.

7 THE COURT: Okay. I disagree. I'm gonna overrule it.
8 I'm not gonna charge that. All right?

9 Anything else?

10 MR. GARDNER: No, Your Honor.

11 THE COURT: All right. Anything from the State before we
12 bring the jury in?

13 MS. LIVESAY: No, sir.

14 THE COURT: Anything from the Defense?

15 MR. GARDNER: No, Your Honor.

16 THE COURT: All right. We'll bring the jury in, the
17 State will close in full, Defense will close in full, and
18 that'll be it, and then I'll charge.

19 All right. Let's go ahead and bring the jury in.

20 (REPORTER'S NOTE: Jury enters courtroom.)

21 BY THE COURT:

22 THE COURT: All right, ladies and gentlemen, welcome
23 back. I hope everybody had a great evening. I appreciate you
24 being prompt again this morning. You don't know now much that
25 is of assistance to the Court and I want to thank everybody

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

360

1 for being prompt this morning.

2 Now, we're ready to proceed with the trial of this case.
3 We've reached the point in the trial where the only thing left
4 is for the attorneys to make their closing arguments and for
5 me to charge you on the law to be applied in this case. Now,
6 just like their opening statements, these closing arguments by
7 the attorneys are not evidence in this case. It is simply the
8 attorneys' contention as to what they feel the facts are in
9 this case and what they feel the law to be applied in this
10 case is. If at any time an attorney references a factual
11 issue that is different from the facts as you find them to be,
12 or references the law that is different from the law as I will
13 charge you at the close of their closing arguments, then
14 you're to disregard that portion of their argument because
15 this is not evidence, it's not a charge on the law; it's just
16 the attorneys' contention as to what they think the evidence
17 has shown and the law to be applied in this case.

18 All right. Ms. Livesay?

19 MS. LIVESAY: Thank you, Judge.

20 CLOSING BY LIVESAY:

21 MS. LIVESAY: Ladies and gentlemen of the jury, we are
22 here for closing statements. This is just us telling you what
23 you saw. Now, what did we see, what did we learn in this
24 case? We learned that Helbert Woodberry, an older man on
25 Social Security, was found face down, naked, at Postal Way in

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

361

1 Carolina Forest, Thrown away, discarded, like a piece of
2 trash. That's what we know. No, wallet, no watch, nothing on
3 him.

4 So, we already know we got a murder or really what I call
5 it is a killing because that's really what this is. Murder is
6 just this legal term that we use. Really what it is, is a
7 killing. Now, how do we know it's what you call a killing, an
8 unjustified killing? Here's how you know. One, the man's
9 blood is sprayed all over a room at Atlantic View. Just his
10 blood. You find anybody else's blood in the room? No. No
11 evidence anybody else was bleeding in the room but the victim.

12 Now, what else do we know? What are the injuries on the
13 victim that tell you this is a killing? He's hit twice in the
14 back of the head. Dr. Proctor told you back here, not up
15 here, not on the arm, not on the leg, not on the chest, twice
16 in the back of the head. That's -- that is a killing. That
17 is a killing.

18 Now, what other wounds did he have other than these in
19 the back of the head? Defense wounds, trying to hold his hand
20 up to defend himself. Those were the other wounds he had Dr.
21 Proctor told you about. Not wounds on his knuckles. There
22 were no wounds there. There were no split knuckles where
23 somebody had been in an altercation, none. No injuries up
24 here on the top of the hand to indicate this was some sort of
25 altercation. There weren't no altercation. This didn't go

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

362

1 but one way. This man had no injuries on his knuckles, he had
2 no injuries that he ever threw a punch. His only injuries
3 were defense wounds, defending himself and the two injuries in
4 the back of the head.

5 Now, the question is, is this killing a unjustified
6 killing to the point it is a murder. Is it a murder? There's
7 really two kinds of unjustified killings. There's voluntary
8 manslaughter and then there's murder. Okay? We're not here
9 for voluntary manslaughter. Voluntary manslaughter says I'm
10 in this heat of passion rage and I killed somebody. I come
11 home and my husband is in bed with another woman and I'm in a
12 heat of rage and I killed either one of them or both of them.
13 Okay? Nothing like this in this case. Okay? This man was
14 struck, not once, not once. He was struck once, bam, blood is
15 slinging in the room. Back again, bam, a second time. That's
16 how you know there's a depraved heart. That's really what
17 malice is. See malice is again this legal term we use, but
18 what does it mean? It means that you have an ill will, that
19 you have a depraved heart, you have a depraved indifference
20 for another human life. Basically, the short version is you
21 don't give a damn about this person to the point you're
22 willing to take their life. It's not always waiting in the
23 bushes. Sometimes it is just that ill will, depraved heart; I
24 have a complete indifference for your life. That's what it
25 means for another human life.

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

363

1 Now, we know this is a killing. We know that it is a
2 viscous killing. Okay? This is a hand to hand killing. We
3 are up close and I am taking your life. That's what this is.

4 Now, the question is, how do we know who killed him and
5 how do we know, again, that he has this ill will and this
6 depraved heart. Okay? The victim was not from Myrtle Beach.
7 His license says Hemingway, and this young lady tells you he
8 was living in Hemingway. Okay? Hemingway, I've been to
9 Hemingway, been through Hemingway. That is a whole different
10 ballgame than Myrtle Beach, Atlantic View Motel. Okay? I am
11 from a small town, Tarboro, about two stop lights. Myrtle
12 Beach is a whole different ballgame than that area. Okay?
13 Not only Myrtle Beach, but Atlantic View, Myrtle Beach is
14 definitely a different ballgame. Okay? This man had no idea
15 what he was getting into. This man was an older man, who
16 couldn't even control his finances. His daughter had to
17 control his card. That's where he was in life. He couldn't
18 even -- he had somebody else handling that. He was no match
19 for a person living on the streets in Myrtle Beach trying to
20 survive. This was never a equal match. This was always,
21 always an easy kill for this man. That victim was a older man
22 on Social Security, that was his only income, and the poor
23 fellow couldn't even do that on his own. He was no match for
24 what was coming in Myrtle Beach.

25 Now, how did he get there, because he ain't from here.

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

364

1 He's not from here. I can tell you how he got here, this
2 Defendant lured him here. This Defendant is running the
3 streets of Myrtle Beach. He's homeless, all the time running
4 these streets. He lured him here. This was his hometown.
5 This was his home turf, not the victim's. He lured him here.

6 Now, why, you have to ask why. We know that Mitchell
7 Weatherall, the Defendant, already had a boyfriend, already
8 had a boyfriend. Tonya told you, Joey Garsow was his lover.
9 Marcus Bell come up and kind of told you, yeah, yeah,
10 homosexual, his boyfriend was out at the jail in a different
11 area. So, this man had a significant other. So, why bring
12 this man to the Atlantic View Motel? You obviously do not
13 have good intentions. You're not looking for somebody else,
14 you're not looking for other companionship from this man, you
15 already have somebody. You're looking for something else from
16 him. You've got already an ill plan using this man for
17 something other than good intentions. There was never good
18 intentions on the Defendant's part, ever. He brought this man
19 here because he was homeless, he had no money, he had nowhere
20 to live, so he was looking for somebody he could get money
21 from, could get somewhere to live from, could get something
22 out of, and that was the victim. He never had good intentions
23 for that man, ever. He brought that man here to use as much
24 as he could and when he couldn't use him anymore, that was it.
25 He had no use for that victim.

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

365

1 Now, how do we know that, because Helbert was the one
2 that drew out \$200 on his card. Helbert is the one that comes
3 down here and pays for the room for him and Mitchell
4 Weatherall. Now, ironically, when we look at this calendar,
5 ironically, he's spending money when he first checks in.
6 Check-in, everything is good, everything is straight,
7 everybody is having a good time. Now, Saturday, when he hits
8 this insufficient funds, that's when everything goes bad for
9 the victim. Okay? You notice, he's still good Friday,
10 Saturday morning, Saturday afternoon, he's hanging out. He's
11 using his card, everything is on the up and up. Now,
12 everything is cool between him and the Defendant as long as
13 that card is swiping, as long as he's got money and he can use
14 him and he can buy cocaine or whatever else he wants from him,
15 everything is cool. When he uses up all of that guy's money.
16 He has no more use for that victim, no more use. And when he
17 used up all his money, he didn't care anymore about this
18 victim. He had no more use for him; he was done with him and
19 he was not gonna sit in that room with him when that victim
20 had nothing to give him. We never hear from him again until
21 he's carting him out of the room on the 5th. Once that money
22 is gone, that victim is gone. He has no more use for him.
23 That's how you know depraved heart. That's how you know ill
24 will.
25 And not only that, but he's sitting in the Atlantic View,

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

366

1 this man is laid out on the floor dead from a head wound, you
2 know he's bleeding because there's blood all in the room and
3 while he's laying there dead in his last moments of life, if
4 you're wondering, if you are wondering what depraved heart and
5 ill will is, it is when a man is laying on the floor bleeding
6 and this man over here is going through his pockets to get his
7 Social Security card out. If you are wondering what a
8 complete indifference to life is, that is it. When he is
9 laying down on the floor dead and this man is shuffling
10 through his pockets to get what he came for, which was the
11 last dime Helbert had to his name. His life was worth that
12 card to this Defendant and not a penny more and not a breath
13 more.

14 If you wonder what ill will is, depraved heart, it is
15 sitting held up in a room with a deceased man with blood all
16 over the walls. Okay? I cannot imagine the smell in that
17 room. It, it had to be out of this world unreal; it had to
18 be. It had to be with that body in there. And it never
19 slowed him down from getting what he wanted the whole time.
20 He is down there reaching in a dead man's pocket taking
21 everything he's got. That is ill will. That is an
22 indifference to life. Then after he does that, if we're still
23 wondering, if we're still wondering how this Defendant feels
24 about the victim, we know. Because after he takes the card,
25 after he gets rid of the man's clothes, after he does all

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

367

1 that, he rolls him up, he goes and gets the vehicle, he gets
2 his lover, his boyfriend, okay, and the two of them now,
3 neither one of them have any use for this man. They've got
4 what they want, the money has loaded back up on the card.
5 Good times are coming, okay, good times are coming. Well,
6 nobody likes to party with a dead man in the room. That kind
7 of kills the good time a little bit, even -- even for this
8 crowd. Now, the blood on the wall and the smell, I'll give it
9 to them, that don't slow them down. They cart this man out
10 and drove him in the woods, this Defendant does. Okay? He
11 had a phone, that's gone, took his card, his clothes are gone,
12 and then they go and throw him and discard him in the woods
13 like a piece of trash, like a absolute piece of trash. That's
14 what they thought of this man.

15 After they discarded the body, they're done with him, I'm
16 tired of him, I don't even want to look at his dead body up in
17 the room with me no more. After that, then they break that
18 card out, which is what they wanted in the first place. Now,
19 they know, this Defendant knows that he's laying out in the
20 woods, laying out in the woods and he gives it to his
21 boyfriend, here, get what you can off this card. And those
22 two people, and you heard Tonya, her and Joey go out and just
23 I mean swipe it, swipe it, swipe it. I mean they swipe that
24 man dry within five or six hours. They are so busy swiping
25 that card. Oh, some of the swipes are within two or three

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

368

1 minutes. Then they come back to the room and they party in
2 the room all night. If you're wondering what ill will and
3 depraved heart is, it's when you're sitting in there partying
4 off the dime of a man you just killed whose blood is still all
5 over the room. That is when you have an indifference to life.

6 Now, they want to tell you, well he should have called
7 the police, but he didn't.. What? What? I almost like I'm
8 being punked for somebody to even say that. Do you know how
9 crazy that is? He should've called the police. We are way
10 past should have called the police. This man is somebody who
11 after he killed him, laid up in the room with him, tried to
12 clean the room up, dumps his body out and then uses his card.
13 Uses his card to party with in the same room. We are way past
14 he should've called the police, if that's the only thing he
15 did wrong. We are way, way, way past that, way past that.

16 Now, Mitchell Weatherall, the Defendant in this case, has
17 walked the streets a long time; there's no doubt about it. He
18 has run the streets with Tonya and that other guy for a long
19 time. So, I'm sure he has street smarts. I am sure he is
20 probably smarter than I am about a lot of things, which is why
21 he dumped the body and which is why he tried to clean up the
22 room. As you heard Missy tell you, for the most part, the
23 room was clean. The room is clean. She said all we did was
24 when we were shampooing up, it was real bloody, but other than
25 that, for the most part, the bathroom was clean. For the most

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

369

1 part, the room was clean. There was some glass on the floor,
2 the white stuff she couldn't vacuum up. Now, the white stuff,
3 I'm gonna tell you, the white stuff had to either be powder,
4 Clorox or something to try to soak that blood up and get that
5 smell out of the room. That's what that white stuff had to be
6 on the floor and when she couldn't get it up because it's
7 right there where the blood is, and she didn't even notice it
8 until when she's trying to get it up with the shampooer, it's
9 turning red. So, that was definitely to cover up the scent.
10 He thinks by covering up the scent and discarding the body, he
11 was gonna get away with this; that's what he thought. He was
12 hoping, he was smarter than Detective Truex. He thought he
13 was smarter than Investigator Pop, me, and the most person or
14 persons that he wants to outsmart are the 14 of you sitting
15 here. Okay? That's why people discard bodies. That's why
16 people clean rooms up. That's why they do these things
17 because they're trying to cover up a terrible act. So either
18 the police can't find the body -- no body, no crime; I hear it
19 all the time. That's why he hid the body. It's no secret
20 there. How you gonna charge me with murder? You don't even
21 have the body. So, he was trying to get rid of the body to
22 fool these people here so he would never get charged. Where
23 is the body? How you gonna charge me with anything? He was
24 cleaning up the room to get rid of any evidence, that's why he
25 cleaned up the room. None of that man's stuff was found in

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

370

1 that room. None of that man's stuff was found near his body.
2 He completely discarded it. And he did outsmart us there; we
3 never found it. We never found the phone, we never found
4 anything.

5 Okay? Whatever else was in that room, we don't know
6 because he cleaned it up and then the staff went in there and
7 they cleaned it up and then they re-rented the room to
8 somebody else. This Defendant did all this to get away with
9 it, to trick the police, to trick me, and to try to trick the
10 14 of y'all. Don't, don't fall for that. Don't fall for
11 that. Okay? People hide bodies, they cover up evidence in an
12 effort to get away with it. That's why they do it. There's
13 no other reason to do it.

14 Now, they have told you over and over about this guy
15 named Chicken. Chicken was in the room. Chicken was in the
16 room. Chicken did it. Chicken did it. Chicken did it. Let
17 me tell you something, folks, do not, do not be fooled by
18 that, do not. And in fact, it reminds me of what I used to
19 say when I was in college. I was thinking about it this
20 morning. When I was in college, I remember going off, I had a
21 card, come home for the holidays, I went off with one of my
22 girlfriends, her and I. I had to be home by 10:30; I had
23 strict parents, 10:30. This other girl, you always have that
24 one friend, she ain't got no curfew. So, her and I go out, we
25 of course get gone and before you know it, you find yourself

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

371

1 and it's about 12 o'clock. I remember coming back, rolling up
2 to the house, you know, I already knew I had done wrong. I
3 already knew I was supposed to be home. I knew, I knew it was
4 my fault, I knew the rules, I knew I had disobeyed them. The
5 little girl I was with was named Sarah. As soon as I came in,
6 I remember as soon as I came in, Sarah was out late, Sarah was
7 out late. I saw this other girl, she was out 11, 11:30. So
8 and so was out; I saw her out. Everybody, everybody, when
9 they do wrong, I'm telling you, everybody, the go-to move is
10 always how about so and so, how about so and so. I'm gonna
11 tell you, folks, what my momma told me without the colorful
12 words. I'm not worried about them; I'm worried about you.
13 You are the one standing in front of me; not these people and
14 that same rule applies today. This is his trial. This is the
15 day to decide whether or not he did something wrong and
16 whether or not he's guilty. Okay? It doesn't matter about
17 anybody else. Those people are charged; they're gonna have
18 their day, but today is not their day, today is Mitchell
19 Weatherall's day. So, do not let this crowd get you looking
20 over here at something sparkling. Don't look at my guy, don't
21 look at what he did, look over here, look over here at this
22 person. Look at what they did. Look at who they are. Don't
23 let that fool you. Don't let that trick work because that's
24 what it is. Look over here. Today, look right here at
25 Mitchell Weatherall. This is his day. We're deciding today

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

372

1 whether or not he's guilty, whether or not he has done
2 something wrong and when you look at the evidence, when you
3 look at the evidence, everything, absolutely everything points
4 to Mitchell Weatherall. Everything points to him.

5 They want to come in here and tell you, well, he wouldn't
6 have brought this guy somewhere that he goes and killed him,
7 he wouldn't have done that. He, are you -- what? He don't
8 care. This is a guy that's homeless. You ask Angie Gunter or
9 Norma, do you know Mitchell Weatherall? No. These people
10 don't know who he is. These people have a high turnover.
11 Like Tonya told you, they basically just trying to get money
12 up to get a room. He don't care. Talking about bringing it
13 back to somewhere he's been before, this man does not care.
14 He moved that body out of the room at 7:30 at night. On the
15 second camera view when they're loading him up, there's
16 actually a guy walking on the second floor back to his room.
17 Do not fall for that, he wouldn't bring him back to somewhere
18 he goes. He does not care. He does not care. He lives on
19 the streets and he's from Wisconsin. He got a victim who he
20 thought he had discarded and nobody would ever catch him.
21 It's not that he doesn't care, it's that he thinks he is
22 smarter than everybody else. He thinks he is smarter and he
23 can get away with it. That's what this is all about, cleaning
24 up the room and discarding the body.

25 Now, they're gonna talk to you a lot about intent and

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

373

1 malice. That's what they're gonna talk to you about. There
2 is no doubt, no doubt, that this had to be one of the most
3 malicious, ill will, depraved heart crimes that I have seen in
4 a long time. To treat a human life the way this victim was
5 treated by this man says nothing but complete depraved
6 indifference to this man's life. When he couldn't do anything
7 else for him, that was it. When he used up the money and he
8 used up everything else, he was done with him and he had to
9 stay in the room because he did it. He did it and he had to
10 cover it up. People know that there's things out there now,
11 DNA, fingerprints, that's why he's cleaning the room, that's
12 why he's in there throwing that Clorox on the floor. That's
13 why he's in there wrapping that body up because he doesn't
14 want to get caught. He doesn't want to get caught and he knew
15 he was the one that did it.

16 Now, I'm gonna show you this video very quickly and we're
17 not gonna watch the whole thing. Tonya pointed out some
18 things and I feel like it was difficult to see, so I want to
19 point it out to you one more time. Now, this video is in
20 evidence, so you can take it back there and watch it.
21 Anything that's put into evidence, you can watch and look at
22 again.

23 (REPORTER'S NOTE: State's Exhibit 77 published for jury.)

24 MS. LIVESAY: The area to look in that Tonya was pointing
25 out is right here. A few seconds before you see them come out

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

374

1 of the room, you see them put the body down. You see them
2 pick the body back up and then you see them move in this
3 direction.

4 Ginger, can you move it back just a few seconds, please,
5 Investigator Pop. Thank you.

6 You're gonna see them come out of the room right here,
7 put the body down and they gonna pick the body back up right
8 there and move it to the car.

9 Now, the time is off by one hour, which means really it
10 was 7:27 at night. Now, he wants you to be convinced that
11 this man cares something about the fact that they were staying
12 in the room together; he doesn't care. It's 7:27 at night,
13 7:27 and they moving a dead body out of Atlantic View Motel
14 into a car to drive off. That is somebody that just does not
15 care. You would think people would wait until the middle of
16 the night to do such. That is somebody that does not care at
17 7:30 at a motel, you are moving a dead body out. Now, I can
18 tell you why they're moving it out at 7:30, because the rush
19 was in then to start swiping that card. I'm sure they were
20 hungry for food and they were hungry for drugs and it didn't
21 matter if it was 5:30, 6:30, or 7:30, they had to get that
22 body out and they wanted to start swiping that card. There is
23 a direct correlation between when that card hits insufficient
24 funds and that man is killed to on the 5th, when the card
25 loads back up, here they are moving him out of the room and

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

375

1 using the card. This was all about \$500. That's all that was
2 on that card. That is all to them this man's life was worth.
3 This Defendant was worth -- this victim was worth \$500 to
4 these people. Moving him out at 7:30 at night and he wants to
5 tell you he cares about the fact that he stayed in this room
6 before. You watch the second view ---

7 Ginger, could you move it to the next camera, I'm sorry,
8 Investigator Pop.

9 Here the doors are open in the car, they getting ready to
10 move him in. There they go. Putting him in the car. Now,
11 this is him coming around here to shut the door. Now check
12 this out, this guy over here, look, bam, right there, walking
13 by, and look at the two of them over here trying to cram the
14 body in the back seat. Look at that. They want to tell you
15 that this man cares about the fact that he's at the Atlantic
16 View where he's stayed before. At 7:30, you got people
17 walking all around this motel and these people are stuffing a
18 dead body in the back of the car. Those are people that do
19 not care. They do not care. They have no interest in
20 anything but what they can get right now and enjoy whatever it
21 is they want, drugs, money, alcohol, cigarettes. They don't
22 care about anybody else but themselves. The fact that they
23 are cramming that man's body in that car at 7:30 with people
24 walking around on the second floor tells you, tells you where
25 they are at with it. It tells you where they're at.

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

376

1 Now, this video is going back into evidence with you.
2 You can go back and watch it. You cannot watch it. I see
3 what's on the video because I've watched it, you know, a bunch
4 of times, but on that first one, everything is happening right
5 in this area up here. They take the body out, they put it
6 down, they pick him back up, and then they put him in the back
7 seat of the car. And then what you saw then when they were
8 both coming around, was trying to pull him. They put him in
9 over here and they were trying to pull him across the car and
10 shut the door. Shut the door. And when you see them shut the
11 door, you see him kind of lean on it, that's probably because
12 his body was stiff and not easy to move at that point.

13 Now how do we know that? Because Dr. Proctor came and
14 told us by the time the body was found, which was right here
15 on the 12th. He said the body had suffered such decomposition
16 that the man had had to have been dead between 10 and 14 days.
17 That's how badly decomposed he was, which is why when we were
18 making the comparison, we had to use the teeth, nothing else
19 was available to us due to the decomposition.

20 Now, when you back up from this date at 12 and you go
21 back, it puts you around the 1st or the 2nd when this man was
22 killed. He had been dead 10 to 14 days, so when you back it
23 up from that, you find that he was killed on the same day, the
24 same day that victim drew insufficient funds. And then he's
25 in a rush to get him back moved out on the 5th; this is the

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

377

1 5th here we're watching on this video. This is the 5th and
2 then that's when the card loads back up again.

