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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Kristi F. Curtis, Circuit Court Judge

JERALD JERMAINE HOWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001319

APPENDIX

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MEEH, PAUL - DIRECT EXAM BY MR. ALFARO

1 compare to the evidence. Like I said, it's a known
2 standard. So any time we take DNA directly from
3 you, we call that a known standard. Blood would be
4 a good example.

5 A buccal swab is a really common one
6 because they're easy to handle and fast to work
7 with.

8 Q. Okay. Now, let's talk a little bit
9 about some of your findings and your results from
10 your analysis. Beginning with State's Exhibit 1,
11 which is SLED Item 1 and 2.

12 A. Yes.

13 Q. I believe it's described as two
14 heat-sealed pouches containing teeth, described as
15 molar teeth from the skull?

16 A. Correct.

17 Q. What were your findings regarding those
18 items?

19 A. I developed a DNA profile that was
20 suitable for comparison of the teeth that were used
21 as a standard in this case.

22 Q. And what were your findings regarding
23 that DNA profile?

24 A. I created a MiniFiler profile, which is
25 a smaller one that happens when we have

MEEH, PAUL - DIRECT EXAM BY MR. ALFARO

1 degradation, and you can't get all the positions
2 that you can with the larger kit that I was talking
3 about, the 25 position kit.

4 And so the DNA profile from the teeth,
5 they were -- they matched. I created a female DNA
6 profile that was suitable for comparison to further
7 items.

8 Q. And were you able to make a
9 determination as to whether or not it was
10 consistent with being the offspring of Bozena
11 Goodlett and James Goodlett?

12 A. Yes. That comparison happens in a
13 different report. This case was complicated
14 because the comparisons couldn't be done directly
15 at first.

16 We compared the DNA profile to the
17 parents and did a stab on that to make sure that
18 they could be the parents and they were. They were
19 consistent with being an offspring -- I mean, the
20 teeth were consistent with being an offspring of
21 Bozena and James Goodlett.

22 Q. Now, moving on to State's Exhibit 2,
23 which is SLED 3, a swab from the left front corner
24 of the master bath sink counter. What are your
25 findings -- or what were your findings regarding

1 that item?

2 A. That DNA profile developed was a
3 mixture of at least two individuals. The DNA
4 profile of the major contributor to the mixture
5 matches the DNA profile of Jerald Howard.

6 This may refer to a different report,
7 I'm sorry. This case was very complicated and
8 there are several reports that refer to this item.
9 All right.

10 Again, to restate, the first finding,
11 the DNA profile developed was a mixture of at least
12 two individuals. The DNA profile of the major
13 contributor of that mixture matches the DNA profile
14 of Jerald Howard.

15 The probability of selecting an
16 unrelated individual having a DNA profile matching
17 the major contributor to this mixture is
18 approximately 1 in 15 quadrillion.

19 Nicole Goodlett could not be excluded
20 as a possible minor contributor to this mixture,
21 and the probability of randomly selecting an
22 unrelated individual who could have contributed to
23 the mixture is approximately 1 in eight.

24 Bozena Goodlett, James Goodlett, James
25 Elijah Mangle and James Antonio Mangle are excluded

MEEH, PAUL - DIRECT EXAM BY MR. ALFARO

1 as possible contributors to this mixture.

2 Q. And let me back up just one second
3 regarding -- I forgot to ask you when I was asking
4 you about buccal swabs. Your analysis is --
5 involves you also developing DNA profiles from the
6 buccal swabs that were submitted to you in this
7 case, correct?

8 A. Correct.

9 Q. Which we discussed as State's Exhibit
10 6, 7, 8, 9, and 10. Specifically, you had a buccal
11 swab from Bozena Goodlett; is that correct?

12 A. Correct.

13 Q. Which is State's 6, and also State's 7
14 which is a buccal swab from James Goodlett?

15 A. Correct.

16 Q. And State's 8, which is a buccal swab
17 from James Elijah Mangle?

18 A. Correct.

19 Q. And a buccal swab, which is State's
20 Exhibit 9, a buccal swab from Jerald Howard?

21 A. That's my item 19 --

22 Q. That's --

23 A. I'm not sure of the State's number.

24 Q. Yes.

25 A. That's correct.

MEEH, PAUL - DIRECT EXAM BY MR. ALFARO

1 Q. Okay. And your item 20, which is
2 State's 10, was a buccal swab from James Antonio
3 Mangle, correct?

4 A. Correct.

5 Q. So those buccal swabs are used to
6 develop a profile, and then you compare it to --

7 A. Yes. That's just part of the
8 comparison. Like I said, that was to set a
9 groundwork to see who was involved in the mixtures
10 and who could have contributed and who couldn't.

11 Q. Okay. So moving on to your SLED Item
12 4, which is State's Exhibit 3, described as a swab
13 from the interior center area of master bath door.
14 What were your conclusions regarding that item?

15 A. The DNA profile developed from Items 4
16 and 11 matches the DNA -- well, Item 4 matched the
17 DNA profile of Nicole Goodlett since you asked me
18 about one specifically.

19 The probability of randomly selecting
20 an unrelated individual having a DNA profile
21 matching this item is approximately 1 in 510
22 billion.

23 Q. And you started to discuss SLED 11,
24 which is State's Exhibit 5, a carpet cutting from
25 the master bedroom floor near the bed.

MEEH, PAUL - DIRECT EXAM BY MR. ALFARO

1 Were those the same findings as to what
2 you were just discussing about State's 3?

3 A. Yes, sir.

4 Q. And that's the DNA profile of Nicole
5 Goodlett as well?

6 A. The DNA profile matched, yeah, Nicole
7 Goodlett with the same statistic. It was a
8 complete profile.

9 Q. And so moving to State's Exhibit 4,
10 which is your SLED 5.4, which is described as a
11 carpet cutting from the master bedroom at the
12 master bath doorway. What were your findings
13 there?

14 A. The DNA profile from item 5.4 is a
15 mixture of at least two individuals. The DNA
16 profile of the major contributor to this mixture
17 matches the DNA profile of James Elijah Mangle.

18 The probability of randomly selecting
19 an unrelated individual having a DNA profile
20 matching the major contributor to this mixture is
21 approximately 1 in 762 quintillion.

22 Jerald Howard cannot be excluded as a
23 possible minor contributor to this mixture. The
24 probability of randomly selecting an unrelated
25 individual who could have contributed to this

MEEH, PAUL - DIRECT EXAM BY MR. ALFARO

1 mixture is approximately 1 in 590.

2 Nicole Goodlett cannot be excluded as a
3 possible minor contributor to this mixture. Due to
4 the use of MiniFiler -- that's where we talked
5 about not getting the complete profile -- not all
6 locations are available for comparison to this
7 mixture.

8 The probability of randomly selecting
9 an unrelated individual who could have contributed
10 to this mixture compared -- at the compared
11 locations is approximately 1 in 86. Bozena
12 Goodlett, James Goodlett, and James Antonio Mangle
13 are excluded as possible contributors to the
14 mixture.

15 MR. ALFARO: Your Honor, at this time,
16 we would offer into evidence State's Exhibit 1, 2,
17 3, 4, 5, 6, 7, 8, 9, and 10.

18 THE COURT: Any objection?

19 MR. SMILEY: No, sir.

20 THE COURT: Without objection, State's
21 1 through 10 are admitted.

22 (STATE EXH. 1 - 10 in evidence.)

23 MR. ALFARO: Thank you. Please answer
24 any questions the defense may have.

25 THE WITNESS: Yes, sir.

MEEH, PAUL - CROSS EXAM BY MR. SMILEY

1 THE COURT: You may cross examine.

2 CROSS-EXAMINATION

3 BY MR. SMILEY:

4 Q. I'm Jim Smiley. I represent
5 Mr. Howard. Let me ask you just a couple of
6 questions before I get into specifics. When we
7 live in a house, we leave DNA in our house; fair
8 enough?

9 A. Everywhere.

10 Q. Everywhere.

11 A. Yes.

12 Q. So finding DNA in your own house is not
13 unexpected?

14 A. Not at all.

15 Q. And the DNA that we find in our house,
16 we can't tell when it was put there?

17 A. No, you cannot.

18 Q. There is no dating it. It could be a
19 day old or ten years old?

20 A. Correct.

21 Q. And we're dealing -- the samples that
22 you're comparing, you actually -- they're
23 microscopic?

24 A. Correct.

25 Q. And then you repeat them so that you

1 have a known amount? That's where I get -- because
2 STR. The repeaters --

3 A. The quant--

4 Q. If you could explain that to the jury
5 and me.

6 A. Sure. No problem. The short tandem
7 repeats are just positions. It's an address in the
8 geno. And each one -- if you get to see my reports
9 later, which I assume they will, it's an address
10 which says something like D 81175.

11 So that means it's chromosome 8 at
12 position 1175. And short tandem repeated, it's
13 almost like a section of railroad tracks. They're
14 usually the repeating letters that are of a certain
15 length.

16 And that's all I'm measuring is the
17 distance between a certain length in everyone's
18 geno. And the edges are the same. So you may be a
19 711, right, and your dad would be -- have a 7 and
20 your mom would have an 11. That's how you got both
21 of those. So the comparison is really quite
22 simple.

23 The difficulty of the comparison or the
24 complexity of the comparison comes in when we try
25 to measure that in the population, because we need

MEEH, PAUL - CROSS EXAM BY MR. SMILEY

1 to know how common that is, right? I need to know
2 how many people have a 711 in the population at
3 that position.

4 And we can -- we can quantify that.
5 And that's what gives -- that's what gives the
6 complexity or -- that's what gives the weight to
7 the finding. If I were to sit here and say, it
8 matches, and couldn't tell you how sure I was, it
9 wouldn't mean anything.

10 Q. And I guess what I was trying to get
11 at, and I understand what you're saying, is that
12 you could get that STR from a microscopic piece of
13 DNA or a big old puddle of DNA?

14 A. That is absolutely -- yes. I see what
15 you're asking now. For example, we could get -- we
16 could get a pretty good DNA profile from as few as
17 maybe 10 or 20 cells from you, from a pen or from
18 something like that, as long as you handle it well
19 enough and you shed enough cells.

20 Let's say 20 cells, for example. I
21 could get a good DNA profile from that. It
22 wouldn't change if I had a puddle of blood. I
23 could get a very good DNA profile from that. I
24 would just cut the amount I used in that example,
25 and I would just use the other -- the pin I would

1 use directly and the blood I would dilute.

2 Q. And this question, is blood DNA and
3 saliva DNA any different?

4 A. No, it's not different.

5 Q. And so you don't distinguish, you've
6 just got DNA?

7 A. We do serological testing, and I am
8 asked to do that. And we can tell the difference,
9 but not by the DNA.

10 Q. Okay. And you weren't asked to do that
11 in this case?

12 A. My report indicates that I was asked to
13 do that.

14 Q. Okay. All righty. I understand. In
15 this case -- since I've now asked the question,
16 I've got to ask the next one -- you had some blood
17 DNA?

18 A. Correct.

19 Q. Well, through your serological testing
20 you were able to determine that some of the samples
21 that you analyzed were made from blood?

22 A. I was -- correct. Yes, that's a
23 correct statement.

24 Q. All right. For instance, when you do
25 buccal swabs, that's saliva, right?

MEEH, PAUL - CROSS EXAM BY MR. SMILEY

1 A. Well, it's actually the -- the cells
2 from your cheek. The -- commonly, we would say
3 it's saliva cells, but the inside of your cheek
4 sheds off a lot.

5 Q. Okay. It's not blood DNA?

6 A. Correct.

7 Q. All right. And the clippings from the
8 floor, the carpet clippings, the one that had
9 Ms. Goodlett's in it, found from the floor, that's
10 blood DNA?

11 A. Yes.

12 Q. Again, you don't know how much, just it
13 was blood DNA?

14 A. Correct.

15 Q. Same thing for the carpet, it was
16 Mr. Mangle's or master -- excuse me, Master Eli
17 Mangle, James Eli Mangle?

18 A. Do you have -- that was 5.4? Yeah.
19 James Eli, Elijah Mangle?

20 Q. Yes, sir.

21 A. Okay. Yes, that's correct.

22 Q. All righty. You don't -- I'm going to
23 ask two more questions, and I'm going to sit down
24 because I'm out of my league. All right?

25 A. Yes, sir.

1 Q. You can't tell how DNA got somewhere
2 either?

3 A. Cannot.

4 Q. So you can't tell how or when. What
5 you are saying is that DNA, however it got there,
6 whenever it got there, is the statistical
7 probability of being that person?

8 A. Yes, sir.

9 Q. And I'm not going to try to quantify
10 that, but the jury can make from that with those
11 statistics.

12 A. That's --

13 Q. One in eight is not a high probability
14 for you?

15 A. It's definitely not. That's a small
16 one. Yeah. We -- like I said, we get into large
17 numbers. The one in eight I would -- in this
18 example is pretty small.

19 Yeah, it's pretty common. You can see
20 it in one in eight people.

21 Q. And just -- is quintillion bigger than
22 quadrillion?

23 A. Yes, it is.

24 Q. All right. I don't know math. I was
25 just asking you while I had you there.

1 MR. SMILEY: That's all I have, Your
2 Honor.

3 THE COURT: Redirect, Mr. Alfaro?

4 MR. ALFARO: No.

5 THE COURT: Thank you. You may step
6 down.

7 Do you wish this witness to be excused?

8 MR. ALFARO: Yes, sir.

9 THE COURT: You are also free to leave,
10 sir.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. ALFARO: Can we approach?

14 (BENCH CONFERENCE)

15 THE COURT: All right. Ladies and
16 gentlemen, there are some issues I need to address
17 quickly -- well, quickly. We need to excuse you.
18 It's 4:30. And we will finish this case tomorrow.
19 You will get this case tomorrow, so you would have
20 to come back anyway because we wouldn't finish this
21 afternoon even if we were to push through, because
22 you still have -- we haven't finished the State's
23 case yet.

24 So I'm going to let you go home.

25 Please remember that you are not at liberty to talk

1 about the case still; you are not at liberty to
2 watch anything or read anything; and you are not at
3 liberty to mention deliberations. That's together
4 or individually.

5 And I don't know that I mentioned this
6 yesterday, but if you go home tonight and there is
7 somebody there, I imagine the question is, can you
8 tell me what is going on? What's happening? A
9 very normal question.

10 And your normal response is -- has to
11 be, I can't talk to you right now. We can talk
12 about it -- I will finish this case most probably
13 tomorrow, and then we can chat about it, but
14 tonight I can't talk to you.

15 So with that restriction, have a
16 wonderful evening. And if you will return to your
17 jury room by 9:30 please, we'll resume at the
18 normal time. Thank you very much.

19 (Jury out, 4:26 p.m.)

20 THE COURT: Anything from the State?

21 MR. STEGALL: No, Your Honor.

22 THE COURT: Anything from the
23 defendant?

24 MR. SMILEY: No, sir.

25 THE COURT: We have been having a

1 conference, and I believe it pertains to the
2 witness Daniel Goodlett, that we want the record
3 not to reflect -- to delete his address; is that
4 correct?

5 MR. STEGALL: That's correct, Your
6 Honor.

7 THE COURT: And that's by agreement of
8 counsel?

9 MR. SMILEY: Correct, Your Honor.

10 MR. STEGALL: Correct.

11 THE COURT: Very well. The Court then
12 will order that the record not -- that that aspect
13 of his testimony be deleted from the record. Thank
14 you.

15 MR. STEGALL: And I believe
16 Mr. and Ms. Goodlett gave their address on the
17 record.

18 THE COURT: Okay. Any objection to
19 that also --

20 MR. SMILEY: No, Your Honor.

21 THE COURT: Mr. and Ms. Goodlett, as
22 well. Thank you.

23 Anything else? Thank you. We will be
24 at ease until -- wait a minute, one thing. I
25 wanted to make sure that we have a discussion

1 because we discussed the possibility of a Biggers
2 hearing concerning the lineup.

3 And you had said at sidebar you were
4 waiving that, and that was with your --
5 Mr. Howard's understanding and he concurs with
6 that.

7 MR. SMILEY: Yes. Your Honor, based on
8 the 404(b) ruling, I did not challenge Biggers in
9 this case. And my client had authorized me --

10 THE COURT: Very well. I just want to
11 confirm that aspect of it. Of course, your
12 objection on the 404(b) is preserved.

13 MR. SMILEY: I succeeded in some ways.

14 THE COURT: You did. You got it
15 limited.

16 And, Solicitor, thank you for framing
17 your questions in that fashion and preparing the
18 witnesses accordingly. I'll just say that, given
19 what was done, I don't find that that in any way
20 violated the 404(b) situation.

21 MR. SMILEY: And, for the record, I
22 agree.

23 THE COURT: Okay. Thank you. All
24 right. Thank you very much. All right. Have a
25 good evening. We'll see you tomorrow at

1 9:30.

2 (Off-the-record conference.)

3 THE COURT: State's 11 is admitted. It
4 was identified. There was an oversight to move it
5 in. It's admitted.

6 (STATE EXH. 11 in evidence.)

7 MR. SMILEY: It's the white phone.
8 They did everything but move it in, and I'm not
9 objecting.

10 (These proceedings were recessed
11 concluded at 4:46 p.m. to be continued 7/18/2019 at
12 9:30 a.m.)

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1 (The following proceedings were had
2 7/18/19, in re State v. Howard, 9:41 a.m.)

3 THE COURT: Good morning. Please be
4 seated everyone. We have the jury up?

5 BAILIFF: Yes.

6 THE COURT: Okay. Is the State ready
7 to proceed?

8 MR. STEGALL: The State is ready, Your
9 Honor.

10 THE COURT: The defendant is ready to
11 proceed?

12 MR. SMILEY: Yes, sir.

13 THE COURT: And let the record reflect
14 that Mr. Howard is present. Okay. Bring in our
15 jury, please.

16 (Jury in, 9:30 a.m.)

17 THE COURT: Thank you very much, ladies
18 and gentlemen. Good morning to you. I hope you
19 had a good evening. We are ready to continue.

20 And as we have done each day, do each
21 of you solemnly swear or affirm that you have at
22 all times since we recessed yesterday observed the
23 Court's instructions and specifically not talked
24 with anyone, allowed anybody to talk with you; not
25 viewed any TV news accounts or read any news

STEVENS, WILLIAM - DIRECT EXAM BY MR. STEGALL

1 accounts of this trial.

2 If you have, please indicate by saying
3 I have.

4 THE JURY: I have.

5 THE COURT: Any member unable to make
6 the commitment, please raise your hand. Thank you
7 very much.

8 Solicitor, good morning. You may call
9 your next witness.

10 MR. STEGALL: Thank you, Your Honor.
11 Good morning. The State calls Bill Stevens.

12 WILLIAM STEVENS,
13 being first duly sworn, testified as follows:

14 THE CLERK: Please have a seat. State
15 your full name, and spell your last name for the
16 record.

17 THE WITNESS: William Stevens. Last
18 name S-T-E-V-E-N-S.

19 DIRECT EXAMINATION

20 BY MR. STEGALL:

21 Q. Dr. Stevens, where are you currently
22 employed?

23 A. At the Richland County Coroner's
24 Office.

25 Q. And how long have you been with the

1 coroner's office?

2 A. Twenty-one years.

3 Q. Where were you employed prior to
4 working at the coroner's office?

5 A. At the University of South Carolina and
6 in contract archeology work.

7 Q. Please describe your educational
8 background.

9 A. I have an undergraduate bachelor's in
10 anthropology, a master's in anthropology, and a PhD
11 in biological anthropology.

12 Q. Please describe any consulting work
13 that you have done related to forensic
14 anthropology.

15 A. I've consulted with law enforcement
16 agencies in the midlands in forensic anthropology
17 and with the FBI and with international agencies as
18 well.

19 Q. Please describe any awards that you may
20 have received as it relates to your profession.

21 A. I got a grant in 2011 for the study of
22 skeletal remains.

23 Q. Would you please describe any
24 professional memberships that you are involved
25 with?

STEVENS, WILLIAM - DIRECT EXAM BY MR. STEGALL

1 A. I'm a member of the American Academy of
2 Forensic Science as well as the Society For
3 Forensic Anthropology.

4 Q. And describe any publications that you
5 have either authored or co-authored.

6 A. Okay. I've had four publications
7 dealing with the study of bones and the recovery of
8 human remains in international journals.

9 Q. Please go over any courses that you may
10 have taught.

11 A. I've taught Introductory Forensic
12 Anthropology and then Biological Anthropology at
13 the University of South Carolina.

14 Q. What is forensic anthropology?

15 A. It is the application of anthropology
16 to the legal process for identifying human remains
17 which are not recognizable. So we deal with
18 skeletal remains, both recovering them, studying
19 them to figure out sex, age, and race of an
20 individual from their bones.

21 Q. Have you been qualified as an expert to
22 testify in court before?

23 A. Yes.

24 Q. Okay. How many times?

25 A. Once.

STEVENS, WILLIAM - DIRECT EXAM BY MR. STEGALL

1 Q. And where was that?

2 A. In Richland County.

3 MR. STEGALL: Your Honor, at this time
4 the State offers Dr. Bill Stevens as an expert in
5 the field of forensic anthropology.

6 THE COURT: Would you care to examine
7 as to qualifications?

8 MR. SMILEY: I do not.

9 THE COURT: Very well. I will permit
10 him to render opinions in that area in that field.
11 Thank you.

12 BY MR. STEGALL:

13 Q. Dr. Stevens, did you receive a call
14 about the case that we are here for today?

15 A. I did.

16 Q. Okay. Who did you receive that call
17 from?

18 A. Trying to think if my first call was
19 from Coroner Salisbury or from FBI.

20 Q. Where did you report once you received
21 that call?

22 A. Cainhoy.

23 Q. Okay. Did you receive any evidence
24 from anyone during that trip to Cainhoy?

25 A. I did. November 27th, I received a

STEVENS, WILLIAM - DIRECT EXAM BY MR. STEGALL

1 skull, teeth, and another bone from Coroner
2 Salisbury.

3 Q. What did you do with that skull?

4 A. After my analysis of the skull, I
5 transferred it to Dr. John Edwards for comparison
6 of dental records with the skull.

7 Q. Were you able to identify the skull as
8 that of Nicole Goodlett?

9 A. We positively identified the skull as
10 Nicole Goodlett.

11 Q. Did you receive the skull back?

12 A. I did.

13 Q. Okay. And you said you analyzed the
14 skull?

15 A. Yes, sir.

16 Q. After you analyzed the skull, what did
17 you do with it?

18 A. Let's see, I transferred two teeth for
19 DNA to Investigator Dean Kokinda.

20 Q. And when was this trip to Cainhoy?

21 A. November 27th was the first time I came
22 down.

23 Q. So after you analyzed the skull, did
24 you produce a report based on that analysis?

25 A. Yes, sir.

STEVENS, WILLIAM - DIRECT EXAM BY MR. STEGALL

1 Q. Okay. Please go over that report for
2 the jury and what conclusions you may have come to.

3 A. Okay. As I said, with forensic
4 anthropology we estimate sex, age, and race from an
5 individual. In this case, I only had a skull to
6 look at, not a complete body so my estimates were
7 using the methods of -- scientific methods of
8 anthropology that this was a female individual from
9 the skull, under 40 years old based on what I had
10 to look at, and of African American or mixed
11 ancestry, ancestral background.

12 And I determined that there was damage
13 from burning and from exposure to the environment
14 and the sun on the skull because it had been there
15 for some time.

16 Q. And also as a part of your analysis,
17 did you take any photographs?

18 A. I did.

19 Q. I'm going to hand you what's been
20 premarked as State's Exhibit 78, 79, 80, and 81.
21 Take a look at those, and I'm going to ask you a
22 question.

23 A. Okay.

24 Q. Do recognize those photos?

25 A. Yes.

STEVENS, WILLIAM - DIRECT EXAM BY MR. STEGALL

1 Q. Do those photos fairly and accurately
2 represent the skull that you analyzed in November?

3 A. Yes, they do.

4 MR. STEGALL: Your Honor, at this time
5 the State moves to enter into evidence exhibits 78,
6 79, 80, and 81.

7 THE COURT: Any objections?

8 MR. SMILEY: No objection.

9 THE COURT: Very well, without
10 objection, 78 through 81 are
11 admitted.

12 (STATE EXH. 78 - 81 in evidence.)

13 MR. STEGALL: Permission to publish?

14 THE COURT: You may.

15 BY MR. STEGALL:

16 Q. Okay. You've got a clicker right there
17 with a laser on it.

18 A. All right.

19 Q. And if you want to turn around. First,
20 I'm going to show you State's Exhibit 78. Please
21 tell the jury what that's a picture of.

22 A. That's the front view of the skull that
23 I analyzed.

24 Q. And is that the skull that you
25 identified as that of Nicole Goodlett?

STEVENS, WILLIAM - DIRECT EXAM BY MR. STEGALL

1 A. Yes, it is.

2 Q. Okay. And State's Exhibit 79, what's
3 significant about that photo?

4 A. This shows the bottom of the skull. It
5 shows burning damage, so the damage from prolonged
6 burning turned -- the bone undergoes color changes
7 and then it breaks apart as it's exposed to hotter
8 fire and longer term duration of fire.

9 Q. Okay. And if you wouldn't mind using
10 your laser pointer to point that out for that jury?

11 A. Yeah. (Indicating) Okay. So the
12 black areas are charring of the bone and the white
13 areas are where it undergoes calcination which is
14 like cremation. So it's turned white when it's
15 exposed for longer -- and missing bone there is
16 probably from fracture related to the heat.

17 Q. And where is that missing bone?

18 A. (Indicating)

19 Q. And next is State's 80. Again, please
20 describe for the jury.

21 A. Okay. Just another angle of the base
22 of the skull showing the burning. Also, there is
23 missing bone from animal activity. So when bones
24 are in the woods for an extended time, animals
25 disperse them; scavenger animals like raccoons and

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1 foxes. And they will also chew on the bone, right
2 there. (Indicating)

3 Q. And last State's Exhibit 81, what is
4 that?

5 A. Okay. The view of the right side of
6 the skull shows the pattern of burning and where it
7 stops from burning up the posterior, or the back
8 side of the skull.

9 Q. Did you make any other subsequent trips
10 out to Cainhoy?

11 A. I did, yes.

12 Q. And when was that?

13 A. It was on April 27, 2016.

14 Q. And did you receive any other evidence
15 related to this case?

16 A. Yes, I did at that time.

17 Q. Okay. What was that evidence?

18 A. We went back out to perform a search of
19 the area, and we recovered additional bones related
20 to the skull we had found.

21 Q. And were you able to analyze the bones
22 as well?

23 A. Yes, I was.

24 Q. Were you able to produce a report based
25 on that analysis?

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1 A. Yes, I did.

2 Q. After that subsequent search and
3 location of the skeletal remains, were you able to
4 develop a more detailed conclusion?

5 A. I was.

6 Q. Okay. How much of the skeletal remains
7 were recovered?

8 A. I estimated about 55 to 60 percent of
9 the skeleton was found.

10 Q. Okay. Dr. Stevens, at this time please
11 discuss your findings for the jury.

12 A. Okay. In the search we found
13 additional bones representing the arms and leg,
14 pelvis of the individual, and some ribs. And we
15 could, kind of like a puzzle, put it back together
16 to see a pattern of what had happened to the body
17 to some extent, seeing the burning and seeing the
18 damage caused by post-mortem, what happens after
19 death with animal activity and exposure in the
20 woods.

21 So it allowed me to make some
22 conclusions. I found evidence that the body was
23 burned while it still had flesh on it so a
24 relatively fresh body. Evidence that it was
25 exposed to a concentrated fire or prolonged fire on

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1 one side, primarily the back side of the body, or
2 posterior.

3 Evidence that animals and -- had
4 scavenged the body and scattered the remains
5 around. And evidence that it had been exposed to
6 the sun for some time. It's not a very precise
7 estimate of time how long the body had been in the
8 woods when you're dealing with bone because there
9 is a lot of factors involved, but I estimated more
10 than a year the body had been out in the woods and
11 less than four years.

12 Further conclusions I had, I could not
13 determine any cause of death. There was no injury
14 that showed up on the portion of the skeleton that
15 we found.

16 Q. You said that you concluded that the
17 body was burned while still fleshed. Were you able
18 to determine what stage of the decomposition
19 process it was in?

20 A. Early, relatively early. I can't be
21 much more precise, but -- so the body was fully
22 fleshed. And, basically, a body will burn like --
23 imagine like a candle with a wick. So the bone is
24 acting as a wick, and then the fats in the body
25 that are still present at that point allow the

1 limbs to burn progressively like a candle because
2 of the fat content.

3 So it displayed a pattern consistent
4 with that burning of the flesh body.

5 Q. Now, let's talk about this what you
6 described as a concentrated burn primarily on the
7 posterior, the back side of the body. What is a
8 concentrated burn?

9 A. Prolonged high temperature. So it
10 points to having materials involved that are
11 flammable placed on or near the body and allowing
12 it to combust for an extended period of time.

13 Q. Can you give us an example of how those
14 flammable materials would have to be used in order
15 to achieve this concentrated burn?

16 A. Based on it being on the back side of
17 the body, it could have been put on top of the body
18 with the body facing down; it could have had
19 material placed on the ground and ignited and
20 placed the body on top. I can't conclude which one
21 was the case.

22 But materials, anything that's, you
23 know, wood, construction material, fabric,
24 something that can burn for a long period of time.

25 Q. What about an accelerant?

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1 the State moves to introduce State's Exhibit 77, 82
2 through 90 into evidence.

3 THE COURT: Any objection?

4 MR. SMILEY: No objection.

5 THE COURT: Without objection, State's
6 77, 82 through 90 are admitted, each being a
7 photograph.

8 (STATE EXH. 77 in evidence.)

9 (STATE EXH. 82 - 90 in evidence.)

10 MR. STEGALL: Your Honor, permission to
11 publish?

12 THE COURT: You may.

13 BY MR. STEGALL:

14 Q. All right. Dr. Stevens, I'm going to
15 show you what's been entered as State's 77. Again,
16 using your laser pointer, can you tell the jury
17 what this is?

18 A. Back it up more, please. Okay. This
19 is a sketch map that I produced of the scene and
20 how the remains were dispersed across the ground
21 surface. We identified one area which contained
22 the pelvis, the ribs, and the vertebrae.

23 And that is the area where the body was
24 initially placed we believe based on it having
25 those smaller parts of the skeleton and all

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1 concentrated in an anatomical position.

2 From that point, the remains had been
3 by acts of nature dispersed throughout the area
4 over several hundred feet. We estimated about an
5 acre, an acre and a half of land, which is normal
6 for South Carolina for remains to be scattered
7 apart. So we don't always recover all of the
8 skeleton.

9 Q. Okay. Can you point out for the jury
10 where you located the skull initially?

11 A. Okay. The skull was initially found in
12 this direction, (indicating) several hundred feet
13 away from where the body would be found at the
14 later date.

15 And I don't have an exact number of
16 distance for that, but within several hundred feet.

17 Q. Okay. So I see the circle in the
18 center there. Below that there appear to be
19 numbers. What are those?

20 A. Those are numbers we gave to individual
21 bones that were found at a distance from the
22 primary spot where we determined the body
23 decomposed. They include leg bones, hip bones, and
24 arm bones.

25 Q. Okay. Next I'm going to show you

1 what's been entered as State's Exhibit 82. Please
2 tell the jury what that is.

3 A. Okay. This is taken in my lab putting
4 the skeleton back in an anatomical position as
5 everything should be, the arms and legs, the ribs
6 in order, and what vertebrae we had from the body,
7 as well as the pelvis, and we put it with the
8 skull. So that represents all of the skeleton that
9 we found.

10 Q. And that's not a complete skeleton.

11 A. Correct. I estimated 55 to 60 percent
12 of the skeleton.

13 Q. Next I'm going to show you State's
14 Exhibit 83. What's that?

15 A. That is the left elbow of the
16 individual so it shows both white color change from
17 the heat. So the thin parts of your body are --
18 when you burn a whole body together, it's going to
19 burn the thin skin areas like your elbow and then
20 preserve the bone on the areas where there is
21 thicker skin, like your thighs and your biceps and
22 your torso.

23 So that shows heat damage to the elbow
24 area and also animal damage on top of that where
25 the squirrels and things had chewed upon the bone

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1 after that point.

2 Q. And, Dr. Stevens -- yes.

3 A. And the brown color is from the soil
4 and the pine straw.

5 Q. Next is State's Exhibit 84. How about
6 that?

7 A. That is the back side of the left femur
8 bone, left thigh bone, and it shows extensive
9 burning. So the half with the knee, so burning
10 from the knee area on up to the hip is what has
11 occurred.

12 And the fracture there with the black
13 discoloration and the white is caused by fire
14 consuming the leg completely.

15 Q. State's Exhibit 85?

16 A. That's the jaw or the mandible that we
17 recovered. And it shows -- that's the front view.
18 And you can see on the left side the damage of heat
19 progressively coming up the jaw line.

20 Q. State's Exhibit 86?

21 A. That's the same bone, the mandible, and
22 looking at it from underneath. You see that
23 left-sided damage to the bone caused by prolonged
24 burning with fractures caused by heat.

25 Q. State's Exhibit 88?

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1 A. Okay. The left side of the skull image
2 there which shows a pattern of burning on both the
3 jaw and the back side of the skull.

4 Q. State's Exhibit 89?

5 A. That's the right side of the skull
6 showing the same thing. On the upper jaw is where
7 we took the DNA sample, so that bone is missing.

8 Q. And last -- and you may have to put it
9 the other way -- State's 90. What is this?

10 A. Okay. Once we examined and documented
11 the location of burning on every bone, I made a
12 diagram to show the distribution of the burn marks
13 on the body. And burning is shown in black and the
14 red parts are the bone we did not find that was not
15 recovered.

16 So all of the burning is present on the
17 back side of the body.

18 Q. So back to this concentrated burning,
19 could this have possibly been the result of just a
20 wildfire?

21 A. No, I do not believe so.

22 Q. And why not?

23 A. A fresh body burned in a wildfire will
24 be superficially burned. It will -- it can have
25 deep tissue burning and the hair will be gone, but

STEVENS, WILLIAM - DIRECT EXAM BY MR. STEGALL

1 it would not consume limbs like this.

2 Q. Okay.

3 A. A skeleton in the woods -- you know,
4 from time to time, we'll find a skeleton in the
5 woods that's been through a fire, and it will
6 reflect a different pattern. It will be,
7 typically, turned black all over from the nature of
8 being exposed, completely with no skin on it. So
9 this is very different from that.

10 Q. And you also mentioned in your finding
11 that you were unable to determine a cause of death?

12 A. That's correct, yes.

13 Q. Okay. Could you rule out any causes of
14 death?

15 A. No.

16 Q. Okay. Is the reason that you couldn't
17 determine a cause of death due to the condition
18 that the remains were discovered?

19 A. Yes, it is.

20 Q. Do you feel in your expert medical
21 opinion that you possibly could have been able to
22 come up with a cause of death had you had more
23 evidence?

24 MR. SMILEY: Objection, Your Honor.

25 THE COURT: What's the basis of the

1 objection?

2 MR. SMILEY: That's beyond an opinion.
3 That's speculation, something he does not have --

4 THE COURT: He's been qualified to
5 render an opinion based on his --

6 MR. SMILEY: Yes, sir.

7 THE COURT: I will allow the question.
8 You certainly can cross examine on it.

9 THE WITNESS: With a complete skeleton,
10 it's always possible we could identify a traumatic
11 injury. In this case, I did not have a complete
12 skeleton.

13 MR. STEGALL: Thank you, Dr. Stevens.
14 I have no further questions. Please answer
15 anything that the defense has.

16 THE WITNESS: Yes, sir.

17 THE COURT: You may cross examine.

18 MR. SMILEY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. SMILEY:

21 Q. Dr. Stevens, I'm Jim Smiley. I
22 represent Mr. Howard. How are you?

23 A. Doing well, thanks.

24 Q. I'm going to ask you some general
25 questions first. And you used some words that I

STEVENS, WILLIAM - CROSS EXAM BY MR. SMILEY

1 want to make sure that I understand and the jury
2 does. Antemortem means before death?

3 A. Correct. Yeah. Antemortem is anything
4 you have that happened before death, such as a
5 healed bone fracture, a cavity in your tooth,
6 whatever, just pathology or something like that.

7 Q. Perimortem means at death or shortly
8 thereafter, correct?

9 A. At or around the time of death.

10 Q. And postmortem is afterwards?

11 A. That's correct.

12 Q. In this case, you were able to
13 determine that the remains were not burned
14 antemortem, correct?

15 A. That's correct.

16 Q. You were not able to determine that
17 they were perimortem burned either?

18 A. Perimortem for anthropology is
19 different from pathology; it's a longer period.
20 And it really means when the bone is fresh or when
21 the body is fresh. In pathology, it means at or
22 causing death.

23 So it's different because we don't have
24 organs and tissues to work with.

25 Q. Right. In this case, you're looking at

STEVENS, WILLIAM - CROSS EXAM BY MR. SMILEY

1 a set of bones. In another case, we would be
2 talking to someone who did an autopsy, right?

3 A. Correct, yes.

4 Q. Okay. Now, you talked about fire?

5 A. Yes.

6 Q. You were able to examine the area.

7 Were you able to find evidence of an accelerant?

8 A. No.

9 Q. Were the bones tested to see if an
10 accelerant was used?

11 A. I'm not sure about that.

12 Q. Okay.

13 A. That would be SLED.

14 Q. You didn't do that?

15 A. I did not, no, sir.

16 Q. In situ means at the site that it was
17 found. Can you tell whether that body was burned
18 there or somewhere else?

19 A. Not conclusively. We determined where
20 the body was deposited or placed --

21 Q. Right.

22 A. -- as a burned body or burned there, we
23 don't know.

24 Q. You have testified that this was an
25 intense fire?

STEVENS, WILLIAM - CROSS EXAM BY MR. SMILEY

1 A. Yes, sir.

2 Q. Concentrated, I think, is the word you
3 used, and that it appeared the body was either
4 burned facing up and a fire put underneath, or that
5 it was face down and a fire was put on top?

6 A. I believe either could have occurred
7 because the burning was on the back side of the
8 body.

9 Q. All right. And this is a concentrated
10 prolonged burn, right?

11 A. That's correct.

12 Q. It's not like -- for example, it's not
13 like a torch was used and burned for a minute and
14 then walked away. The body wouldn't continue to
15 burn, would it, without an accelerant?

16 A. That's correct, without flammable
17 materials in association with the body.

18 Q. And I believe you testified you found
19 where you believe that the remains were deposited
20 from the little bones and what have you. You all
21 didn't collect any debris in collection around
22 those bones that would indicate the fuel that was
23 used for the fire, did you?

24 A. I did not. Law enforcement may have,
25 but as I recollect, there was not much at all in

1 association, just the bones there.

2 Q. If you have a concentrated fire,
3 prolonged fire -- and I believe you said the body
4 was fleshed. If the body is fleshed and there is a
5 prolonged concentrated fire, will you smell burned
6 flesh?

7 A. Yes.

8 Q. Okay.

9 A. During the burning process, yes.

10 Q. Right. If the body was fleshed and it
11 was burned, it is unlikely that all of the flesh
12 was burned off of the body, correct?

13 A. That's correct. The pattern that I saw
14 on the skeleton implied that probably some flesh
15 was still on it and then the body was decomposed.

16 Q. Okay. And decomposition has a smell,
17 correct?

18 A. It does, yes.

19 Q. And you talked about animals that
20 scavenge the remains, right?

21 A. Yes, I did.

22 Q. And those could have been rodents, like
23 squirrels and rats and what have you, right?

24 A. That's correct.

25 Q. It could have been dogs that scavenged

STEVENS, WILLIAM - CROSS EXAM BY MR. SMILEY

1 it?

2 A. Yes.

3 Q. It could have been buzzards and
4 vultures?

5 A. Yes.

6 Q. All right. I have a question, but I
7 think it's outside your expertise so I won't ask
8 it.

9 You said that the best you can do about
10 when the body was placed was somewhere between --
11 and I may say this wrong, so correct me if I do --
12 between one and four years?

13 A. That's what I estimated.

14 Q. All right. Now, you had a complete
15 skull, right?

16 A. Yes.

17 Q. And it showed no injury?

18 A. It showed no injury. There was missing
19 bone, as I showed in the photo, due to heat and
20 also due to animal activity.

21 Q. But in your examination of the bone,
22 there did not appear to be any antemortem or
23 postmortem traumatic injury?

24 A. Antemortem or perimortem. And, yes,
25 there was no evidence for any injury.

STEVENS, WILLIAM - CROSS EXAM BY MR. SMILEY

1 Q. All right. You had the majority of her
2 vertebrae, correct?

3 A. Yes.

4 Q. In examining those, you didn't find any
5 traumatic injury, did you?

6 A. I did not.

7 Q. I think when you -- in your report it
8 says, when you examined the ribs on the left side
9 that there appeared to be some perimortem or
10 postmortem fracturing.

11 A. Yes. I found several rib fractures
12 were present.

13 Q. And I think you contributed that to the
14 wearing and maybe the heat; is that correct?

15 A. I did -- I couldn't rule out whether
16 those could have been caused by animals. So when
17 animals scavenge they will produce tooth marks, but
18 they also can produce fractures in the bones;
19 because the bone is still fresh, they look fresh.

20 Q. You could tell that it wasn't an
21 antemortem injury, though?

22 A. Correct.

23 Q. While you said you cannot tell the
24 cause of death based on looking at the bones,
25 right?

STEVENS, WILLIAM - CROSS EXAM BY MR. SMILEY

1 A. That's correct, I cannot determine the
2 cause of death.

3 Q. And that if you had a flesh skeleton,
4 you possibly could, correct?

5 A. Potentially, but with skeletal remains
6 often the cause is undetermined because we don't
7 have organs, tissues, and blood.

8 Q. So you don't come here to tell this
9 jury how she died?

10 A. I cannot tell you.

11 Q. You can't tell this jury where she was
12 burned?

13 A. I can't tell exactly where she was
14 burned, only that she was burned.

15 Q. You can't tell when she was placed
16 there?

17 A. I can only estimate one to four years.

18 Q. The missing bones -- just a quick
19 question. I think it's sort of obvious; I don't
20 ever assume things. Only about 55 percent of the
21 body was collected?

22 A. That's what I estimated, yes.

23 Q. Is -- in your experience, do you
24 believe the other 45 percent of the bones were just
25 not located or weren't there?

1 A. The pattern that I showed you of the
2 burning show that the limbs were consumed. So a
3 lot of the bone was completely consumed by the
4 fire. Other parts of the bone were removed by
5 animal activity and sometimes they can be
6 completely consumed, chewed up.

7 You've probably picked up a deer antler
8 in the woods and you notice that squirrels will
9 chew it until it's gone. You know, they chew on
10 it. And, also, sometimes they can disperse it for
11 hundreds of feet and just -- we were not able to
12 recover any more.

13 Q. So you don't know whether the whole
14 body was out there or not, correct?

15 A. Yes. I believe that parts of it were
16 consumed by the fire and parts were consumed by
17 animals.

18 MR. SMILEY: I beg the Court's
19 indulgence?

20 THE COURT: Certainly.

21 MR. SMILEY: Nothing further, Your
22 Honor.

23 THE COURT: Redirect?

24 MR. STEGALL: Just one question, Your
25 Honor.

STEVENS, WILLIAM - REDIRECT EXAM BY MR. STEGALL

1 THE COURT: Certainly.

2 REDIRECT EXAMINATION

3 BY MR. STEGALL:

4 Q. Dr. Stevens, you testified that you
5 were able to estimate that the body was placed one
6 to four years prior to locating it. Is that one to
7 four years prior to April 2016, that we're talking
8 about or --

9 A. My estimate initially was on the skull,
10 and that was recovered in November. So prior to
11 that.

12 Q. Prior to November 2015?

13 A. Yes.

14 Q. Okay.

15 A. And it's a rough estimate based on the
16 condition of the bone, based on established methods
17 that they come up with on how the organic component
18 of the bone has changed into -- and gone away, the
19 fats are gone, so it starts to crack and turns
20 white. And that's what I used.