3 Now, when you look at the time on the card, when the
4 money loads up -- and those records are going back with you so
5 you can look at them -- it's about 45 minutes to an hour by
6 the time they dump this man that they're out swiping the card.
7 So, that tells you they got this figured out. Okay? It's
8 such a short, short timeframe to get him dumped and to get
9 that card back in use. They had a plan. This man had a plan.
10 Okay? This timing is not coincidental. It is a very short
11 timeframe of when they get him dumped off and they're back
12 swiping that card again.

13 Now, they want you to believe that Chicken did this.
14 Chicken did this. Chicken did this. Let me tell you
15 something, folks, Mitchell Weatherall had to put some effort
16 into getting that man here from Hemingway, he had to. Okay?
17 People just don't coincidentally meet up and come to Myrtle
18 Beach and find themselves at the Atlantic View Motel with a
19 homeless person, okay, that is not just coincidental. This
20 Defendant sought him out, okay, and brought him down here.
21 And he brought him there because he was a older man that was
22 easy kill. So, this was planned out. Okay? Chicken's name
23 is not on the room. Chicken has no skin in the game. Chicken
24 is not the one that brought this man to Myrtle Beach and
25 brought him to Atlantic View. Chicken is a drug dealer that

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

378

1 is supplying whatever needs they had when they were at
2 Atlantic View. And Tonya told you she talked to Mitch the day
3 before and he was calling around looking for drugs for both of
4 them. Okay? He brought him here to use him up until he
5 couldn't use him anymore. That's what this is about. This
6 man has nothing but a depraved heart to the very end of trying
7 to trick the police and cover it up and trick me and trick all
8 of you. This was well thought out. He brought him here, he
9 used him for what he could and then he discarded him. And
10 even in discarding him, you see nothing, nothing but a
11 complete indifference for human life. You see those pictures
12 of him laying in the woods. It is awful. It is awful. It is
13 the acts of a person that does not care about a human life at
14 all.

15 I'm gonna ask you to go back there and to focus on the
16 facts and what you heard, the hard facts. Ask yourself what
17 was presented, what do we have on tape, what does the
18 registration card say, what do we have on the video, who is
19 using the card? This Defendant was the one in there going
20 through his pockets. Chicken had no reason to kill this man,
21 none, none, absolutely none. He got nothing off of him. He
22 had nothing to gain, and he didn't gain anything from it.
23 Nothing, zero. The only money he had was on that card. The
24 only, the only person that anything to gain and who did gain
25 from this murder was the Defendant. And the reason that is,

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

379

1 is because that was his plan the entire time. He got what he
2 wanted. He got what he brought the man down here for.

3 Chicken did not know this man. He had no way to know
4 anything about his card, and he never touched the man's card
5 and never benefited at all from his murder. That person is
6 sitting right there. That Defendant is sitting right there.
7 This is his day in court.

8 I want you to go back, look at everything we've
9 presented, look at everything you've heard, and use your
10 common sense. What makes sense? That's all I ask you because
11 there's only one answer and that is the Defendant killed this
12 man, beat him to death. Not in the front of the head, but in
13 the back of the head and the man had nothing but defense
14 wounds, nothing to show he even threw a punch or had an
15 opportunity to throw a punch. No, absolutely zero evidence of
16 that. There is no hard evidence of anything other than this
17 is a killing, a killing, and there is no evidence that anybody
18 struck him other than Mitchel Weatherall.

19 And Marcus Bell came up here and told you from jail, I
20 was in there with him and when I was in there with him, he
21 ultimately told me he hit the man. He hit the man. People
22 don't go around telling people that unless it's true. This
23 man had nothing to gain, nothing to gain. He came out here in
24 shackles and he went back in shackles. He told you, yeah, I
25 wrote the note to get a benefit, but obviously I didn't get no

State v. Weatherall - 2014-GS-26-01415
CLOSING BY LIVESAY

380

1 benefit, I'm in prison. So, now I'm just doing it because
2 what if that was my family member. What, if that was my
3 family member discarded with somebody out there using his
4 money after he killed him. This man has a ill will and no
5 regard for human life. This is nothing short of a unjustified
6 killing. And let me tell you something, folks, it's
7 uncomfortable for everybody; it's uncomfortable for this lady
8 here, who it was her dad; it's uncomfortable for me. Nobody,
9 nobody likes to believe that these things happen, nobody.
10 Nobody likes to believe that there are people walking around
11 that have that kind of ill will and indifference for human
12 life, nobody. It's uncomfortable. It's uncomfortable for me
13 to get up here and have to tell people that these people
14 exist. They do. This woman never expected this to happen.
15 The first time, when we were talking, she said I should have
16 never gave him that card. We have people feeling like I
17 shouldn't have never give him that card because we can't trust
18 other people. I'm not here to tell you that this is a easy
19 thing, or comfortable thing, because it's not. Whenever
20 someone is killed, the ultimate price is paid when someone
21 loses their life. It is terrible. It is uncomfortable and it
22 is horrible, but whether we like it or not and whether I like
23 it or not, these people exist and people do horrible, awful
24 things. We cannot let it go because it makes us uncomfortable
25 or we don't want to believe that there are people out there

State v. Weatherall - 2014-GS-26-01415
CLOSING BY BOUCHETTE

381

1 that act this way towards another person.

2 I'm telling you and asking you to go back and look at the
3 evidence, use your common sense. There is no other answer
4 other than this man is guilty.

5 I appreciate your time.

6 THE COURT: All right. Mr. Gardner, Mr. Bouchette?

7 MR. BOUCHETTE: Your Honor, if it please the Court?

8 THE COURT: Yes, sir.

9 CLOSING BY BOUCHETTE:

10 MR. BOUCHETTE: Now, ladies and gentlemen of the jury,
11 when I spoke to you on Tuesday, I told you that the State was
12 trying to control the flow of information in this case. I had
13 no idea I was gonna witness the case that we just saw this
14 week. We sat here for two days listening to witness after
15 witness, 17 in total, tell us what we already knew. The
16 decedent died by blunt force trauma to the head. The issue is
17 who caused the blunt force trauma to the head.

18 Then we heard from two witnesses that have what can most
19 generously be described as a loose connection with this case.
20 We heard from Tonya Wedlock. Folks, you saw Ms. Wedlock here.
21 I think if you'd met her or if you had saw her in the
22 elevator, you'd probably describe her as a crack head. That
23 would probably be an accurate description. You then heard
24 from Marcus Bell and we'll talk about him a little bit more
25 later. And then the State rested in a murder trial, in a

State v. Weatherall - 2014-GS-26-01415
CLOSING BY BOUCHETTE

382

1 murder trial, the State presents a crack head and a jailhouse
2 snitch as their evidence, as their witnesses.

3 Now, I don't know if y'all could see my face over at
4 counsels' table, but whenever Ms. Livesay, the State rests, my
5 jaw about hit the floor. Because what I was seeing was the
6 State's case unraveling and then throw in the towel. We were
7 supposed to hear all this information about a robbery. That
8 didn't happen. We were supposed to hear from Joey Garsow,
9 Mitchell's boyfriend, about all the terrible things Mitchell
10 said to him. That didn't happen. I told you that they were
11 gonna try to hide the testimony of Chicken. I didn't know
12 they were gonna try to hide Joey, too. And that flow of
13 information that we're talking about, Ms. Livesay just went
14 ahead and cut it right off. We didn't even hear from an
15 investigating officer in this case. You know, I haven't been
16 practicing law that long, but every criminal case I've been
17 involved with, an investigating officer takes the stand and he
18 says I interviewed these folks, I interviewed Chicken, or I
19 interviewed Mitchell and Joey and, jury, here's what my
20 investigation uncovered. We didn't get that.

21 The detective has been sitting right here the whole time;
22 he didn't take the stand. Ms. Ginger Pop has been sitting
23 right here the whole time; she didn't take the stand. And why
24 is that? I don't know. What I do know is that if they had
25 taken the stand, if some of these folks had stood up there, I

State v. Weatherall - 2014-GS-26-01415
CLOSING BY BOUCHETTE

383

1 would've been able to ask them a few questions myself just
2 like we did with Ms. Wedlock and just like we did with Mr.
3 Bell. And now, Ms. Wedlock told you on direct examination
4 that there was some luring by way of a Craig's List add and a
5 Greyhound bus. Well, the State's obviously got subpoena
6 power, they could've brought somebody here from Craig's List
7 and said, yep, here's the ad. They didn't do that because
8 there is no Craig's List ad. Then we heard from the
9 decedent's daughter that said I believe it was his friend
10 Freddie that brought him to Myrtle Beach. There was no
11 Greyhound bus. There was no luring. There's been no evidence
12 of how they were connected in the first place other than that
13 they were in the room at the same time doing drugs. That was
14 their connection.

15 We then heard her say that, well, Mitchell gave me this
16 credit card. Well, on cross examination, upon a little more
17 questioning, then she says, well, actually Joey retrieved it
18 from a trashcan in Chapin Park; it had been discarded. Then
19 Joey gets it out, according to her, and she and him both use
20 it to buy whatever it was they were buying and getting cash
21 out.

22 You then heard from Marcus Bell and the State wants you
23 to believe that Marcus Bell, being the paragon of good virtue
24 that he is, just felt compelled to tell you what Mitchell had
25 told him, which even if we -- even if we believe him, what did

State v. Weatherall - 2014-GS-26-01415
CLOSING BY BOUCHETTE

384

1 he say? Mitchell told him Chicken did it. And then
2 apparently, for some unknown reason, at a later point, he
3 changed his story and said, yeah, I did it.

4 Now, folks, if you believe Marcus Bell is not expecting
5 something from the State from his testimony, you believe in
6 Santa Claus and the Tooth Fairy and everybody else all mixed
7 into one. He told you that he didn't see his discovery. He's
8 sharing a cell with Mitchell Weatherall. You'll notice
9 Mitchell didn't hold his discovery with him right now.
10 Where's it at? It's in his cell right now. And how do you
11 know he saw it, because he knew exactly who Mr. Gardner was.
12 Mr. Gardner walks up and says, hey, you know who I am? He
13 says, yeah, you're Johnny Gardner. How he knows that is
14 because that's in your discovery file. Of course.

15 Now, so we didn't hear from the detective. We didn't
16 hear from anybody else. We want to go and we want to see what
17 is the case, what has the State presented to you. Okay? I
18 want to talk a little bit about what -- well, before I do
19 that, I told you that you were gonna hear from Mitchell in
20 this case, but when the State rested, they hadn't proven this
21 case by a long shot, not even close. And why are we gonna
22 take another day to establish what we already know? And the
23 State says, well, you know what, you don't need to worry about
24 Chicken. Chicken will have his day in Court. Well, I hope
25 so, and I hope in that trial that they bring all the witnesses

State v. Weatherall - 2014-GS-26-01415
CLOSING BY BOUCHETTE

385

1 that they didn't bring in this one and actually establish what
2 happened, cause they sure didn't do it here. Maybe in that
3 case, we'll hear from the detective. Maybe in that case,
4 we'll hear from Joey or we'll hear from these other witnesses.

5 It's like I said, I told you that you would hear from
6 Mitchell. You can't hold that against him. That's my
7 decision. Okay? We've already -- we've heard enough in this
8 case, it's time for you to go back and make your decision..
9 And, I want to talk about the decision that you got to make.
10 I want to talk about the burden of proof in this case.

11 All right. Now, the Judge told you about beyond a
12 reasonable doubt. Most of you have probably heard that at
13 some point before, but we've got a number of burdens of proof
14 in the law. The first one is what's called scintilla. The
15 Supreme Court has basically described that, it's almost like a
16 theoretical amount. It's as close to having no evidence as
17 there can be without there actually being no evidence.

18 You've then got reasonable suspicion. That's what it
19 takes for a police officer to do a traffic stop or to stop you
20 and talk to you on the street, but not arrest you and not do
21 anything further.

22 You've then got probable cause. That's what it takes to
23 get a warrant to go search your house, to arrest you, to take
24 you to jail; that's what probable cause is.

25 And above that, you've got preponderance of the evidence.

State v. Weatherall - 2014-GS-26-01415
CLOSING BY BOUCHETTE

386

1 That's the civil case. That's what they'll say that if the
2 scales of justice ever tilt ever so slightly, 50 percent plus
3 .1 then they'll award you some money.

4 And then we got this other one that you rarely here
5 about. It's called clear and convincing. That's DSS, that's
6 Social Services standard. That's what they use if they're
7 gonna take your children away. Now, folks, I haven't had the
8 blessing of children in my life, but every parent I've talked
9 to said they'd rather do 20 years in the penitentiary than
10 have their children taken away from them.

11 And above that, we've got beyond a reasonable doubt. And
12 that's your standard in this case. And, folks, when I just
13 got up here on Tuesday, I probably didn't have a lot of
14 credibility. I'm a defense lawyer, I get that, but I'm hoping
15 I've built at least a little bit with you in the last few days
16 because I'm gonna ask that you enter into a transaction with
17 me. I'm gonna ask for something from you and in exchange I'm
18 gonna give something to you. I ask that you apply the law
19 that Judge Culbertson gives you with the burden of proof to
20 the evidence that Ms. Livesay put before you this week.

21 Mitchell please stand up.

22 Folks, if you'll do that for me, if you'll do that simple
23 task, I'm gonna give you the opportunity that very few people
24 will ever have in this world. I'm gonna give you the
25 opportunity to set an innocent man free. He's been sitting in

State v. Weatherall -- 2014-GS-26-01415
CHARGE TO JURY

387

1 jail for three years waiting for this day.

2 Folks, I want to thank you for your patience and I want
3 to thank you for your time this morning.

4 CHARGE TO JURY:

5 THE COURT: All right, ladies and gentlemen, all of the
6 testimony and other evidence has been presented to you in this
7 case. The attorneys have made their closing arguments and now
8 is the time of the trial when I charge you with the law to be
9 applied in this case.

10 The indictment -- this is the indictment -- in this case
11 charges the Defendant with murder. I remind you that the fact
12 the Defendant was arrested, charged, and indicted in this case
13 is not evidence in this case and cannot be considered by you
14 as evidence of guilt in this case. Nor does the Defendant's
15 arrest, charge, and indictment create any presumption or
16 inference of guilt. The indictment is simply the formal,
17 written document which contains the charge made against the
18 Defendant. It is the formal document by which this case is
19 brought into this Court. The Defendant pleads not guilty to
20 this indictment. That plea puts the burden on the State to
21 prove the Defendant guilty. A person charged with committing
22 a criminal offense in South Carolina is never required to
23 prove his innocence.

24 I charge you that an important rule of the law is that
25 the Defendant in a criminal trial, no matter what the

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

388

1 seriousness of the charge may be, will always be presumed to
2 be innocent of the crime for which the indictment was issued
3 unless guilt has been proven by evidence satisfying you of
4 that guilt beyond a reasonable doubt. The presumption of
5 innocence does not end when you begin your deliberations, but
6 it accompanies the Defendant throughout the trial until you
7 reach a verdict of guilt based on evidence satisfying you of
8 that guilt beyond a reasonable doubt. The presumption of
9 innocence is like a robe of righteousness placed about the
10 shoulders of the Defendant which remains with the Defendant
11 until it has been stripped from the Defendant by evidence
12 satisfying you of the Defendant's guilt beyond a reasonable
13 doubt. The presumption of innocence is not a mere legal
14 theory, it is not just a legal phrase. It is a substantial
15 right to which every Defendant is entitled unless you, the
16 jury, are satisfied from the evidence of the Defendant's guilt
17 beyond a reasonable doubt.

18 Now what is a reasonable doubt in the law? A reasonable
19 doubt is the kind of doubt that would cause a reasonable
20 person to hesitate to act. Proof beyond a reasonable doubt is
21 proof that leaves you firmly convinced of the Defendant's
22 guilt. We know very few things in this world with absolute
23 certainty and in criminal cases, the law does not require
24 proof that overcomes every possible doubt. If based on your
25 consideration of the evidence, you are firmly convinced that

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

389

1 the Defendant is guilty of the crime charged, you must find
2 the Defendant guilty. On the other hand, if you think a real
3 possibility exists that the Defendant is not guilty, you must
4 give the Defendant the benefit of that doubt and find the
5 Defendant not guilty.

6 During this trial, you and I have certain duties to
7 perform. As the Trial Judge, my responsibility is to preside
8 over the trial of this case. I also have the duty to rule on
9 the admissibility of evidence offered during this trial. You
10 are to consider only the competent evidence before you. If
11 any testimony was ordered stricken from the record in this
12 case during this trial, you must disregard that testimony.
13 You are to consider only the testimony which has been
14 presented from the witness stand, any exhibits which have been
15 made a part of the record in this case, and any stipulations
16 of counsel. I have the additional duty to charge you the law
17 applicable to this case. As the Presiding Judge, I am the
18 sole judge of the law of this case. Your duty as jurors is to
19 accept and apply the law as I now state it to you. If you
20 have any idea as to what the law is or what the law ought to
21 be and your idea is different from what I now tell you the law
22 is, you must disregard your idea of what the law is or ought
23 to be because you are sworn to accept the law and apply the
24 law exactly as I state it to you.

25 In every case tried in this Court before a jury, the jury

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

390

1 is the sole and exclusive judge of the facts in a case. The
2 Trial Judge cannot intimate, state, comment on, or make any
3 statement to a Trial Jury about the facts in a case. Since,
4 you, the jury, are the sole judge of the facts in this case,
5 you are not to infer from what I have said during the progress
6 of this trial in ruling upon the admissibility of evidence or
7 otherwise or anything that I say now during the course of this
8 instruction to you that I have any opinion about the facts in
9 this case. The law does not allow me to have an opinion about
10 the facts in this case. This is a matter solely for you, the
11 jury, to determine. As jurors, your duty is to determine the
12 effect, value, weight, and truth of the evidence presented
13 during this trial.

14 Now two types of evidence are generally presented during
15 a trial; direct evidence and circumstantial evidence. Direct
16 evidence is the testimony of a person who claims to have
17 actual knowledge of a fact, such as an eyewitness.
18 Circumstantial evidence is proof of a chain of facts and
19 circumstances indicating the existence of a fact. The law
20 makes absolutely no distinction between the weight or value to
21 be given to either direct or circumstantial evidence nor is a
22 greater degree of certainty required of circumstantial
23 evidence than of direct evidence. However, to the extent the
24 State relies on circumstantial evidence to prove the
25 Defendant's guilt, all of the circumstances must be consistent

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

391

1 with each other and when taken together, point conclusively to
2 the guilt of the accused beyond a reasonable doubt. If these
3 circumstances merely portray the Defendant's behavior as
4 suspicious, then that proof alone is not sufficient to convict
5 the Defendant. The State has the burden of proving the
6 Defendant guilty beyond a reasonable doubt. This burden rests
7 with the State regardless of whether the State relies on
8 direct evidence, circumstantial evidence or some combination
9 of the two. You should weigh all of the evidence in this
10 case. After weighing all of the evidence, if you are
11 convinced of the guilt of the Defendant beyond a reasonable
12 doubt, you must find the Defendant guilty. On the other hand,
13 after weighing all of the evidence, if you are not convinced
14 of the guilt of the Defendant beyond a reasonable doubt, you
15 must find the Defendant not guilty.

16 Necessarily, you must determine the credibility of
17 witnesses who have testified. Credibility simply means
18 believability. Your duty as jurors is to analyze and to
19 evaluate the evidence and determine which evidence convinces
20 you of its truth. In determining the believability of
21 witnesses who have testified in this case, you may believe one
22 witness over several witnesses or several witnesses over one
23 witness. You may believe a part of the testimony of a witness
24 and reject the remaining part of the testimony of that same
25 witness. You may believe the testimony of a witness in its

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

392

1 entirety or reject the testimony of a witness in its entirety.
2 You may consider whether any witness has exhibited to you any
3 interest, bias, prejudice, or other motive in this case. You
4 may also consider the appearance and manner of the witness
5 while on the witness stand.

6 Now the Rules of Evidence ordinarily do not permit
7 witnesses to testify to opinions or conclusions. An exception
8 to this rule exists for witnesses we call expert witnesses. A
9 witness who by education and experience has become an expert
10 in some art, science, profession, or calling, may state an
11 opinion as to relevant and material matter in which the
12 witness claims to be an expert and may also state the reasons
13 for the opinion. You should consider any expert opinion
14 received in evidence in this case and like any other evidence,
15 give it the weight you think it deserves. If you decide that
16 the opinion of an expert is not based on sufficient education
17 and experience, or if you conclude that the reasons given in
18 support of the opinion are not sound or that the opinion is
19 outweighed by other evidence, you may disregard the opinion
20 entirely. An expert witness' testimony is to be given no
21 greater weight than that of other witnesses simply because the
22 witness is an expert. Further, you're not required to accept
23 an expert's opinion even though it is not contradicted.

24 You have heard testimony from a witness who has a
25 criminal record. A person who has a past criminal record is

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

393

1 competent to testify during a trial. Past record does not
2 affect the ability of that witness to testify. The past
3 record may only be considered by you, if at all, in
4 determining the witness' credibility or believability.
5 Remember, you are the sole judge of the facts in this case and
6 of the believability of any and all of the witnesses.

7 I instruct you and emphasize that the fact that the
8 Defendant did not testify in this case is not a factor to be
9 considered by you in any way in your deliberation and in your
10 consideration on the question of the guilt or the innocence
11 of the Defendant. The Defendant's failure to testify must not
12 be considered by you in any manner whatsoever. A Defendant
13 has the constitutional right to remain silent and the
14 assertion of this right must not be considered by you in your
15 deliberations. I repeat, under your oath, you are to draw no
16 conclusion whatsoever from the fact that the Defendant in this
17 case did not testify. The fact that this Defendant did not
18 testify should not even be discussed in the jury room.

19 The burden of proof, as I have stated to you, is on the
20 State to prove the Defendant's guilt. The Defendant is not
21 required to prove his innocence. The burden of proof remains
22 on the State to prove the Defendant's guilt beyond a
23 reasonable doubt.

24 Now, if a crime is committed by two or more people who
25 are acting together in committing a crime, the act of one is

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

394

1 the act of all. A person who joins with another to commit an
2 unlawful act is criminally responsible for everything done by
3 the other person, which happens as a probable or natural
4 consequence of the acts done in carrying out the common plan
5 and purpose. For example, two people can be guilty of robbing
6 a bank when only one actually enters the bank and forcefully
7 demands money from the bank teller while the other remains
8 outside the bank as a lookout. If two or more people are
9 together, acting together, assisting each other in committing
10 the offense, the act of one is the act of all or as it is
11 sometime said, the hand of one is the hand of all.

12 Prior knowledge that a crime is going to be committed
13 without more is not sufficient to make a person guilty of that
14 crime. Mere knowledge that another person is going to commit
15 a crime, even if the Defendant is present when the crime is
16 committed, is not sufficient to convict the Defendant as a
17 principal. Guilt as a principal is shown by actual or
18 constructive presence at the scene, as a result of a prior
19 arrangement. Therefore, a finding of a prior arranged plan or
20 common scheme is necessary for a finding of guilt as a
21 principal. The State must prove beyond a reasonable doubt by
22 competent evidence the theory of the hand of one is the hand
23 of all.

24 A principal in a crime is one who either actually commits
25 the crime or who is present, aiding, abetting, or assisting in

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

395

1 committing the crime. When a person does an act in the
2 presence of and with the assistance of another, the act is
3 done by both. Where two or more are acting with a common plan
4 or intent are present at the commission of a crime, it does
5 not matter who actually commits the crime. All are guilty.
6 The hand of one is the hand of all.

7 Present at the commission of a crime means to be
8 sufficiently near to aid and abet and assist in the commission
9 of the crime. However, mere presence at the scene of the
10 crime is not sufficient to convict one as a principal on the
11 theory of aiding and abetting. Intent also is also a
12 necessary element for there must have been a common design or
13 intent to commit the crime and the crime must've been
14 committed pursuant to the common design or intent with the
15 person aiding and abetting by some overt act. Intent means
16 intending the result which actually occurs, not accidentally
17 or involuntarily. Intent may be shown by acts and conduct of
18 the Defendant and other circumstances from which you may
19 naturally and reasonably infer intent. The State must prove
20 these elements beyond a reasonable doubt.

21 Now in order establish criminal liability, criminal
22 intent is required. For example, the mental state required to
23 be proven by the State for a particular crime might be
24 purpose, intent, knowledge, recklessness, or criminal
25 negligence. Criminal intent must be proven by the State .

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

396

1 beyond a reasonable doubt. Criminal intent is always a matter
2 that must be determined by the jury from the circumstances
3 surrounding the situation. There is no way to prove intent to
4 a mathematical certainty. Medical science cannot dissect a
5 person's brain and determine what the person had in mind. So,
6 the law says that criminal intent may be inferred from the
7 circumstances shown to have existed. This is how you make a
8 determination of whether or not the element requiring intent
9 was present. Intent does not have to be established by direct
10 and positive evidence, but intent may be established by
11 inference in the same way as any other fact by taking into
12 consideration the acts of the parties and all of the facts and
13 circumstances of the case. Criminal intent is a mental state,
14 a conscious wrongdoing. You must determine what the Defendant
15 intended to do based on the circumstances shown to have
16 existed. Criminal intent may arise from an action or a
17 failure to act. It may arise from negligence, recklessness,
18 or an indifference to duty or to consequences that is
19 considered by law to be the equivalent of criminal intent.

20 As I have instructed you before, mere presence at the
21 scene of a crime is not sufficient to prove someone guilty of
22 a crime. A Defendant's presence where a crime is being
23 committed or mere association with a person who commits a
24 crime does not make a Defendant an accomplice or an aider and
25 abettor of the person committing the crime. The burden is on

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

397

1 the State to prove every element of the crime charged. If you
2 find after reviewing all of the evidence, that the State has
3 proved that the Defendant was only present at the scene of the
4 crime and that the State has not proved beyond a reasonable
5 doubt any other participation in the crime, then you must find
6 the Defendant not guilty. The law is that proof of a
7 Defendant's presence at the scene of a crime alone is not
8 sufficient to find the Defendant guilty.

9 Now the Defendant is charged with murder. To convict the
10 Defendant of this crime, the State must prove beyond a
11 reasonable doubt that the Defendant killed another person with
12 malice aforethought. Malice is hatred, ill will, or hostility
13 towards another person. It is the intentional doing of a
14 wrongful act without just cause or excuse and with an intent
15 to inflict an injury or under circumstances that the law will
16 infer an evil intent. Malice aforethought does not require
17 that malice exists for any particular time before the act is
18 committed, but malice must exist in the mind of the Defendant
19 just before and at the time of the act -- at the time the act
20 is committed. Therefore, a combination of the previous evil
21 intent and the act must exist.

22 Malice aforethought may be expressed or inferred. These
23 terms, expressed and inferred, do not mean different kinds of
24 malice, but merely the manner in which malice may be shown.
25 That is either by direct evidence or by inference from the

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

398

1 facts and circumstances which are proved. Express malice is
2 shown when a person speaks words which express hatred or ill
3 will for another or when the person prepared beforehand to do
4 the act which was later accomplished. For example, lying in
5 wait for a person or any other acts of preparation going to
6 show that the deed was within the Defendant's mind would be
7 expressed malice.

8 Malice may be inferred from conduct showing a total
9 disregard for human life. Inferred malice may also arise when
10 the deed is done with a deadly weapon. A deadly weapon is any
11 article, instrument, or substance, which is likely to cause
12 death or great bodily harm. Whether an instrument has been
13 used as a deadly weapon depends on the facts and circumstances
14 of each case. Ordinary objects may become deadly weapons when
15 the facts show that they have been used to inflict serious
16 bodily harm or death. If facts are proved beyond a reasonable
17 doubt, sufficient to raise an inference of malice to your
18 satisfaction, this inference would be simply an evidentiary
19 fact to be considered by you along with the other evidence in
20 the case and you may give it the weight you decide it should
21 receive.

22 Now, there are two possible verdicts which you may find
23 in this case. No significance should be given to the order in
24 which I state these verdicts to you; I simply must state one
25 first and one second. The two possible verdicts in this case

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

399

1 are guilty or not guilty.

2 Ladies and gentlemen, your verdict must be a unanimous
3 one.

4 Mr. Brevik, as foreperson, when the jury agrees on a
5 verdict, you will right that verdict under the verdict portion
6 on the back of the indictment, sign your name, date it, knock
7 on the door, and tell the Bailiff that the jury has reached a
8 verdict.

9 I'm gonna excuse you back to the jury room for just a few
10 minutes, but please do not begin your deliberations at this
11 time. I need to check with the attorneys to see if there are
12 any additional charges or challenges to the charges I've given
13 you. If there are and I deem them appropriate, I'll bring you
14 back in the courtroom and make whatever additional charges or
15 corrections are needed. If there are none, then all of the
16 exhibits will be brought back to the jury room by the Bailiff
17 and the Bailiff will instruct to begin your deliberations, but
18 please do not begin your deliberations until you're told to do
19 so by the Bailiff.

20 Thank you very much.

21 (REPORTER'S NOTE: Jury exits courtroom. The following takes
22 place outside the presence of the Jury.)

23 THE COURT: All right. Any exceptions to the jury charge
24 that have not previously been raised by the State?

25 MS. LIVESAY: No, sir.

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

400

1 THE COURT: Any by the Defense?

2 MR. GARDNER: No new ones, Your Honor, just renew the old
3 ones.

4 THE COURT: All right. Those are so noted and I'll stick
5 with my prior rulings on those.

6 Let's make sure we've got all the exhibits and we'll take
7 them back and begin the deliberations.

8 If you would go ahead and ask Mr. Williams and Ms. Ritch,
9 the alternates, if they would come out so I can excuse them.

10 And here's the indictment right there.

11 (REPORTER'S NOTE: Counsel reviews and stipulates to exhibits
12 to be submitted to jury.)

13 COURT REPORTER: The Defense needs to be here, please.

14 MR. GARDNER: I'm watching.

15 THE COURT: Mr. Williams, Ms. Ritch, you can just come on
16 around. This is the part of the trial I hate because as the
17 alternates, since we still have our twelve jurors, the law
18 says that you cannot participate in the deliberations. I hate
19 it because we make you sit through the whole trial but then we
20 don't let you render a decision in this case. You're at
21 liberty to do whatever you want. If you want, if you want to
22 stay and see the outcome, you can do that. If you want to
23 leave, you can do that as well. This will conclude your duty
24 as jurors not only for this case but for this week, and I want
25 to thank you for your service as jurors. Do either one of you

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

401

1 have anything in the jury room?

2 JUROR 297: I have my purse.

3 THE COURT: Would you step in there and get Ms. Ritch's
4 purse?

5 JUROR 297: And a book. There's a book right by it, too.

6 THE COURT: All right. Thank you. And I do want to
7 thank you for your service. I know, like I say, I hate this
8 because you have to sit through the whole trial but then you
9 don't get to make a decision, but you're at liberty to stay,
10 you're at liberty to go, whichever you prefer to do.

11 Thank you very much.

12 JUROR 297: Thank you.

13 THE COURT: All right.

14 COURT REPORTER: Judge, we the indictment; do we have a
15 verdict form?

16 THE COURT: No, I was just gonna do the indictment --
17 since it's just guilty or not guilty, I was just gonna do the
18 indictment and let them write on that. Usually I'll do the
19 verdict form if there's a lesser included charge, but like
20 that, I'll just let them write it on there.

21 COURT REPORTER: All right. Everybody agree on the
22 exhibits?

23 MR. GARDNER: Yes, ma'am.

24 MS. LIVESAY: I'm good.

25 (REPORTER'S NOTE: Deliberations commence at 11:08 A.M.)

State v. Weatherall - 2014-GS-26-01415
CHARGE TO JURY

402

1 THE COURT: Anything from the State?

2 MS. LIVESAY: No, sir.

3 THE COURT: Anything from the Defense?

4 MR. GARDNER: No, Your Honor.

5 THE COURT: All right. We'll go ahead and we'll stand in
6 recess unless we or until we hear from the jury. If you want
7 to leave your number with the Clerk of Court, whatever you
8 want to do, but please try to stay within 5 or 10-minute trip
9 from here.

10 MR. GARDNER: Yes, sir.

11 THE COURT: All right.

12 (RECESS.)

13 *****OFF THE RECORD*****

14 (On the Record - 12:00 P.M.)

15 THE COURT: All right. I understand the jury has reached
16 a verdict. Anything from the State before we bring the jury
17 in?

18 MS. LIVESAY: Yes, sir. Oh, no, sir.

19 THE COURT: Okay. Anything from the Defense?

20 MR. GARDNER: No, Your Honor.

21 THE COURT: Anything from the Defense?

22 MR. GARDNER: No, Your Honor.

23 THE COURT: All right. Let's bring the jury in.

24 (REPORTER'S NOTE: Jury enters courtroom.)

25 THE COURT: All right, ladies and gentlemen, welcome

State v. Weatherall - 2014-GS-26-01415
VERDICT OF JURY

403

1 back.

2 Mr. Brevik, I understand that the jury has reached a
3 verdict; is that correct?

4 JUROR 57: Yes, Your Honor.

5 THE COURT: All right. And have you written the verdict
6 on the back of the indictment, signed your name and dated?

7 JUROR 57: Yes, sir.

8 THE COURT: All right. If you'd please hand the
9 indictment back to the Bailiff, please.

10 Thank you, sir.

11 All right. I will ask the Clerk to please publish the
12 verdict.

13 VERDICT OF JURY:

14 CLERK: Indictment Number 2014-GS-26-01415, State of
15 South Carolina, County of Horry versus Mitchell Monroe
16 Weatherall. We, the jury -- I'm sorry -- on the charge of
17 murder, we, the jury, by unanimous consent, find the Defendant
18 guilty. Dated March 23rd, 2017, signed by Foreperson, Peter
19 Brevik.

20 Ladies and gentlemen of the jury, if this your verdict,
21 so signify by raising your right hand.

22 THE COURT: Thank you.

23 CLERK: Let the record reflect that all jurors raised
24 their right hand. Any polling of the jury by the Defendant?

25 MR. GARDNER: Yes, Your Honor, please.

State v. Weatherall - 2014-GS-26-01415
POLLING OF JURY

404

1 THE COURT: All right. Ladies and gentlemen, we're gonna
2 poll the jury and when your jury number is called, if you
3 would please stand and the Clerk is gonna ask you two
4 questions. First the Clerk is gonna ask you if this is your
5 verdict and then the Clerk is gonna ask you if this is still
6 your verdict. So, please listen up and ask the Clerk calls
7 your jury number, stand and respond to those questions by the
8 Clerk.

9 Thank you.

10 POLLING OF JURY:

11 CLERK: Juror Number 57, is this your verdict?

12 JUROR 57: Yes.

13 CLERK: Is this still your verdict?

14 JUROR 57: Yes.

15 CLERK: Thank you.

16 34, Juror Number 34?

17 THE COURT: Benson?

18 CLERK: Yes. Is this your verdict?

19 JUROR 34: Yes.

20 CLERK: Is this still your verdict?

21 JUROR 34: Yes, ma'am.

22 CLERK: Thank you.

23 167, is this your verdict?

24 JUROR 167: Yes.

25 CLERK: Is this still your verdict?

State v. Weatherall - 2014-GS-26-01415
POLLING OF JURY

405

1 JUROR 167: Yes.
2 CLERK: Thank you.
3 347, is this your verdict?
4 JUROR 347: Yes.
5 CLERK: Is this still your verdict?
6 JUROR 347: Yes.
7 CLERK: Thank you.
8 244, is this your verdict?
9 JUROR 244: Yes.
10 CLERK: Is this still your verdict?
11 JUROR 244: Yes.
12 CLERK: Thank you.
13 181, is this your verdict?
14 JUROR 181: Yes.
15 CLERK: Is this still your verdict?
16 JUROR 181: Yes.
17 CLERK: Thank you.
18 153, is this your verdict?
19 JUROR 153: Yes.
20 CLERK: Is this still your verdict?
21 JUROR 153: Yes.
22 CLERK: Thank you.
23 115, is this your verdict?
24 JUROR 115: Yes.
25 CLERK: Is this still your verdict?

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

406

1 JUROR 115: Yes.

2 CLERK: Thank you.

3 286, is this your verdict?

4 JUROR 286: Yes, ma'am.

5 CLERK: Is this still your verdict?

6 JUROR 286: Yes, ma'am.

7 CLERK: Thank you.

8 20, is this your verdict?

9 JUROR 20: Yes.

10 CLERK: Is this still your verdict?

11 JUROR 20: Yes, ma'am.

12 CLERK: Thank you.

13 226, is this your verdict?

14 JUROR 226: Yes, ma'am.

15 Is this still your verdict?

16 JUROR 226: Yes, ma'am.

17 CLERK: Thank you.

18 Juror Number 69, is this your verdict?

19 JUROR 69: Yes, ma'am.

20 CLERK: Is it still your verdict?

21 JUROR 69: Yes, ma'am.

22 CLERK: Thank you.

23 BY THE COURT:

24 THE COURT: Ladies and gentlemen, I want to thank you for
25 your service, not just in this case, but for this week. As I

State v. Weatherall - 2014-GS-26-01415
MOTIONS

407

1 said, there were a number of cases that have been resolved
2 simply because you were here to serve and fulfill your duty as
3 jurors and I want to thank you for your service. That will
4 conclude your duty as jurors, not only on this case, but for
5 the remainder of the week. We don't have any more cases that
6 we'll be calling to trial, so I want to thank you for your
7 service this week.

8 Now you have a one-year disqualification from serving as
9 jurors. You've got a three-year exemption. I hope you don't
10 exercise your exemption because we do need good jurors and I
11 want to thank you for your service. You're free to go at this
12 time for not only the remainder of the day but for the
13 remainder of the week and thank you very much.

14 (REPORTER'S NOTE: Jury exits courtroom. The following takes
15 place outside the presence of the Jury.)

16 THE COURT: Any post-trial motions at this time?

17 MOTIONS:

18 MR. GARDNER: Yes, Your Honor, for the record, and I
19 always mix this stuff up. It's not a JNOV; it's a motion to
20 arrest judgement, I believe it's called. The normal post-
21 trial motions or motion to set aside this verdict or in the
22 alternative for a new trial.

23 THE COURT: All right. All right. I'm gonna deny your
24 motion. All right.

25 Did you have any additional arguments you wanted to make

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

408

1 in that regard?

2 MR. GARDNER: No. No, not on that. I don't believe
3 there are any, Your Honor.

4 THE COURT: All right. Any further motions from the
5 defense at this time?

6 MR. GARDNER: Nothing -- no more motions.

7 BY THE COURT:

8 THE COURT: All right. Any reason why we cannot go ahead
9 and impose sentencing at this time?

10 MR. GARDNER: Not from the Defense, Your Honor.

11 THE COURT: All right. Have we got a verdict form? Are
12 we ready to go forward and impose the sentence?

13 MS. LIVESAY: Yes, sir.

14 THE COURT: All right.

15 MR. GARDNER: You want us to stand here or come around,
16 Judge?

17 THE COURT: You can stand right there or where do y'all
18 need him to stand for security?

19 COURT REPORTER: Right there where he is if you can,
20 Judge.

21 THE COURT: Okay. Stand right there. That'll be good.

22 MS. LIVESAY: And whenever you want to hear from the
23 victim, Judge, just let me know.

24 THE COURT: I'll let you know.

25 All right. Mr. Gardner, Mr. Bouchette, anything in

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

409

1 mitigation before I impose sentencing?

2 MR. GARDNER: Yes, sir, Your Honor. He's 35 years old,
3 you've heard his prior record was Magistrate type stuff,
4 misdemeanor type stuff, and I believe it was many years ago.
5 He is 18 hours short of having a college degree. He moved
6 here from his home in Wisconsin to try to start a new life.
7 Unfortunately, he got involved in the drug situation down at
8 the beach which is horrible. I was court appointed to
9 represent him and, since day one, he has told me that he did
10 not do this. We understand the jury has disagreed with us.
11 We ask you -- I understand that there's a statutory minimum on
12 this and I would ask to impose that sentence on there. At
13 best, this was a drug situation that got out of hand. This
14 was no, by any stretch of the imagination, any premeditation
15 or any lying-in-wait type case that you might see on a day-to-
16 day basis trying cases. We'd ask for the minimum sentence,
17 Your Honor.

18 THE COURT: All right. Mr. Bouchette, anything you want
19 to add?

20 MR. BOUCHETTE: Nothing further, Your Honor.

21 THE COURT: All right. Mr. Weatherall, anything you want
22 to say, or does anybody want to speak on your behalf?

23 MR. WEATHERALL: I don't know, I guess I'm just kinda
24 shocked. Obviously, I didn't want anything like this to
25 happen and somebody losing their life, I don't know -- I guess

State v. Weatherall - 2014-GS-26-01415
BY THE COURT

410

1 I don't know what to say other than I feel for the family of
2 the victim but, outside of that, I guess I have nothing
3 further, Your Honor.

4 THE COURT: All right. The victim's family or anybody
5 want to speak?

6 MS. LIVESAY: Yes, sir, Your Honor.

7 THE COURT: All right. If you'd please come to the
8 microphone and give the Court Reporter your name.

9 MS. WOODBERRY: Avra Woodberry.

10 THE COURT: All right. Ms. Woodberry, what would you
11 like to say?

12 MS. WOODBERRY: You know, my dad, he never gonna get to
13 see us again, he's never gonna get to see his granddaughter
14 again. He was thrown in the woods like trash. I didn't even
15 get to see his face to say goodbye. He needs to understand
16 the weight of what he did. I think giving him a light
17 sentence would imply that this was somewhat okay. He needs to
18 feel the accountability for his actions. And I think that if
19 he gets the maximum sentence it would show him the severity of
20 his actions and impact, he would never feel, but please give
21 him the time that he deserves.

22 THE COURT: All right. Prior criminal record?

23 MS. LIVESAY: No, sir, Your Honor.

24 THE COURT: No prior criminal record?

25 MS. LIVESAY: Nothing other than misdemeanors, Your

State v. Weatherall - 2014-GS-26-01415
SENTENCE OF THE COURT

411

1 Honor.

2 THE COURT: All right. Now, you've got checked on this
3 sentencing sheet a lessor included offense, but he was
4 convicted -- you've got it as a plead?

5 MS. LIVESAY: Oh, I'm sorry, Judge.

6 SENTENCE OF THE COURT:

7 THE COURT: All right, Mr. Weatherall, you have been
8 convicted by a jury of your peers for the crime of murder.
9 The sentence of the Court is that you be confined to the State
10 Department of Corrections for life. All right. I'm imposing
11 the life sentence on this one.

12 All right. Anything further from the State before we
13 adjourn?

14 MS. LIVESAY: No, sir.

15 THE COURT: Anything from the Defense?

16 MR. GARDNER: No, Your Honor.

17 THE COURT: All right. We'll be adjourned.

18 (ADJOURNED.)

19

20

21

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24

25

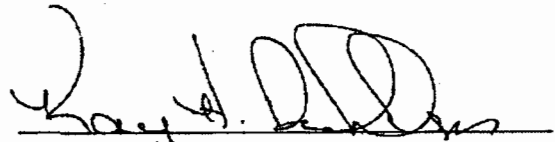
State v. Weatherall - 2014-GS-26-01415
CERTIFICATE OF COURT REPORTER

412

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Mitchell Monroe Weatherall, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on March 20-23, 2017, taken by Dixie C. Eubank.

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



Kay H. Richardson

Official Court Reporter

October 8, 2017.

DOCKET NO. 2014-GS-26-01415

WITNESSES

B Truex Myrtle Beach Police Department

The State of South Carolina
County of Horry

J. Scott Hicks

13H05839

COURT OF GENERAL SESSIONS

April, 2014 TERM

ARREST WARRANT NUMBER

2013A2620602712

CDR: 0116 16-03-0010, 0020

DOA: 11/1 2/2013

ACTION OF GRAND JURY

THE STATE

VS.

Mitchell Monroe Weatherall
 B/M

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: Diggs, William I.

Foreperson of Grand Jury

Date: APR 24 2014

VERDICT

GUILTY

Indictment for

MURDER

ORIGINAL

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

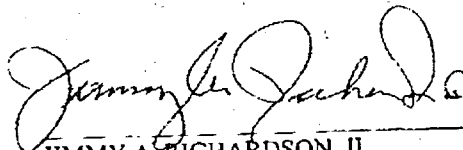
At a Court of General Sessions, convened on April 24, 2014, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Mitchell Monroe Weatherall did in Horry County, on or about November 11, 2013, willfully, feloniously, and intentionally kill the victim, Helbert Woodbury, with malice aforethought, either express or implied, by means of Hit the victim in the head with a bottle, and the victim did die as a proximate result thereof on or about November 02, 2013 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

FILED
HORRY COUNT
2017 MAR 23 PM 2:41
CLARENCE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
COURT DATE
PLED GUILTY/TRIAL

STATE OF SOUTH CAROLINA

COUNTY OF
STATEHorry
VS.