21 MR. STEGALL: Okay. Thank you. No
22 further questions.

23 THE COURT: Recross?

24 MR. SMILEY: No, sir.

25 THE COURT: Thank you, Dr. Stevens.

1 You may step down.

2 Do you wish him to be excused?

3 MR. STEGALL: Yes, sir, Your Honor.

4 THE COURT: Any objection?

5 MR. SMILEY: No, sir.

6 THE COURT: You are also free to leave.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Thank you. You may call
9 your next witness, Solicitor.

10 MR. STEGALL: Your Honor, at this time
11 the State rests.

12 THE COURT: All right. Ladies and
13 gentlemen, there are some matters of law that I
14 have to take up now out of your presence. I will
15 ask you to go to your jury room.

16 Do not begin your deliberations. Do
17 not discuss the case among yourselves. We will be
18 with you as quickly as we can.

19 (Jury out, 10:08 a.m.)

20 THE COURT: Are there any motions from
21 the State?

22 MR. STEGALL: None from the State, Your
23 Honor.

24 THE COURT: Mr. Smiley, I'll be happy
25 to hear from you.

1 MR. SMILEY: Yes, sir. And I make a
2 motion for directed verdict on the charge of murder
3 and desecration of a body.

4 First, on the murder, Your Honor. I've
5 repeated over and over, it's the killing of another
6 with malice aforethought. I used the word
7 intentional, but it's not in the statute. I think
8 it's sort of required because it's part of the
9 malice.

10 In this case, Your Honor, the State has
11 not been able to demonstrate the -- how she was
12 killed, where she was killed, why she was killed,
13 when she was killed, or that Mr. Howard -- they
14 have not presented any evidence that Mr. Howard
15 caused her death.

16 She certainly passed away. It appears
17 she passed away from the testimony sometime around
18 or about after she went missing, but they've done
19 nothing to -- they have presented -- and I know we
20 look at it in the light most favorable to the
21 State.

22 They've actually presented no evidence
23 to show through witnesses or testimony that he
24 caused her death and whether we have -- well, we
25 don't even get to malice aforethought at that

1 point, because there's been nothing to establish
2 malice aforethought.

3 From the evidence that was put in in
4 this case, Your Honor, they have established that
5 Nicole Goodlett was not seen after February 20th.
6 They established they found her body, that after
7 she was deceased that she was burned. That's all
8 they have established.

9 They have established my client, they
10 alleged, has done some things that -- I'm trying to
11 use the right word, Your Honor -- has done some
12 things that are suspicious, but suspicious is not
13 enough.

14 We have to rise above that to even get
15 it to a jury, Your Honor. I don't believe that
16 they have come close, that they have established --
17 I can't speak this morning -- they have established
18 some suspicion and some wrongdoing, but they have
19 not been able to show that he was involved with her
20 passing.

21 There is absolutely no evidence about
22 that; therefore, I believe that looking at the
23 evidence most favorable to the State, that it must
24 be a directed verdict in this case. Thank you,
25 Your Honor.

1 THE COURT: Thank you.

2 Solicitor, I'll be happy to hear from
3 you.

4 MR. ALFARO: Thank you, Your Honor. As
5 the Court is aware and as Mr. Smiley indicated, the
6 concern at this point is the existence of any
7 evidence in the light most favorable to the State
8 that proves guilt.

9 In addition, that includes not only
10 direct evidence but also circumstantial evidence.
11 And in circumstantial evidence, if we have
12 circumstantial evidence that reasonably tends to
13 prove the guilt and from which guilt may be fairly
14 and logically deduced, then it should be a question
15 for the jury.

16 The State's position is that we have
17 produced ample circumstantial evidence, as well as
18 some direct evidence. You've had testimony
19 regarding the -- just initially, the victim's
20 phone, multiple statements by the defendant denying
21 having possession of the phone, testimony from
22 family and friends, including Amanda Hinojos, who
23 testified as to the use of Nicole's phone to set up
24 a meeting with someone named Leo, who in a
25 subsequent lineup was identified as the defendant,

1 which goes to corroborate the testimony of the
2 mother regarding texts and other messages she
3 received supposedly from Nicole that were sort of
4 German, bad German, gibberish German, that goes to
5 prove the -- or establish evidence of a continued
6 ruse by the defendant to conceal the fact that the
7 victim was actually deceased and not just
8 voluntarily absent from the area.

9 In addition, her phone also pinged in
10 close proximity of the route of the phone ping.
11 There's testimony from the FBI agent the phone
12 pinged to track essentially from the Spartanburg
13 area down to the Charleston 526 area, which would
14 be the route taken to the defendant's parents'
15 house.

16 There's testimony from the defendant's
17 father that the defendant arrived one night,
18 February 23rd. There -- the time around February
19 23rd late at night, and the phone ping was at 9:30.
20 His estimated arrival time was 10:30, 11:00
21 o'clock.

22 Also related to the father's testimony
23 is the proximity of the remains of the victim, that
24 it was in proximity to an area where the defendant
25 is familiar with and that the victim has no ties.

1 Again, in the light most favorable to
2 the State, we believe there has been ample evidence
3 produced which a jury could reasonably find the
4 defendant guilty of both murder as well as
5 desecration of human remains.

6 In any murder case, absent video or
7 eyewitnesses, there are always issues to --
8 potential issues as to exactly where or exactly day
9 and time of when something happened, and oftentimes
10 even how something happened. But those are issues
11 for the jury in the case, Your Honor.

12 THE COURT: Okay. Do you wish to
13 respond?

14 MR. SMILEY: Just briefly, Your Honor.
15 His father also testified that the trunk was open,
16 that he was in the yard, and that Jerald came in
17 and didn't leave that night.

18 I think that's all I have, Your Honor.

19 THE COURT: Okay. Well, first of all,
20 obviously, this is a circumstantial evidence case,
21 as you said, and the key is whether there is
22 substantial circumstantial evidence.

23 Probably one of the factors that could
24 lead a jury to a reasonable conclusion is the
25 location, because obviously this -- the victim is

1 not from this area, has no connection with this
2 area, no connection with Cainhoy, and that's not an
3 area that somebody would just drive through.

4 You would only go there, typically --
5 I'm very familiar with where Cainhoy school is. So
6 it's an area that has been for quite some time,
7 changing now, but very rural. And the location is
8 in an area where in a light most favorable to the
9 State, obviously the defendant knew well; he
10 attended that school.

11 The linkage of the blood, the jury
12 could conclude something happened at the house. I
13 agree with you in your questioning that there was
14 no evidence of when that happened, but, again,
15 that's for a jury's determination as to connecting
16 all the dots, so to speak.

17 Certainly, the phone usage and the
18 denial is, I think, substantial evidence of
19 knowledge of something. The jury could conclude
20 it's knowledge that you did an act.

21 And it goes even stronger to that in
22 where they found the phone is further inference to
23 be drawn from that. He was definitely trying --
24 because in his statement he said he found it, but
25 refused to show it to him.

1 Of course, he had -- he had some
2 explanation for that and, certainly, that would be
3 up to the jury to determine. But probably, for me,
4 one of the more compelling things is the Google
5 searches and the time of the Google searches and
6 the subject matter of the Google searches.

7 As I recall the testimony, there were
8 multiple days of Google hits, but toward the end of
9 the week it was two different Google searches; one
10 dealing with destruction of a body and one the
11 likelihood of being -- how well would you be able
12 to determine anything from the burning of the body.

13 No question that we don't know who was
14 actually Googling it, but we know the phone, and we
15 know the jury could conclude the phone was in his
16 presence then, obviously, that could be another
17 connection to him. The malice issue is clearly, I
18 think, supported by the evidence; and the
19 destruction of the body, that could be inferred
20 that I did something.

21 And as we know -- I don't quarrel with
22 you that there is no circumstantial evidence of
23 malice aforethought, but if you link all of those
24 circumstances together and the nature of the act
25 itself and the nature of the conduct that was

1 attributed to him by a jury, then I think that's
2 extremely malicious and could show everything that
3 is necessary for that.

4 Because as you know, the instruction
5 says it doesn't have to be for an extended period
6 of time. It can be at the moment just before the
7 act is committed, which clearly could be construed
8 by -- the act could be -- again, the nature of the
9 conduct after is what leads to the, I think,
10 malicious conclusion that it was not something that
11 was done, oops, I'm so sorry, or, oops, it was an
12 accident, or, oops, it was in self-defense.

13 And, again, assuming that the jury
14 concludes he's the actor -- but it's for the jury
15 to determine because of the connection that he has
16 to her, to the phone, and to the usage of the
17 phone.

18 So all of those things I would say in
19 the light most favorable to the State warrants my
20 denying the motion for a directed verdict. Thank
21 you.

22 Now, we are at a point where, as I told
23 the jury before we started, that Mr. Howard
24 absolutely had nothing to prove or disprove and
25 didn't have to say a word or present any evidence.

1 Mr. Smiley, does Mr. Howard intend to
2 testify in this case?

3 MR. SMILEY: May we have ten minutes,
4 Your Honor?

5 THE COURT: You may, sir. We'll be at
6 ease for about ten minutes.

7 (A recess transpired.)

8 THE COURT: Let the record reflect that
9 Mr. Howard has returned.

10 MR. SMILEY: After discussing at length
11 with my client, Your Honor, he's declined to
12 testify, and that is with my advice.

13 THE COURT: Very well. All right.
14 Mr. Howard, you can remain seated or stand,
15 whatever your pleasure, sir. If you want to remain
16 seated, it's perfectly all right with me. The
17 lawyers and I did it, too -- and I learned a lot
18 and over the years have learned and continue to
19 learn a lot from people you work with, but this
20 person happened -- I knew him before I went on the
21 bench and I knew him before he went on the bench,
22 and then we had a chance -- I sat with him the
23 first day, and then I spent six months next door to
24 him in Columbia in 1996, and we would chat from
25 time to time.

1 But I was reading a decision that he
2 had with a PCR, a post-conviction relief, and he
3 was talking -- they were quoting him, and he was
4 talking to the defendant, or an applicant in that
5 case, and his lawyer did what Mr. Smiley just did,
6 obviously.

7 He said -- the defendant stood and he
8 responded. And it stuck with me for a long time
9 now. He said, sir, you don't have to stand. Your
10 lawyer has to stand because he's an officer of the
11 court. You are a citizen and this is -- this
12 courtroom belongs to you and everybody else here.
13 So if you want to be seated you have that option.

14 And I thought, you are absolutely
15 right. He later became a chief justice,
16 Justice Pleconis. And I thought that was good
17 advice. So I've tried to do that through my
18 career, but some people like to stand.

19 As I told the jury, I don't like to sit
20 down too much, I would rather stand up and talk,
21 but you are welcome to sit, sir.

22 You have had a chance now -- and I know
23 this is not the first time that you all have
24 discussed this, I'm sure, and that's perfectly all
25 right. I'm not asking you to tell me what you

1 discussed, but you have been in consultation with
2 your lawyers concerning your right to testify or
3 not testify; is that correct, sir?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: And they have explained to
6 you, just as I explained to that jury when we
7 started that they need not look to you for anything
8 at all. You didn't have to say a word; you didn't
9 have to produce any evidence; you don't have to do
10 a thing. And that is still your right.

11 Do you understand?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: But as your lawyers have
14 said you have the right to take the stand and
15 testify, but, of course, if you do, you would be
16 subject to cross-examination just as every witness
17 who has appeared in this matter. Do you understand
18 that, sir?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And there are also some
21 other strategies and being -- having been a lawyer
22 I know about those too, and one of those is an
23 opportunity to have the last argument to the jury.
24 Have you talked with your lawyer about that as
25 well?

1 THE DEFENDANT: Yes, sir, Your Honor.

2 THE COURT: And I don't want to know
3 why you may, but your lawyers advise me that you
4 have indicated to them that it is your desire to
5 continue to remain silent in this matter; is that
6 correct?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: And it is your desire not
9 to testify?

10 THE DEFENDANT: That's correct, Your
11 Honor.

12 THE COURT: Are you today under the
13 influence of any alcohol or any medication, sir?

14 THE DEFENDANT: No, sir, Your Honor.

15 THE COURT: Have you consumed any
16 alcohol or taken any type of medication in the last
17 24 hours?

18 THE DEFENDANT: No, sir, Your Honor.

19 THE COURT: And you have had sufficient
20 time to reflect on this decision, sir?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: And I will say this, and I
23 say this with all sincerity, everything that I have
24 read and listened to, obviously, you are an
25 educated person and a very articulate individual as

1 well, and you've applied all of that knowledge and
2 your life's experiences to assist you in making
3 this decision?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: And are you comfortable
6 with your decision, sir?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: Okay. Are you satisfied
9 with the manner in which your attorneys have
10 advised you in this matter?

11 THE DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: Very well. Thank you so
13 much, Mr. Howard. I appreciate it, sir.

14 I find that Mr. Howard has certainly
15 had the benefit of very competent counsel with whom
16 he's indicated he's satisfied. I find that he has
17 had an opportunity to further discuss this matter
18 with his attorneys, and he's made a decision, a
19 conscious decision for himself.

20 I find that he makes this decision
21 freely, voluntarily, knowingly and intelligently,
22 and I will accept that. And, Mr. Howard, in just a
23 moment I'm going to ask the jury to return, and I'm
24 going to ask -- I'm going to reiterate to them you
25 do not have -- the State is the only party that has

1 the burden of proof.

2 And as I told them -- I'll remind them
3 that you did not have anything to prove or disprove
4 and you don't have to present any evidence. And
5 what I've been doing for the last several years has
6 been that I will ask Mr. Smiley, does Mr. Howard
7 wish to present any additional witnesses for the
8 jury's consideration?

9 And at that time, Mr. Smiley is going
10 to say, no, Your Honor, the defense rests, or
11 something similar to that. At that point, this
12 decision is sort of in stone. Do you understand
13 that?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: Okay. If you change your
16 mind between the time that I ask him that question,
17 if you will let Ms. Hensley know, she can punch
18 him, and I'll excuse the jury and we'll let you go
19 out and have further conversation. Okay?

20 THE DEFENDANT: Thank you, Your Honor.

21 THE COURT: But if I don't hear
22 anything, I'm going to assume that you are good
23 with your decision and you stand by it.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Thank you.

1 MR. STEGALL: Can we take --

2 THE COURT: Just hold on a second, I'm
3 going to give you that. No problem. I promise
4 you, I understand about being human. I promise you
5 about that.

6 At this point, Mr. Smiley, I assume you
7 would now -- since you will be resting, so we don't
8 have to send the jury through the mechanics of
9 going back out and coming back in.

10 MR. SMILEY: And just for the record,
11 the same motion I made, I make again, Your Honor.

12 THE COURT: Very well. And I think I
13 wanted to -- in the interim, I went and found the
14 exhibit that I referenced. And it really, as I
15 understand, comes from his iPhone. It was the
16 extract from the -- that were -- started, I think,
17 February 24th going through March 3rd.

18 And the last part that I was referring
19 to was a search initiated from his phone on
20 March 3rd, one to the *Chronicle* in Augusta, talking
21 about burned body causes solvable challenges for
22 investigators.

23 And then he went on that same date *CNN*,
24 how authorities identify a burned body. And I say
25 he. Excuse me, the phone did. I don't know who

1 was doing that. I'm not suggesting that. That's a
2 determination that the jury would have to make, but
3 they could conclude that it was the defendant.

4 And then the last one, can you identify
5 a burned body, with a Google search. And that was
6 also conducted on that date from that phone. And
7 those were the ones I was referencing earlier in my
8 denying your motion for a direct verdict, I would
9 reiterate those as well.

10 Anything further now from the State?
11 The State is ready to go. You agree that he -- to
12 preserve the record, he's not required now to send
13 the jury back out and make that motion. We will
14 assume that motion is made, is that fair?

15 MR. ALFARO: That's fine, Your Honor.

16 THE COURT: Very good. Now, how long
17 do you need, Mr. Stegall?

18 MR. STEGALL: Fifteen seconds.

19 THE COURT: Well, you can have -- how
20 about take five minutes?

21 MR. SMILEY: I'm going to go get some
22 nicotine, Judge.

23 THE COURT: All right. Any specific
24 requests to charge? I'm going to charge murder.
25 There's no reason to charge any lesser included,

1 and I'm going to charge the statute concerning the
2 desecration of the body.

3 I'm only going to charge a part that
4 deals with the body. I don't think there is any
5 need to charge any other portions of it unless you
6 all want me to.

7 MR. SMILEY: No, sir.

8 THE COURT: Okay. Good. We will be at
9 ease for about five minutes.

10 (A recess transpired.)

11 THE COURT: All right. Let the record
12 reflect that Mr. Howard is present. We had a
13 sidebar concerning the charge. I had included in
14 my charge the typical charge -- well, about
15 statement of the defendant being in evidence.
16 And in riding today I was thinking, there really is
17 no statement. There are statements he has made --
18 allegedly made if the jury believes they are his
19 statements.

20 They were testified to by various
21 persons, but those, we agreed I think at sidebar,
22 that all -- nobody is challenging the voluntariness
23 of that or that it would be subject to any Miranda
24 warnings or anything of that nature.

25 So I indicated to both sides that I

1 will not charge that typical charge that's given
2 about you have to first determine the statement was
3 freely and voluntarily, it was his statement.
4 There is no question it's his statement. It's
5 whether or not what the jury wants to believe
6 about -- he's just like any other witness, in other
7 words.

8 MR. SMILEY: Yes, sir.

9 THE COURT: Do you agree with that,
10 Mr. Smiley?

11 MR. SMILEY: I do, Your Honor.

12 THE COURT: And, Mr. Howard, you have
13 discussed that with your lawyer as well?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: Very well. Okay. Thank
16 you.

17 Solicitor, are you comfortable with
18 that now in the record?

19 MR. ALFARO: No objection to that.

20 THE COURT: Very well.

21 MR. SMILEY: One last question.

22 THE COURT: Sure.

23 MR. SMILEY: Just to make sure that I
24 understand because I know we do this every trial,
25 but I just don't -- the State will open in full, I

1 will close in full, and then we are done.

2 THE COURT: We're done. That's
3 correct. You put in no evidence. You are entitled
4 to that.

5 MR. SMILEY: I just wanted to make
6 sure.

7 THE COURT: And that's not a -- listen,
8 it's worth doing because it was kicked around. I
9 can't tell you how many Listserve we had among
10 ourselves when they first came down with that
11 decision and how to proceed with it.

12 And there were various opinions, but
13 this is what we, I think, pretty much decided on
14 across the state. If the defendant in a criminal
15 prosecution offers no evidence, the defendant has
16 the final closing. Thank you.

17 All right. Are we ready for the jury
18 then? Is the State is ready?

19 MR. STEGALL: Yes, sir, Your Honor.

20 THE COURT: Defendant is ready?

21 MR. SMILEY: Yes, sir.

22 THE COURT: Bring in our jury.

23 (Jury in, 11:09 a.m.)

24 THE COURT: Thank you very much, ladies
25 and gentlemen. Thank you for your patience. That

1 is a normal part of the process, and I appreciate
2 your indulgence in that.

3 Now, we have reached the point where I
4 mentioned to you that the only party that had the
5 burden of proof in this case was the State of South
6 Carolina. And I told you that you would hear first
7 totally from the State. And I, also, told you that
8 the defendant in this case, Mr. Howard, has
9 absolutely nothing to prove, nothing to say, he
10 doesn't have to present any evidence because he has
11 no responsibility or obligation and no duty to do
12 that.

13 But if he wishes to present any
14 additional witnesses, he would still have the right
15 to do that, and now we are at that point.

16 Mr. Smiley, does Mr. Howard wish to
17 present any additional witnesses for the jury's
18 consideration?

19 MR. SMILEY: Mr. Howard will not
20 present any evidence. The defense rests, Your
21 Honor.

22 THE COURT: Very well. That concludes
23 the evidentiary portion of this process. Now, in
24 the normal course of things, we would have to
25 excuse you again because there are matters of law

1 that we have to take up at the end of the case, but
2 I anticipated that that would be the case, and
3 we've already had those arguments and those
4 arguments and positions are now preserved fully for
5 the record.

6 So we're moving into the final two
7 portions. First, you will hear from the attorneys
8 again. And as I mentioned to you, it's now proper
9 for them to discuss the evidence with you and to
10 suggest reasonable inferences that you may draw
11 from that evidence.

12 And I am confident that you will find
13 their remarks extremely beneficial when you begin
14 the process in deciding this case. So please give
15 them your undivided attention, as I know that you
16 will.

17 And let me thank you also for your
18 attention throughout the trial of this matter and
19 ask you -- now request that again for the last two
20 portions.

21 While their remarks as officers of this
22 court and as advocates for their clients are very
23 important and will be very helpful. Please
24 remember something else; their remarks are not
25 evidence in any fashion.

CLOSING ARGUMENT BY MR. STEGALL

1 Now, following the attorneys' closing
2 remarks, I will give you the law and that -- of
3 course, that law, as I will tell you, you have to
4 accept and apply fairly and impartially to the
5 facts that you will determine.

6 So please give your attention now to
7 the attorneys as they give their closing arguments.

8 Solicitor, you may proceed.

9 MR. STEGALL: Thank you, Your Honor.
10 May it please the Court?

11 THE COURT: Certainly.

12 MR. STEGALL: Good morning. At the
13 beginning of this trial the defense attorney stood
14 up and said that the State starts with a blank
15 canvas, and it's our job to paint a picture for the
16 jury to tell what happened.

17 I liken this case more to a story than
18 a picture. This is a story about the defendant,
19 Jerald Howard, who began an extramarital affair
20 with Nicole Goodlett. He got her pregnant; he
21 murdered her; he drove her body down to Huger where
22 he's from and dumped her body behind Cainhoy where
23 he went to school.

24 He set her on fire until there was
25 nothing left but bones. Not stopping there, he

CLOSING ARGUMENT BY MR. STEGALL

1 continued on leading family and friends to believe
2 that Nicole was still alive.

3 Now, because of this, the defendant in
4 this case is charged with two crimes. He's charged
5 with murder and desecration. Now, the judge is
6 going to give you the law at the end of the case,
7 and what he says goes. I want to briefly touch on
8 it for you.