Mitchell Monroe Weatherall

AKA:

Race: BLACK

Sex: M

Age: 35

DOB:

SS#: 1

Address:

City, State, Zip: Milwaukee, WI 53212

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

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The 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:

SCB75159

Livesay, Nancy

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or paymentof \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for Xmonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-13-25 (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	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2601415 415

A/W#: 2013A2620602712

Date of Offense: 11/11/2013

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

FILED
Horry County
MAR 23 PM 4:41
CLERK OF COURT
Horry County SC

PTUP

_____ days/hours Public _____ 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 \$ N/A beginning N/A

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2148

Sentence Date: March 23, 2017

ROA PAGE 415

Horry County Courthouse RANDOM STRIKE SHEET

CULBERTSON

JUDGE NAME :
TRIAL TYPE : Criminal
PANEL ID : B CULBERTSON CT
COURTROOM JAR

DESCRIPTION : B CULBERTSON CT

Sorted **416** Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Brevik, Peter A	* 57 *	W	M	()	()	()	Foreperson
2 Benson, Matthew G	34	W	M	()	()	()	
~~R~~ 3 Schmaltz, Joel A	318	W	M	()	(1)	()	R
4 Harrell, Jacob W	167	W	M	()	()	()	
~~W~~ 5 Wright, Shirley A ~~R~~	191	B	F	(1)	()	()	~~Retur.~~
~~R~~ 6 Ard, Emerson L Jr.	14	W	M	()	(2)	()	R
~~R~~ 7 Porter, Robert	281	W	M	()	(3)	()	R
8 Straight, Nathan A	347	W	M	()	()	()	
9 Mckoy, Alexander Iii	244	B	M	()	()	()	
~~R~~ 10 Burgess, Aaron S	64	W	M	()	(4)	()	R
~~R~~ 11 Gaddy, Teresa S	139	B	F	()	()	()	Excused by Judge
12 Infantino, Diane	181	W	F	()	()	()	
13 Grann, Kremer Patricia A	153	W	F	()	()	()	
14 Dye, Steven R	115	W	M	()	()	()	
~~R~~ 15 Burd, Jessica L	62	W	F	()	(5)	()	R
16 Quesinberry, James D	286	W	M	()	()	()	
~~R~~ 17 Esposito, Nancy	121	W	F	()	(6)	()	R
~~R~~ 18 Russell, Kathleen A	307	W	F	(2)	()	()	R
~~R~~ 19 Yerrie, Margaret A	404	W	F	()	(7)	()	R
~~R~~ 20 Spallone, Lisa J	337	W	F	()	()	()	Excused. R
~~R~~ 21 Winecoff, David W	397	W	M	(3)	()	()	R
22 Baldree, Cindy L	20	W	F	()	()	()	
23 Madl, James	226	W	M	()	()	()	

Horry County Courthouse RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

PANEL ID : B CULBERTSON CT

COURTROOM JAR

DESCRIPTION : B CULBERTSON CT

Sorted by **417** Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
24 Cannon, Leisa	69	W	F	()	()	()	AH.
25 Williams, Cody W	391	W	M	()	()	()	AH.
26 Ritch, Stacy K	297	W	F	()	()	()	
~~27 Sahaydak, Kathleen R~~	310	W	F	()	()	()	
~~28 King, William J~~	203	W	M	()	()	()	
~~29 Atkinson, Francis M Jr.~~	17	W	M	()	()	()	
~~30 Fauber, Steven M~~	126	W	M	()	()	()	
~~31 Tilley, Charlie W~~	356	W	M	()	()	()	
~~32 Williams, Shaquasha J~~	394	B	F	()	()	()	
~~33 Martinez, Orlando li~~	233	H	M	()	()	()	
~~34 Williams, Cheryl L~~	390	W	F	()	()	()	
~~35 Welborn, Christie C~~	380	W	F	()	()	()	
~~36 Tyler, Georgia A~~	369	W	F	()	()	()	Excused by Judge
~~37 Reyes, Matthew~~	292	H	M	()	()	()	
~~38 Watson, Lucia A~~	377	W	F	()	()	()	
~~39 Bell, Lisa~~	27	B	F	()	()	()	Excused by Judge
~~40 Baranofsky, Ann Marie~~	21	W	F	()	()	()	
~~41 Steele, Charles K~~	343	W	M	()	()	()	Excused by Judge
~~42 Brauner, Mark D~~	53	W	M	()	()	()	
~~43 Metzger, Denise M~~	250	H	F	()	()	()	
~~44 Stanek, Jr Paul M~~	339	W	M	()	()	()	
~~45 Twentier, Henry W~~	368	W	M	()	()	()	
~~46 Meeam, Barbara J~~	239	W	F	()	()	()	

Horry County Courthouse RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

PANEL ID : B CULBERTSON CT

COURTROOM JAR

DESCRIPTION : B CULBERTSON CT

Sorted by **418** Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
~~Q47~~ Edens, William T	116	W	M	()	()	()	
~~Q48~~ Rautzhan, Crystal K	290	W	F	()	()	()	
~~Q49~~ Weeden, Jessica L	379	W	F	()	()	()	
~~Q50~~ Linebaugh, Jessica A	215	W	F	()	()	()	
~~Q51~~ Wilburn, Kevin M	388	W	M	()	()	()	
~~Q52~~ Prager, Susan J	283	W	F	()	()	()	
~~Q53~~ Brantley, Christy L	52	B	F	()	()	()	
~~Q54~~ Talbert, Kevin D	350	W	M	()	()	()	
~~Q55~~ Forte, Kimmarie C	137	W	F	()	()	()	
~~Q56~~ Winters, Lisa J	398	W	F	()	()	()	
~~Q57~~ Merkel, Sharon K	249	W	F	()	()	()	Excused by judge
~~Q58~~ Benning-james, Jamie A	33	B	F	()	()	()	
~~Q59~~ Myers, Vincent D	261	B	M	()	()	()	
~~Q60~~ Lawrence, Michael A	209	W	M	()	()	()	
~~Q61~~ Shmaruk, Nicholas J	329	W	M	()	()	()	

Total Number of Jurors:

61

** END OF REPORT **

I don't know exactly what day
but William Weatherall was my roommate
in D-4-123. And he gave me a play by
play detail explanation of what happened
in this Macider Case. He told me
"Afternoon 17. Bell that he and a few
5 friends were at a hotel Ocean some-
where south of here and to make a long story short
By 11:00 Mitch told me that the victim was 25
5 ft. well as himself were all doing drugs
of some type and the victim suppo-
sedly lied and told Mitch that he had
more money but turns out he doesn't
so Mitch flew out and hits the victim
with a Forty ounce bottle. Which is what
causes the fatal blow to the head. 3 days
later Mitch and a friend try dragging
the dead body out of the room to
a car that he (Mitch) borrowed from
a girlfriend. Planning to take the
car to a scrapyard somewhere in
Caroline County to crash the car but
Mitch found out later that it didn't
200 couldn't work out quite that easy.
And I Merous Allen Bell will testify
to all of this.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 17 2019

SC Court of Appeals

APPEAL FROM HORRY COUNTY

Court of General Sessions

Hon. Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2017-002447

State of South Carolina, ... Respondent,

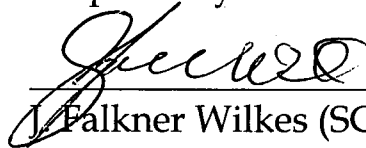
v.

Mitchell Monroe Weatherall, ... Appellant.

CERTIFICATE

I certify that the Record on Appeal has been redacted in accordance with the Supreme Court's Order on redaction of personal and private data and the applicable Rules of Appellate and Civil Procedure.

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)

114 Whitsett Street

Greenville, SC 29601

(864) 282-1292

(864) 271-6035 (facsimile)

Counsel for Appellant

June 12, 2019.

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Honorable Benjamin H. Culbertson, Circuit Court Judge

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NOV 28 2017

SC Court of Appeals

CASE NO:
2014GS2601415

The State, ... Respondent,

V.

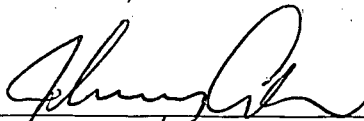
Mitchell Monroe Weatherall, ... Appellant.

FILED
HORRY COUNTY
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
2017 NOV 22 PM 1:39

NOTICE OF APPEAL

Mitchell Monroe Weatherall, appeals the conviction and sentence in this case. The sentence was imposed by the Honorable Benjamin H. Culbertson, on March 23, 2017. A post-trial Motion for New Trial or in the Alternative for a Reduced Sentence was filed on March 31, 2017, and ruled upon by the Honorable Benjamin H. Culbertson on September 29, 2017. A Motion to Reconsider Order was filed on October 9, 2017, ruled upon by the Honorable Benjamin H. Culbertson on November 16, 2017 and received by the Defendant on November 20, 2017.

November 22, 2017


Johnny Gardner, Esquire
Jarrett Bouchette, Esquire
JOHNNY GARDNER LAW GROUP, P.A.
212 Main Street
Conway, SC 29526
843-248-7135
Attorneys for Appellant

Other Counsel of Record:
Nancy Livesay, Solicitor
Post Office Box 1276
Conway, SC 29528
843-915-5460
Attorney for Respondent

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RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

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STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO: 2014GS2601415

The State, ... Respondent,

V.

Mitchell Monroe Weatherall, ... Appellant.

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HORRY COUNTY, SC

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of the Notice in the United States Mail, postage prepaid, on November 22, 2017, addressed to the attorney of record:

Nancy Livesay
Solicitor
Post Office Box 1276
Conway, South Carolina, 29528
Attorney for Respondent

November 22, 2017



Christie Chestnut, Senior Paralegal
JOHNNY GARDNER LAW GROUP, P.A.
212 Main Street
Conway, SC 2952
Phone: 843-248-1570
Facsimile: 843-248-0270
Email: Christie@JohnnyGarnderLawGroup.com

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HORRY COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2017-002447

Trial Case No.: 2014GS2601415

THE STATE, ... RESPONDENT,

v.

MITCHELL MONROE WEATHERALL, ... APPELLANT.

BRIEF OF APPELLANT

RECEIVED
JUN 17 2019
SC Court of AppealsJ. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	iii
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	2
ARGUMENT	
I. THE COURT ERRED IN EMPANELING JURY OVER THE APPELLANT'S BATSON v. KENTUCKY MOTIONS.	7
II. THE COURT ERRED IN REFUSING TO CHARGE THE JURY ON S.C. CODE § 17-25-65 WHERE THE STATE'S KEY WITNESS DENIED THAT HE COULD RECEIVE ANY BENEFIT FROM HIS TESTIMONY AT TRIAL.	14
CONCLUSION	18

TABLE OF AUTHORITIES

Cases

Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986)	7
McCrea v. Gheraibeh, 380 S.C. 183, 669 S.E.2d 333 (2008)	9
Miller-El v. Dretke, 545 U.S. 231 (2005)	11
Payton v. Kearsse, 329 S.C. 51, 495 S.E.2d 205 (1998)	10,13
Powers v. Ohio, 499 U.S. 400 (1991)	10
Purkett v. Elem, 514 U.S. 765 (1995)	10,12,13
Randall v. State, 716 So. 2d 584 (Miss. 1998)	12
Snyder v. Louisiana, 552 U.S. 472 (2008)	8,11
State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996)	10,12
State v. Brownlee, 318 S.C. 34, 455 S.E.2d 704 (Ct. App. 1995)	17
State v. Brown, 344 S.C. 70, 543 S.E.2d 552 (2001)	15
State v. Cochran, 631 S.E.2d 294, 369 S.C. 308 (S.C. App., 2006)	7,10,13
State v. Flynn, 368 S.C. 83, 627 S.E.2d 763 (Ct.App.2006)	9
State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014)	10,11,12
State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004)	15
State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999)	9,10
State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993)	17
State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (2014)	10,12
State v. Kimbrell, 294 S.C. 51, 362 S.E.2d 630 (1987)	17
State v. McMillan, 400 S.C. 298, 734 S.E.2d 171 (S.C. App., 2012)	7
State v. Mizzell, 349 S.C. 326 at 332–33, 563 S.E.2d 315 at 318. (2002)	15,16
State v. Gillian, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004)	15
State v. Sams, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014)	17
State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001)	7,9,10
United States v. Bartko, 728 F.3d 327, 343 (4th Cir.2013)	17
United States v. McFadden, 753 F.3d 432, 443–44 (4th Cir.2014)	17
United States v. Schoneberg, 396 F.3d 1036, 1041 (9th Cir. 2005)	17

United States v. Sonmez, 777 F.3d 684, 688 (4th Cir. 2015) 18

Constitutional Provisions

U. S. Const. Amend. VI 14

Statutes

Code § 17-25-65 14

STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in denying the Appellant's Batson motion where state struck the only African American juror called?
- II. Did the trial court err in denying the Appellant's Batson motion where state struck gay juror?
- III. Did the trial court err in denying the Appellant's requested jury charge to show potential bias on the part of the state's key witness?
- IV. Does any of the court's errors, or a combination thereof, require a reversal of the Appellant's conviction and sentence?

STATEMENT OF THE CASE

The Appellant, Mitchell Monroe Weatherall, was indicted by the Horry County Grand Jury on the charge of murder (2014-GS-26-01415). March 20-23, 2017, a jury trial was held, the Honorable Benjamin H. Culbertson presiding. Appellant was represented at trial by Johnny Gardner and Thomas Jarrett Bouchette. The State was represented by Nancy R. Livesay of the Horry County Solicitor's Office. Dixie C. Eubank was the court reporter in the case. The jury found the Appellant guilty as charged and the court imposed a sentence of life imprisonment. The Appellant was remanded to the South Carolina Department of Corrections where he remains currently incarcerated.

A timely notice of appeal was filed by Appellant's trial counsel. J. Falkner Wilkes was substituted as counsel for the Appellant for the appeal. The State is represented on appeal by Melody Jane Brown of the Office of the Attorney General.

STATEMENT OF FACTS

The Appellant and several others were alleged to have been in a hotel room for days smoking crack cocaine. R. p. 272-278. While in the room one of the individuals was struck in the head with a bottle and died as a result. R. p. 96; 272-278. A video surveillance tape from the hotel showed two individuals carrying what appeared to be a body wrapped in a sheet and putting it into a car. R. p. 232. The victim's body was found some time later in a wooded area. 154. The Appellant's detention center cellmate, who was being held on unrelated charges, testified that during their stay together in jail the Appellant revealed that he had struck the deceased in the head with a bottle and later disposed of the victim's body. R. p. 272-273.

Jury Selection

The Appellant is a gay African American. R. p. 36. During jury selection the State struck Juror 191, the only black juror called. R. p. 27-28; 34. The defense raised a motion pursuant to Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). In response to the motion the trial court began with a misstatement of the applicable law: "You know, there's a whole lot of leeway. I know that it -- if there had been more black females called and struck, you could address it, but since there was only one called..." R. p. 34, l. 25-35, l. 4. The court allowed the State to respond. R. p. 35. The State claimed that the juror was struck because "our records indicated that she has a prior conviction" and that "because under our records, it showed that she would have been disqualified as a juror." R. p. 35, 5-10. This claim however was apparently rebutted by the juror during qualifications when she presented her identification to prove that she did not have any prior criminal record. R. p. 35. The juror was subsequently qualified by the court. 8. Without any analysis or clarification of its earlier misstatement of the law, the trial court

found a "justifiable reason" for the strike. R. p. 37, l. 2-3.

The defense also raised a Batson objection to the State's strike of Juror 397, who was gay. R. p. 31; 35-37. Without any consideration or analysis, and prior to any basis for the strike being given by the State the trial court denied the motion, holding that as a matter of law sexual orientation was not a protected class under Batson. R. p. 36. The court indicated that it would not require the solicitor to place a reason for the strike on the record. R. p. 36. Subsequent to the ruling the solicitor claimed that she was unaware of the juror's sexual orientation and struck the juror because he appeared disinterested during the jury selection. R. p. 36. There was no indication that the court applied any particular analysis or actually revisited the issue on which it had already ruled. R. p. 36-37. The jury was empaneled over the defense's objection. R. p. 37.

Failure to Give Requested Jury Charge

The State offered testimony of Marcus Bell, the Appellant's former detention center cellmate. R. p. 270. In February of 2015 Bell wrote the solicitor a letter, which he described at trial as "giving a brief description of what was told to me as far as what we're here today discussing as far as this murder trial." R. p. 272, l. 8-11; 276. Bell claimed that the Appellant had told him about his charges. R. p. 270. Bell claimed that Appellant told him "bits and pieces". 271, l. 23. Bell couldn't recall details but said that "I can give you a pretty much overview summary." R. p. 272.

According to Bell "a misunderstanding about the victim having some money to purchase more drugs, this, that, and the third because they were all in the room, Mr. Weatherall and a couple of other people were having, you know, just sitting down, getting high, enjoying themselves, and the drugs were running out, the money was getting low, and the victim

supposedly claimed he had more money to get more drugs. Come to find out, that wasn't the case.

Mr. Weatherall said, hey, you know, kind of got angry and something ensued to the point to where a bottle was grabbed and hit the victim across the head, and come to find out, like they didn't even notice that the victim was, was deceased until some days later..." R. p. 272, l. 17-273,

l. 3. When asked if the Appellant had shown him how he struck the victim Bell said: "Not exactly like in a whole bunch of different moves, but he just was like I smacked him across the head with the bottle." R. p. 275, l. 3-7. Bell's testimony was clearly critical to the State's case as there was no other evidence to show the identity of the victim's assailant.

Despite having testified that the Appellant had confessed to hitting the victim, Bell contradicted himself and admitted that the Appellant never actually told him that he had hit the victim. R. p. 274. Bell admitted that the Appellant had told him repeatedly that "Chicken" [Marvin McElveen, R. p. 308] had hit the victim with the bottle. R. p. 274. Bell then contradicted his own testimony further and claimed that the Appellant had implied that he had hit the victim in the head with a bottle. R. p. 274, l. 8-275, l. 2.

The defense questioned Bell to show that the alleged confession was simply fabricated using information that Bell obtained from reading the Appellant's discovery material, rather than any actual admissions by the Appellant. R. p. 287-288. Bell admitted "that discovery, that's a commodity at the jail; people trade it, people use it, and things like that." R. p. 285, l. 18-22. On cross-examination Bell first denied having seen Appellant's discovery material while in the jail, but then later admitted that the Appellant, "like every other inmate out there, has a copy of his [discovery material] that stays in the cell". R. p. 287-288. On cross Bell also admitted that inmates don't stay in their cells all the time, leaving to go to eat, go out on the yard, and things

like that. R. p. 288.

On re-direct the solicitor attempted to rehabilitate Bell's testimony asking if he ever saw the Appellant's discovery. R. p. 288. Bell responded that he had not. R. p. 288. Despite having just admitted on cross-examination that Appellant had his discovery in the cell like every other inmate, on re-direct Bell was suddenly able to "specifically remember Mr. Weatherall saying that he didn't even have discovery at the time when I was in his room. R. p. 288, l. 20-22. Despite Bell's answer that the Appellant didn't even have discovery while they were cellmates, the solicitor's next question was: "Okay, And did he ever just leave it sitting out for anybody to look at?" R. p. 288, l. 23-24. To which Bell responded: "No, because he rarely came out the room." 288, l. 25. The solicitor continued: "Okay, And so, he was basically in there holding his stuff, making sure weren't nobody looking at it?" R. p. 289, 1-2. To which Bell responded: "Pretty much." R. p. 289, l. 3. This continued with the solicitor asking: "Okay. Now let me ask you this, would you have messed with his discovery?" R. p. 289, l. 4-5. Bell: "Definitely not." R. p. 289, l. 6. Despite the obvious incongruity of the whole line of questions, and the importance of the testimony to the case, the court denied the defense's request to follow up on the solicitor's attempt to rehabilitate Bell. R. p. 289, l. 22-23.

The solicitor asked Bell if what he put in the letter, and what he told the jury, was the truth. R. p. 276. Bell replied that it was. R. p. 276. To bolster Bell's credibility further the solicitor asked Bell: "Okay. Now, are you expecting anything in exchange for writing that letter or coming up here and telling them what Mitch told you?" R. p. 276, l. 200-22. To which Bell responded: "Not at all." R. p. 276, l. 23. When asked why he wrote the letter to the solicitor Bell responded:

1 Well, at first I'm gonna be totally honest w1th you, I,
2 I, I felt that it was -- I felt that possibly it could help me
3 when I was facing time, but then I later on found out that it
4 didn't help me. And, as the time went on down the road,
5 figured out that it was pretty much the right thing to do
6 because of the simple fact that it could've been my dad, it
7 could've been my brother, it could've been my, you know, it
8 could've been a family member on mine and, you know, I'd want
9 somebody to do it for me -- you know what I'm saying, to do it
10 for a family member of mine, but this me being here today
11 don't help me none, so -- at all, not one bit.

R. p. 277, l. 1-11.

In an effort to show the potential for bias in Bell's ability to qualify for a sentence reduction the defense requested the court charge the content of S.C. Code § 17-25-65. Despite the critical nature of Bell's testimony the court denied the defense request to charge. R. p. 358-359.

ARGUMENT

I. THE COURT ERRED IN EMPANELING JURY OVER THE APPELLANT'S BATSON V. KENTUCKY MOTIONS.

Standard of Review

"Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record." State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). The judge's findings regarding purposeful discrimination are given great deference and will not be set aside by this court unless clearly erroneous. Evins, 373 S.C. at 416, 645 S.E.2d at 909-10. "This standard of review, however, is premised on the trial court following the mandated procedure for a Batson hearing." State v. Cochran, 369 S.C. 308, 312, 631 S.E.2d 294, 297 (Ct.App.2006). "[W]here the assignment of error is the failure to follow the Batson hearing procedure, we must answer a question of law. When a question of law is presented, our standard of review is plenary." *Id.* at 312-13, 631 S.E.2d at 297. State v. McMillan, 400 S.C. 298, 734 S.E.2d 171 (S.C. App., 2012). In this case, the court failed to apply the proper law given the facts. Plenary review is therefore appropriate.

Discussion of the Issues

The defense raised two challenges pursuant to Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). The first was to the State's strike of the only African American juror called. The second was in response to the State's strike of a gay juror. In considering the Batson issue the court misstated the law in both instances.

In response to the defense challenge of the State's strike of the African American juror the trial court stated: "'You know, there's a whole lot of leeway. I know that it -- if there had

been more black females called and struck, you could address it, but since there was only one called..." This was an error of law: "The "Constitution forbids striking even a single prospective juror for a discriminatory purpose." Snyder v. Louisiana, 552 U.S. 472, 478, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008)" Foster v. Chatman, 136 S. Ct. 1737, 1747, 195 L. Ed. 2d 1 (2016). While the solicitor put on the record that the strike was based on some belief that the juror might have had a disqualifying prior drug conviction, such was clearly contrary to the court's prior qualification of the juror. 8. The court made no analysis on the record and never corrected its earlier misstatement of the law. The court, apparently only as an afterthought, stated: "I find that there is a justifiable reason for striking Juror Number 191." R. p. 37, l. 2-3. Having failed to place any analysis on the record after misstating Batson's application, the court's finding cannot be assumed valid. The court's misapprehension as to Batson's application where the strike involved only a single African American juror therefore constitutes an error of law.

As to the State's strike of a gay juror the court again misstated the law: "I'm gonna go ahead and deny your motion because I agree, there's no protected class based upon sexual orientation." R. p. 36. The trial court's subsequent comments show that it's ruling was final and that it did not intend to conduct any meaningful analysis of the issue: "And I'm not gonna require you to give the reason that you struck him unless you just want to put that on the record. You want to put that on the record?" R. p. 36. It was only subsequent to the court's ruling that the solicitor added that she was unaware of the juror's sexual orientation and had struck the juror because he appeared "disinterested" during the jury selection process. R. p. 36. There was no indication that the court actually revisited the issue on which it had already ruled, or even if it did, that it applied the proper analysis required under Batson. R. p. 36-37.