9 Murder is the killing of another with
10 malice aforethought. Desecration is when a person
11 willfully and knowingly and without proper legal
12 authority destroys or damages the remains of a
13 deceased human being.

14 Now, the second and third part of that
15 doesn't apply in this case. We are simply focusing
16 on number one. Did the defendant destroy or damage
17 the remains of Nicole Goodlett? We submit to you
18 that he did.

19 The judge is also going to tell you
20 that there are two types of evidence that you can
21 consider. There is direct evidence and there is
22 circumstantial evidence.

23 Direct evidence is evidence that
24 directly proves the existence of a fact that does
25 not require deductions. It's evidence that a

CLOSING ARGUMENT BY MR. STEGALL

1 person can see, that they can hear, that they can
2 smell, they can feel.

3 Circumstantial evidence is a little bit
4 different. It's actually proof of a chain of facts
5 and circumstances indicating the existence of a
6 fact. But what's important is what's next. The
7 crime can be proven by circumstantial evidence
8 alone. We don't need direct evidence. We can
9 prove crimes beyond a reasonable doubt with
10 circumstantial evidence. All right.

11 Also important is that the law makes no
12 distinction between the weight or value to be given
13 to either direct or circumstantial evidence. You
14 must weigh them equally.

15 Finally, all circumstances must be
16 consistent with each other, and when taken
17 together, point conclusively to the guilt of the
18 accused beyond a reasonable doubt.

19 Now, to help explain circumstantial
20 evidence I usually use an analogy. Imagine you are
21 in a restaurant, you are sitting there and having
22 dinner and a patron walks in and he's wearing a
23 raincoat. You know, he's carrying an umbrella.
24 That raincoat is wet, so is the umbrella.

25 You can't see outside, but you can

CLOSING ARGUMENT BY MR. STEGALL

1 deduce that it's raining based on the raincoat and
2 the umbrella, right? That is circumstantial
3 evidence, ladies and gentlemen.

4 Now, this case is a circumstantial
5 evidence case. We were completely upfront with
6 that from the beginning; but, again, we can prove
7 our case beyond a reasonable doubt with
8 circumstantial evidence.

9 And the important thing to remember in
10 circumstantial evidence cases and, frankly, in all
11 cases, the judge has been alluding to this every
12 single day. It comes down to one thing and one
13 thing only, common sense. I ask you to keep an
14 open mind and to use your common sense in this
15 case.

16 Okay. Remember, with any story it's
17 all about the details. So let's talk about them.
18 What do we know? February 21st through
19 February 23rd, that's a Friday through Sunday, we
20 know that Travis Martin last sees Nicole Goodlett
21 on February 20th, which was a Thursday. She drops
22 him off.

23 We also know -- let me back up -- that
24 the defendant gave multiple statements indicating
25 that sometime the weekend of February 21st was the

CLOSING ARGUMENT BY MR. STEGALL

1 last time he saw her. Remember, he comes in
2 March 13th and gives a statement. Said the last
3 time I saw Nicole Goodlett was three weeks prior,
4 which would put that February 20th.

5 Daniel Goodlett, her brother, last
6 heard Nicole's voice on February 17th. Also, the
7 phone usage dropped significantly, according to
8 Clay Simmonds, on February 23rd. So we know when
9 she went missing.

10 Also, that same weekend we know the
11 defendant rented a car from Enterprise Rental in
12 Spartanburg and put over 500 miles on it. William
13 Gary testified that the defendant admitted to
14 renting the car, but denied the mileage.

15 William Gary testified that he reviewed
16 the rental agreement through Enterprise and
17 confirmed that it was over 500 miles; plenty of
18 miles to go from Spartanburg to Huger and back that
19 weekend.

20 The defendant's father, Jerald Howard,
21 also testified that his son made a trip to Huger.
22 Remember he wasn't clear on the date? It said it
23 was sometime possibly early March. I think he
24 might have been thinking it was sometime
25 February 21st through the 23rd, but he said he

CLOSING ARGUMENT BY MR. STEGALL

1 didn't remember the date.

2 But he remembers that he came late,
3 that he came by myself, with the twins. He said
4 that he spent the night and he got up and left the
5 next morning. We also know that Nicole phone pings
6 near I-26 and 526 on February 23rd around 9:30 p.m.
7 The defendant's phone does not ping in that area
8 during that time.

9 Let's talk about these messages. The
10 defendant calls Mr. Goodlett on March 8th and says,
11 where is Nicole. Mr. Goodlett testifies, why are
12 you asking me? I'm in Texas; you live with her at
13 Loblolly.

14 On March 6th, the brother receives a
15 strange text from Nicole's phone. And, remember,
16 he testified that it was the grammatical structure
17 that sort of tipped him off. She liked to text in
18 long sentences with dot, dot, dot. You know, this
19 was short, concise, used punctuation.

20 And you're probably saying to yourself,
21 well, that doesn't seem very suspicious. I mean,
22 you know, what are a few punctuation points? But
23 the reason why I know that Daniel Goodlett was
24 suspicious is because two days later he called his
25 father and voiced those concerns to his father.

CLOSING ARGUMENT BY MR. STEGALL

1 That's how I know he was suspicious.

2 Mrs. Goodlett also becomes suspicious.
3 She is concerned about Nicole, so she sends a
4 message on February 27th. And keep that date in
5 mind. February 27th, she sends a message in
6 German. Now, what did she testify about? I don't
7 speak to Nicole in German. Nicole is fluent -- or
8 she said she's not fluent, but she is
9 conversational because she communicates with the
10 grandmother in German because the grandmother
11 doesn't know English, but as far as Nicole and Ms.
12 Goodlett they communicate in English.

13 So the fact that she sent Nicole a
14 message in German on the 27th tells me she was
15 concerned. She was concerned about her daughter.

16 Also, Travis Martin testified. He said
17 once he was dropped off on the 20th, he received
18 calls subsequent to that that he called them, and,
19 pardon me, but to use his language, butt dialed.
20 He said they sounded like butt dials. Nobody on
21 the other end, wait a few seconds, hang up.

22 He also said that there was a voicemail
23 he received that sounded like it was background
24 noise, and that was on the 23rd. So he did not
25 speak to Nicole after February 20th.

CLOSING ARGUMENT BY MR. STEGALL

1 Last, we've got Amanda Hinojos. She
2 agrees to meet up with a person named Leo at Nicole
3 Goodlett's house. She meets with Leo, and Nicole's
4 phone is communicating with her and setting this
5 meeting up. Nicole's phone tells her to meet up on
6 March 4th at Nicole's house to meet Leo.

7 She goes to the house March 4th, she
8 meets Leo, and she leaves. She texted Nicole's
9 phone back and forth, and then mentions a mutual
10 friend that her and Nicole have together. And the
11 response she got was, who's that, from Nicole's
12 phone. From the person she thought Nicole was on
13 the other end. So she said she became suspicious,
14 and she changed the subject.

15 At that point, she still didn't know
16 Nicole was missing. Two weeks later she finds out
17 Nicole is missing and she goes to law enforcement.
18 But that's important. She referenced a mutual
19 friend and Nicole's phone response was, who's that?

20 So after he gets the text message on
21 the 6th, Daniel calls his father to voice his
22 concerns. Mr. Goodlett asked Spartanburg County to
23 conduct a welfare check on March 10th, three of
24 them. They go by the house on Loblolly three
25 times. Nothing. They don't know where Nicole is.

CLOSING ARGUMENT BY MR. STEGALL

1 Daniel gives a statement to Greenville
2 County on March 10th and files that report. The
3 Goodletts fly down from Texas and provide
4 statements on March 12th.

5 Let me back up. The defendant's first
6 statement to law enforcement is March 13th, one day
7 after her brother gave a statement and the parents
8 gave a statement. Jerald Howard sets this whole
9 thing in motion by making that call to
10 Mr. Goodlett. I haven't seen your daughter in
11 three weeks. Do you know where she might be?

12 No, I don't. You should, you live with
13 her. Have you gone to law enforcement? No, I
14 haven't.

15 The Goodletts go to law enforcement.
16 So then Jerald Howard says, well, I better go to
17 law enforcement too.

18 Next, Detective Tracy Moss testified
19 about the bank records. She was able to pull the
20 USAA records from Nicole, as well as the Wells
21 Fargo records from the defendant. And there were
22 some pretty significant transactions that she came
23 across.

24 That first one: Detective Tracy Moss
25 testified that the defendant purchased Rosetta

CLOSING ARGUMENT BY MR. STEGALL

1 Stone, which is a language software program,
2 foreign language. Remember, I told you to remember
3 that February 27th date with Ms. Goodlett, the
4 German.

5 What happened two days before the 27th?
6 He purchases Rosetta Stone. Also, there is a \$200
7 check written out of Nicole's USAA account on --
8 dated March 1st, it's deposited on March 4th, and
9 the description in that check is babies.

10 Later, the defendant admits to writing
11 the check, but as we will talk about in a minute,
12 he says it's for the phone bill, not babies. It
13 seems minor until we talk about it later.

14 So let's talk about the defendant's
15 statement. All right. The first is March 13th,
16 which is one day after he realized the Goodletts
17 gave a statement. He also gives three other
18 statements. He gives one on March 20th, one the
19 morning of March 26th, and then one the afternoon
20 of the 26th.

21 He was not in custody on March 20th and
22 the morning of March 26th. And that's important.
23 They made it clear to him that he was not in
24 custody. How did he arrive for those statements?
25 He drove himself. How did he leave? He drove

CLOSING ARGUMENT BY MR. STEGALL

1 himself.

2 Yet one of the first things out of the
3 defendant's mouth on March 20th was, I understand
4 I'm probably a suspect. That's what he told
5 Detective Gary. What did he do on March 20th? He
6 handed over Nicole's old cell phone. After saying
7 he understood he was a suspect, he handed over
8 Nicole's cell phone. He was being helpful, wanted
9 to help further the investigation.

10 Then, again, on the morning of
11 March 26th between those two statements, he
12 testified or he -- Detective Gary testified that
13 the defendant said that he received text messages
14 from Nicole's new phone -- or a new phone, excuse
15 me.

16 On March 20th and on the morning of
17 March 26th, the defendant was adamant about not
18 having Nicole's phone. If you remember, Detective
19 Gary asked him on the 20th, you know, this is her
20 old phone. Does she have a new phone? Yes, she
21 has a new phone. She would have bought it in March
22 of 2013. Do you have her new phone? I do not have
23 her new phone.

24 Then, again, March 26th, that morning,
25 okay, you got text messages from Nicole's phone.

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1 Do you have her new phone? Do you know where her
2 new phone is? I do not.

3 Also, he asked him about the \$200
4 check. And, again, his response, it's for the
5 phone bill. He also told Detective Gary that her
6 account with Verizon is under his name.

7 Next, they asked him about his iPhone.
8 Do you -- where is your iPhone 4? The screen is
9 broken. It's probably in the trash was his
10 response. On the 26th, that morning he was asked
11 why her phone would have pinged near Charleston on
12 February 23rd. He couldn't answer it.

13 Also, on March 9th their phones pinged
14 together going near Blacksburg. He was going to
15 drop his other kids off at the Border. His
16 response to that, she must have been following him
17 on March 9th. Also, during this statement he
18 admitted to renting the car on the 21st, but he
19 denied putting over 500 miles on it.

20 And Detective Gary said, you put
21 500 miles on it. That's -- you know, that's what
22 the odometer says. What was his response?
23 Enterprise lied. They're liars. I didn't put 500
24 miles on it. I used to work at Enterprise; I know
25 they lie. Uh-huh.

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1 He also denied having her debit card.
2 In between the two statements on the 26th, we have
3 an incident at Graymouth Drive. And Graymouth is
4 where Jerald, before having an affair, lived with
5 his wife and children. They tell Jerald that they
6 have a search warrant for Graymouth during the
7 morning of March 26th during his statement.

8 Detective Gary testified that they
9 could go ahead and let themselves in, or if you
10 prefer, we can let you go meet them and let them in
11 at Graymouth.

12 The defendant elects to go meet them.
13 He pulls into the driveway, partially opens the
14 garage door, rolls under, closes the garage door;
15 and then after several seconds, he opens the front
16 door. At that point, he's placed into custody.

17 William Gary pats him down and locates
18 an Android. Not an iPhone, an Android. And it
19 wasn't until he was strip searched at the jail --
20 remember, William Ballew testified that the
21 defendant took his pants off, turned his back to
22 Ballew, and was actively trying to conceal
23 something. He said he was trying to put something
24 from here to his boot.

25 Ballew saw that and confiscated what

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1 appeared to be an iPhone. And what we learned was
2 that iPhone turned out to be Nicole's iPhone. The
3 one that he was adamant he did not have. He didn't
4 have her iPhone on March 20th when he was asked.

5 He didn't have her iPhone on
6 March 26th, the morning statement, even though from
7 the morning of March 26th he was with law
8 enforcement, he went to Graymouth, law enforcement
9 was around him there, and they found the phone. At
10 no point could he have stumbled upon her phone
11 before that. He had her phone the whole time.

12 So he gives a second statement. Now
13 he's in custody. He does attempt to make a
14 purchase on Nicole's debit card for gas. Now he's
15 saying that he had Nicole's phone that morning, but
16 he didn't turn it over because he realized that
17 Lieutenant Gary was pointing at him as a possible
18 suspect.

19 Why is that important? That is
20 important because on March 20th, the first words
21 out of his mouth to Detective Gary was, I realize
22 I'm a suspect, here's Nicole's old phone. Why turn
23 her old phone over voluntarily, but then a week
24 later decide not to turn her phone over for the
25 same reason he turned the first one over in the

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1 first place?

2 I'm a suspect, I'm going to turn this
3 over to you. Oh, I didn't turn this over to you
4 because I'm a suspect. It just doesn't make any
5 sense.

6 The search warrant on Loblolly, the
7 defense made a -- they discussed on cross about the
8 blood. We do know that there was evidence of blood
9 recovered from the bedroom and bathroom. We know
10 that SLED confirmed the blood on the counter was --
11 belonged to the defendant and there was also traces
12 of the victim.

13 We know that the master bedroom, the
14 blood belonged to Nicole Goodlett, and the blood on
15 the door also belonged to Nicole Goodlett, and the
16 blood near the master bath doorway belonged to the
17 son. We also know there wasn't a lot of blood
18 there. There wasn't.

19 There is blood, and you are allowed to
20 take that into consideration in your deliberations,
21 but ask yourself when you're back there, is that
22 all the blood? Or was that all the blood that was
23 left?

24 Next we have a search warrant on the
25 defendant's Jeep. Shawn Nix executed a search

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1 warrant on a Jeep that was purchased by the
2 defendant, through his own admission, on
3 February 18th. In the Jeep, Detective Nix locates
4 Nicole's checkbook, her Social Security card, her
5 USAA identification card, Travis Martin's bankcard,
6 but, more importantly, the iPhone that he claimed
7 to have been in the trash because the screen was
8 broken.

9 There's her checkbook where the \$200
10 check for babies, or a phone bill, was written out
11 of. There's her social. There's her USAA ID card,
12 and above that is Travis Martin's bankcard. I
13 don't know how that got there, but -- there is her
14 certificate of title. He also found that in the
15 car. There is your broken iPhone from the
16 defendant. Doesn't look broken to me.

17 And you will have that phone back into
18 evidence. You can look at it yourself and make a
19 determination whether or not it was broken, the
20 screen was broken.

21 All right. So let's talk about the
22 extraction on the defendant's phone that he said
23 was broken and he said he threw away. Lindsey
24 McGraw conducts a phone extraction on the
25 defendant's iPhone 5. Remember he testified that

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1 it was registered to a Jeraldjhoward@Yahoo? He
2 also said that the number associated with that
3 phone was 864-688 -- 680-8830. He turned that over
4 to William Gary.

5 William Gary then testified about
6 several searches on the phone. He said there were
7 several for Cainhoy Elementary specifically, and
8 then several with *Huger News, Berkeley County News*.
9 He testified that there were no searches for
10 Cainhoy, Huger, and Berkeley prior to the 24th.

11 There were also no searches of
12 Spartanburg on his web history. That's important
13 to me because we believe Nicole went missing
14 sometime that weekend, 21st through the 23rd. The
15 first search that he makes is Cainhoy Elementary on
16 the 24th.

17 Then he expands a little bit; he
18 searches for Huger. He searches for Berkeley
19 County. He expands even more. He wants to know if
20 Nicole has been found, and that's why he's
21 searching.

22 And you may say to yourself, well,
23 maybe he was just interested in the news because
24 he's from Huger, but Detective Gary testified there
25 was no history on his phone prior to the 24th that

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1 he searched for any of those things. It was in
2 that date range that's in close proximity to the
3 weekend of Nicole disappearing.

4 And you may say, yeah, but maybe he
5 really wants look at the news in Huger. I will
6 play devil's advocate. Okay. Maybe he does like
7 the news, but then you got the very next search,
8 the burned body searches. And we are about to talk
9 about it.

10 There is your first search, Cainhoy
11 Elementary, on the 24th of February, one day after
12 we believe Nicole went missing and was killed after
13 he had already come back and returned the rental
14 car to Enterprise in Spartanburg.

15 He also searches that same day Huger,
16 SC. Two days later on the 26th, Huger, South
17 Carolina, Breaking News. The next day -- the same
18 day, Huger, South Carolina news. Next day, same
19 day, Huger, South Carolina news. Again, different
20 times, the same day.

21 Next day. Now he's looking for
22 Berkeley County news, as well as Huger news. He's
23 looking for something, ladies and gentlemen.

24 Again, March 1st, Huger news. Berkeley
25 County news. There you go. And if you thought

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1 maybe he was just interested in the news for Huger,
2 then this slide right here should convince you
3 otherwise; because right after he searches for the
4 news in Huger, he tells you exactly what he's
5 looking for.

6 He'd just burned the body, and now he
7 wants to know if authorities can identify a burned
8 body or if burned body cases are solvable for
9 investigators. So he starts out on Monday, the
10 24th, searching for Cainhoy to see if Nicole had
11 been found in our opinion.

12 And then he starts searching Huger
13 news, any sign of her, any sign of her. There's
14 your giveaway.

15 Let's talk about Clay Simmonds, the FBI
16 agent yesterday who was an expert in historical
17 cell phone records and data analysis. He testified
18 that Nicole's cell phone was in the area of I-26
19 and 526 in the evening hours of February 23rd. It
20 was actually around 9:30 at night that Sunday.

21 He also testified that that was the
22 only phone in that area. The defendant's phone was
23 not in that area at that time. He also said that
24 both the defendant and Nicole's phone pinged on
25 March 9th around Blacksburg. They made a trip from

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1 Spartanburg to Blacksburg, dropped the kids off,
2 comes back.

3 So Nicole's phone pings down in Huger
4 on the 23rd, a place that she has no ties to, a
5 place that you have to know that you are going to
6 Huger to get to Huger. You are not going to get
7 off of 526 and just stumble upon Cainhoy.

8 She's from Texas. Her family is from
9 Texas. They lived in Germany. She doesn't have
10 ties to the Lowcountry, but he does. And there is
11 the illustration. February 22nd, 2014, Nicole's
12 phone pings around the Columbia area at 9:41, and
13 then it hits cell tower 418-1 at 9:30 on the 23rd,
14 which would have put it in the area of 26 and 526.

15 March 9th, both the defendant and
16 Nicole's phone, as you can see, is pinging right
17 here, right there, up here. (Indicating) They're
18 making the trip. The phone and the defendant are
19 making the trip right there.

20 What else did Clay testify about? He
21 mentioned a conversation lasting over five hours.
22 And if you remember, Daniel Goodlett testified that
23 on March 17th he talked to his sister for -- he
24 said it was long. He didn't -- he said it was a
25 very long conversation, and we know from Clay

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1 Simmonds that that was five hours.

2 And also on February 20th, Agent
3 Simmonds testified that there was also a 16-minute
4 phone call between Nicole and Daniel. This was
5 what I thought was interesting. On the 23rd,
6 Travis, Travis Martin, Nicole's best friend, had a
7 missed call from her. He calls her back. No
8 answer. What does he do? Calls her 28 more times.
9 Twenty-nine times to no answer.

10 Don't you think if Nicole was alive and
11 her best friend had called her 29 times, that she
12 would have called back? She didn't call back
13 because she was dead.

14 Also of significance, Agent Simmonds
15 testified that between February 15th and February
16 22nd, Nicole had 64 outgoing calls. She was active
17 with her phone. She called people. She talked to
18 people. But what about the 23rd through
19 March 15th? Seven, seven outgoing calls. The
20 longest call of those seven was 40 seconds. Enough
21 time to hit send, let it ring a few times, and hang
22 it up when somebody answers.

23 So let's fast forward to November 2015.
24 You heard from DaShawn Joseph yesterday. He was
25 out running dogs, he was deer hunting, and it was

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1 getting late in the day. One of his dogs got loose
2 and he went to go chase him. Found the dog behind
3 Cainhoy, came across a skull.

4 He said initially he thought it was
5 fake. He said Halloween had just passed; he
6 thought it was something to do with Halloween. He
7 picked it up, realized that it was real, and he
8 marked where the skull was by breaking a branch and
9 then calls law enforcement.

10 Deputies respond and locate that skull.
11 They also locate a bone which turned out to be a
12 deer bone. Dr. Stevens, who testified this
13 morning, took custody of that skull and was able to
14 identify it as that of Nicole Goodlett.

15 There is the football field. There is
16 the woods behind it. There is the skull. And if
17 you remember Captain Shuler's testimony, the skull
18 was laying upside down. And Dr. Stevens confirmed
19 this, that would have been from laying for a
20 prolonged period on the ground there.

21 That is not from laying on the ground
22 from a prolonged period. That, ladies and
23 gentlemen, is concentrated burning and we will get
24 to that in a second.

25 Subsequent searches: They go back out

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1 in December and didn't find anything. They go
2 again on April 16th, 2016, and they are able to
3 locate skeletal remains that are spread across a
4 wide area. Those remains also turn out to be
5 Nicole Goodlett.

6 There is a picture of where some of the
7 remains were found. There is another. It's hard
8 to see in that picture, but right there
9 (indicating) is a flag indicating more remains.
10 Those are all bones, all of those.

11 So where were the bones found? The
12 defendant's father got up there and told you where
13 they were found. They were found two to two and a
14 half miles from his house. And we also know that
15 the defendant, who lived with his father up until
16 he left for college in 1998 or 1999, those years,
17 attended Cainhoy for elementary and middle school.

18 Captain Shuler confirmed what
19 Mr. Howard testified to in that the home and the
20 location of the skull, there's about a mile and a
21 half to 1.8 miles as the crow flies. So here's the
22 Howard residence. As the crow flies, it's 1.5 to
23 1.8. And Mr. Howard said two miles. They are both
24 right. The point is it's close, very close.

25 Let's talk about Dr. Stevens. You

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1 heard him testify this morning. He only received
2 60 percent of the body. He also opined that the
3 body was burned while still fleshed, and it was
4 relatively early in the decomposition process.

5 He also said that there was a fire
6 concentrated on the posterior of the body, and to
7 achieve that level of concentrated burning either
8 flammable materials or an accelerant was used. And
9 remember he said, well, how do you do that? Well,
10 I'll tell you. You either lay somebody on top of
11 flammable material, such as wood, construction
12 materials, and you set a fire like a funeral pyre,
13 or you dump stuff on them while they're laying face
14 down on the ground.

15 Either way, what was important is he
16 said, in his expert medical opinion, this type of
17 burning would not have occurred in a natural
18 wildfire. Somebody had to do this. You don't have
19 charring on bone like we had unless somebody
20 intentionally set it on fire.

21 He also testified to what my co-counsel
22 said in the beginning of the trial; we can't
23 determine the manner, the cause, or the time of
24 death. We've been honest about that. We can't.
25 He also said that he couldn't rule out a cause of

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1 death.

2 And I said, well, why, why can't you
3 determine a cause of death? Well -- and you
4 remember his answer was the condition that the
5 remains were discovered? And I asked him, if you
6 had more evidence, do you think you may could have
7 come to the cause of death? Yeah, probably so.
8 But he didn't.

9 He only had 60 percent of her bones,
10 charring, burning, concentrated fire on the
11 posterior side. This picture was interesting.
12 This was the knee bone, remember? Going up to the
13 thigh? And he said this portion here burned like a
14 candle. Imagine a fire so hot that it burns bone
15 away. It's unbelievable. Here's another picture.
16 Charring, concentrated burning.

17 As I said, and as the judge will
18 instruct you, that murder is the killing of another
19 with malice aforethought.

20 Ladies and gentlemen, read that statute
21 again. That doesn't say the killing of another
22 with malice aforethought by shooting, or the
23 killing of another with malice aforethought by
24 stabbing, or the killing of another with malice
25 aforethought by strangulation. It doesn't say

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1 that.

2 It does not ask us to provide a cause
3 of death or a manner in which she was killed. It
4 just says there must be a killing. Here we have a
5 killing. Nicole Goodlett was killed. Absolutely.

6 Malice aforethought: Malice is hatred,
7 ill will, or hostility toward another person. It's
8 the intentional doing of a wrongful act without
9 just cause or excuse. It's -- wickedness is the
10 best way that I can describe it. It's wickedness.

11 If you set the mother of your children
12 on fire, that's as wicked as it comes. That's as
13 wicked as it comes.

14 We also have desecration. And ask
15 yourself, did the defendant destroy or damage the
16 remains of a deceased human being? I submit to you
17 he did. We just got done with the last slide of
18 Dr. Stevens. Flammable material or accelerants?
19 Two miles from his parents' house. Google searches
20 of burned bodies. He burned her that night behind
21 Cainhoy. Common sense, ladies and gentlemen.

22 Now, for all the inconsistencies he
23 told and all the mistakes he made, he got one thing
24 right. He made sure that nobody was going to say
25 how Nicole Goodlett died that night. But here's

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1 the thing. He doesn't get to kill Nicole Goodlett,
2 drive her down here two miles from his parents'
3 home, set her body on fire until there is nothing
4 remaining but charred bone, and then search Google
5 a week later to see if the cops can identify a
6 burned body, and then say, sorry, you can't prove
7 how she was killed, not guilty. He doesn't get to
8 hide behind that robe of righteousness.

9 MR. SMILEY: Objection, Your Honor.

10 THE COURT: What's the objection?

11 MR. SMILEY: Burden shifting.

12 THE COURT: The jury will disregard
13 that, but as I told you the attorneys' remarks are
14 not evidence and is certainly not the law of the
15 case. You may continue.

16 MR. STEGALL: Thank you, Your Honor.
17 The coroner couldn't determine how she died. You
18 had Bill Salisbury stand up there and say he
19 couldn't give you a manner or cause or time. And
20 you had Bill Stevens sit up there and say the same
21 thing.

22 Don't reward the defendant for going
23 through such great lengths in creating that
24 condition and then hiding behind it.

25 I want to continue my analogy from

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1 earlier. This case is a circumstantial evidence
2 case. I'm going to ask you to use your common
3 sense. All week you have heard witness after
4 witness after witness stand up there on that
5 witness stand, wearing their raincoats, holding
6 their umbrellas telling you that it's raining
7 outside. Believe them. Believe them.

8 We did give you a story this week, but
9 you know what? The story we gave you is
10 unfinished. You get to decide how to finish the
11 story. When you hand down your verdict, you are
12 deciding how to finish the story. And I ask that
13 you find it by finding him guilty on all charges.

14 THE COURT: Thank you, Solicitor.

15 MR. SMILEY: If it please the Court,
16 Your Honor?

17 THE COURT: Yes, sir.

18 MR. SMILEY: I'm going to start with,
19 he said that there have been witnesses with
20 raincoats and umbrellas sitting on the stand
21 telling you. If they told you, that's called
22 direct evidence.

23 Circumstantial evidence would be the
24 raincoats and the umbrella. And I submit to you
25 they haven't brought a raincoat or an umbrella out

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1 here, nor has he brought anybody to tell you that
2 there wasn't a sprinkler going off out front.

3 I don't know. Mr. Howard sits here an
4 innocent man until, and if, they can prove each
5 element beyond a reasonable doubt.

6 In the beginning of this case, I asked
7 you why are we here? Why are we in Berkley County?
8 And I kept wondering, why aren't we in Spartanburg
9 where it happened allegedly? We got our answer
10 from right here.

11 Lieutenant Gary, 24 years as a
12 detective, worked this case from day one. And I
13 asked him about the process of gathering evidence
14 and what you do with that as he builds a case.
15 When he builds a case, he's out to arrest somebody.
16 That's his job.

17 For a year, year and a half he's
18 building a case. Twenty-two months after the
19 alleged disappearance of Nicole and the body is
20 found and the remains and it's identified as her,
21 Lieutenant Gary is down here. He's involved.

22 And I asked, like, did you ever fill
23 out an affidavit and submit it to a magistrate in
24 Spartanburg County for murder? He did not. And I
25 asked him why. Didn't have probable cause? And he

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1 said, unfortunately, I didn't. Here's a man whose
2 job is to make an arrest, and he's been working for
3 24 years, he is the man that knows what's in the
4 case. You heard him testify, straightforward.

5 And the very low burden of probable
6 cause, he said, unfortunately, I didn't have it.
7 So I asked Captain Shuler after the body was
8 identified, what other investigation did you do?
9 And he's like, it was complete.

10 And she was identified the end of
11 December 2015, reports were done in 2016. Nothing
12 else was done. And then in 2018, well, I think I
13 have probable cause down here. This didn't happen
14 down here. Did it? I don't know where it
15 happened. But there is no evidence about that.

16 This is a Spartanburg County case with
17 a diligent law officer that has worked the case who
18 tells you under oath, I didn't have probable cause
19 to get an arrest warrant. Probable cause -- and
20 I'm going to use football terms and forgive me
21 ladies if that's not your thing. It's just easier
22 for me.

23 Probable cause is like a first down, a
24 low standard. Probable cause is that there is some
25 evidence that murder was committed and there is

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1 some evidence that Jerald Howard committed it. And
2 he told you, I never had that, unfortunately. So
3 that answers the first question.

4 Now, Mr. Howard, Jerald Howard has
5 nothing to prove. The State has to prove their
6 case beyond a reasonable doubt, each element. And
7 I kept putting the word intentional, because I
8 don't think you can unintentionally kill somebody
9 with malice aforethought, but it's the killing of
10 another with malice aforethought.

11 How did she die? What is their theory?
12 Have they told you a theory of when, where, how?
13 They haven't even given you a why. This isn't a
14 Saturday night mystery where you hear 30 seconds of
15 evidence that was put on the TV screen from the
16 courtroom and minutes -- an hour full of a narrator
17 giving you innuendos.

18 This is a courtroom. This is where you
19 come to prove your case beyond a reasonable doubt.
20 This isn't about guesswork. This isn't about
21 saying, well, he must have done it.

22 You all have no friends to reward or
23 enemies to punish. You all took an oath. And I've
24 asked you to be courageous, and I'm going to ask
25 you again. Nicole's death is tragic and

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1 unexplained. You do not say, we must just punish
2 without evidence. It doesn't work in this country.

3 It might make it work in some other
4 country, but that is the basis of being a American
5 citizen and having those protections.

6 Now, I'm going to guess at their
7 theory. I guess they allege that this happened on
8 Loblolly Drive. And I want to tell you, when they
9 had the scene described to you, I thought we were
10 going to see Charles Manson and Helter Skelter. We
11 got a house with blood splatter, and there's blood
12 on the floor, a wall broken down.

13 I'll find it. Four pictures, that's
14 what we saw. Four pictures of Loblolly. They are
15 a crime scene? Now, I'm going to show you a
16 picture -- I was going to show you, but I'm going
17 to tell you about, it's easier.

18 I show you this picture of the door of
19 their blood splatter. There is a dot, at the most.
20 I mean, I was home last night and I was walking
21 through my house and looked and, no kidding, lo and
22 behold, I see a drop of blood on the floor.

23 And being in the middle of this case,
24 I'm like, I just asked about DNA in a house. And
25 so I looked; I didn't have any cuts. I asked my

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1 significant other, did you drop blood on the floor?
2 Are you cut? Turns out it was my dog. My dog had
3 a cut.

4 But my point is, when you live in a
5 house you leave your DNA. They didn't find puddles
6 of blood. They didn't find blood cleaned up. They
7 tried to make it sound like that, but they used
8 their BLUESTAR, and they fluoresced. And it looked
9 like blood had been cleaned up.

10 Turns out it wasn't blood. It turned
11 out there was a drop of blood at the bathroom door
12 that belonged to Nicole's son.

13 And they make a big deal in their
14 closing case trying to dirty my client that he had
15 children with more than one person. It's modern
16 society, yes. But so did she. So does that make
17 him worse than her?

18 Her eldest son cut his foot -- or,
19 excuse me, put blood on the floor. Jerald's blood,
20 he lived there, was found on the corner mixed with
21 some DNA of Nicole's. Are they telling you that he
22 cleaned up that house and that they couldn't
23 determine -- come on.

24 Do you see any pictures of the house?
25 They took -- you heard from -- and forgive me, it's

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1 just easier, the collector, that he took picture
2 after picture of the house. And they examined
3 everything. They took out the drains, they took
4 sponges, they took counters. They took a whole
5 bunch of stuff. And they didn't come back with any
6 evidence that this crime was committed there.

7 There is no evidence of that. None.

8 And I thought -- Lieutenant Gary said
9 something that when he went to the house, he saw
10 multiple jacks. And he said, you know, he didn't
11 see any of the tire irons. He said, I guess she
12 was trying to change the tire.

13 And I asked him, I said, you're
14 assuming she changed the tire. You don't know who
15 did. And that's what is going on in this case.
16 There is a jump. And they're saying, come along
17 with us, come along with us.

18 We don't have to prove a killing. We
19 don't have to prove malice. All we got to prove is
20 that he did things that we don't like, that are
21 suspicious. I agree with you. It's not how I
22 would have handled it, but that's not a murder.

23 And the judge is going to read you the
24 circumstantial evidence. We do agree on that.
25 There is no direct evidence in this case, that they

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1 rely on circumstances. And circumstances are facts
2 that are chained one together that lead you to a
3 conclusion beyond a reasonable doubt.

4 And it's part of the charge. The judge
5 is going to read you the law. So if I misstate the
6 law, I did not do it on purpose, and I did not do
7 it to mislead. So please understand that. I'm not
8 trying to substitute my judgment for the judge's.

9 But it says, the law has to -- the law
10 says to the extent that the State relies on
11 circumstantial evidence, it has to meet a certain
12 test. First, the State -- as to each of those
13 events or circumstances on which they are relying,
14 the State has to prove each one of the chain beyond
15 a reasonable doubt.

16 Further, these facts must point
17 conclusively, conclusively to the guilt of the
18 accused and must be wholly and perfectly consistent
19 with each other in every particular respect.

20 That's a high standard. And that is
21 the law that you will be asked to apply.

22 I further instruct you that the mere
23 fact that circumstances brought out in a case are
24 strongly suspicious of guilt, or the circumstances
25 are such that the defendant's guilt is probable is

CLOSING ARGUMENT BY MR. SMILEY

1 not enough. That is not enough.

2 That is not sufficient to sustain a
3 conviction because the proof offered by the State
4 has to be more than suspicious. It has to be -- it
5 has to be more than someone is probably guilty. It
6 has to be proof that satisfies you beyond a
7 reasonable doubt.

8 A reasonable doubt is the kind of doubt
9 that makes a person hesitate to act. And I'm going
10 to suggest to you that your job on that part is
11 fairly easy, because there is not any proof.
12 There's innuendos. There's suspicion.

13 I mean, hindsight is 20/20, because
14 they're going to tell you they know who is behind
15 these phones. The phones aren't murder. I can
16 tell you that he told the police that on the 25th
17 -- or excuse me, the day before the 26th is what he
18 said, that he had received a message from Nicole
19 that said she had been by the house and seen the
20 black bags and that he was mad at her -- that she
21 was mad at him or something to that effect, but
22 made him want to go by the house.

23 Because he hadn't been to Loblolly in a
24 while because he was living back on Graymouth where
25 his wife was helping with the twins. He said when

CLOSING ARGUMENT BY MR. SMILEY

1 he got there he found the phone and a letter. Now
2 -- and he realized when he got to the police
3 station on the 26th that he was a suspect.

4 Now, I heard what was said in Mr.
5 Stegall's close is he had already been told from
6 the very first reaction with law enforcement, that
7 would have been Detective Burgess, that he was a
8 suspect. And I believe Detective Gary said
9 something to the fact that that was premature.

10 On the 26th, he realizes that Detective
11 Gary is calling him a liar and that he needs help.
12 He makes bad choices. I'm not telling you he
13 didn't. He did make bad choices. But that doesn't
14 make him a murder. They have not proved, they have
15 not offered any evidence, none, he intentionally
16 killed Nicole Goodlett with malice aforethought.

17 Now, let's talk about this body. Now,
18 you're in Spartanburg, South Carolina, and assuming
19 I've got their theory that he killed her in
20 Loblolly and he rented a car, he loads up the twins
21 in the car, I guess, he's -- they suggest that he
22 put this dead body in the trunk and drove to his
23 parents' house.

24 Boy, that makes sense. Makes just
25 perfect sense. I'm going to drive around the state

CLOSING ARGUMENT BY MR. SMILEY

1 of South Carolina with a dead body in the trunk of
2 my car. And I'm going to take my kids along with
3 me. All right. That's their theory.

4 He gets -- now, I'm going to put it
5 close to my house. There are plenty of bodies that
6 -- he supposedly knows the area -- in Berkeley
7 County in the swamp that have never been found.
8 Why would you put it right on the edge there?

9 I don't know, but -- however, there's a
10 missing person's case and someone brought harm to
11 Nicole. And I don't know. I'm just suggesting. I
12 don't know. And you're looking for the missing
13 person and you've got this person of interest,
14 Mr. Howard. If you're going to set him up, that's
15 a good place to put it, right next to his house
16 down in Cainhoy.

17 I don't know what happened. I'm just
18 telling you that their circumstantial evidence
19 doesn't prove that beyond a reasonable doubt.

20 They asked him about an accelerant.
21 They didn't test for it. They asked him about the
22 piece of quilt. Was that involved in it? They
23 didn't test for it. No flammable material was
24 found out there. No remains were found at the --
25 from the fire were found. No accelerant was found.

CLOSING ARGUMENT BY MR. SMILEY

1 And also, I mean, Huger, school --
2 supposedly, to listen to -- that her leg burnt like
3 a candle. Nobody called in a fire. And you saw
4 the picture. How did he do that? When did he do
5 that? According, I guess, to their theory -- and
6 I'm not making up their theory. I just don't know
7 what it is because they never gave you all any
8 evidence.

9 Did they ever tell you where they
10 thought she was killed? No. Have they even told
11 you when they think she would have died? I don't
12 know. When? But, supposedly, he drove down here
13 with the kids in the car. He went to his parents'
14 house, pulled up with his kids inside, and his dad
15 came out, helped him get the kids.

16 And I asked the dad, because I thought
17 it was important, was the trunk open. And he was
18 like, yes, but I didn't go back and look in it. If
19 I've got a dead body in my trunk, I ain't leaving
20 it open with my daddy in the front yard while I'm
21 getting the kids out.

22 He also said he didn't leave the house.
23 Okay. So I guess he had to dump this body before
24 he came while he still had the kids, and he did it
25 without smelling like gasoline or like fire because

CLOSING ARGUMENT BY MR. SMILEY

1 he's going straight to his parents'. It doesn't
2 make sense. But I'm telling you I don't know.

3 Mr. Howard does not have to prove
4 anything. They've got to prove each element beyond
5 a reasonable doubt and they haven't come close.
6 They have not come close.

7 I'm not sure when is the last time she
8 was seen. You heard what's on the stand. You
9 know, they make this thing about searches on
10 devices and all. There's more devices in this case
11 than you can possibly imagine because -- very
12 little was put into evidence as it was picked
13 through, the phones, iPads, computers.

14 I don't know about you, but since I've
15 been in the courtroom today, I've used my iPad,
16 I've used this computer, and I've used both of my
17 phones in some form or fashion. We change things.
18 So we to try to narrow it down, oh, he was doing
19 this or doing that. I don't know he was using what
20 phone when.

21 You know, in this case, we do not have
22 one eyewitness to anything. Not one. In a murder
23 case I always ask about what forensic evidence you
24 have. In this case, none. Zero.

25 I left my pad and I have a couple of

CLOSING ARGUMENT BY MR. SMILEY

1 notes, so I'm going to walk back there and grab it.

2 You know, one thing they made a bunch
3 about the -- all these text messages, Facebook
4 messages that were going around. And I don't know
5 who sent what, but there was one that stuck out to
6 me that made me think maybe, I don't know, but
7 Mr. Goodlett testified that he got a phone call
8 while he was in church from a number that he did
9 not recognize and that he thought it could be
10 Nicole.

11 They had told her to get a new phone if
12 you think you're being listened to, or something
13 like that. Then he called it back several times
14 trying to reach it until the next day when he got a
15 text that says, hey -- and you've got to remember
16 this is now -- the exact date, the 9th of March,
17 10th of March, somewhere in that. You've got the
18 evidence.

19 But he said that he returned -- he
20 tried to return the call and he got a text from
21 that number that said, hey, look, stop calling me.
22 A female at the bus stop borrowed the phone to make
23 the call.

24 Now, I don't know, but they certainly
25 hadn't tried to tie that phone to Jerald. It's

CLOSING ARGUMENT BY MR. SMILEY

1 like, come on. Pick and choose a bunch of
2 innuendos. Let's get to what the case is about.
3 I'm not even going to try to set that Saturday
4 night mystery, so I've refrained from jumping over
5 in their lane and getting into this ticky-tacky,
6 what does this mean, what does that mean guesswork.

7 Let's stay in the lane of murder.
8 That's what we're here for. Keep asking, where was
9 it? Where is it? Show us. Show us. They haven't
10 shown us. They have not shown us.

11 You know no more about how Nicole
12 Goodlett died, where she died, or when she died,
13 why she died, or who did it since you walked in
14 here. I'm sorry Nicole Goodlett is deceased, but I
15 cannot stand here and tell you that they have
16 proved their case beyond a reasonable doubt.

17 The coroner can't even tell you that it
18 was a homicide. It's like undetermined. I don't
19 know what happened. It's not for Mr. Howard and
20 myself to prove. We are here to defend.

21 And they have not done their job, and
22 they are asking you to do it for them. And that's
23 wrong. Just like I'm an officer of the court,
24 Lieutenant Gray took an oath when he took his job.
25 And he testified and he told you, I didn't have

CLOSING ARGUMENT BY MR. SMILEY

1 probable cause.

2 And it's like a huge jump, a huge jump
3 to go from probable cause to beyond a reasonable
4 doubt. That's what it is, beyond a reasonable
5 doubt. And if they can't reach at that, they have
6 not reached beyond a reasonable doubt that he had
7 anything to do with the remains in the woods.

8 Somebody else could have put it there.
9 I don't know who. I don't have to prove it. But
10 if you're going to take suspicion off yourself,
11 it's a good place to put it.

12 I wish I had all the answers. I wish
13 we could go back. We wouldn't have to be here, but
14 you all took an oath in the beginning -- and I know
15 that you all have been very tentative. And I thank
16 you so much and Mr. Howard does too.

17 And your oath, you take the evidence
18 that came from that stand, the law as His Honor
19 will give it to you, and apply it. Any benefit of
20 the doubt of anything -- and I don't think it's
21 anywhere close, but you all are the finders of the
22 facts -- must be resolved in Mr. Howard's favor.

23 Don't reward the State. Don't punish
24 the defendant. Just find the facts; no friends or
25 foe. It takes courage to bring back a true verdict

JURY CHARGE

1 in this case, and it's only one. There is only one
2 verdict; not guilty. Thank you so much.

3 THE COURT: All right. Thank you.

4 Now, ladies and gentlemen, if I could
5 have your attention. It's my responsibility, as I
6 mentioned, to give you the law that you, of course,
7 have promised that you will accept and apply fairly
8 and impartially to those facts that you will
9 determine when you are instructed to begin your
10 deliberations.