The Batson Analysis

In Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), the Supreme Court held the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prevents the prosecution from striking potential jurors on the basis of race. McCrea v. Gheraibeh, 380 S.C. 183, 186, 669 S.E.2d 333, 334 (2008) (citing State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001)); see also Batson v. Kentucky, 476 U.S. at 89. The Supreme Court has set forth a three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause. See Purkett v. Elem, 514 U.S. 765, 767-68 (1995); State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (2014).

The purposes of Batson v. Kentucky and its progeny are to protect the defendant's right to a fair trial by a jury of his peers, protect each venireperson's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of the justice system by seeking to eradicate discrimination in the jury selection process. State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999); State v. Flynn, 368 S.C. 83, 627 S.E.2d 763 (Ct.App.2006). It is unconstitutional to strike a juror on the basis of race or gender. See J.E.B. v. Alabama, 511 U.S. 127, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994). The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venireperson on the basis of race. State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001); Haigler, 334 S.C. at 628, 515 S.E.2d at 90. "Purposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure." Batson, 476 U.S. at 86, 106 S.Ct. 1712. A criminal defendant may object to race-based peremptory challenges on equal protection grounds regardless of whether the defendant and

potential juror share the same race. Powers v. Ohio, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991); Payton v. Kears, 329 S.C. 51, 495 S.E.2d 205 (1998). Batson has also been held to apply to strikes based on sexual orientation. Smithkline Beecham Corporation, v. Abbott Laboratories, 740 F.3d 471 (2014); Morgan v. State, 416 P.3d 212 (2018).

Once a peremptory challenge is opposed, the trial court must, upon request, conduct a Batson hearing and adhere to the procedures set forth in Purkett v. Elem, 514 U.S. 765, 767, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995), and adopted by our supreme court in State v. Adams, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996). State v. Cochran, 631 S.E.2d 294, 369 S.C. 308 (S.C. App., 2006).

Batson's Three Step Analysis

In State v. Giles, our supreme court explained the proper procedure for a Batson hearing:

First, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the proponent of the challenge to provide a race neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the opponent of the challenge has proved purposeful discrimination. 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014) (*internal citations omitted*).

State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014).

The First Step Of The Analysis

First, the [party asserting the Batson] challenge must make a prima facie showing that the challenge was based on race. State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (2014). When one party strikes a member of a cognizable racial group or gender, the trial court must hold a Batson hearing if the opposing party requests one. *See generally* State v. Haigler, 334 S.C. 623, 515

S.E.2d 88 (1999). The same would apply when a party strikes a juror based on sexual orientation. Smithkline Beecham Corporation, v. Abbott Laboratories, 740 F.3d 471 (2014); Morgan v. State, 416 P.3d 212 (2018). In this case the defense objected to the State's strike of the only African American juror called, as well as to the strike of a gay juror. This satisfies the first step of the Batson analysis.

The Second Step Of The Analysis

Once a prima facie showing has been made, the trial court will move to the second step in the process, which requires the [party opposing the Batson] challenge to provide a race neutral explanation for the challenge. State v. Giles, 407 S.C. 14, ---, 754 S.E.2d 261, 263 (2014). (*internal citations omitted*); *see also* Snyder v. Louisiana, 552 U.S. 472, 476-77 (2008) (*quoting Miller-El v. Dretke*, 545 U.S. 231, 277 (2005)); State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (2014). The same type of analysis should apply to strikes based on sexual orientation. Beecham Corporation, v. Abbott Laboratories, 740 F.3d 471 (2014); Morgan v. State, 416 P.3d 212 (2018).

Reversal Required Based on the Failure to Reach the Second Step of the Analysis as to Gay Juror

Here the court ruled as a matter of law that Batson does not apply to strikes based on sexual orientation. Although the State later stated that the strike was based on the juror appearing disinterested in the process, that was only done subsequent to the trial court ruling that Batson does not apply as a matter of law. Having ruled prior to reaching Batson's second step, the court failed to conduct a proper Batson analysis. The failure of the court to apply Batson to the State's strike of a gay juror as a matter of law constitutes reversible error. *See* Smithkline Beecham Corporation, v. Abbott Laboratories, 740 F.3d 471 (2014); Morgan v. State, 416 P.3d 212 (2018).

The Second Step of the Analysis

Step two of the analysis is perhaps the easiest step to meet, as it does not require that the race-neutral explanation be persuasive, or even plausible. Purkett, 514 U.S. at 768; Randall v. State, 716 So. 2d 584, 588 (Miss. 1998). The explanation must only be "clear and reasonably specific such that the [party asserting the Batson challenge] has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty [in step three] to assess the plausibility of the reason in light of all the evidence with a bearing on it." Giles, 407 S.C. at ---, 754 S.E.2d at 265; *see., e.g., id. at ---*, 754 S.E.2d at 262, 265-66 (finding that a defendant's explanation that he "did not feel the [struck] jurors were right for the jury," while "technically, semantically and intellectually racially neutral," would not allow the circuit court to "assess the plausibility of the proffered reason for striking the potential jurors"). *See also* State v. Inman, 409 S.C. 19, 760 S.E.2d 105 (2014).

The Supreme Court observed "[t]he second step of this process does not demand an explanation that is persuasive, or even plausible." Purkett v. Elem, 514 U.S. 765, at 767-68, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995). At step two, therefore, the proponent of the strike does not carry "any burden of presenting reasonably specific, legitimate explanations for the strikes." State v. Adams, 322 S.C. at 123, 470 S.E.2d at 371. Therefore, "[u]nless a discriminatory intent is inherent" in the explanation provided by the proponent of the strike, "the reason offered will be deemed race neutral" and the trial court must proceed to the third step of the Batson process. Purkett, 514 U.S. at 768, 115 S.Ct. 1769.

The Third Step Of The Analysis - The Fundamentally Implausible Explanation

In light of the totality of the facts the State's explanation for the strike of the only black

juror presented in the Appellant's case is fundamentally implausible and therefore fails the third step of the Batson analysis. "Under some circumstances, the race-neutral explanation given by the proponent may be so fundamentally implausible that the judge may determine, at the third step of the analysis, that the explanation was mere pretext even without a showing of disparate treatment." Purkett, *supra*; Adams, 322 S.C. at 124, at 123, 470 S.E.2d at 372; State v. Cochran, 631 S.E.2d 294, 369 S.C. 308 (S.C. App., 2006); Payton v. Kears, 495 S.E.2d 205, 329 S.C. 51 (S.C., 1996). Payton v. Kears, 329 S.C. 51, 495 S.E.2d 205 (1998). Here the implausibility of the State's explanation is clear. The solicitor struck the African American juror because she believed the juror might have a disqualifying prior conviction, which is clearly contrary to the court's qualifying the juror during the venire process. During qualification the juror raised the issue which was resolved by the trial court qualifying her for the jury pool. The State's claim that the strike was "out of abundance of caution" that there could be a prior disqualifying conviction is therefore clearly unfounded and completely contrary to the court's ruling. The stated basis for the State's strike is therefore fundamentally implausible. Therefore the trial court erred in empaneling the jury over the Appellant's Batson motion.

[Continued on following page]

II. THE COURT ERRED IN REFUSING TO CHARGE THE JURY ON S.C. CODE § 17-25-65 WHERE THE STATE'S KEY WITNESS DENIED THAT HE COULD RECEIVE ANY BENEFIT FROM HIS TESTIMONY AT TRIAL.

Here the State's key witness Marcus Bell provided the only evidence identifying the Appellant as the person that hit the deceased in the head with a bottle. Bell was not a witness to the events, but rather the Appellant's cell mate at the detention center while both were pending trial on unrelated charges. The defense attempted to show Bell's access to the Appellant's discovery material as the source of his knowledge of the Appellant's case. To bolster Bell's credibility the solicitor asked Bell if he was expecting anything in exchange for writing that letter or testifying at trial. Bell initially claimed that he expected nothing, but later when on to admit that he was when he originally wrote the letter to the solicitor, but that it couldn't help him now. Essentially Bell claimed that he was testifying simply because it was the right thing to do. To contradict Bell's testimony and expose possible bias the defense requested a jury charge on S.C. Code § 17-25-65 which specifically provides for the reduction of sentences where an inmate cooperates with the State in a situation such as Bell's. The court denied the charge and in doing so foreclosed the defense's only effective means of showing Bell's potential bias.

Showing witness bias is an essential right guaranteed under the Sixth Amendment. The analysis here should therefore be similar to cases involving a witness facing sentencing on pending charges. "Included in the Confrontation Clause protection is the right to cross-examine any State's witness as to possible sentences faced when there exists "a substantial possibility [the witness] would give biased testimony in an effort to have the solicitor highlight to [a] future [court]" how the witness cooperated in the instant case. *See State v. Sims*, 348 S.C. 16 at 25, 558

S.E.2d at 523; *see also* State v. Mizzell, 349 S.C. 326 at 332–33, 563 S.E.2d 315 at 318. (2002); State v. Gillian, 360 S.C. 433, 454, 602 S.E.2d 62, 73 (Ct. App. 2004), *aff'd as modified*, 373 S.C. 601, 646 S.E.2d 872 (2007). Here the only way to show the bias in Bell's testimony was to show that, contrary to his testimony, his cooperation would qualify him for a sentence reduction, if of course the State was so inclined.

The potential for biased testimony in the hope of reducing a sentence already imposed is no different than the potential for biased testimony in hopes of a reduced sentence on pending charges. In addressing the right to show potential bias where a witness has sentencing pending on outstanding charges the court has said: "We found Brown was unfairly prejudiced because the witness "was permitted to avoid a mandatory prison term of more than three times the duration she would face on her plea to conspiracy [was] critical evidence of potential bias that appellant should have been permitted to present to the jury." State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). Moreover, the witness provided the only evidence to link Brown to the cocaine trafficking. *Id.*, 303 S.C. at 171-72, 399 S.E.2d at 594." State v. Mizzell, 349 S.C. 326, 332, 563 S.E.2d 315, 318 (2002). Here, Bell's testimony opened the door for future gain no different than where a witness testifies in hopes of having that cooperation affect future sentencing. The potential for bias is exactly the same.

It is not necessary that there be evidence of an existing agreement or offer by the State to have Bell's sentence reduced in exchange for Bell's testimony. It is merely the hope of one that creates the potential for bias:

"Petitioners argue Steele would reasonably have felt the quality of his cooperation would determine the degree of benefit he would later receive. *See* Boone v. Paderick, 541 F.2d 447, 451 (4th Cir.1976) ("[A] promise to recommend leniency

(without assurance of it) may be interpreted by the promisee as contingent upon the quality of the evidence produced; the more uncertain the agreement, the greater the incentive to make the testimony pleasing to the promisor." We agree."

State v. Mizzell, 349 S.C. 326, 332–33, 563 S.E.2d 315, 318 (2002). Here Bell testified that his cooperation with the State, and testimony in the Appellant's case, could not help him "not one bit". This testimony was offered by the State to bolster Bell's credibility and was especially egregious as it was not at all true. S.C. Code § 17-25-65 provides that upon the State's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved information provided by the defendant to the State within one year of sentencing, but which did not become useful to the State until more than one year after sentencing. Clearly, Bell's testimony makes him eligible for a sentence reduction. Whether or not offered by the State, Bell could have hope that testimony favorable to the State would result in some benefit to him. That potential for future benefit gives rise to a corresponding potential for bias that the defense was entitled to show. The defense sought to do this by having the court charge the relevant portion of S.C. Code § 17-25-65.

The jury's ability to judge credibility turns on it's having all of the relevant information, including that which might create bias. In analyzing the right of a defendant to establish bias that can be created by the potential for a sentence reduction the federal court has said:

As in many trials, the jury's task boiled down to deciding which of the two most important witnesses was lying to them. The defendant had an obvious motive to lie, because his direct freedom was at stake, but so did the government's star witness. His motive was more subtle, as it arose from a plea agreement that left open the possibility that he might walk out the door a free man if the government was satisfied that his testimony was the truth.

United States v. Schoneberg, 396 F.3d 1036, 1041 (9th Cir. 2005).

Here the State elicited testimony that Bell's cooperation could do nothing for him. This evidence was clearly presented to bolster Bell's credibility by removing any impression of bias. It misrepresented to the jury that Bell's testimony could not benefit him in any way, which is clearly not case. Whether or not the solicitor had made an offer or intended to move to reduce Bell's sentence if pleased with his testimony, the potential for bias lies in fact that she could. Bell's role as the State's star witness made him eligible for a sentence reduction under S.C. Code § 17-25-65. 'The law to be charged to the jury is determined by the evidence presented at trial.' " State v. Sams, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014) (*quoting State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993)). The defense requested the court charge the statute so the jury could see the potential for bias. As the request arose from the facts and was based on the applicable law, it was error for the court to refuse it: "It is error to refuse a requested charge on an issue raised by the indictment and the evidence presented at trial." State v. Kimbrell, 294 S.C. 51, 362 S.E.2d 630 (1987); State v. Brownlee, 318 S.C. 34, 455 S.E.2d 704 (Ct. App. 1995).

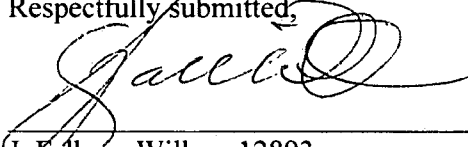
Federal courts apply a similar analysis: "We review for abuse of discretion the district court's denial of Sonmez's proposed jury instructions. United States v. Bartko, 728 F.3d 327, 343 (4th Cir.2013). To establish an abuse of discretion in this regard, a defendant must demonstrate that his proposed instructions (1) were "correct," (2) were "not substantially covered by the charge that the district court actually gave to the jury," and (3) "involved some point so important that the failure to give the instruction[s] seriously impaired the defendant's defense." *Id.*; *see also* United States v. McFadden, 753 F.3d 432, 443–44 (4th Cir.2014) (same)." United States v. Sonmez, 777 F.3d 684, 688 (4th Cir. 2015). Here, the failure to charge Code § 17-25-65 limited the defense's ability to show the potential for bias in Bell's testimony. As Bell's testimony

constituted the only evidence that the Appellant struck the victim, the court's refusal to charge seriously impaired Weatherall's defense.

CONCLUSION

For the reasons set forth herein, Appellant Mitchell Monroe Weatherall respectfully requests this Court to reverse his convictions and remand for new trial.

Respectfully submitted,



J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

Counsel for Appellant

July 10, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2017-002447

Trial Case No.: 2014GS2601415

 THE STATE, ... RESPONDENT,

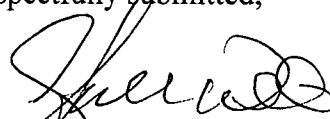
v.

 MITCHELL MONROE WEATHERALL, ... APPELLANT.

 CERTIFICATE OF COUNSEL

I certify that the Final Brief of the Appellant is in compliance with Rule 211(b), SCACR.

Respectfully submitted,



 J. Falkner Wilkes, 12893
 114 Whitsett Street
 Greenville, SC 29601
 (864) 282-1292

Counsel for Appellant

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2017-002447

RECEIVED

MAY 21 2019

SC Court of Appeals

THE STATE,

Respondent,

vs.

MITCHELL MONROE WEATHERALL,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

ANTHONY MABRY
Senior Assistant Attorney General
S.C. Bar No. 11973
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
803-734-6305

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit
P. O. Drawer 1276
Conway, South Carolina 29526

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
APPELLANT’S STATEMENT OF ISSUES ON APPEAL.....	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS	2
ARGUMENT.....	5
Argument I. Judge Culbertson did not err in denying Weatherall’s <u>Batson</u> motions.....	5
Argument II. Judge Culbertson did not err in denying Weatherall’s request to charge S.C. Code Ann. § 17-25-65.....	14
CONCLUSION.....	27

APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in denying the Appellant's Batson motion where state struck the only African American juror called?
- II. Did the trial court err in denying the Appellant's Batson motion where state struck a gay juror?
- III. Did the trial court err in denying the Appellant's requested jury charge to show potential bias on the part of the state's key witness?
- IV. Does any of the court's errors, or a combination thereof, require a reversal of the Appellant's conviction and sentence?

TABLE OF CASES

Cases

<u>Arthur v. Sexton Dental Clinic,</u> 368 S.C. 326, 628 S.E.2d 894 (Ct. App. 2006).....	9
<u>Batson v. Kentucky,</u> 476 U.S. 79 (1986).....	5, 7
<u>Benson v. State,</u> 105 A.2d 979 (Del. 2014).....	26
<u>Butler v. Gamma Nu Chapter of Sigma Chi,</u> 314 S.C. 477, 445 S.E.2d 468 (Ct. App. 1994).....	23
<u>Coleman v. State,</u> 301 Ga. 720, 804 S.E.2d 24 (2017).....	11
<u>Daves v. Cleary,</u> 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003).....	18
<u>Finley v. State,</u> 529 S.W.3d 198 (Tex. Crim. App. 2017).....	11
<u>Georgia v. McCollum,</u> 505 U.S. 42 (1992).....	8
<u>Hernandez v. New York,</u> 500 U.S. 352 (1991).....	7
<u>In re Winship,</u> 397 US. 358 (1970).....	21
<u>J.E.B. v. Alabama ex rel. T.B.,</u> 511 U.S. 127 (1994).....	8
<u>Johnson v. State,</u> 302 Ga. 774, 809 S.E.2d 769 (2018).....	11
<u>Keating v. Hood,</u> 191 F.3d 1053 (9th Cir. 1999).....	21
<u>Lamon v. Boatwright,</u> 467 F.3d 1097 (7th Cir. 2006).....	11
<u>Lee v. Commr. of Ala. Dept. of Corr.,</u> 726 F.3d. 1172 (11th Cir. 2013).....	11
<u>Lee v. State,</u> 898 So.2d 790 (Ala. Crim. App. 2001).....	11
<u>Lisenby v. Jackson,</u> 2013 WL 5707344 (D.S.C. 2013).....	20

<u>McElemore v. State,</u>	
798 So.2d 693 (Ala. Crim. App. 2000).....	11
<u>Miller-El v. Dretke,</u>	
545 U.S. 231 (2005).....	13, 14
<u>Parra v. Lizarraga,</u>	
2018 W.L. 6835980 (C.D.Cal. 2018).....	26
<u>People v. Harrison,</u>	
106 P.3d 895 (Cal. App. 2005).....	26
<u>People v. Hovarter,</u>	
189 P.3d 300 (Cal. App. 2008).....	26
<u>Pope v. Illinois,</u>	
481 U.S. 497 (1987).....	21
<u>Purkett v. Elem,</u>	
514 U.S. 765 (1995).....	9
<u>Reese v. City of Dothan,</u>	
642 So.2d 511 (Ala. Crim. App. 1993).....	11
<u>Robinson v. Bon Secours St. Francis Health System Inc.,</u>	
382 S.C. 224, 675 S.E.2d 744 (2009).....	8
<u>Smith v. Fitton & Pittman, Inc.,</u>	
264 S.C. 129, 212 S.E.2d 925 (1975).....	21
<u>Smith v. Winningham,</u>	
252 S.C. 464, 166 S.E.2d 825 (1969).....	17
<u>Snyder v. Louisiana,</u>	
552 U.S. 472 (2008).....	8
<u>Solis v. Garcia,</u>	
219 F.2d 92 (9th Cir. 2000).....	21
<u>State v. Adams,</u>	
322 S.C. 114, 470 S.E.2d 366 (1996).....	8, 9
<u>State v. Baccus,</u>	
367 S.C. 41, 625 S.E.2d 216 (2006).....	7, 16
<u>State v. Bagwell,</u>	
201 S.C. 307, 23 S.E.2d 244 (1941).....	21
<u>State v. Bamberg,</u>	
270 S.C. 77, 240 S.E.2d 639 (1977).....	26
<u>State v. Battle,</u>	
408 S.C. 109, 757 S.E.2d 737 (Ct. App. 2014).....	24, 26
<u>State v. Blackstone,</u>	
157 S.C. 278, 154 S.E. 161 (1930).....	17
<u>State v. Blurton,</u>	
352 S.C. 203, 573 S.E.2d 802 (2002).....	18

<u>State v. Bridges,</u>	
278 S.C. 447, 298 S.E.2d 212 (1982).....	16
<u>State v. Bryant,</u>	
369 S.C. 511, 633 S.E.2d 152 (2006).....	24, 26
<u>State v. Bryant,</u>	
391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2011).....	17
<u>State v. Burton,</u>	
302 S.C. 494, 397 S.E.2d 90 (1990).....	18
<u>State v. Casey,</u>	
325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997).....	9, 13
<u>State v. Chapman,</u>	
317 S.C. 302, 454 S.E.2d 317 (1995).....	9
<u>State v. Cole,</u>	
338 S.C. 97, 525 S.E.2d 511 (2000).....	17
<u>State v. Collins,</u>	
266 S.C. 566, 225 S.E. 2d 189 (1976).....	21, 22, 23
<u>State v. Dodson,</u>	
16 S.C. 453 (1881)	17
<u>State v. Easler,</u>	
322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996).....	9
<u>State v. Elmore,</u>	
286 S.C. 70, 332 S.E.2d 762 (1985).....	9
<u>State v. Evins,</u>	
373 S.C. 404, 645 S.E.2d 904 (2007).....	7, 8
<u>State v. Faulkner,</u>	
151 S.C. 38, 149 S.E. 108 (1929).....	17
<u>State v. Flynn,</u>	
368 S.C. 83, 627 S.E.2d 763 (Ct. App. 2006).....	9
<u>State v. Foust,</u>	
325 S.C. 12, 479 S.E.2d 50 (1996).....	18
<u>State v. Gaines,</u>	
380 S.C. 23, 667 S.E.2d 728 (2008).....	17
<u>State v. Garrett,</u>	
350 S.C. 613, 567 S.E.2d 523 (Ct. App. 2002).....	16
<u>State v. Garris,</u>	
394 S.C. 336, 714 S.E.2d 888 (Ct. App. 2011).....	8
<u>State v. Giles,</u>	
407 S.C. 14, 754 S.E.2d 261 (2014).....	9, 10
<u>State v. Goodson,</u>	
312 S.C. 278, 440 S.E.2d 370	17