11 The State and Mr. Howard expects that
12 you will when so instructed evaluate the evidence,
13 determine the value and weight to be given, and
14 then apply the law. And when you have done that,
15 you will have honored the commitment that you made
16 when we started in every respect, and both of the
17 parties will have received and obtained a fair and
18 impartial determination, which is what we have been
19 seeking since Monday when we started.

20 Now, during this -- during this charge
21 I may use the term defendant. And as I mentioned
22 to you, that's a term that we use to designate the
23 party against whom the claim is made. When using
24 it, please know I'm referring to Mr. Howard.

25 As I stated from the start, he's been

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1 accused by these two documents, which you will not
2 have in your jury room because they are not
3 evidence. They are called indictments. He's been
4 accused of the crime of murder and the destruction
5 and desecration and/or removal of human remains.

6 To these indictments he's rendered a
7 plea of not guilty, which places upon the State the
8 burden of proving his guilt beyond a reasonable
9 doubt. Mr. Howard, as every person in the United
10 States accused of committing a criminal offense,
11 has no responsibility to prove or disprove anything
12 at all.

13 They have no responsibility to present
14 any evidence; and, primarily, because the law
15 places upon them the -- they're entitled to the
16 presumption of innocence. Now, those aren't just
17 words. That's an active -- you have to have that
18 as a thought.

19 He's actively to be presumed innocent,
20 and that presumption can only be set aside when,
21 after your deliberations, you have become firmly
22 convinced that the State has met its burden of
23 proof and established each element of the crimes
24 charged beyond a reasonable doubt. And only then
25 may you set that burden aside -- or set that

JURY CHARGE

1 presumption aside.

2 Now, obviously, then, as I told you,
3 persons so accused don't have to present any
4 evidence, don't have to say anything at all. And
5 the fact that Mr. Howard has not testified in this
6 case cannot be discussed by you. It can't be
7 mentioned in your deliberations. And if you do,
8 you will have violated your oath, because he has
9 the absolute right to remain silent. And that
10 right cannot be considered by any jury at any time
11 against a person so accused.

12 The burden of proof rests solely upon
13 the State, and they have to prove it beyond a
14 reasonable doubt.

15 What is a reasonable doubt? A
16 reasonable doubt is that doubt, ladies and
17 gentlemen, that would cause an honest, sincere
18 conscientious juror to hesitate to act. Now, I
19 will tell you that there are very few things that
20 we know in this life to an absolute certainty. The
21 law does not require the State to prove it to an
22 absolute certainty, nor does it require the State
23 to overcome every possible doubt.

24 If based upon your consideration of the
25 evidence you are firmly convinced that the

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1 defendant is guilty of one or more of the crimes
2 charged, then you must find him guilty. If, on the
3 other hand, you think there is a real possibility
4 that he is not guilty, then you must give him the
5 benefit of that doubt and return a verdict of not
6 guilty.

7 Now, reasonable doubt, ladies and
8 gentlemen, may arise from the evidence in the case
9 or the lack or absence of evidence in the case.
10 And it's up to you to determine whether or not a
11 reasonable doubt exists in this case as to the
12 guilt of this defendant.

13 And I charge you in that regard that
14 he's entitled to every reasonable doubt arising in
15 the whole case. What do I mean by that? Simply
16 this; if upon any issue of fact -- as to any issue
17 of fact you should have a doubt as to how that
18 issue is to be resolved, I would instruct you that
19 it must be resolved in his favor.

20 Now, the evidence which you are to
21 consider consists of the testimony of the witnesses
22 and the exhibits that were introduced through their
23 testimony and nothing else. The statements of the
24 attorneys throughout are not evidence. Neither are
25 my statements evidence.

JURY CHARGE

1 As you know, you have the job to
2 determine the facts of the case. It's my
3 responsibility to make rulings on matters of law.
4 And, typically, those are done outside of your
5 hearing. As you noted, we had sidebar conferences,
6 and bench conferences, and we've excused you.

7 There is one occasion though that
8 probably illustrates the best I could give you as
9 an example of how we work together to resolve
10 disputes, and that's when an attorney has made an
11 objection. An objection is simply raising an issue
12 of law for me to decide.

13 Typically, it deals with a rule of
14 evidence. And if I have overruled the objection,
15 then you were permitted to hear the question and
16 answer. If I sustained it, then you were not
17 permitted to hear the answer typically. And you
18 are not to consider that at all.

19 If you should consider it in the
20 fashion that, well, I wonder why the attorney made
21 the objection, or I wonder why the judge ruled the
22 way he did, you've kind of stepped over into my
23 area of responsibility. That's not your -- you
24 don't have anything to do with that.

25 But, likewise, if I overruled it and I

JURY CHARGE

1 said that you may hear it, don't say, well, the
2 judge allowed that, I guess we have to accept and
3 believe that. If that's the case then you -- if you
4 think that way, then you've let me step over into
5 your area of responsibility. Don't let that happen
6 either.

7 Frankly, at that precise moment if I
8 overruled the objection, I have said as a matter of
9 law that the question is proper and the witness may
10 answer it. Now it shifts to you and you decide
11 whether you believe it or not, and if so, how
12 strongly you believe it. And that's what you will
13 be doing when you decide this case.

14 And also if during this instruction --
15 please understand that you are not to take anything
16 that I say during this instruction as a statement
17 of fact or how you are to resolve a fact. And I
18 would also remind you that the attorneys' remarks,
19 as I've told you throughout, are not evidence.

20 And if during your deliberations you
21 discuss and suggest that an attorney said such and
22 such, and that differs from your recollection of
23 what the witness said or didn't say, you are
24 instructed to disregard their remarks because you,
25 and you alone, are the sole judges of the facts.

JURY CHARGE

1 It's your determination, not -- and their remarks,
2 of course, are not evidence.

3 Likewise, as to any issue of law that
4 they've mentioned to you differs from the law as I
5 give it to you, you are instructed to disregard
6 those remarks and take the law as I give it to you,
7 because for purposes of this proceeding today, I am
8 the sole judge of the law.

9 Now, ladies and gentlemen, these types
10 of cases when a party having the burden of proof
11 presents evidence, there are two types of evidence
12 that you typically consider. One is direct
13 evidence and the other indirect.

14 Sometimes you have both; sometimes you
15 may have only one or the other. And it really
16 doesn't matter because the law makes absolutely no
17 distinction as to the weight or the value to be
18 given to either direct or circumstantial evidence.

19 Direct evidence is typically a sensory
20 perception; something I saw; something I felt;
21 something I heard, or the like. And if you're
22 firmly convinced as to that testimony as to that
23 fact, then that would establish that particular
24 fact beyond a reasonable doubt.

25 Circumstantial evidence is when you

JURY CHARGE

1 prove a number of facts about which, of course, you
2 are firmly convinced and, therefore, it meets that
3 test of beyond a reasonable doubt. And when you
4 combine them, when you link them through inductive
5 or deductive reasoning, it leads you to a logical
6 conclusion and you're firmly convinced of that
7 logical conclusion, it would establish that
8 particular fact by circumstantial evidence.

9 Now, again, as I told you, the law
10 makes no distinction between the weight or the
11 value, nor is any greater degree of certainty
12 required of circumstantial evidence than of direct
13 evidence. You are instructed to weigh all of the
14 evidence and decide what you find to be credible
15 and believable.

16 But the law does state to the extent
17 the State is relying on any circumstantial
18 evidence, it has to meet a certain test. First, as
19 I've indicated to you, it has to establish each of
20 those facts or circumstances to that standard
21 beyond a reasonable doubt that you are firmly
22 convinced.

23 Further, these facts must point
24 conclusively to the guilt of the defendant in this
25 case, and they must be wholly, perfectly consistent

JURY CHARGE

1 with each other in every particular respect.

2 I would instruct you in that regard
3 that the mere fact that circumstances in a case are
4 strongly suspicious of guilt or that the
5 circumstances are such that the defendant's guilt
6 is probable, that would not be enough to sustain or
7 establish your -- or be in -- the State would be
8 entitled to a verdict of guilty, because proof
9 offered by the State has to be more than mere
10 suspicion.

11 It has to be more than somebody being
12 probably guilty. It has to be proof, ladies and
13 gentlemen, that satisfies you beyond a reasonable
14 doubt.

15 Now, how do you decide these facts? As
16 I stated to you, you are extremely qualified to
17 perform that task because you have done it
18 throughout your entire life. You've heard
19 something, you've read something and you decide --
20 decide for yourself whether you believed it or not.

21 And you are going to do the same thing
22 when you are instructed to begin your
23 deliberations. And they are many, many factors and
24 methods that we employ to assist us in making these
25 determinations. I'm going to discuss several with

JURY CHARGE

1 you now, but if I don't mention a method or a
2 factor that you have considered in your life to
3 help you and you found it to be reliable, please
4 use it when you begin your analysis of the
5 evidence.

6 But some of the issues that you may
7 want to consider would be the appearance of the
8 witness. How did they appear to you,
9 straightforward or hesitant in answering questions?
10 Was the testimony of a witness consistent or
11 inconsistent? How did the witness come to know the
12 facts that he or she testified to? What was the
13 ability of that witness to know those particular
14 facts or circumstances? Is there a reason for a
15 witness to give testimony which may be helpful or
16 detrimental to one side or the other? In other
17 words, was the witness biased or prejudiced in any
18 fashion?

19 Now, in making these determinations,
20 you are given wide latitude, broad -- you have
21 broad discretion. You have the right to believe
22 many witnesses against one; you have the right to
23 believe one witness against many; you have a right
24 to believe parts of a witness's testimony, all of a
25 witness's testimony, or none of the witness's

JURY CHARGE

1 testimony.

2 Now, you don't make these decisions
3 arbitrarily, but if there is a record in the
4 evidence in this case for taking that position, you
5 have that right because your objective has been to
6 determine what you find to be credible and
7 believable regardless of the source of the
8 evidence.

9 Now, when it comes to the law, you
10 don't have any such luxury. You don't have any
11 discretion there. You have to accept the law as I
12 give it to you and apply that law fairly and
13 impartially to the facts that you will determine.

14 Now, the order of my instruction, as I
15 stated, you are not to consider that to be a
16 statement of fact and you are not to put weight on
17 any one aspect, but rather to consider the charge
18 as a whole. And the fact that I have again charged
19 you on a particular issue should not be considered
20 by you as a statement of how you are to resolve
21 that specific issue.

22 Let's look at the two crimes that are
23 charged, and I will discuss with you first murder.
24 As you know, the defendant has been accused of the
25 crime of murder, and the State must prove beyond a

JURY CHARGE

1 reasonable doubt that Mr. Howard killed another
2 person with malice aforethought.

3 Malice is hatred, ill will, or
4 hostility towards another person. It is the
5 intentional doing of a wrongful act without just
6 cause or excuse and with the intent to inflict an
7 injury under circumstances that the law will allow
8 you to infer an evil intent.

9 Malice aforethought does not require
10 the malice to exist for any particular time before
11 the act is committed, but malice must exist in the
12 mind of the defendant just before and at the time
13 the act is committed; therefore, there must be a
14 combination of a previous evil intent and the act
15 to accomplish that -- that thought.

16 Malice aforethought may be express or
17 inferred. The terms express and inferred do not
18 mean different kinds or types of malice, but merely
19 the manner in which malice may be shown to exist.

20 That is direct evidence or by inference
21 from facts and circumstances which are established
22 and have been established beyond a reasonable doubt
23 that leaves you firmly convinced, in other words.

24 Express malice is shown when a person
25 speaks words or which express hatred or ill will

JURY CHARGE

1 for another, or when a person prepares beforehand
2 to do the act which was later accomplished.

3 Malice may be inferred from conduct
4 showing a total disregard for human life. If facts
5 established in a case beyond a reasonable doubt are
6 sufficient to raise an inference of malice to your
7 satisfaction, this inference would be simply an
8 evidentiary fact to be taken into consideration by
9 you along with all other evidence in the case, and
10 you may give it the weight that you deem it's
11 entitled.

12 Now, let's look at the next crime. And
13 that is the desecration or destruction of human
14 remains. And the law provides that -- Section
15 16-17-600 provides in part that it is unlawful for
16 a person willfully and knowingly and without proper
17 legal authority to destroy or damage the remains of
18 a deceased human being.

19 In order to obtain a conviction for
20 this offense, the State must prove the defendant in
21 this case did knowingly, and that is not
22 accidentally, but knowingly with intent, destroy the
23 remains of a deceased or damage the remains of a
24 deceased human being.

25 Desecration, as used in this term, is

JURY CHARGE

1 defined as damaging an object or treating it
2 disrespectfully.

3 Ladies and gentlemen, criminal intent
4 is a necessary element in each of the crimes and it
5 has to be established beyond a reasonable doubt.
6 Intent means the result which actually occur --
7 intending the result which actually occurs not
8 accidentally or involuntarily.

9 Intent may be shown by acts and conduct
10 of the defendant and other circumstances from which
11 you may naturally or reasonably infer intent. The
12 State must prove these elements beyond a reasonable
13 doubt.

14 Criminal intent is a state of mind that
15 operates jointly with the act in the commission of
16 a crime. Intent would include those consequences
17 which represent the very purpose for which an act
18 is done or are known to be substantially certain to
19 result regardless of one's desire.

20 Criminal intent is a mental state of
21 conscious wrongdoing. And it's up to you to
22 determine what the defendant intended to do,
23 assuming that you are convinced that the State has
24 established the defendant committed these acts
25 based on the circumstances which have been shown to

JURY CHARGE

1 have existed.

2 I tell you that intent, as every other
3 element, has to be established beyond a reasonable
4 doubt.

5 Now, ladies and gentlemen, throughout
6 this matter, as I told you when we started, you
7 have become a judge in this case. And we, as
8 judges, have no friends to reward, as I remind you,
9 or enemies to punish. We don't have any mission,
10 so to speak, other than you to determine what you
11 find to be credible and believable, and me to give
12 you the law both fairly and impartially. You are
13 to apply that law to the facts that you will
14 determine.

15 And you can't be influenced by any
16 human emotions, sympathy, passion, prejudice,
17 anything, concern. Those are things that are for
18 other places. We, as humans beings, are free to
19 express those and do from time to time, but not in
20 this process. You have to very carefully and
21 deliberately apply your common sense and sense of
22 logic and reason fairly and impartially in
23 performing the task that you will ultimately
24 determine.

25 Madam Presiding Juror, I will be

JURY CHARGE

1 sending back two verdicts forms, which I would like
2 to discuss with you, that you will use to report
3 the jury's determination in this case.

4 Please understand that the forms -- you
5 will see they are identical. One deals with the
6 crime of murder and the other deals with the crime
7 of destruction, desecration, or removal of the
8 human remains.

9 There are two possible verdicts. The
10 order means nothing. I had to put them in some
11 order. One says guilty; one says not guilty. You
12 will note the caption. That means nothing, that's
13 just to facilitate the filing of the document. And
14 then you will note there is a place for a signature
15 that says presiding juror on each one of them.

16 Let's talk about what you will be
17 saying on either one of those if the verdict is
18 guilty. You will be saying that -- because it
19 reads thus: We, the jury, by unanimous consent,
20 find the defendant Jerald Jermaine Howard of the
21 charge, and one says murder and the other the
22 desecration and destruction.

23 What does unanimous consent mean? All
24 12 of you; 11 to 1 won't work. It has to be 12 to
25 0. If it's guilty, what will you be saying? That

JURY CHARGE

1 you and each juror have analyzed the evidence and
2 you are satisfied that the State has met its burden
3 of proof as to each of the elements required of
4 that particular charge. You are firmly convinced
5 and, therefore, you are returning a verdict of
6 guilty as I have instructed pursuant to the law.

7 Not guilty means that, as to that
8 particular charge, you individually and
9 collectively are not firmly convinced of one --
10 that the State has met its burden of proof of one
11 or more. If they fail on one, you must return a
12 verdict of not guilty, because that's what the law
13 says. They have to prove each of those elements.

14 Now, how you go about it we will talk
15 about that. You are going to analyze the evidence.
16 You're going to talk to each other and discuss and
17 share your recollections.

18 Let me share with you now that if you
19 have a difference concerning what a witness said or
20 didn't say, you will need to send me a note and
21 tell me. Tell the bailiff, give it to the bailiff
22 and say, we would like to hear the testimony of
23 such and such witness if you come to that
24 situation. Because we can replay that testimony
25 for you.

JURY CHARGE

1 If you need some instruction on the
2 law, let me know that. Write that on a piece of
3 paper and I'll be happy to -- probably what I will
4 do is send you the entire charge back. I will talk
5 with the attorneys, but if -- any questions that
6 you need during the deliberations, just write it on
7 a piece of paper, send it -- if you'll sign it,
8 sign your name. That way, sometimes I can respond
9 in writing.

10 But you are about to begin your
11 deliberation and I know that you are anxious to get
12 started with that. Let me ask the first 12 of you:
13 Do any of you believe you will not be able to
14 continue? If so, raise your hand.

15 My alternates, Ms. Baxley and Ms.
16 Magazine, at this point it appears that the first
17 12 will be able to continue. So when the jury
18 retires, I will ask that you not rejoin them in the
19 jury room. They will take you to another room and
20 I will be with you in a moment to explain, discuss
21 with you how much longer you need to remain.

22 But I know you are anxious to get
23 started with your deliberations and you are almost
24 there. I told you that it would be the last thing
25 that I would tell you.

JURY CHARGE

1 You are -- I have to excuse you now and
2 talk about my charge. There may be some
3 corrections or additions that I need to give to
4 you. If there aren't any, then we will gather the
5 exhibits and the verdict form and deliver them to
6 you.

7 When you receive those exhibits, then
8 you may begin your deliberations, but not before.

9 Now, once the deliberations start the
10 only restriction that I place is this. If any
11 juror has to leave the table for any reason, you
12 must stop deliberating until all 12 of you are
13 together. Other than that, folks, you proceed as
14 you deem fit and proper.

15 Thank you so much for your attention
16 throughout. Thank you for honoring the oath thus
17 far. I ask you now to retire to your jury room and
18 await the exhibits and to -- before you begin your
19 deliberations.

20 Thank you so much. You may retire.

21 And the alternates, please do not join
22 them.

23 (Jury out, 12:48 p.m.)

24 THE COURT: Exceptions or additions
25 from the State?

1 MR. STEGALL: No, Your Honor.

2 THE COURT: Exception or additions from
3 the defendant?

4 MR. SMILEY: No, sir.

5 THE COURT: Thank you very much. Thank
6 you all. I appreciate it.

7 (Jury deliberating)

8 (COURT EXH. 1, Jury Note, was marked
9 for identification.)

10 (COURT EXH. 2, Jury Note, was marked
11 for identification.)

12 THE COURT: The PowerPoint, was that
13 introduced into evidence?

14 MR. STEGALL: Which PowerPoint?

15 THE COURT: Well, any of them?

16 MR. STEGALL: Simmonds was.

17 THE COURT: Simmonds was?

18 MR. STEGALL: Yes, sir.

19 THE COURT: None other than -- well,
20 none -- and then we introduced CDs of what?

21 MR. STEGALL: Phone records.

22 THE COURT: Phone records. Those were
23 not -- were those presented in a hard copy?

24 MR. STEGALL: No, Your Honor.

25 THE COURT: All right. So we'll have

1 to tell them if they want to see that, they have to
2 -- one of the questions is they want an outline of
3 the evidence.

4 (Off-the-record conference.)

5 THE COURT: All right. Let the record
6 reflect that Mr. Howard is present. Thank you all.
7 The jury has sent two notes; one, Court's
8 Exhibit 1, requested the outline of the law.

9 MR. SMILEY: The charge?

10 THE COURT: I'm assuming that.

11 MR. SMILEY: Yes, sir.

12 THE COURT: Two, requests the outline
13 of what the State presented. Houston, we may have
14 a problem. I'm going to bring them in, and I'm
15 going to attach -- here's a copy of the charge that
16 I printed out for each of you.

17 And I'm going to send them back a copy
18 and -- which is attached to the Court's Exhibit,
19 and two -- three extra copies for the jury to use
20 if they need to look at it. And I'll bring them
21 out and ascertain what they're asking for.

22 I didn't tell them about the CD, but
23 the CD contains only phone records which they have,
24 what portions were introduced. Those came from
25 that CD.

1 MR. STEGALL: Correct, Your Honor.

2 THE COURT: The copies that were sent
3 back, like 31 through 37, those are copies of the
4 CDs, of the dump.

5 MR. STEGALL: The dump -- the phone
6 records were just a history of the numbers and
7 duration.

8 THE COURT: Just --

9 MR. STEGALL: That's correct.

10 THE COURT: So you didn't have anything
11 -- any dump -- anything of the dump is in a hard
12 copy.

13 MR. STEGALL: Correct.

14 THE COURT: Okay.

15 MR. SMILEY: Your Honor, I know that
16 it's no big deal, but line 5 it says: Both the
17 State and Mr. Hendricks during the commission --

18 THE COURT: Yeah, I saw it. Okay.
19 Thank you.

20 MR. SMILEY: Like I said, I know it's a
21 typo.

22 THE COURT: Thank you for catching
23 that. This is the last one I sent last week, so I
24 didn't catch that. Thank you. I'll go change that
25 real quickly before I send them back, and I will

1 have Mr. Howard's name --

2 MR. SMILEY: I understand.

3 THE COURT: But thank you for calling
4 that to my attention.

5 All right. Let's bring in the jury,
6 please.

7 (Jury in, 2:06 p.m.)

8 THE COURT: Thank you very much, ladies
9 and gentlemen. I hope that you had your lunch and
10 enjoyed that.

11 Now, Presiding Juror, I have what's now
12 Court's Exhibit 1 and 2. Court's Exhibit 1
13 requested the outline of the law. I'm assuming you
14 want my charge because there is no outline. So
15 I've copied -- I've printed my charge; I'll send
16 that back.

17 I've attached one to what is Court's
18 Exhibit 1, and we'll leave it in that fashion.
19 That's just part of the evidence in the case. But
20 I will also send back three additional copies so
21 the jurors can share it, if need be, in reviewing
22 whatever it is you need.

23 And I've written, I've attached my
24 charge for the jury's consideration. If further
25 instruction is needed, please advise. And I signed

1 it.

2 Court's Exhibit 2, the outline of what
3 the State presented. You have all the evidence
4 that the State introduced, and then you have what
5 you recall of testimony. And as I indicated to
6 you, if during your discussion you have a
7 disagreement about what a person said or didn't
8 say, we could replay that testimony for you, but
9 that's all the outline that we will be able to give
10 to you.

11 You have what you -- you have
12 everything in connection with that. Okay. But if
13 there is something specific -- with the exception
14 of the phone records, which were the listing of the
15 callers, those are on CDs. And if you need to view
16 for any reason those, I don't recall that that was
17 ever shown, but it's in evidence.

18 If you want to view that, let us know,
19 and we will have to bring you in and play that for
20 you. But other than that, you have all the
21 physical documents that were introduced.

22 Okay. Thank you. You may retire and
23 resume your deliberations. I'll send the charge
24 back in just a moment.

25 (Jury out, 2:09 p.m.)

1 THE COURT: Are there any exceptions or
2 additions? From the State?

3 MR. STEGALL: No, Your Honor.

4 THE COURT: Exceptions or additions
5 from Mr. Howard?

6 MR. SMILEY: No, sir.

7 THE COURT: Thank you very much. We
8 will be at ease.

9 (A recess transpired.)

10 THE COURT: All right. Let the record
11 reflect that Mr. Howard is present.

12 Is the State ready to receive the
13 verdict?

14 MR. STEGALL: The State is ready, Your
15 Honor.

16 THE COURT: Is the defendant ready to
17 receive the verdict?

18 MR. SMILEY: We are, Your Honor.

19 THE COURT: And, ladies and gentlemen,
20 those of you that have been here in support of all
21 of the parties involved, thank you for the courtesy
22 and the respect that you have shown throughout
23 these proceedings. I know it's extremely
24 difficult.

25 I've been doing this now for almost

1 26 years, and while I don't have any vested
2 interest in any of it, I'm a human being. And the
3 suffering that people experience gets to me too,
4 and my heart goes out to everybody, both sides.

5 And I just -- I wish there was
6 something else I could say, but words are not
7 appropriate for that.

8 But I do respect this process totally.
9 Whether I agree with it or not it doesn't matter,
10 because I believe in it strongly.

11 I'm going to ask -- the persons that
12 have been working so diligently now almost five
13 hours -- well four and a half hours for sure, I
14 appreciate what they have done, and I want us to
15 continue to show that respect.

16 When I publish the verdict, I don't
17 want any outbursts, no reaction to it. And if you
18 feel that you are not going to be able to control
19 that, I respect that too, but I'd ask you to please
20 just step out until we finish this, because if you
21 remain, I assume that you will honor my request.

22 If you do that, that would be -- that
23 would contemplate direct contempt of the Court. So
24 please keep that in mind. Thank you very much.

25 Let's bring in our jury, please.

VERDICT

1 (Jury in, 4:44 p.m.)

2 THE COURT: Thank you very much, ladies
3 and gentlemen. And, Ms. Simmons, as I understand,
4 the jury has reached a verdict?

5 PRESIDING JUROR: Yes, sir.

6 THE COURT: If you would, pass the
7 verdict forms to Mr. Grainger, please.

8 You want to me to publish it?

9 The verdict forms have been properly
10 completed. I would ask the defendant to please
11 rise.

12 THE DEFENDANT: (Standing)

13 The State of South Carolina, County of
14 Berkley, in Case Number 2019-GS-08-1040: We, the
15 jury, by unanimous consent, find the Defendant
16 Jerald Jermaine Howard on the charge of murder
17 guilty.

18 Signed by Ms. Simmons as the presiding
19 juror.

20 Case Number 2019-GS-08-623: We, the
21 jury, by unanimous consent, find the Defendant
22 Jerald Howard on the charge of destruction,
23 desecration, and/or removal of human remains
24 guilty. Signed by Ms. Simmons.

25 Both are dated July 18th, 2019.

VERDICT

1 Ladies and gentlemen, if the Court has
2 accurately published your verdict, please indicate
3 that by raising your right hand.

4 THE JURY: (Raised hands)

5 THE COURT: Thank you. You may put
6 them down.

7 Let the record reflect that each juror
8 raised his or her right hand in response to the
9 Court's question.

10 Anything further from the jury, from
11 the State?

12 MR. STEGALL: No, Your Honor.

13 THE COURT: Anything further from the
14 defendant?

15 MR. SMILEY: Nothing, Your Honor.

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

18 Thank you, ladies and gentlemen. I
19 appreciate your consistence, and I appreciate the
20 opportunity to serve with each one of you, because
21 you have honored the -- and I'm not talking about
22 the decision. You had a decision to make.

23 I'm talking about the manner in which
24 you approached your responsibilities, and I thank
25 you for that. You have been diligent, and you have

1 been attentive, and that's exactly why I believe so
2 strongly in the system.

3 I will ask you to step into the jury
4 room. I would like to come in and speak to you in
5 just a moment. I won't keep you too much longer,
6 but if you will step in the jury room, I will be
7 there in a just few minutes.

8 (Jury out, 4:47 p.m.)

9 THE COURT: All right. Anything from
10 the State at this point concerning -- at this point
11 anything from the defendant? Your motions?

12 MR. SMILEY: Besides to renew
13 everything I've done.

14 THE COURT: And a motion for a new
15 trial?

16 MR. SMILEY: Yes, sir.

17 THE COURT: And, of course, I've ruled.
18 I thought it was a jury issue. I still think it's
19 a jury issue. I find the evidence, as I think I
20 articulated in my -- in denying the motion for a
21 direct verdict, my reasons for it, and I think
22 there was -- certainly, there was a basis to
23 support a not-guilty verdict in this case.

24 You raised a number of issues in your
25 -- especially in your closing argument, but the

1 jury has decided, and I think there is certainly
2 substantial evidence to support the verdict, so I
3 would respectfully deny that motion.

4 MR. SMILEY: Yes, sir.

5 THE COURT: Do we want to go ahead with
6 sentencing today?

7 MR. STEGALL: Yes, sir. My co-counsel
8 is getting the sentencing sheets.

9 THE COURT: Well, that's no problem.
10 I'm going to take a break because I want to go
11 speak to the jury and dismiss them. Okay.

12 So we'll be at ease for 10 or 15
13 minutes.

14 MR. STEGALL: Thank you, Your Honor.

15 THE COURT: Thank you very much.

16 (A recess transpired.)

17 THE COURT: I thought I said -- the
18 second verdict was guilty too on the desecration; I
19 thought I said that. If I didn't, then it is
20 published. If anybody needs to see the verdict
21 forms, they are here for your review.

22 All right. The Court will be at ease.
23 Ladies and gentlemen, those of you, thank you for
24 honoring again the Court's request after publishing
25 the verdict. We'll be at ease for a few minutes.

1 (A recess transpired.)

2 THE COURT: All right. Is the State
3 ready to proceed?

4 MR. STEGALL: The State's ready, Your
5 Honor.

6 THE COURT: And the defendant is ready?

7 MR. SMILEY: We are, Your Honor.

8 THE COURT: Very well. Does the State
9 wish to -- anything else the State want to -- I
10 will hear from you first, Mr. Stegall.

11 MR. STEGALL: Your Honor, I believe
12 Mr. Goodlett would like to address the Court.

13 THE COURT: I will be delighted to hear
14 from Mr. Goodlett. Mr. Goodlett, you can come
15 forward, sir, if you wish. Wherever you are most
16 comfortable, sir.

17 MR. GOODLETT: Thank you, Your Honor,
18 for giving us the opportunity to speak as a family.
19 Back in February of 2014, Mr. Howard made a
20 decision of his own free will to take a human life,
21 to take the life of the mother of his two children,
22 to leave these children without their immediate
23 family.

24 Not knowing what happened to their
25 mother for these years has been very difficult for

1 us to explain to these children as they are getting
2 older what happened. Elijah now is ten, and the
3 girls will be six this coming year. And at six
4 they are very bright, and they always ask us where
5 is their mother.

6 The heartbreak that me and my wife feel
7 for one of our children is unspeakable. I cannot
8 express how much pain we've had all these years.
9 Wondering where she was at the beginning part,
10 asking law enforcement for as much help as they
11 could give us to find her, and flying over South
12 Carolina praying to God that he would just somehow
13 do the impossible again for this our case, which is
14 biggest thing to us.

15 Finding Nicole was a miracle with all
16 the attempts and the obstacles that Mr. Howard
17 placed within law enforcement to try to prevent
18 them from finding her. Today the people of South
19 Carolina spoke up and they found him guilty in two
20 very important degrees.

21 I request as a family, as we can never
22 again embrace our daughter on this side of this
23 world, as her children can never embrace her, as a
24 son has to and these children have to learn
25 eventually what happened.

1 We do ask the Court, if they could, to
2 do the most. Not in revenge, but a society that
3 does not hold forth the truth, part of the law,
4 which we all as citizens should submit ourselves
5 to.

6 Excuse me, Your Honor.

7 THE COURT: No, sir. Don't you
8 apologize to me, sir, for being emotional, for
9 having the compassion and love that you have
10 demonstrated throughout this entire process, sir.

11 MR. GOODLETT: We would ask that the
12 Court would within the laws find the correct
13 punishment for this terrible and useless crime, and
14 as we deal with the loss of life that will be with
15 us as long as we are here on God's earth.

16 THE COURT: Thank you, sir. Appreciate
17 that, sir. God bless you, sir, and your family.

18 Anything else, Solicitor?

19 MR. STEGALL: Judge, nothing that I say
20 to you will be as impactful as what Nicole's father
21 just told you. So for those reasons I will just
22 respectfully ask for a life sentence in this case.

23 THE COURT: Thank you sir.

24 Mr. Smiley, anything you wish to add,
25 sir.

1 MR. SMILEY: Of course, you know I'm
2 asking for you to do a 30-year, day-for-day
3 sentence, Your Honor. Jerald will be 39 on the
4 28th of this month, born July 28th, 1981. I've
5 gotten to know Jerald over the last 14 months
6 fairly well in a professional sense, but we've
7 spent a lot of time speaking otherwise.

8 I've gotten to know his mother and
9 father, his brothers. And I'm going to tell you, I
10 could not have more love for a family. I can't
11 give you explanations, I won't try; the jury has
12 spoken.

13 But Jerald was raised by a loving
14 mother and father who are pillars of their
15 community, who have raised their three children in
16 the best way possible. They all have been
17 successful educationally and otherwise.

18 I'm not going to address the facts.
19 They have spoken.

20 THE COURT: Yes, sir.

21 MR. SMILEY: There is not -- obviously,
22 there is differences of opinion, but that doesn't
23 matter at this point. Jerald has always maintained
24 his innocence. I'm sure he maintains it right now.

25 THE COURT: I understand.

1 MR. SMILEY: To the Goodletts, I
2 personally extend you all condolences. It's a very
3 difficult thing for Jerald to be on the other side
4 of a woman he loved, his family too. If Nicole
5 could be here, he would lead the way to bring her
6 here. I am confident of that.

7 Your Honor, he's 39 now. Thirty years
8 day-for-day, he'd be right at 69, 70 -- close to 70
9 years when he finishes that sentence. So I would
10 ask you for a 30-year sentence and ten years
11 concurrent on the other, Your Honor.

12 THE COURT: Yes, sir.

13 MR. SMILEY: Thank you.

14 THE COURT: Thank you, Mr. Smiley.

15 MR. SMILEY: He has been -- just
16 because it's one of those things I always do, he
17 has been in jail since his arrest on -- March 2nd,
18 was it?

19 THE DEFENDANT: Twenty-sixth.

20 MR. SMILEY: -- 26th of 2018.

21 THE COURT: All right. Does Mr. Howard
22 wish to -- Mr. Howard, do you wish to say anything?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You may.

25 THE DEFENDANT: To the Goodletts, I am

1 sorry for your loss. I do maintain my innocence.
2 I did make lots of mistake in this process, but I
3 did not hurt Nicole. I didn't. But I do hope that
4 this brings you some sort of relief from the grief
5 that I know that you have been feeling.

6 To my parents, I'm sorry for the
7 embarrassment that I have caused you, the pain that
8 you feel right now. Thank you for the support. I
9 love you all. Please continue to take care of my
10 children. And to the Goodletts, as well, thank you
11 for what you have done for my children. Please
12 continue to take care of them.

13 Your Honor, you have been a gentleman
14 throughout this entire process. Respectfully, I
15 thank you for the way that you have handled this.
16 I do not agree with the findings of the jury, but I
17 do respect it, and I will respect whatever decision
18 you decide to make, sir.

19 THE COURT: Thank you, Mr. Howard. And
20 thank you for that. I appreciate that, sir.

21 I appreciate most importantly the
22 respect that everybody, both sides, has shown to
23 this process. And I told the jury, this is -- this
24 isn't easy and it wasn't easy for them. There were
25 tears in people's eyes when I went in there to talk

1 to them.

2 And you know what -- for me, over these
3 years, as I told them, I don't derive any great
4 pleasure out of what I have to do and it causes me
5 great concern. But, you know, as I told them, I
6 hope it always will, because the day it doesn't,
7 then that's probably the day that I need to hang
8 this robe up.

9 This is -- I think it's serious on both
10 sides. And I think this process needs to be just
11 what you have described, as fair as humanly
12 possible. And I think we've accomplished that, but
13 that's for another day.

14 But the one thing that I do know -- and
15 when I looked at the sentencing sheet, my youngest
16 son, you and he were born the same year, 1981. And
17 I thought, wow. And it made me think of something.

18 When I was elected, my son was still in
19 high school. And we were going home one day -- we
20 lived in Pinopolis, right up the road here. And I
21 can see it now.

22 He said, I guess since you're a judge
23 now if I do something wrong, I'll get probation.
24 And I said, son, I'm sorry, but that won't happen.
25 And I said, because I know what you've had. I know

1 what you've been taught. I know what opportunities
2 you've been given.

3 And the Bible tells me that to whom
4 much is given, much is expected. And I think
5 that's pretty accurate. And I witnessed -- with
6 your father's testimony, but I've witnessed in you
7 the successes that you've achieved, and it's a
8 credit to you as an individual.

9 Because one thing we know, and you know
10 anybody that has children knows, we can be the --
11 try to be the best parents in the world, but that
12 doesn't assure that our child won't make mistakes.
13 And I tell people all the time, don't feel you're
14 responsible for your child's mistakes sometimes.
15 Maybe occasionally there is, but most -- the
16 majority of the time it's not.

17 But, likewise, you shouldn't take
18 credit for their successes either because they're
19 individual and each have to be. But you are the
20 one that has been given much and most of your life
21 has been incredible.

22 And, yes, you said it, you made some
23 mistakes. And I respect the jury for dealing with
24 it. As I told them, I look into this case, and I
25 articulated, they could decide either way, but they

1 have spoken. And by their verdict then this, for
2 me, kind of, sort of -- it determines itself.

3 Because when we have somebody here that
4 had everything going for them, had children, the
5 egregiousness of this offense, there's just simply
6 no way to sugarcoat it. It was horrible. And my
7 heart goes out to the family.

8 I have said this hundreds of times over
9 the last 26 years. My grandfather was gunned down
10 on Main Street here in Moncks Corner. My daddy was
11 12 years old when that occurred. He was 81 when he
12 died; in fact, tomorrow is his birthday. And he
13 was a bitter man the day he died.

14 His sisters were able to deal with it.
15 Maybe they were more forgiving; I don't know. I'm
16 not going to try to do that, but I know that
17 forgiveness isn't for the benefit of the person
18 that's harmed you. It's for your benefit so that
19 you can go forward.

20 And I hope that each of you will be
21 able to go forward with life. It's not easy. I
22 know that. I witnessed that myself. So -- but I
23 pray that you will find some peace in the future
24 going forward.

25 And Mr. Howard's family, I hope that

SENTENCE

1 you will as well. You've obviously been incredible
2 parents to have children and do what your children
3 have accomplished. Yes, they did it through their
4 efforts, but they had a lot of support to
5 accomplish that.

6 And when I think about that part of
7 Berkeley County and the obstacles that had to be
8 overcome, incredible. And I credit you for that,
9 in spite of that. But all of that being said, this
10 crime now warrants what I'm about to do in my
11 opinion.

12 The sentence of the Court on 2019-1040,
13 murder, life in prison and ten years concurrent.

14 Good luck to you, sir. God bless you
15 too, sir. Take care, Mr. Howard.

16 (These proceedings were concluded at
17 4:30 p.m.)

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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 20th day of December, 2019 at Charleston, Charleston County, South Carolina.



S/Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

FORM 5

STATE OF SOUTH CAROLINA)
County of Berkeley)
Serald Jermaine Howard 380 868)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

FILED
MAY 07 2020
CASE LEFT QUERRY DUP
CLERK OF COURT
BERKELEY COUNTY, SC

v.

State of South Carolina)
)
)
)
)

APPLICATION FOR

POST-CONVICTION RELIEF

20 20-CP-08-01034

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution

2. Name and location of Court which imposed sentence Berkeley County
Courthouse 300 California Drive #B Moncks Corner, SC
3. Name(s) of co-defendant(s) (if any) N/A 29461

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2019GS0800623
 - (b) 2019GS0801040

cc:
J. Howard
5/8/2020

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 7/18/2019

(b) Life sentence

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I don't believe that there were errors in the

(b) procedure based upon the stipulations. The

- (c) error was in my representation of counsel.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Please turn to back of page.
- (a) Defense Attorney was incompetent
 - (b) Defense Attorney provided ineffective assistance of
 - (c) counsel. I am innocent of my charges.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Defense attorney failed to present evidence, failed
 - (b) to call key witnesses, and failed to investigate
 - (c) case.
12. Prior to this application have you filed with respect to this conviction: N/A
- (a) any petition in a State Court under South Carolina Law? N/A
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 - (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) ~~My defense attorney did not present the~~
 (b) ~~evidence he had in his possession.~~
 (c) This is my initial appeal.

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

- (a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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

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

- i. James Smiley
58 Broad Street 2E
Charleston, SC 29401
 ii. _____
 iii. _____

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

- i. The attorney represented me in all
proceedings involved in my case and trial.
 ii. _____
 iii. _____

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

I would like a new trial with all evidence presented. ~~I would like to speak with~~

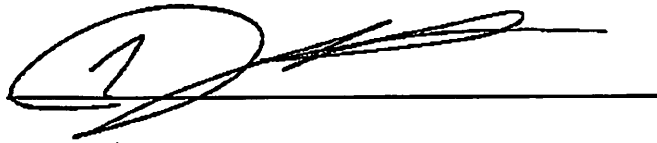
20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
County of Berkeley)

VERIFICATION

I, Jerald Howard, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 4th day of May, 2020.

Linda K. Be (L.S.)
Notary Public

My Commission Expires: 6-20-26

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

I, Derald Howard, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

4th day of May, 2020



Notary Public

My Commission Expires: 6-20-26

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
)
 Jerald Jermaine Howard, SCDC # 380868,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
)
)
)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No. ~~2019~~-CP-08-01034

2020

**RETURN AND MOTION FOR A MORE
 DEFINITE STATEMENT TO THE
 APPLICATION FOR
 POST-CONVICTION RELIEF
 (Counsel Already Appointed)**

In response to the post-conviction relief (PCR) application filed by Applicant Jermaine Howard on May 7, 2020, and received by Respondent the State of South Carolina on June 25, 2020, Respondent makes this return:

Handwritten signature
FILED
 JUN 25 2020 12:12 PM
 LEGISLATIVE CLERK
 CLERK OF COURT
 BERKELEY COUNTY, SC

I. PROCEDURAL HISTORY

Applicant is currently incarcerated in the South Carolina Department of Corrections. During its April 2019 term, the Berkeley County Grand Jury indicted Applicant for murder (2019-GS-08-01040) and destruction, desecration and/or removal of human remains (2019-GS-08-00623). On July 15, 2019, Applicant proceeded to a jury trial before the Honorable R. Markley Dennis, circuit court judge. Applicant was represented by James Smiley, IV, Esquire and Laree Hensley, Esquire. Assistant Solicitors Bryan Alfaro and Bart Stegall of the Ninth Circuit Solicitor’s Office prosecuted the case. Following a period of deliberation, the jury convicted Applicant of murder and desecration and/or removal of human remains as indicted. Judge Dennis sentenced Applicant to life imprisonment for murder and ten years concurrent for desecration and/or removal of human remains.

Applicant filed a timely notice of appeal and was represented by Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense-Office of Appellate Defense.

Applicant, through counsel, filed a letter and affidavit with the Court of Appeals indicating he wished to withdraw his appeal. The Court of Appeals dismissed the appeal by written order filed on February 2, 2020. The remittitur was returned to the circuit court on February 24, 2020. Thereafter, Applicant initiated the current action with the filing of an application for post-conviction relief on May 7, 2020; Respondent received a copy of the application from the Berkeley County Clerk of Court on June 25, 2020.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

-Ineffective assistance of counsel for:

- “Defense attorney was incompetent”
- “Defense attorney provided ineffective assistance of counsel”
- “I am innocent of my charges”

As requested relief, Applicant states he is seeking, “I would like a new trial with all evidence presented.”

Attached herewith and incorporated by reference are the Berkeley County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, Applicant’s appellate records), and the records of the current PCR action. The State reserves the right to amend this Return upon receipt of any relevant materials.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant asserts trial counsel was ineffective for a variety of reasons, including being incompetent and being innocent of his charges. Respondent submits these claims of ineffective assistance of counsel are without merit.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee

Applicant, like all other defendants, the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCF; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney’s performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant’s burden for proving both of these components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to

prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Harrington*, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing

court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify

reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to

dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Allegation that Counsel Failed to Investigate

Second, Applicant asserts counsel was ineffective for failing to investigate his case. Trial counsel has a professional responsibility to perform a reasonable investigation. “Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (quoting *Strickland*, 466 U.S. at 691). However, to prevail on such a claim, an applicant must provide more than mere speculation as to what the result of additional investigation would yield. *See Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (holding failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result).

Here, Applicant wholly fails to state what additional investigation trial counsel should have performed and fails to state what the result of such investigation would be. Accordingly, Respondent moves for Applicant, through his appointed counsel, to amend this allegation to provide sufficient facts to support this claim well in advance of an evidentiary hearing.