<u>State v. Grate,</u>	
310 S.C. 240, 423 S.E.2d 119 (1992).....	13
<u>State v. Haigler,</u>	
334 S.C. 623, 515 S.E.2d 88 (1999).....	9, 12
<u>State v. Hewitt,</u>	
205 S.C. 207, 31 S.E.2d 257 (1944).....	18
<u>State v. Hoffman,</u>	
312 S.C. 386, 440 S.E.2d 869 (1994).....	18
<u>State v. Huckabee,</u>	
388 S.C. 232, 694 S.E.2d 781 (Ct. App. 2010).....	17, 18
<u>State v. Hughey,</u>	
339 S. C. 439, 529 S.E.2d 721 (2000).....	17
<u>State v. Jackson,</u>	
297 S.C. 523, 377 S.E.2d 570 (1989).....	18
<u>State v. Jeffries,</u>	
316 S.C. 13, 446 S.E.2d 427 (1994).....	24, 26
<u>State v. Johnson,</u>	
302 S.C. 243, 395 S.E.2d 167 (1990).....	12
<u>State v. Kerr,</u>	
330 S.C. 132, 498 S.E.2d 212 (Ct. App. 1998).....	24, 26
<u>State v. Lambert,</u>	
149 N.C. App. 163, 560 S.E.2d 221 (N.C. App. 2003).....	19, 20
<u>State v. Lee,</u>	
298 S.C. 362, 380 S.E.2d 834 (1989).....	17
<u>State v. Lee-Grigg,</u>	
374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007).....	24, 26
<u>State v. Lewis,</u>	
293 S.C. 107, 359 S.E.2d 66 (1987).....	9
<u>State v. Light,</u>	
278 S.C. 641, 664 S.E.2d 465 (2008).....	24
<u>State v. Martinez,</u>	
294 S.C. 72, 362 S.E.2d 641 (1987).....	9
<u>State v. Mattison,</u>	
388 S.C. 469, 697 S.E.2d 578 (2010).....	17
<u>State v. McCray,</u>	
332 S.C. 536, 506 S.E.2d 301 (1998).....	13
<u>State v. Middleton,</u>	
407 S.C. 312, 755 S.E.2d 432 (2014).....	24, 26
<u>State v. Mikell,</u>	
257 S.C. 315, 185 S.E.2d 814 (1971).....	21

<u>State v. Moultrie,</u>	
273 S.C. 532, 257 S.E.2d 730 (1979).....	18
<u>State v. Pitts,</u>	
256 S.C. 420, 182 S.E.2d 738 (1971).....	21
<u>State v. Quattlebaum,</u>	
338 S.C. 441, 527 S.E.2d 105 (2000).....	7
<u>State v. Rabon,</u>	
175 S.C. 459, 272 S.E.2d 634 (1980).....	18
<u>State v. Rochester,</u>	
301 S.C. 196, 391 S.E.2d 244 (1990).....	7
<u>State v. Rye,</u>	
375 S.C. 119, 651 S.E.2d 321 (2007).....	16
<u>State v. Shuler,</u>	
344 S.C. 604, 545 S.E.2d 805 (2001).....	8
<u>State v. Smalls,</u>	
336 S.C. 301, 519 S.E.2d 793 (Ct. App. 1999).....	9
<u>State v. Smith,</u>	
391 S.C. 408, 706 S.E.2d 12 (2011).....	17
<u>State v. Southerland,</u>	
316 S.C. 377, 447 S.E.2d 862 (1994).....	9
<u>State v. Sowell,</u>	
85 S.C. 278, 67 S.E. 316 (1910).....	21
<u>State v. Steadman,</u>	
257 S.C. 528, 186 S.E.2d 712 (1972).....	21, 22, 25
<u>State v. Taylor,</u>	
255 S.C. 147, 177 S.E.2d 550 (1970).....	21
<u>State v. Tucker,</u>	
334 S.C. 1, 512 S.E.2d 99 (1998).....	7
<u>State v. West,</u>	
138 S.C. 421, 136 S.E. 736 (1927).....	17
<u>State v. Wilder,</u>	
306 S.C. 535, 413 S.E.2d 323 (1991).....	8
<u>State v. Williams,</u>	
367 S.C. 192, 624 S.E.2d 443 (Ct. App. 2005).....	18
<u>State v. Wilson,</u>	
345 S.C. 1, 545 S.E.2d 827 (2001).....	7, 16
<u>Sumpter v. State,</u>	
312 S.C. 221, 439 S.E.2d 842 (1994).....	7
<u>United States v. Anekwu,</u>	
695 F.3d 967 (9th Cir. 2012).....	26

<u>United States v. Lane,</u>	
866 F.2d 103 (4th Cir. 1989).....	8
<u>United States v. Satterfield,</u>	
254 Fed. Appx. 957 (4th Cir. 2007).....	23
<u>Wade v. United States,</u>	
504 U.S. 181 (1992).....	20

Statutes

18 U.S.C.A. §5K1.1.....	20
S.C. Code Ann. § 17-25-65.....	passim
S.C. Const art. 5, § 21	21

Rules

F.R.Crim.P. 35(b)(1).....	20
F.R.Crim.P. 35	23

STATEMENT OF THE CASE

On or about November 3rd or 4th, 2013, Appellant, Mitchell M. Weatherall, murdered Helbert Woodbury in Horry County. Weatherall was arrested several days later after a police investigation and charged with Woodbury's murder. The Horry County grand jury subsequently indicted Weatherall for Woodbury's murder. (Indictment # 2014-GS-26-1415). Weatherall was represented on the charge by Jonny Gardner and Thomas Jarrett Bouchette, Esquires. The State was represented by Assistant Solicitor Nancy R. Livesay. On March 20-23, 2017, Weatherall proceeded to a jury trial before the Honorable Benjamin H. Culbertson, Circuit Court Judge. At the conclusion of the trial, the jury found Weatherall guilty of Woodbury's murder. Judge Culbertson sentenced Weatherall to life in prison for the murder. Weatherall appeals his conviction and sentence to this Court raising two (2) actual issues. (R. pp 1-412; Indictment; Sentencing Sheet; Brief of Appellant). This is the Initial Brief of Respondent.

RESPONDENT'S STATEMENT OF FACTS

Helbert Woodbury ("the victim"), a fifty-seven (57) year old African-American man, was murdered in a motel room in Myrtle Beach, S.C. Appellant, Mitchell Weatherall ("Weatherall") is the person who murdered the victim. (R. pp. 1-412).

Weatherall murdered the victim by beating him to death. The victim died from blunt force trauma to the head which caused an "egg shell" skull fracture to the back of the victim's head killing him. The victim also had defensive wounds on his arms. The victim's blood [DNA] was found all over the motel room where he was killed. There was soaking blood on the carpet between the motel room's two (2) single beds and blood spatter on the walls, furniture, and ceiling of the motel room indicating a violent assault took place within the motel room. (R. pp. 77-84; 85-94; 95-113; 115-21; 181-89; 190-93; 244-52; 268-89; 213-43; 294-309).¹

The victim, who was from Hemmingway, S.C., was lured to Myrtle Beach by Weatherall over Craig's List with the promise of sexual favors. The victim arrived in Myrtle Beach on Friday, November 1, 2013, and according to a motel clerk he and Weatherall checked into Room 135 of the Atlantic View Motel together. Weatherall was listed as a co-occupant of the motel room on motel registration records. Weatherall also signed a form stating he was a co-occupant and the motel clerk made and retained a copy of the victim's and Weatherall's driver's license. (R. pp. 85-94; 194-213; State's Ex. 65).

The victim and Weatherall registered for one (1) week. They were to check out on Friday, November 8, 2013. The victim paid for the room. Over the first several days, among

¹ Police were not able to search the motel room until November 12, 2013 after Weatherall and some of his associates had attempted to clean up the room and after motel cleaning personnel had cleaned the room. However, even after these cleanings, the victim's blood was still found all over the motel room by crime scene investigators.

other things, the victim and Weatherall drank alcohol and used illegal drugs in the motel room. At some point, on or about November 3rd or 4th, 2013 [either Sunday or Monday], the two (2) men ran out of money, an argument ensued, and Weatherall beat the victim to death. (R. pp. 85-94; 194-213; 268-89; State's Ex. 65; State's Ex. 77).

After murdering the victim, on Tuesday, November 5, 2013, Weatherall, with the assistance of a male friend [Weatherall's boyfriend Joey Garsow], carried the victim's dead body out of the motel room in a blanket to a nearby car and placed the body in the back seat. Weatherall had to get rid of the victim's body because the motel room where the victim was murdered, Room 125 of the Atlantic View Motel, was the same one rented by the victim and Weatherall. Weatherall's carrying the victim's body to a nearby car, with the assistance of his friend, was captured on hotel surveillance video and played for the jury. (R. pp. 85-94; 194-213; State's Ex. 65 [registration] State's Ex. 77 [surveillance video]; R. pp. 213- 43).

A female friend of Weatherall, Tonya Wedlock, testified to driving to the Atlantic View Motel with Weatherall and Garsow on Tuesday, November 5, 2013, and allowing Weatherall to borrow her car at the time. Weatherall specifically told Tonya at the time that he needed to take the victim [who Tonya thought was alive] back to the Greyhound Bus Station so the victim could go home. Once she, Weatherall, and Garsow arrived at the Atlantic View Motel in Tonya's car, Weatherall asked Tonya to step around the corner of the motel out of sight. She did so and sat on a bench until Garsow joined her on the bench. As a result, Tonya did not actually see Weatherall and Garsow remove the victim's body from the motel room and place it in her car. At trial, Tonya was shown the surveillance video and Tonya identified Weatherall and Garsow in the surveillance video carrying the victim's body from the motel room and placing the victim's body in her car. She also testified consistent with the surveillance video, that Weatherall then

drove her car out of the motel parking lot. At the time of the incident, she of course had not seen the surveillance video and thought Weatherall was taking the victim to the bus station. (R. pp. 85-94; 194-213; State's Ex. 65 [registration] State's Ex. 77 [surveillance video]; R. pp. 213- 43).

Weatherall then drove the victim's body to a secluded location, and dumped the body, but not until first stripping the body of all belongings and clothing. Weatherall dumped the body in the Carolina Forest area of Horry County. Weatherall drove off of the last paved road, Postal Way, onto a gravel road, and then onto a dirt path and dumped the body in the thick undergrowth off the dirt path in a wood-line near a clear cut for a high voltage power line. The victim's body could not be seen unless the undergrowth was pulled back near the body. When the victim's nude, decomposing body was discovered several days later by police on November 12, 2013, there was no clothing, wallet, jewelry or identification around the body. Next to the body was a blanket or comforter. The body was so decomposed it could only be identified by fingerprint and DNA comparison. (State's Ex. 77 [surveillance video]; R. pp. 213-43; 151-71).

Still on Tuesday, November 5, 2013, after dumping the victim's body and returning to the motel in Tonya's car, Weatherall proceeded to use the victim's debit card to buy alcohol, food, and drugs. However, Weatherall did not buy alcohol, food, and drugs with the victim's debit card himself, but used two (2) other individuals to do that for him. According to Weatherall's friend Tonya Wedlock, after Weatherall returned to the motel with her car [after dumping the victim's body], Weatherall came back to Room 125 of Atlantic View Motel and picked up a book bag out of which Weatherall retrieved a credit or ATM type card. Weatherall gave the card to his boyfriend Joey Garsow and instructed Tonya and Garsow to use the card. Over the next several days Wedlock and Garsow used the card to purchase items which were

traded for drugs which the group, including Weatherall, used in the room where the victim had been murdered. The victim's ATM card records corroborated these facts. (R. pp. 213-43).

I. Judge Culbertson did not err in denying Weatherall's Batson motions?²

What Occurred Below

After selection of the jury, Weatherall made two (2) separate Batson³ motions outside the presence of the jury. (R. pp. 8-37). First, Weatherall objected to the State exercising one (1) of its peremptory challenges against a female African-American juror. Second, Weatherall objected to the State striking a male juror that Weatherall claimed was gay. Weatherall claimed the State excused this juror because he was gay. As to this 2nd Batson motion, Weatherall conceded to Judge Culbertson in making the motion that sexual orientation had not been recognized by the United States Supreme Court as a protected class. (R. pp. 33-37).

The Solicitor then informed the Court of her reason for striking each individual juror. The Solicitor informed the Court that the African-American female juror was struck because the NCIC rap sheet the Solicitor's Office ran on the juror showed she had a prior conviction for a criminal offense. The Solicitor informed the Court the male juror was struck because he seemed disinterested in the case based on the Solicitor's observations of the juror during voir dire. The Solicitor also informed the Court that she did not know the male juror was gay and there was nothing in her notes from general qualification that the juror was even asked or disclosed his sexual orientation or that the juror's sexual orientation was noted by her anywhere. The Solicitor

² Respondent has combined Appellant's issues 1 and 2 as they both raise Batson challenges. Appellant also treats issues 1 and 2 together in his brief. (See IBOA & Table of Contents, p. i.).

³ Batson v. Kentucky, 476 U.S. 79 (1986).

also questioned where the defense' information came from that this particular juror was even gay. (R. pp. 33-37).

When given the opportunity to respond to the State's stated neutral reasons for these two (2) peremptory challenges, appellant Weatherall gave no response. (R. 33-37). As a result, Weatherall did not meet his burden to show the stated reasons were mere pre-textual, in fact, he did not even attempt to do so. (R. pp. 33-37).

And, contrary to Weatherall's claim in his brief, the African-American female juror, Juror #191 Shirley Wright, was not the only African-American juror presented for jury selection. Juror # 244 Alexander McCoy was African-American and he was presented by the State and seated on the jury. (R. p. 29, Horry County Courthouse Random Strike Sheet, R. pp. 416-18).

Further, the Solicitor exercised only three (3) of her five (5) peremptory challenges during jury selection. She excused as stated Juror #191 Shirley Wright, an African-American female, Juror #307 Kathleen Russell, a white female, and Juror # 397 David Winecoff, a white male.⁴ (R. pp. 27, 31; Random Strike Sheet, R. pp. 416-18) The Solicitor did not exercise any peremptory challenge during alternate juror selection. (R. pp. 32-33; Random Strike Sheet, R. pp. 416-18). As a result, there was no pattern of racial discrimination in the Solicitor's peremptory challenges. (R. pp. 25-33; Random Strike Sheet, R. pp. 416-18). Further, during jury selection the Solicitor presented seven (7) female jurors who were either struck by Weatherall or seated on the jury. And, during alternate jury selection, the Solicitor presented the

⁴ Another African-American female juror was drawn for service in this case, but she had been mistakenly placed in the pool of potential jurors, as she had been removed from the case by the Court during voir dire of the jury about this particular case, i.e. she was not impartial to this particular case. (See R. p. 9; Random Strike Sheet, R. pp. 416-18).

only female juror called for alternate jury selection. As a result, there was no pattern of discrimination based on sex. (R. pp. 25-33; Random Strike Sheet, R. pp. 416-18).

As a result, Judge Culbertson found the State had not violated Batson v. Kentucky and did not order re-striking of the jury. The Court found the stated reason for striking the female African-American juror was race neutral. The Court also found credible the Solicitor's stated reason for striking the male juror. And, as to the male juror, the Court also found that he was not a member of a protected class as recognized by the United States or South Carolina Supreme Court in Batson and its progeny. (R. pp. 33-37).

Standard of Review

(General Appellate Standard)

In criminal cases, this Court will review errors of law only. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). This Court is bound by the trial court's factual findings unless clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000). This Court is limited to determining whether the trial court abused its discretion. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990). This Court does not re-evaluate the facts based on its own view of the preponderance of the evidence but determines whether the trial court's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001).

(Batson v. Kentucky Motions)

Because a trial court's findings regarding purposeful discrimination rest largely upon its evaluation of credibility, those findings will be given great deference by this Court. State v. Tucker, 334 S.C.1, 512 S.E.2d 99 (1998); Sumpter v. State, 312 S.C. 221, 439 S.E.2d 842 (1994). An evaluation of an attorney's state of mind based on demeanor and credibility lies "peculiarly within a trial judge's province." Hernandez v. New York, 500 U.S. 352 (1991); State

v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007). “The trial court’s findings regarding purposeful discrimination are given great deference and will not be set aside by this court unless clearly erroneous.” State v. Garris, 394 S.C. 336, 714 S.E.2d 888 (Ct. App. 2011), *citing* Evins, 373 S.C. at 416, 645 S.E.2d at 909-10. It is within the discretion of a trial court to determine purposeful discrimination based on the totality of relevant facts, including the credibility of the attorney. Id., *citing* State v. Wilder, 306 S.C. 535, 413 S.E.2d 323 (1991). “Therefore, those findings are given great deference and will not be set aside unless clearly erroneous.” Evins, *supra*.

Law/Analysis

A party may not engage in racial discrimination in exercising peremptory strikes. Georgia v. McCollum, 505 U.S. 42, 59 (1992). A party may not engage in striking a juror on the basis of gender. J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127 (1994). “The Equal Protection Clause of the Fourteenth Amendment prohibits the striking of a venire person on the basis of race or gender.” Robinson v. Bon Secours St. Francis Health System Inc., 382 S.C. 224, 675 S.E.2d 744 (2009); State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). The Constitution forbids striking even a single prospective juror for a discriminatory purpose. Snyder v. Louisiana, 552 U.S. 472, (2008); United States v. Lane, 866 F.2d 103, 105 (4th Cir. 1989).

Step One

After jury selection, Weatherall made a Batson/J.E.B. motion. (R. pp. 8-37). Judge Culbertson appropriately conducted a Batson hearing based on the exercise of the State’s strikes and Weatherall’s motion. (R. pp. 8-37). State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996);

State v. Chapman, 317 S.C. 302, 454 S.E.2d 317 (1995).⁵ See State v. Haigler, 334 S.C. 623, 629-30, 515 S.E.2d 88, 90-91 (1999)(When 1 party strikes a member of a cognizable racial group or gender, the court must hold a Batson hearing if the opposing party requests one); Arthur v. Sexton Dental Clinic, 368 S.C. 326, 628 S.E.2d 894 (Ct. App. 2006); State v. Flynn, 368 S.C. 83, 627 S.E.2d 763 (Ct. App. 2006)(once a party requests a hearing the burden shifts to the proponent of the strike who must present a neutral reason or explanation), *citing* Adams.

Step Two

Upon a motion being made, the burden shifts to the adverse party to provide a race or gender neutral explanation for its strikes. Chapman. The “burden” of the strike’s proponent at this step is very limited. The explanation need not rise to a challenge for cause. State v. Lewis, 293 S.C. 107, 359 S.E.2d 66 (1987); State v. Martinez, 294 S.C. 72, 362 S.E.2d 641 (1987). Unless *discriminatory intent is inherent in the explanation*, the reason advanced will be deemed neutral. Hernandez. The explanation need not be “persuasive, or even plausible,” so long as it is facially neutral. Purkett v. Elem, 514 U.S. 765 (1995); Adams. Unless a discriminatory intent is inherent in the explanation, it will be deemed neutral and the court must proceed to Batson’s 3rd step, where the burden shifts to the strike’s opponent to establish it was discriminatory, or mere pretext. Cochran; State v. Smalls, 336 S.C. 301, 519 S.E.2d 793 (Ct. App. 1999). However, the proponent must present a reasonably specific and legitimate explanation for the strike at the 2nd step. State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014), *modifying* Adams, *to the extent*

⁵The objecting or moving party need not make out a *prima facie* showing of purposeful discrimination as formerly required; the *prima facie* showing is made when a member of a cognizable racial group or gender has been struck and the opposing party makes a motion for a Batson review. Adams, *supra*; Chapman, *supra*; State v. Casey, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997); State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996); *Compare former law* State v. Elmore, 286 S.C. 70, 332 S.E.2d 762 (1985); State v. Southerland, 316 S.C. 377, 447 S.E.2d 862 (1994).

necessary). General overall subjective dissatisfaction with a juror is not legally sufficient. Id.

The State's explanations

The Solicitor informed the Court of her reason for striking each challenged juror. The Solicitor informed the Court that the African-American female juror was struck because her NCIC rap sheet showed she had a prior conviction for a criminal offense. The Solicitor informed the Court the male juror was struck because he seemed disinterested in the case based on her observations of him during the entire voir dire. The Solicitor also informed the Court that she did not know the male juror was gay and there was nothing in her notes from general qualification that the juror was even asked or disclosed his sexual orientation or that the juror's sexual orientation was noted by her anywhere. The Solicitor also questioned where the information came from that Weatherall was relying upon to support that this particular juror was even gay. (R. pp. 33-37).

The Solicitor's stated reason for exercising each of these two (2) challenged peremptory strikes was race and gender neutral. (R. pp. 33-37). The female African-American juror had a criminal conviction appearing on the NCIC rap sheet run by the Solicitor's Office on her. Even though the trial court had found during general qualification of the entire panel that the criminal conviction was not related to this juror and she was not disqualified to serve based on this juror's assurance to the court it was not her, the Solicitor still believed the conviction was related to this juror. The Solicitor further explained to Judge Culbertson that the NCIC rap sheet indicated the juror had been convicted of a criminal offense, and the juror did not provide Judge Culbertson with a driver's license when she contested the conviction during general qualification, but with a State identification [i.d.] card, which indicated to the Solicitor that the juror was in fact the

person noted on the NCIC rap sheet.⁶ Out of an abundance of caution, the Solicitor exercised a peremptory challenge as to this juror because the Solicitor did not want a juror on this jury with a criminal record and who was actually disqualified from service. This stated reason has nothing to do with and is in no way related to the gender or race of the Juror.⁷

As to the peremptory strike of the male juror, the Solicitor stated she was not aware this Juror was gay, and there was no information in the record that he was gay. This is supported by the record. (R. pp. 1-37). Further, her reason for striking this juror was that he seemed disinterested throughout the entire voir dire. This reason is race and gender neutral. It is also

⁶ Under South Carolina law, certain convictions, such as drug and driving convictions, result in the suspension of the offender's driver's license.

⁷ Based on Respondent's post-trial investigation, there was a clerical error in running this Juror's NCIC rap sheet, and as a result, the rap sheet incorrectly reflected this juror had a prior criminal conviction, when the conviction actually belonged to a different individual. However, this does not change the legal analysis of the claim. The fact that it is later determined that the prosecutor relied on incorrect information in exercising a strike, does not change the fact the strike was exercised for race neutral reasons and did not violate Batson. Johnson v. State, 302 Ga 774, 781, 809 S.E.2d 769, 776 (2018) ("It is troubling that the information on which the district attorney relied in making four of his ten peremptory strikes was later shown to be incorrect, but such later revealed inaccuracy does not establish that the prosecutor's reasons for the professed strikes were necessarily a pretext for invidious discrimination."); Coleman v. State, 301 Ga. 720, 725, 804 S.E.2d 24 (2017) ("Batson is only about *racial discrimination* – it does not prevent the prosecution from relying on inaccurate (but race neutral) information in striking jurors."); Lee v. Commr. of Ala. Dept. of Corr., 726 F.3d 1172, 1226 (11th Cir. 2013) ("The conclusion that an honestly mistaken but race-neutral reason for striking a black venire member did not violate Batson was not unreasonable."); Lamon v. Boatwright, 467 F.3d 1097, 1101 (7th Cir. 2006) ("Batson and its progeny direct trial judges to assess the *honesty*-not the accuracy of a proffered race-neutral explanation."); Finley v. State, 529 S.W.3d 198, 209 (Tex. Crim. App. 2017) ("Based on this binding precedent, we conclude that merely identifying a factual mistake in the State's race-neutral explanation for its peremptory strike is not sufficient to meet the appellant's burden of proving purposeful discrimination") (*numerous citations omitted*); Harris v. State, S.W.2d 232, 235 (Tex App. 1999) (holding that appellant failed to meet Batson burden, even though prosecutor "may have been mistaken about the ... basis for his challenge," because the challenge was race neutral and there was "no indicia that the challenge was racially motivated."); Lee v. State, 898 So.2d 790, 815-16 (Ala. Crim. App. 2001) ("A prosecutor may strike from mistake, so long as the assumptions involved are based on an honest belief and are racially neutral.") quoting Reese v. City of Dothan, 642 So.2d 511 (Ala. Crim. App. 1993); McElemore v. State, 798 So.2d 693, 698 (Ala. Crim. App. 2000).

sexual orientation neutral, if such a class is ever recognized by the United States Supreme Court.

Step Three

If a gender or race neutral explanation is given for exercising the peremptory challenge, the moving party must show the explanation given is merely pretextual, i.e., there has been purposeful discrimination. Hernandez. The opponent carries the ultimate burden of showing purposeful discrimination and must demonstrate the pretextual nature of the stated reason. Purkett; Adams; Cochran. In this case, Weatherall completely failed to show the explanation given for the strikes was merely pretextual. (R. pp. 33-37). Cochran; Smalls.⁸ The methods of attacking a strike are (1) to establish the alleged reason or criteria for the use of any strike was not consistently applied to every juror; and (2) the explanation is so implausible or fantastic it lacks any credibility. Evins; Adams; See Haigler, 334 S.C. at 629, 515 S.E.2d at 91 (Pretext generally will be established by showing similarly situated members of another race were seated on the jury). Weatherall did neither of the two (2) described above. (R. pp. 33-37). Under some circumstances, the neutral explanation given by the proponent may be so fundamentally implausible the trial court may determine, at the 3rd step, the explanation was mere pretext even without a showing of disparate treatment. Williams, n. 2.⁹ Judge Culbertson did not make any such finding but found the Solicitor's stated reasons for exercising these two (2) peremptory challenges were race and gender neutral and credible. (R. pp. 33-37).

⁸Weatherall argues Judge Culbertson erred because of the language he used before requiring the State to respond to Weatherall's motion; however, Respondent submits it is clear from the entire record, Judge Culbertson was simply reciting the law as far as how the 3 step Batson process works (R. pp. 33-37), not making specific findings at that time. This is clear by Judge Culbertson's eventual decision at the end of the hearing where he found the State had not violated Batson. (See R. pp. 33-37).

⁹ Although a party does not have a duty to state whether the same standards are applied to jurors that are seated, as are to jurors that are excused, a party must be prepared to show the reason or criteria for the use of any strike was consistently applied to every juror, and not merely pretextual. Sumpter; State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990).

Whether a party has engaged in any purposeful discrimination will largely depend on the trial court's evaluation of the credibility of the party's explanation. In the typical strike inquiry, the decisive question will be whether counsel's neutral explanation for a strike should be accepted by the court as being non-discriminatory. There will seldom be much evidence bearing on the issue, and the best evidence will often be the demeanor of the attorney who used the strike. Shuler. The evaluation of an attorney's state of mind based on demeanor and credibility lies "peculiarly within a trial judge's province." Hernandez; Evins; Shuler. Because the court's findings regarding purposeful discrimination rest largely upon its evaluation of credibility, those findings will be given great deference on appeal. Tucker; State v. Casey, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997). It is within a trial court's discretion to determine purposeful discrimination based on the totality of relevant facts, including the credibility of the party making the strike. Garris; Wilder. The failure of a party to consistently apply a proffered neutral reason for striking jurors, infers an invidious discriminatory purpose. Oglesby. Whether or not jurors are struck for reasons similar to those who are seated is left to the determination of the trial court. State v. McCray, 332 S.C. 536, 506 S.E.2d 301 (1998).¹⁰

At the 3rd step, Weatherall offered no evidence that the State treated other jurors disparately than the two (2) jurors who were peremptory challenged. Weatherall did not point to any white or male juror who had an NCIC rap sheet conviction but was allowed by the State to be seated on the jury. **(R. 33-37)**. Weatherall did not point to any juror who had been

¹⁰ In Oglesby, it was held to be error for a party to strike 3 black female jurors because they were patients of a doctor who was a witness, when a white female juror was seated who also was a patient of the doctor. Similarly, in State v. Grate, 310 S.C. 240, 423 S.E.2d 119 (1992), a new trial was granted where a party struck 2 black male jurors because of their ages (22 and 28), but seated a 21 year old white juror. See Miller-El v. Dretke, 545 U.S. 231 (2005)(if proffered reason for striking black panelists applies just as well to an otherwise-similar non-black panelist who is permitted to serve, such evidence tends to prove purposeful discrimination which is to be considered at 3rd step); Snyder (party did not strike similarly situated jurors for same reason).

disinterested during voir dire but was allowed by the State to be seated on the jury. (R. 33-37). In fact, Weatherall made no argument at all in response to the State's stated neutral reasons for exercising these two (2) peremptory challenges. (R. 33-37). And, Weatherall presented absolutely no evidence that the male juror in question was in fact gay or where he, Weatherall, got the information that the male juror was gay. (R. 33-37).

As a result, Judge Culbertson did not err in finding the Solicitor was credible and in denying Weatherall's two (2) Batson motions. Therefore, this appellate issue has no merit and Weatherall's conviction and sentence must be affirmed.

ARGUMENT II.

Judge Culbertson did not err in declining to charge S.C. Code Ann. § 17-25-65 to the jury

What Occurred Below

At the conclusion of the testimony, during the jury charge conference, Weatherall requested that Judge Culbertson instruct the jury on S.C. Code Ann. § 17-25-65. (R. pp. 351-59). S.C. Code Ann. § 17-25-65 is the statute that allows the prosecutor in his or her discretion to move for reconsideration of an inmate's sentence based on cooperation with the State subsequent to the inmate's conviction and sentence. Id.

Weatherall's justification for this requested instruction on the law in this case was that it [the statute] showed potential bias of witness Marcus Bell, who testified during the trial. Bell testified that Weatherall admitted to him, while the two (2) men were cellmates in J. Reuben Long Detention Center, that he [Weatherall] killed the victim by hitting him over the head with a

bottle.¹¹ At the time of his testimony, Bell was serving a sentence of thirteen (13) years for trafficking in heroin.

However, Bell was never asked by Weatherall on cross-examination if he had been told about S.C. Code Ann. § 17-25-65. Bell was never shown the statute on cross-examination and asked about it. And, Bell was not prevented by the State or the Court from asking Weatherall about § 17-25-65. In fact, Weatherhall never asked Bell if he expected the prosecutor to move for reconsideration of his sentence in the future. (R. pp. 268-89).

Bell testified on direct examination no one had promised him anything in exchange for his testimony. Bell testified that when he initially wrote a letter to the Solicitor's Office detailing his knowledge of the case, he did want assistance with his sentence. However, Bell testified since then his motivation had changed to simply wanting to do the right thing, since a family member of his could have been murdered and he would want a person with knowledge to tell what they knew. Bell testified it was his understanding at the time of his testimony that nothing could be done for him as far as his sentence. (R. pp. 268-89).

At the charge conference, the Solicitor objected to the requested instruction on 17-25-65 because it had nothing to do with whether Weatherall was guilty or innocent of the crime of murder and would be confusing to the jury and it was a matter for cross-examination. The Solicitor noted Weatherall could have pursued an inquiry with the witness whether he was hoping for or anticipating a motion for reduction of his sentence on cross-examination, but

¹¹ A motel cleaning lady testified that when cleaning Room 125 after the end of the rental period for Weatherall and the victim, part of a broken wine or beer bottle was found in the room. The broken bottle was thrown away because the cleaning lady was unaware a murder had been committed in the room between November 1st and November 8, 2013.

Weatherall did not do so. To charge the statute now would therefore confuse the jury. (R. pp. 351-59).

Judge Culbertson declined to instruct the jury on § 17-25-65. (R. pp. 351-59). Weatherall now alleges Judge Culbertson erred in declining to instruct the jury on 17-25-65 and he was prejudiced by this error. Weatherall is wrong on both counts.

Standard of Review

(Appellate)

In criminal cases, this Court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). Thus on review, the appellate court is limited to determining whether the trial court abused its discretion. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Garrett, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002).

(Of the Trial Judge)

The conduct of a criminal trial is left largely to the discretion of the trial judge, and this Court will not interfere unless the rights of the appellant were prejudiced. State v. Bridges, 278 S.C. 447, 298 S.E.2d 212 (1982). Therefore, this Court reviews errors of law only and is bound by the trial court's factual determinations unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007). If the instructions given to the jury afford the proper test

for determining the issues, the failure to give one side's requested instructions is not prejudicial. State v. Hughey, 339 S. C. 439, 529 S.E.2d 721 (2000).

Jury Charges

"The law to be charged must be determined from the evidence presented at trial." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000); State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994); State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." Mattison, 388 S.C. at 479, 697 S.E.2d at 583; State v. Gaines, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008); State v. Huckabee, 388 S.C. 232, 694 S.E.2d 781 (Ct. App. 2010), *cert. denied*. See Smith v. Winningham, 252 S.C. 464, 166 S.E.2d 825 (1969).

If there is any evidence to warrant a jury instruction, a trial court must, upon request, give the instruction. State v. Smith, 391 S.C. 408, 706 S.E.2d 12 (2011). The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand constitutes an error of law. State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2011). A trial court commits error when it fails to give a requested charge on an issue raised by the evidence presented. Lee, 298 S.C. 362, 380 S.E.2d 834. The court has a duty to charge the jury as to the law applicable to the facts brought out in the testimony. State v. West, 138 S.C. 421, 136 S.E. 736 (1927). A trial judge is bound to lay before the jury the principles of law as are applicable to the case as made by the evidence. State v. Blackstone, 157 S.C. 278, 154 S.E. 161 (1930); State v. Faulkner, 151 S.C. 38, 149 S.E. 108 (1929); State v. Dodson, 16 S.C. 453

(1881). The purpose of jury instructions are to enlighten the jury and to aid them in arriving at a correct verdict. State v. Hewitt, 205 S.C. 207, 31 S.E.2d 257, 259 (1944).

When reviewing a jury charge for alleged error, the charge must be considered as a whole in light of the evidence and issues presented at trial. State v. Huckabee, 388 S.C. 232, 694 S.E.2d 781 (Ct. App. 2010); Daves v. Cleary, 355 S.C. 216, 224, 584 S.E.2d 423, 427 (Ct. App. 2003). A judge's charge to a jury is sufficient if, as a whole, it is substantially correct and covers the law applicable to the case. State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990); State v. Jackson, 297 S.C. 523, 377 S.E.2d 570 (1989); State v. Rabon, 175 S.C. 459, 272 S.E.2d 634 (1980). A jury charge which is substantially correct and covers the law does not require reversal. State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996); State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994).

"However, an instruction should not be given unless justified by the evidence." State v. Moultrie, 273 S.C. 532, 534, 257 S.E.2d 730, 731 (1979). "If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury." State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002). This Court will not reverse the trial court's ruling regarding jury instructions unless the trial court abused its discretion. State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005).

Analysis

In his brief, Weatherall cites to several different cases which stand for the proposition that a defendant has the Constitutional right to cross-examine a witness about potential bias. (IBOA, pp. 14-18). Respondent agrees with the holdings in each of these particular cases that a defendant does have the Constitutional right to cross-examine or confront a witness about possible or potential bias.

However, what occurred in the cases cited by Weatherall in his brief did not occur in this case. (R. pp. 268-89). Here, Weatherall was not prevented from cross-examining or confronting Marcus Bell about possible or potential bias. (R. pp. 268-89). Weatherall simply chose not to ask Bell about the possible or potential bias he now argues in his brief. (R. pp. 268-89). This is simply not a case about Weatherall being denied the right to effectively cross-examine, confront, or impeach a witness. (R. pp. 268-89). *See State v. Lambert*, 149 N.C. App. 163, 560 S.E.2d 221, 225-26 (N.C. Ct. App. 2003) (“Failure to pursue the right to confrontation does not constitute a denial of the right to confrontation”).

Instead, Weatherall is asking this Court to reverse his conviction for murder because Judge Culbertson declined to instruct the jury on a specific statute in his jury instruction at the close of the case. The cases Weatherall cites in his brief, do not hold that the defendant is entitled to a jury instruction on a specific statute in an attempt to impeach a witness or show bias. (See IBOA, pp. 14-18).

S.C. Code Ann. § 17-25-65 states:

§ 17-25-65 Reduction of sentence for substantial assistance to the State; motion practice.

- (A) Upon the state’s motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing provided:
 - (1) substantial assistance in investigating or prosecuting another person,; or
 - (2) aid to a Department of Corrections volunteer who was in danger of being seriously injured or killed.
- (B) Upon the state’s motion made more than one year after sentencing, the court may reduce a sentence if the defendant’s substantial assistance involved;
 - (1) information not known to the defendant until one year or more after sentencing;
 - (2) information provided by the defendant to the State within one year of sentencing, but which did not become useful to the State until more than one year after sentencing;

- (3) information, the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing, and which was promptly provided to the Stat after its usefulness was reasonably apparent to the defendant; or
 - (4) aid to a Department of Corrections employee or volunteer who was in danger of being seriously injured or killed.
- (C) A motion made pursuant to this provision shall be filed by that circuit solicitor in the county where the defendant's case arose. The State shall send a copy to the chief judge of the circuit within five days of filing. The chief judge or a circuit court judge currently assigned to that county shall have jurisdiction to hear and resolve the motion. Jurisdiction to resolve the motion is not limited to the original sentencing judge.

HISTORY: 2010 Act No 273, § 13, eff June 2, 2010.

S.C. Code Ann. § 17-25-65. The statute [§17-25-65] provides that *the Solicitor* in his or her discretion can move for a reduction in an inmate's sentence based on cooperation. *Id.* It is not mandatory but discretionary. *Id.*; *Lisenby v. Jackson*, 2013 WL 5707344, C/A No. 5:13-cv-2106 DCN KDW (D.S.C. 2013)(*Not Reported in F.Supp.2d*)(whether to file a motion pursuant to §17-25-65 is discretionary with the prosecutor and the court cannot issue a mandamus to force the prosecutor to file such a motion); *see also Wade v. United States*, 504 U.S. 181, 185 (1992)(holding, in part, that a federal prosecutor pursuant to F.R.Crim.P. 35(b)(1) has "a power, not a duty, to file a motion when a defendant has substantially assisted."). And, ultimately, whether a sentence reduction is granted if such a motion is made by the Solicitor is within the discretion of the circuit judge hearing the motion. S.C. Code Ann. § 17-25-65; *See also* 18 U.S.C.A. § 5K1.1 (Thomson/West 2007)(Federal Sentencing Guidelines)(if the federal prosecutor makes the motion, the decision whether to allow it and reduce a defendant's sentence lies within the United States trial court). Regardless, Bell was not asked about §17-25-45 or whether he had been informed of the substance of the statute. (R. pp. 268-89). There was no evidence Bell knew about the statute. (R. pp. 268-89).

Weatherall is constitutionally entitled to jury instructions on every element of the offense charged [murder], and the failure to so instruct the jury violates the requirements of due process. *See e.g. In re Winship*, 397 U.S. 358 (1970); *Solis v. Garcia*, 219 F.2d 92 (9th Cir. 2000). However, failure to charge every element of the offense is subject to harmless error analysis. *See Pope v. Illinois*, 481 U.S. 497 (1987); *Keating v. Hood*, 191 F.3d 1053 (9th Cir. 1999). However, Weatherall is not constitutionally entitled to an instruction on S.C. Code Ann. § 17-25-65 in an attempt to impeach a witness.

Weatherall is no more entitled to a jury instruction on S.C. Code Ann. § 17-25-65 as a defendant is entitled to a **jury instruction on prosecutorial discretion, i.e. that the prosecution could prosecute, reduce, or dismiss a charge against any witness who testifies during the trial who has pending charges.** Similarly, Weatherall is no more entitled to a jury instruction on 17-25-65 as he is to an instruction that accomplice testimony is to be viewed with suspicion, which has been rejected by our appellate courts as a charge on the facts. *State v. Steadman*, 257 S.C. 528, 186 S.E.2d 712 (1972); *State v. Mikell*, 257 S.C. 315, 185 S.E.2d 814 (1971); *State v. Pitts*, 256 S.C. 420, 182 S.E.2d 738 (1971); *State v. Taylor*, 255 S.C. 147, 177 S.E.2d 550 (1970); *State v. Bagwell*, 201 S.C. 307, 23 S.E.2d 244 (1941); *State v. Sowell*, 85 S.C. 278, 67 S.E. 316 (1910), *other numerous citations omitted*. As this Court is well aware, under the South Carolina Constitution and case law, a charge on the facts is not permitted. “Judges shall not charge juries in respect to matters of fact, but shall declare the law.” S.C. Const art. 5, § 21.; *Smith v. Fitton & Pittman, Inc.*, 264 S.C. 129, 212 S.E.2d 925 (1975)(*abrogated by, Dorrell v. South Carolina Dept. of Transp.*, 361 S.C. 312, 605 S.E.2d 12 (2004)).

As the South Carolina Supreme Court held in *State v. Collins*, 266 S.C. 566, 573, 225 S.E. 2d 189, 193 (1976):

Defendant's next contention is that the trial judge erred in refusing to charge that the testimony of a codefendant should be carefully scrutinized and that the jury may consider whether the witness is fearful of retribution or has any hope of leniency from the prosecution. We think the trial judge's overall instruction that it was the jury's duty to pass upon the credibility of the testimony of witnesses, and that they could reject any part of the testimony if they found reason for doing so, was adequate. State v. Steadman, 257 S.C.528, 186 S.E.2d 712 (1972). Any further instruction on this point might have invaded the province of the jury to draw inferences from the evidence.

Id., at 573, 225 S.E.2d at 193.

Weatherall was certainly entitled to cross-examine Marcus Bell on whether he hoped for favorable treatment by the prosecution and Weatherall was entitled to know about any deal the State had with the witness and to probe the witness on the same. However, Weatherall simply chose not to pursue these subjects on cross-examination. (See R. pp. 268-89). Instead, he chose to impeach Bell through other avenues. (See R. pp. 268-89).

Instead of questioning Bell on cross-examination about the possibility of a future reduction in his sentence, where he would have had to accept Bell's answer, Weatherall argued extensively in his closing argument, that Bell was biased for this reason. Weatherall specifically argued in his closing argument that at some point in the future, Bell was hoping for favorable treatment by the State based on his cooperation and testimony in Weatherall's trial. (R. pp. 382-84).

It is noteworthy, Bell had already admitted on direct examination that when he originally wrote the letter to the Solicitor's Office detailing his knowledge of the case, i.e. exactly what he testified to before the jury, he was motivated by the desire for a reduction in his sentence. (R.p. 268-89). As a result, the jury knew that Bell's first revealing of the same matter he testified to before them was motivated by hope for assistance from the State in reducing his sentence.

Judge Culbertson instructed the jury at the close of the case that they were to determine the credibility of each witness and they were to determine credibility based on whether they [the jury] determined a witness had an “interest, bias, prejudice or other motive in this case.” (R. pp. 391-92).

But Weatherall was not entitled to an instruction on the statute § 17-25-65 in an attempt to argue or prove bias or to impeach Bell, when there is no evidence Bell knew about the statute or had been promised a motion for reconsideration would be filed or made. Such a charge could constitute a charge on the facts and would be confusing to the jury. A judge may not instruct the jury in a manner which assumes the truth of facts needing to be proved. Butler v. Gamma Nu Chapter of Sigma Chi, 314 S.C. 477, 445 S.E.2d 468 (Ct. App. 1994). For example, as previously discussed, a requested instruction that the testimony of a codefendant or accomplice should be carefully scrutinized is properly refused as a charge on the facts. Collins, 266 S.C. 566, 225 S.E.2d 189. Judge Culbertson did not abuse his discretion in declining to instruct the jury on S.C. Code Ann. § 17-25-65. See United States v. Satterfield, 254 Fed. Appx. 957 (4th Cir. 2007)(*not reported in Federal Reporter 3d.*)(District Judge did not abuse his discretion in declining to instruct the jury on Rule 35, F.R.Crim.P. [sentence reconsideration or reduction rule based on substantial assistance] or declining to provide jury with a copy of the text of Rule 35, where defense counsel was able to cross-examine witness about his hope for sentence reduction). For the above stated reasons, there is no merit to Weatherall’s argument. As a result, this appellate ground must be denied.

Harmless Error

Furthermore, any failure to instruct the jury on § 17-25-65 was harmless beyond a reasonable doubt. *See State v. Middleton*, 407 S.C. 312, 755 S.E.2d 432 (2014)(finding harmless error analysis is appropriate for the failure to give a jury instruction); *State v. Battle*, 408 S.C. 109, 757 S.E.2d 737 (Ct. App. 2014)(same);¹² *State v. Bryant*, 369 S.C. 511, 633 S.E.2d 152 (2006). “When considering whether an error with respect to a jury instruction was harmless, we must ‘determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.’” *Middleton*, *supra*, quoting *State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998). “In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered.” *Id.*, *citation omitted*. “Thus, whether or not the error was harmless is a fact intensive inquiry.” *Id.* A fact intensive inquiry shows Judge Culbertson’s not charging 17-25-65 was harmless.

Even assuming the Court had instructed the jury on §17-25-65, the jury would have been left with the same testimony from Bell, that *he* had not been promised anything by the State and *he* was not aware that his testimony could result in a reduction in his sentence. On cross-examination, Bell was not asked about §17-25-65 or whether he had been informed of the substance of the statute. (R. pp. 268-89). There was no evidence Bell knew about the statute. (R. pp. 268-89). On cross-examination, Bell was not asked about any promises made by the State, and was not asked if he hoped for a sentence reduction. (R. pp. 268-89).

¹² Our appellate courts have previously held the refusal to charge the jury with a requested instruction is subject to harmless error analysis. *State v. Lee-Grigg*, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), *affirmed* 387 S.C. 310 (2010); *State v. Jeffries*, 316 S.C. 13, 21, 446 S.E.2d 427, 431 (1994)(harmless error analysis is appropriate where the error complained of is a “trial error” rather than a “structural defect” in the trial mechanism itself). *See also Lee-Grigg, Toal, C.J. concurring. Contra State v Light*, 278 S.C. 641, 664 S.E.2d 465 (2008).

The statute [§17-25-65] provides that *the Solicitor* in her discretion could move for a reduction in an inmate's sentence based on cooperation. S.C. Code Ann. §17-25-65. As a result, had the jury been instructed on §17-25-65, the jury would have only known that the Solicitor at some future time could move to reduce Bell's sentence for his cooperation, not that Bell was motivated to testify based on some hope of reduction to his sentence. And, the ultimate determination whether Bell received any sentence reduction would be determined by a judge, not the State.

Weatherall was attempting to impeach Bell with a jury charge on the contents of a specific legal statute which there is no evidence Bell, a prison inmate, knew about at the time of his testimony. (R. pp. 268-89). As a result, the failure to charge §17-25-45 could not have affected the verdict. As a result, if any error, it was harmless beyond a reasonable doubt.

Additionally, Weatherall attacked Bell's credibility in other ways including his prior criminal record, the length of his sentence, and that Bell was a jail house informant or snitch who had access to Weatherall's discovery. (R. pp. 268-89). And, Weatherall argued Bell's lack of credibility throughout his closing argument to the jury. (R. pp. 381-82; 383-84).

Furthermore, Bell had already admitted on direct examination that when he originally wrote the letter to the Solicitor's Office detailing his knowledge of the case, i.e. exactly what he testified to, he was motivated by the desire for a reduction in his sentence. (R. 268-89). As a result, the jury knew that Bell's first revealing of the same matter he testified to was motivated by hope for assistance from the State in reducing his sentence. Judge Culbertson instructed the jury they were to determine the credibility of each witness and they were to determine credibility based on whether they [the jury] determined a witness had an "interest, bias, prejudice or other

motive in this case.” (R. pp. 391-92). See State v. Steadman, 257 S.C. 528, 542, 186 S.E.2d 712, 717 (1972)(there was no prejudice from the failure to give the requested instruction [that the jury had the right if not the duty to take into consideration any bias or prejudice or hope of reward that a witness might have] where the trial judge instructed the jury it was their duty to pass upon the credibility of the testimony of the witnesses and that they could reject any part of the testimony if they found good reason for doing so; the instruction clearly left to the jury the determination of the credibility of the testimony of the witnesses); State v. Bamberg, 270 S.C. 77, 240 S.E.2d 639 (1977)(similar); People v. Harrison, 106 P.3d 895 (Cal. App. 2005) (holding a pinpoint instruction on a **witness's expectation of leniency** was not required given the other general instructions on **witness** credibility); People v. Hovarter, 189 P. 3d 300 (Cal. App. 2008)(holding a pinpoint instruction on a **witness's** particular status as a **jailhouse informant** was not required given the other general instructions on **witness** credibility); United States v. Anekwu, 695 F.3d 967, 983-84 (9th Cir. 2012)(similar); Parra v. Lizarraga, 2018 W.L. 6835980, No. CV17-5946-VBF (KS), Report and Recommendation (C.D. Cal 2018)(*Slip Copy*)(*Only Westlaw Citation Currently Available*)(similar); Benson v. State, 105 A.2d 979 (Del. 2014)(jury instruction on credibility of witnesses, conflicts in testimony, and witness’ conviction of a crime adequately guided jury as trier of fact and determiner of credibility and enabled the jury to perform its duty, therefore there was no plain error in not charging specific instruction argued on appeal).

As a result of all of the above, the failure to instruct the jury on 17-25-65 was harmless beyond a reasonable doubt. Middleton, 407 S.C. 312, 755 S.E.2d 432; Bryant, 369 S.C. 511, 633 S.E.2d 152; Kerr, 330 S.C. at 144-45, 498 S.E.2d at 218; Battle, 408 S.C. 109, 757 S.E.2d 737;

Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41, *affirmed* 387 S.C. 310; Jeffries, 316 S.C. at 21, 446 S.E.2d at 431. Weatherall's conviction and sentence must be affirmed.

Other Suggested Appellate Issue

In his "Statement of Issues on Appeal," Weatherall lists the following as a fourth appellate issue: "IV. Does any of the court's errors, or a combination thereof, require a reversal of the Appellant's conviction and sentence?" (IBOA, p. iv). Since Weatherall makes no argument in his brief on this fourth appellate issue or submits any legal authority for the same, this appellate issue was waived and abandoned. (IBOA, pp. 7-18). To the extent this appellate issue is raised and argued in the other appellate issues, Respondent relies on its arguments and authority in response to the same as set forth herein.

CONCLUSION

For the above stated reasons, Weatherall's conviction and sentence for murder must be affirmed.

ALLAN WILSON
Attorney General

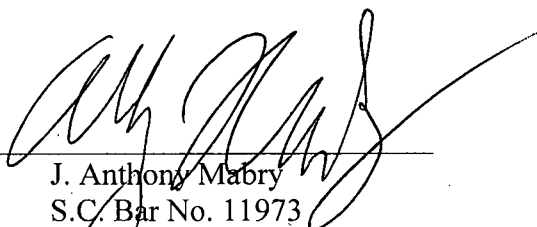
DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ANTHONY MABRY
Senior Assistant Attorney General

JIMMY RICHARDSON
Solicitor, Fifteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

By: 

J. Anthony Mabry
S.C. Bar No. 11973

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

May 21, 2019.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2017-002447

THE STATE,

Respondent,

vs.

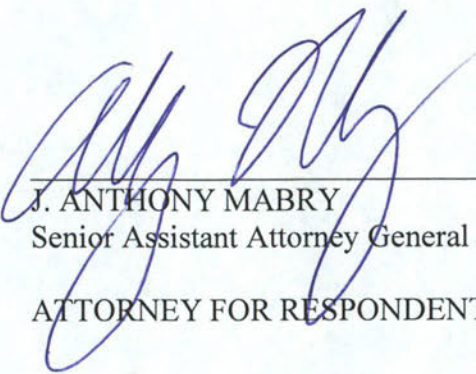
MITCHELL MONROE WEATHERALL,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 21st day of May, 2019.



J. ANTHONY MABRY
Senior Assistant Attorney General

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Mitchell Monroe Weatherall, Appellant.

Appellate Case No. 2017-002447

Appeal From Horry County
Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 5763
Submitted June 1, 2020 – Filed August 19, 2020

AFFIRMED

J. Falkner Wilkes, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, and Senior
Assistant Attorney General J. Anthony Mabry, all of
Columbia; and Solicitor Jimmy A. Richardson, II, of
Conway, for Respondent.

LOCKEMY, C.J.: Mitchell Weatherall appeals his conviction for murder and his sentence of life imprisonment. Weatherall argues the trial court abused its discretion by (1) denying his *Batson*¹ challenges, which were based on race and

¹ *Batson v. Kentucky*, 476 U.S. 79, 92-95 (1986) (holding that racial discrimination in jury selection offends the Equal Protection Clause of the Fourteenth Amendment and outlining the steps to challenge racial discrimination in jury selection).

sexual orientation, and (2) refusing to charge section 17-25-65 of the South Carolina Code (2014)² because an imprisoned State's witness testified he did not expect to receive any benefit from his testimony. We affirm.

FACTS/PROCEDURAL HISTORY

During voir dire, the court asked, "Is there any member of the jury panel who feels that a person's sexual orientation would affect your ability to be fair and impartial to that person? If so, please stand." No one stood in response. During jury selection, the State excused Juror 191, a black female juror. The State presented Juror 244, a black male, who was seated on the jury. The State then excused Juror 397.

Weatherall objected to the State striking the only black female juror. The Court stated "You know, there's a whole lot of leeway. I know that if—if there had been more black females called and struck, you could address it, but since there was only one called—[the State], what is the basis for striking Juror 191?" The State explained its records indicated Juror 191 had a prior conviction. Juror 191 informed the State she did not have a conviction. The State explained it was concerned Juror 191 had a prior conviction because she did not have a driver's license, she only had a personal ID, which it believed was indicative of a possible conviction. The trial court inquired if Weatherall wanted to reply to the State's explanation and he responded he did not.

Weatherall then challenged the striking of Juror 397 on the grounds of sexual orientation, arguing,

I might be wrong, but I don't think the Supreme Court has recognized sexual orientation as a protected class, but one of the things that's involved in this case, and I believe we've made it obvious to this court and to the potential jury panel by our questions, is that one of the witnesses for the State and one of our witnesses, or client is a homosexual, and we believe that the only reason the [State] struck Juror Number 397 was because of that juror's sexual orientation.

² Section 17-25-65 permits, on motion from the State, the reduction of a prisoner's sentence if the prisoner provides substantial assistance to the State.

The trial court denied the challenge, stating sexual orientation was not a protected class. Weatherall did not offer any evidence of Juror 397's sexual orientation and did not attempt to proffer any evidence to that effect. The trial court asked the State if it wanted to put its reason for striking Juror 397 on the record. The State responded it "didn't know [the juror] was gay . . . it wasn't in any of our notes. I had no idea he was gay and I don't know what evidence we have that he was . . . homosexual." The trial court stated the State was not required to put a reason on the record unless it wanted to. The State responded that Juror 397 "appeared completely disinterested, and when he stood up there, he looked completely disinterested." The trial court denied the challenge as to Juror 397 and found there was a justifiable reason for striking Juror 191.

At trial, Norma Davis, the owner of the Atlantic View Motel, testified Weatherall and Helbert Woodbury (Victim) checked into one of its rooms for a week. Melissa Baines, a member of the motel's housekeeping staff, testified the guests broke the door to the room and she could not open it. She testified she found a broken bottle in the room and blood was soaked into the carpet and the bed.

Kelly Matteson, of the Myrtle Beach Police Department's crime scene unit, testified she processed the motel room and found blood on the bed, headboard, dresser, and wall. She testified the location of bloodstains in the room indicated the blood was cast off from a weapon used in the assault. Jennifer Bartman, an expert in DNA comparisons, testified the blood from the bed, carpet, and dresser matched Victim's DNA. Victim suffered multiple lacerations on the back of his head, an underlying blunt force injury that fractured his skull, and defensive wounds on his arms and hands. Victim died from a skull fracture and brain injury.

Investigators found Victim's body concealed off of a dirt access trail. The State published a surveillance video to the jury. Angie Gunter, the manager at the Atlantic View Motel, explained the video showed someone carrying a body out of a room and putting it in a car. Weatherall admitted in his opening statement that the video showed him and a man named Joey Garsow carrying the Victim's body to the car.

Tonya Wedlock, Weatherall's friend, testified Weatherall and Garsow were lovers. Wedlock stated Weatherall met Victim through Craigslist, and Victim took a bus to Myrtle Beach to receive sexual favors from Weatherall. She recalled that once Victim was in Myrtle Beach, Weatherall called a dealer in order to buy drugs. Wedlock testified that later that week, Weatherall asked to use her car to take Victim back to the bus station. Wedlock explained she, Weatherall, and Garsow

drove to the motel, where Weatherall asked her to wait outside. She testified she walked to the corner to drink and was unable to see who came in or out of the room. Wedlock identified herself, Garsow, and Weatherall in the surveillance video.

Marcus Bell, an inmate at the South Carolina Department of Corrections, testified he was Weatherall's roommate for two weeks in jail. He explained Weatherall told him Victim and Weatherall had argued about money to purchase drugs. Bell stated Weatherall said he got angry with Victim and hit Victim across the head with a bottle. Bell testified he did not expect anything from the State in exchange for his testimony against Weatherall. When asked why he wrote a letter to the State with this information, he stated,

Well, at first I'm going to be totally honest with you . . . I felt that possibly it could help me when I was facing time, but then I later on found out that it didn't help me. And, as the time went on down the road, I figured out that it was pretty much the right thing to do because of the simple fact that it could've been my dad, it could've been my brother, it could've been my, you know, I'd want somebody to do it for me . . . but this me being here today don't help me none

Weatherall requested the trial court charge the jury with section 17-25-65. He argued that the law provided Bell could have his prison sentence reduced if he testified. Weatherall stated, "[S]ince [Bell] testified he wasn't expecting anything from the [State], I ask you to charge this because this would be a fair statement of what he's gonna get." The trial court denied Weatherall's request. The trial court charged the jury that it had the responsibility to "determine the credibility of witnesses who have testified" and that it "may consider whether any witness ha[d] exhibited . . . any interest, bias, prejudice, or other motive in this case." In addition, the trial court instructed the jurors that they could consider a witness's past criminal record "in determining the witness'[s] credibility or believability." The jury found Weatherall guilty of murder, and the trial court sentenced him to life imprisonment. This appeal followed.

ISSUE ON APPEAL

1. Did the trial court err by denying Weatherall's *Batson* challenge when the State struck the only African American juror called?

2. Did the trial court err by denying Weatherall's *Batson* challenge based on sexual orientation?
3. Did the trial court err by denying Weatherall's requested jury charge on section 17-25-65 to show potential bias on the part of the State's key witness?
4. Do any of the court's errors, or a combination thereof, require a reversal of Weatherall's conviction and sentence?

STANDARD OF REVIEW

"In criminal cases, appellate courts sit to review errors of law only, and are therefore bound by the trial court's factual findings unless clearly erroneous." *State v. Robinson*, 410 S.C. 519, 526, 765 S.E.2d 564, 568 (2014). An appellate court's review "is limited to determining whether the trial court abused its discretion." *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). "The trial court's findings regarding purposeful discrimination are accorded great deference and will be set aside on appeal only if clearly erroneous." *State v. Blackwell*, 420 S.C. 127, 148, 801 S.E.2d 713, 724 (2017) (quoting *State v. Haigler*, 334 S.C. 623, 630, 515 S.E.2d 88, 91 (1999)).

"A trial court's decision regarding jury charges will not be reversed whe[n] the charges, as a whole, properly charged the law to be applied." *State v. Rye*, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). "An appellate court will not reverse the trial [court's] decision regarding a jury charge absent an abuse of discretion." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166-67 (2007).

LAW/ANALYSIS

I. *Batson* Challenges³

Weatherall argues the trial court failed to address the *Batson* challenge requirements for Juror 191. Weatherall further argues the trial court failed to reach

³ We address both *Batson* challenges in the same section in the interest of conciseness.

the second step of the *Batson* analysis as to Juror 397 because it ruled as a matter of law that *Batson* does not extend to strikes based on sexual orientation. We disagree.

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venireperson on the basis of race." *Haigler*, 334 S.C. at 628, 515 S.E.2d at 90. "The purposes of *Batson* and its progeny are to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venireperson's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice" *Id.* (footnote omitted). "The United States Supreme Court has set forth a three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause." *State v. Inman*, 409 S.C. 19, 26, 760 S.E.2d 105, 108 (2014).

First, the [party asserting the *Batson*] challenge must make a prima facie showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the [party opposing the *Batson*] challenge to provide a race neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the [party asserting] the challenge has proved purposeful discrimination. The ultimate burden always rests with the [party asserting the *Batson* challenge] to prove purposeful discrimination.

Id. (alterations in original) (quoting *State v. Giles*, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014)). In order to establish a prima facie case of discrimination, the challenging party must show (1) that the prospective juror was a member of a protected group; (2) that the State exercised peremptory challenges to remove members of the group from the jury; and (3) that these facts and other relevant circumstances raise an inference that the State used peremptory challenges to exclude the prospective juror from the jury on account of their group. *See State v. Oglesby*, 298 S.C. 279, 280, 379 S.E.2d 891, 891 (1989).

"Step two of the analysis is perhaps the easiest step to meet as it does not require that the race-neutral explanation be persuasive, or even plausible." *Blackwell*, 420 S.C. at 147, 801 S.E.2d at 723 (quoting *Inman*, 409 S.C. at 26, 760 S.E.2d at 108).

"Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record." *Id.* at 148, 801 S.E.2d at 724 (quoting *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001)).

Pretext generally will be established by showing that similarly situated members of another race were seated on the jury. Under some circumstances, the race-neutral explanation given by the proponent may be so fundamentally implausible that the [trial court] may determine, at the third step of the analysis, that the explanation was mere pretext even without a showing of disparate treatment.

Haigler, 334 S.C. at 629, 515 S.E.2d at 91 (quoting *Payton v. Kearsse*, 329 S.C. 51, 55, 495 S.E.2d 205, 208 (1998)). The *Batson* analysis "focuses upon a party's knowledge of a potential juror and reason for exercising a peremptory challenge." *Id.* at 630, 515 S.E.2d at 91.

Race

As an initial matter, Weatherall contends Juror 191 was the only black juror called; however, this assertion was not supported by the record because Juror 244, a black male, was seated on the jury. Weatherall argues the trial court erred when it stated, "You know, there's a whole lot of leeway. I know that it – if there had been more black females called and struck, you could address it, but since there was only one called." However, the trial court did not rule on the challenge at that time. The trial court instead commented on the difficulty Weatherall faced in showing pretext given so few black jurors were in the jury pool; however, the trial court permitted a full *Batson* analysis.

We find Weatherall failed to prove the State engaged in purposeful discrimination based on race during the jury selection process. *See Inman*, 409 S.C. at 26, 760 S.E.2d at 108 ("The ultimate burden always rests with the [party asserting the *Batson* challenge] to prove purposeful discrimination." (alteration in original) (quoting *Giles*, 407 S.C. at 18, 754 S.E.2d at 263)). At trial, the State explained it struck Juror 191 because it received an NCIC report that indicated the juror had a disqualifying prior conviction. Prior to voir dire, the juror argued she did not have the conviction. The State further expressed its concern she presented an identification card instead of a driver's license, which it asserted may have been indicative of a prior conviction and a suspended license. The State explained it

struck Juror 191 based on her identification card and out of an abundance of caution. The State's representations concerning the contents of the NCIC report and concern over the identification card were race-neutral.

Importantly, when given the opportunity by the trial court, Weatherall failed to argue that the State's reason for striking Juror 191 was pretext or that there was disparate treatment at trial. Thus, any argument regarding pretext or disparate treatment is not preserved on appeal. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

On appeal, Weatherall asserts the State's basis for the strike was fundamentally implausible such that it showed purposeful discrimination without showing similarly situated members of the jury were treated differently. We hold the trial court did not abuse its discretion because the record supports the trial court's finding that the State's concern over Juror 191's possible conviction was reasonable and not fundamentally implausible. *See State v. Martinez*, 294 S.C. 72, 73, 362 S.E.2d 641, 642 (1987) (providing a juror's "*possible* criminal record" was a sufficient racially neutral explanation for striking a juror (emphasis added)). Thus, the trial court did not err in denying Weatherall's *Batson* challenge as to Juror 191.

Sexual Orientation

As to Juror 397, Weatherall failed to establish a prima facie case to the trial court. *See Oglesby*, 298 S.C. at 280, 379 S.E.2d at 891 (stating that to establish a prima facie case the challenging party must show (1) that the prospective juror was a member of a protected group, (2) that the State exercised peremptory challenges to remove members of the group from the jury, and (3) that the relevant circumstances raise an inference that the prosecutor used peremptory challenges to exclude the prospective juror from the jury on account of their group).

At trial, Weatherall argued the State struck Juror 397 because of his sexual orientation, and the trial court denied the challenge before reaching the second step of the *Batson* analysis. Although the trial court permitted the State the opportunity to offer an explanation for the record, the court stated it would not require one, finding sexual orientation was not a protected class and therefore not subject to a *Batson* analysis. Nevertheless, it was Weatherall's burden to establish the prima facie case to the trial court, which he failed to do. *See Batson*, 476 U.S. at 94 (providing the burden is on the party asserting the challenge to prove the prima

facie case). First, Weatherall failed to provide any evidence of Juror 397's sexual orientation or that the State was aware of Juror 397's sexual orientation. *See Haigler*, 334 S.C. at 630, 515 S.E.2d at 91 (providing the *Batson* analysis "focuses upon a party's knowledge of a potential juror and reason for exercising a peremptory challenge"). Second, because Weatherall failed to provide any evidence that the juror was gay or that the State knew the juror's sexual orientation, he also failed to provide any evidence the State exercised the peremptory challenge with the purpose to remove homosexual jurors from the venire. Weatherall did present some evidence that the relevant circumstances would have raised the inference of exclusion based on sexual orientation because the case involved a gay defendant and victim. Nevertheless, because Weatherall failed to establish the first two elements, his showing was insufficient to establish a prima facie case of discrimination. *See Inman*, 409 S.C. at 26, 760 S.E.2d at 108 ("If a sufficient showing is made, the trial court will move to the second step in the process" (emphasis added) (quoting *Giles*, 407 S.C. at 18, 754 S.E.2d at 263)). Based on the foregoing, Weatherall failed to prove the prima facie case; thus, we affirm the trial court's denial of Weatherall's *Batson* challenge.

II. Jury Charge

Weatherall argues the trial court abused its discretion by refusing to charge section 17-25-65. Weatherall asserts that because Bell could have benefited under section 17-25-65 and received a reduced sentence, the trial court erred in failing to charge the jury on the statute. We disagree.

"A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003). "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *Id.* at 318, 577 S.E.2d at 463. "The law to be charged must be determined from the evidence presented at trial." *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000). "A jury charge that is substantially correct and covers the law does not require reversal." *Mattison*, 388 S.C. at 478, 697 S.E.2d at 583. "To warrant reversal, a trial [court's] refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *Id.* at 479, 697 S.E.2d at 583.

Section 17-25-65(A)(1) provides that "[u]pon the state's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after

sentencing, provided . . . substantial assistance in investigating or prosecuting another person"

We hold the trial court did not abuse its discretion by denying Weatherall's request to charge section 17-25-65. During direct examination, Bell stated he did not expect anything from the State in exchange for his testimony against Weatherall, but acknowledged that when he first wrote the letter to the State explaining what he knew, he had hoped to receive a reduced sentence. On cross-examination, Weatherall failed to question Bell about the provisions of section 17-25-65 or any of his expectations for his cooperation with the State. Because section 17-25-65 was never addressed during Bell's testimony, the evidence—or more accurately, the lack thereof—supported the trial court's refusal to give the requested charge. Further, viewing the jury instructions as a whole in light of the evidence and issues presented at trial, the trial court's instructions were substantially correct and covered the law. Therefore, we hold the trial court did not abuse its discretion by denying Weatherall's request to charge section 17-25-65. Because we find the trial court did not err, we do not address Weatherall's fourth issue regarding reversal of Weatherall's conviction.

CONCLUSION

Based on the foregoing, we find the trial court did not err by denying Weatherall's *Batson* challenges because Weatherall failed to establish a prima facie case for Juror 397 and failed to show the State's reason for striking Juror 191 was fundamentally implausible. We further find the trial court did not err by refusing to charge section 17-25-65 because it was not raised during trial. Accordingly, Weatherall's conviction is

AFFIRMED.⁴

GEATHERS and HEWITT, JJ., concur.

⁴ 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
CHIEF 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

September 11, 2020

The Honorable Renee Elvis
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: The State v. Mitchell Monroe Weatherall
Lower Court Case No. 2014GS2601415
Appellate Case No. 2017-002447

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,

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
J. Falkner Wilkes, Esquire
J. Anthony Mabry, Esquire
Donald J. Zelenka, Esquire
Jimmy A. Richardson, II, Esquire