IV. MOTION FOR A MORE DEFINITE STATEMENT

Respondent submits Applicant’s claims of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to Applicant’s allegations because Applicant has failed to provide specific facts to support each claim. “[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient.” *Coardes v. State*, 262 S.C.

493, 497, 206 S.E.2d 264, 265 (1974); *see* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to “specifically set forth the grounds upon which the application is based”); *see also* Rule 8(a)(2), SCRPC (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRPC (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations of ineffective assistance of counsel pursuant to Rule 12(e), SCRPC and the Uniform Post-Conviction Procedure Act.

V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC; *see also* Rules 15(a)-(b), SCRPC. The State

reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRC.P.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VI. GENERAL DENIAL

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

VII. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section IV, and thereafter convene an evidentiary hearing on the allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: s/ Benjamin Limbaugh
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

February 18, 2021

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Jerald Jermaine Howard, #380868)
)
 Applicant,)
)
 vs)
)
 State of South Carolina,)
)
 Respondent,)

IN THE COURT OF COMMON PLEAS

~~2019~~-CP-08-01034
2020

CERTIFICATE OF SERVICE BY MAIL

LEAH GUFFERY DUPREE
 CLERK OF COURT
 BERKELEY COUNTY, SC
 21 FEB 22 PM 12:35

FILED
 JMN

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Sarah G. Drawdy, Esquire
Byrholdt Drawdy, LLC
The Regency Building
2315 N. Main Street, Suite 117
Anderson, SC 29621

DATED this 18th day of February 2021.


 Jennifer Jennison, Administrative Coordinator
 For Respondent

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Jerald Jermaine Howard 380868)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)

IN THE COURT OF COMMON PLEAS

LAH GUERRY DUNN
 CLERK OF COURT
 BERKELEY COUNTY, SC

21 AUG 25 AM 11:22

FILED

AMENDED

APPLICATION

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Berkeley County Court of General Sessions

Sessions

3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2019-GS-08-6231359
 - (b) 2019-GS-08-040
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 07/18/2019 Life in prison

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty xx

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such

results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Did not understand my appellate rights

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty xx
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Did not understand my appellate rights
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) I did not receive the effective assistance of counsel during my trial for murder and related charges.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Trial counsel failed to investigate my case.

(b) Trial counsel failed to present evidence that would have established reasonable doubt as to my guilt.

(c) Trial counsel failed talk with or call key witnesses in defense of my case. See additional sheets attached.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

11(d): Trial counsel failed to effectively cross-examine State's witness to attempt to establish reasonable doubt

11(e) Trial counsel failed to discuss cellphone and bank records with me and to use this information to cross examine State's witnesses.

11(f) Trial counsel failed to prepare for trial as he was involved in another ongoing murder case.

11(g) Trial counsel told me there was not enough evidence to convict me.

11(h) Trial counsel failed to investigate alleged victims background, bad acts, and acts of violence against victim and Defendant to provide alternative theory for victim's death by others.

ADD ANY ADDITIONAL GROUNDS

- (c) the disposition thereof:
- i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
- i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
 - ii. _____
 - iii. _____
 - iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- no
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
 - ii. _____
 - iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. James Smiley 58 Broad Street, 2E, Charleston, SC 29401
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. James Smiley Pre-trial and trial of case
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
- I would request the Court vacate my conviction and remand for new trial.
20. Are you now under sentence from any other court that you have not challenged?
- no

STATE OF SOUTH CAROLINA)
)
County of Anderson)

VERIFICATION

I, Jerald Jermaine Howard, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

 _____

SWORN to and subscribed before me this 9th
day of August, 2021.

 _____ (L.S.)
Notary Public

My Commission Expires: March 31, 2031

JG
FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

BERKELEY COUNTY

2022 OCT 17 PM 3: 10

JERALD JERMAINE HOWARD,
#380868

LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

Applicant,

vs.

**MOTION TO ADD ADDITIONAL GROUNDS FOR POST
COVICTION RELIEF**

STATE OF SOUTH CAROLINA,
Respondent.

2020-CP-08-01034

Applicant Gerald Howard moves to amend his Application for Post Conviction Relief to assert three additional grounds to prove ineffective assistance of counsel as set forth below:

First Additional Argument

Counsel provided ineffective assistance of counsel by failing to object to the state's failure to prove each and every element of the statute s.c. code of Law ann. §17-19-30; cause of death.

The applicant contends that the trial judge informed the jury of the charge in the body of indictment at trial transcript pg 50, line 25. It is alleged in the indictment that (pg 51, line 1) accuses Mr. Howard of committing the offense of murder, that on or between February 17, 2014 and February 24, 2014 the defendant did with malice (pg 51, line 4) aforethought killed Nicole Goodlett by means of an (pg 51, line 5) instrumentality unknown, and that Nicole Goodlett (pg 51, line 6) died as a proximate result of some material act or (pg 51, line 7) offense that...the requisite to its commission (pg 51, line 8) having occurred in Berkeley County, in violation of section 163 of the code which prescribes the conduct of murder (pg 51, line 10).

The applicant contends that the state could not determine the cause of death during trial at trial transcript page 483, line 22. The cause of death could be a cardiac event (pg 483, line

cc: S.G.P. (D)

23), a heart attack; it could be blunt force trauma from a car accident (pg 483, line 24). It could be a number of different things (pg 484, line 2).

The cause of death in this case, what were you able to determine (pg 484, line 3)? It was undetermined also. On the death certificate, is one of the things you try to determine is the time of death, correct? That would be correct. The date and time. **In this case were you able to determine the date and time of the death** (pg 484, line 11)?

All answers were said to be undetermined. Also see at trial transcript page 486, line 23. And would it be fair to say that the condition in which the remains of Nicole Goodlett were found made it impossible to determine the manner of death?

I would say just about impossible. (Pg. 487, line 2)

And same-- would that be the same answer for the cause of death?

That would be the same answer for the cause of death. It would be just about impossible to determine. (Pg 487, line 5)

And would it also make it impossible to determine the exact time of death?

Impossible. (Pg. 487, line 10)

The applicant contends that Stevens, William could not determine cause of death. See at trial transcript page 530, line 12. **Further conclusions I had, I could not determine any cause of death. There was no injury that showed up on the portion of the skeleton that we found.**

The applicant contends that the State could not rule out the cause of death. Trial transcript page 538, line 13. Okay. Could you rule out any causes of death?

No. (Pg 538, line 15)

The applicant contends that counsel provided ineffective assistance of counsel by failing to object that the prosecution is required to prove all of the essential elements set forth in the statute S.C. Code of Law ann. §17-19-30 beyond a reasonable doubt (In re Winship 397 U.S. 358, 361, 90 S.Ct. 1068. S.C. code Law ann. § 17-19-30

Every indictment for murder shall be deemed and adjudged sufficient and good in law which in addition to setting forth time and place, together with a plain statement, divested of all useless phraseology, **of the manner in which the death of deceased was caused**, charges that the defendant did feloniously, wilfully and of his malice aforethought kill and murder the deceased.

Applicant contends that the state could not determine cause of death. And counsel was ineffective in assistance by failing to object that the state did not present any evidence that the defendant killed the victim.

See trial transcript page 550, line 10. In this case, Your Honor, the state has not been able to demonstrate the—how she was killed, when she was killed, or that Mr. Howard—they have not presented any evidence that Mr. Howard caused her death.

First, the applicant must prove that counsel's performance was deficient under this prong. Attorney performance is measured by its reasonableness under professional norms, **"Cherry, 300 S.C. at 117, 385 SE2d at 625** citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different." **Cherry, 300 S.C. at 117-18, 386 SE2d at 625**. However, courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement. Butler, Id. The applicant must overcome this presumption to receive relief. **Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989)**.

Second Additional Argument

Counsel provided ineffective assistance of counsel by failing to conduct a pre-trial independent investigation to request a chain of custody report, to determine if one was done and done properly. The chain of custody report would be used to verify that detention officer Ballow, William properly handled the evidence (cellphone) obtained during a strip search. See trial transcript page 254, line 15 by Ballow, William- direct exam by Mr. Alfaro. Line 22.

(Page 254, line 15) So I asked him to hand me the cell phone and he acted like he didn't know what I was talking about at first. Finally, he handed it over to me, and once I took possession of it, finished my search, once I got done and took it to--gave it to the arresting officers that brought him in.

While the chain of custody is only required to be established as far as is reasonably practicable, South Carolina courts have consistently held that all persons in the chain of custody must be identified and the manner of the handling of evidence must be demonstrated. **Sweet, 374 S.C. at 7-8, 647 S.E.2d at 206-07.**

To establish counsel was inadequately prepared for trial, an applicant must present evidence of what counsel could discover or what other defenses could have been pursued had counsel been more fully prepared. *Jackson v State*, 329 S.C. 345, 495 SE2d 768 (1998). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. *Davis v State*, 326 S.C. 283, 486 S.E.2d 747 (1997).

First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under profession norms" **Cherry, 300 S.C. at 117, 385 SE2d at 625**, citing *Strickland*. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." **Cherry, 300 S.C. at 117-18, 386 SE2d at 625**. However, courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement. *Butler, Id.* The applicant must overcome this presumption to receive relief. **Cherry v State, 300 S.C. 115, 386 SE2d 624 (1989).**

Third Additional Argument

Counsel provided ineffective assistance of counsel by failure to object to officer Ballow, William-direct exam by Mr. Alfaro. Did the arresting officer that brought the suspect to the detention center have a search warrant to seize the suspect's cell phone, that was taken by detention center officer William Ballow and turned over to the arresting officer?

The applicant contends that his federal sixth amendment right to effective assistance of counsel was violated due to trial counsel's failure to assert a claim of violation of the Federal 5th amendment, right of due process of law. Because the defendant was deprived of his property (cell phone) without due process of law, thus leading to him being unconstitutionally convicted and deprived of his liberty without due process.

The applicant contends that the evidence was seized during a conduct of strip search by officer Ballow, William. The detention center officer seized the applicant's cellphone without a search warrant being provided for his person. The search warrant for his vehicle and home did not apply to his person. The evidence that was unlawfully seized during the search was entered into the applicant's jury trial as evidence. All testimony that came or that was related to this "evidence" would be fruit of the poisoned tree. Seizing the phone without a search warrant is in direct violation of the applicant's 4th and 5th rights, due process of law. **See Wong Sun vs U.S.**

Also, see cite at trial transcript page 254, line 4-25 by Ballow, William. The applicant contends that the cell phone should have been placed into the applicant's property locker box until the police had a search warrant to seize the evidence. The police did not provide a search warrant to the applicant at the time of the search, because they had none.


First, the applicant must prove that counsel's performance was deficient under this prong, attorney performance is measured by its "reasonableness under professional norms." **Cherry, 300 S.C. at 117, 385 SE2d at 625 citing Strickland.**

Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 SE2d at 625.

However, courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement. *Butler, Id.* The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 SE2d 624 (1989).

Applicant Jerald Howard, by and through his undersigned counsel requests his Application be amended to include the three (3) additional grounds asserting ineffective assistance of counsel.

BYRHOLDT DRAWDY, LLC


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September 19, 2022

ATTORNEY FOR APPLICANT

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
)
 Jerald Jermaine Howard, #380868,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

2020
 Case No.: 2019-CP-08-01034
 01034
 AMENDED RETURN
 (Counsel Already Appointed)

FILED
 2021 DEC 20 PM 12:39
 LEAH GUERRY BURNETT
 CLERK OF COURT
 BERKELEY COUNTY, SC

In response to the amended post-conviction relief (PCR) application filed by Jermaine Howard (Applicant) on August 25, 2021¹, and received by Respondent the State of South Carolina on September 13, 2021, Respondent makes this return:

I. Procedural History

Applicant is currently incarcerated in the South Carolina Department of Corrections. During its April 2019 term, the Berkeley County Grand Jury indicted Applicant for murder (2019-GS-08-01040) and destruction, desecration and/or removal of human remains (2019-GS-08-00623). On July 15, 2019, Applicant proceeded to a jury trial before the Honorable R. Markley Dennis, circuit court judge. Applicant was represented by James Smiley, IV, Esquire and Laree Hensley, Esquire. Assistant Solicitors Bryan Alfaro and Bart Stegall of the Ninth Circuit Solicitor’s Office prosecuted the case. Following a period of deliberation, the jury convicted

¹ Respondent’s return was due to be filed on October 13, 2021. See Rule 12(a), SCRPC (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.”) Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.”); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

Applicant of murder and desecration and/or removal of human remains as indicted. Judge Dennis sentenced Applicant to life imprisonment for murder and ten years concurrent for desecration and/or removal of human remains.

Applicant filed a timely notice of appeal and was represented by Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. Applicant, through counsel, filed a letter and affidavit with the Court of Appeals indicating he wished to withdraw his appeal. The Court of Appeals dismissed the appeal by written order filed on February 2, 2020. The remittitur was returned to the circuit court on February 24, 2020. Thereafter, Applicant initiated the current action with the filing of an application for post-conviction relief on May 7, 2020; Respondent received a copy of the application from the Berkeley County Clerk of Court on June 25, 2020. Respondent submitted its return to the Application for Post-Conviction Relief on February 18, 2021, moving for a more definite statement on his allegations of ineffective assistance of counsel. Applicant submitted his amended application on August 25, 2021.

II. Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

- a. Ineffective Assistance of counsel
 - a. Trial counsel failed to investigate my case.
 - b. Trial counsel failed to present evidence that would have established reasonable doubt as to my guilt.
 - c. Trial counsel failed to talk with or call key witnesses in defense of my case.
 - d. Trial counsel failed to effectively cross-examine State's witness to attempt to establish reasonable doubt.
 - e. Trial counsel failed to discuss cellphone and bank records with me and to use this information to cross-examine State's witnesses.
 - f. Trial counsel failed to prepare for trial as he was involved as another ongoing murder case.
 - g. Trial counsel told me there was not enough evidence to convict me.

- h. Trial counsel failed to investigate alleged victims background, bad acts, and acts of violence against victim and Defendant to provide alternative theory for victim's death by others.

As requested relief, Applicant states he is seeking, "I would request the Court vacate my conviction and remand for a new trial."

Attached herewith and incorporated by reference are the Berkeley County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records of the current PCR action. The State reserves the right to amend this Return upon receipt of any relevant materials.

III. Summary Of Facts Established At Trial

In November of 2015, Dashawn Joseph, a hunter, was chasing his dog into the woods behind an elementary school. Trial Tr. p. 431. He stumbled across a skull. Tr. Transcript p. 32. That skull belonged to Nicole Goodlett (Victim). Trial Tr. p. 463.

On February 17, 2014, Victim's brother last heard her voice. Trial Tr. p. 143. On February 20, 2014, witness Travis Martin stated that Victim dropped him off at his home. Trial Tr. p. 261. Applicant, Jerald Howard stated the last time he had spoken with Victim was on February 20, 2014. See Trial Tr. p. 190. However, at trial, there was evidence presented that would allow inference to determine that was not true.

During the weekend of February 20-22, 2014, Applicant rented a car from Enterprise and put over five hundred miles on it. Trial Tr. p. 302. Applicant's father testified that his son made a trip home to Huger, SC, where he spent the night. Trial Tr. p. 279. During that time, Victim's phone pinged off of cell tower on I-26 near Columbia, SC, then to Blacksburg, SC. See Trial Tr. p. 414. Over the next several days, friends and family of Victim received phone calls and strange text messages from Victim's phone, but never spoke to her directly. On February 28, Victim's mother

texted Victim in German—a tactic she used when she expected Victim to be in trouble due to her ability to speak German fluently. *See* Trial Tr. p. 172. She received a text message back that was what she considered “bad German” and uncharacteristic of Victim. Trial Tr. pp 172-173. On March 6, the brother of Victim received what he considered a strange text message from Victim’s phone due to the unusual grammatical structure. Trial Tr. p. 145. Victim’s brother began to get suspicious and alerted their father in Texas. Trial Tr. p. 146. Victim’s father asked Spartanburg County to conduct a welfare check on March 10. Trial Tr. p. 155. They executed the search twice to no avail. *Id.* Victim’s brother gave a statement to authorities. Trial Tr. p. 147. Victim’s parents flew in from Texas to give a statement on March 12. Trial Tr. p. 154. On that same day, Applicant contacted Victim’s father and told him he hadn’t seen Victim in three weeks and asked if he knew where Victim might be. Trial Tr. p. 153. A full investigation followed, which illuminated that Applicant purchased a language conversion application, Rosetta Stone, two days before Victim’s mother received a message from Victim’s phone in “bad German”, wrote a check from Victim’s bank account to himself, and conducted several Google searches regarding a burning body in Huger, SC. *See* Trial Tr. p. 194; Trial Tr. p. 323-325.

In November of 2015, Victim’s skull was found, and led to the identification of the Victim. There were subsequent searches that took place to find the rest of Victim’s remains. The search team conducted a search in December of 2015 that was not fruitful. Trial Tr. p. 456. The team returned to do another search on April 16, 2016. *See* Trial Tr. pp. 462-467. The team located skeletal remains spread out around the area. *Id.*, Dr. Stevens, an expert in forensic anthropology testified that he only received fifty percent of the body that had significant posterior burning. He also opined that the body was burned while still fleshed. Trial Tr. pp. 546; Trial Tr. Pg. 543. As a

result, in April 2019, the Charleston County Grand Jury indicted Applicant for murder and destruction, desecration or removal of human remains.

IV. To Allegations Of Ineffective Assistance Of Counsel

Applicant asserts that trial counsel was ineffective in her representation of Applicant due to her alleged failure of pretrial investigation, failure to make objections, failure to ask for a cautionary instruction, and failure to argue for dismissal of Applicant's murder and attempted armed robbery due to lack of evidence.

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1)

their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690-95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation [—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel's performance must be highly deferential, as

it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and

raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister*

v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*”

Applicant can satisfy neither requirement of the *Strickland* test. However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

Failure to Investigate and Prepare for Trial

Applicant also contends Trial Counsel was ineffective for failing to properly and fully investigate the case before trial, failing to talk to or call key witnesses, and failed to investigate alleged victims background, bad act, and acts of violence against victim and Defendant to prepare an alternative theory.

“A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut

any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses “when it is reasonable to do so.” *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (noting that “this duty is limited to a reasonable investigation”). Reviewing courts “should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Strickland*, 466 U.S. at 690. Thus, in applying the

Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014).

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*, nor show Trial Counsels were ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsels; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

Failure to Discuss

Applicant alleges Counsel was ineffective in failing to discuss and provide a copy of cellphone and bank records in his case. An applicant who alleges his or her defense attorney was ineffective in failing to provide a copy of the discovery materials must show how the outcome of trial would have been different had the attorney provided such a copy; the applicant must show what evidence could have been discovered or what other defense could have been prepared. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)).

For the above-reasons, Applicant cannot show trial counsels were ineffective for failure to discuss a copy of his cellphone and bank records. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsels; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR

application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

Additional Time for Preparation

Applicant contends Counsel failed to adequately prepare for trial because he was involved in another ongoing murder case.² “The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing *Harris v. State*, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008)). An applicant must present evidence to show how additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 404 S.C. at 500-01, 745 S.E.2d at 382 (citing *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997)). Here, applicant has not presented evidence to reveal how additional time spent on his case would have resulted in a different outcome.

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

² This allegation has been interpreted as a claim for lack of time spent on Applicant’s case.

V. Any Future Amendments And Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRPC. *Pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases...we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading).

Pursuant to section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent

requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent, pursuant to *Love* as discussed above.

VI. Denial Of All Other Allegations

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

Respectfully submitted,


ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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By:


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December 15, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

2020-CP-08-01034

Jerald Jermaine Howard, #380868)

Applicant,)

vs)

State of South Carolina,)

Respondent,)


CERTIFICATE OF SERVICE BY MAIL

FILED
2021 DEC 20 PM 12:39
LEAH GUERRY DUFFIN
CLERK OF COURT
BERKELEY COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Sarah G. Drawdy, Esquire
Byrholdt Drawdy, LLC
2315 North Main Street, Suite 117
Anderson, SC 29621**

DATED this 15th day of December, 2021.



Vickie Hall, Legal Assistant
For Respondent

State of South Carolina)	Court of Common Pleas
County of Berkeley)	Ninth Judicial Circuit
)	
JERALD J. HOWARD,)	Case Number:
)	2020-CP-08-01034
Applicant,)	
)	
vs.)	
)	HEARING ON APPLICANT'S
STATE OF SOUTH CAROLINA,)	MOTION FOR
)	POSTCONVICTION RELIEF
Respondent.)	
_____)	TRANSCRIPT OF RECORD

June 26, 2023
 Moncks Corner, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis

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

MS. SARAH G. DRAWDY
 and MR. BRUCE A. BYRHOLDT,
 Attorneys at Law,
 for the Applicant;

MS. DANIELLE DIXON,
 Assistant Attorney General,
 for the Respondent.

Jamie Bickett
 Official Court Reporter

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1 (The following proceedings were had in open court.)

2 THE COURT: Okay. Thank you for your patience this
3 morning. We apparently took the scenic route to get here, I
4 guess. It took us a lot longer than I anticipated.

5 Go right ahead. Yes, ma'am.

6 MS. DIXON: May it please the Court. I'm Danielle
7 Dixon, assistant attorney general for the State of South
8 Carolina.

9 This is the case of Jerald Jermaine Howard, Docket
10 Number 2020-CP-08-1034. Mr. Howard is currently serving a
11 life sentence. He was indicted in April 2019 by the Berkeley
12 County Grand Jury for murder and destruction, desecration,
13 and/or removal of human remains. Those are Indictment
14 Numbers 2019-GS-08-1040 and 2019-GS-08-623.

15 These charges arose from the death of Nicole Goodlett,
16 who was his live-in girlfriend. They had some children in
17 common. She went missing sometime in February of 2014 from
18 Spartanburg County, and her skeleton was later found in a
19 wooded area in Berkeley County.

20 He proceeded to -- Mr. Howard proceeded to a jury trial
21 before the Honorable R. Markley Dennis July 15, 2019. He was
22 represented by James Smiley and Laree Hensley. Assistant
23 Solicitors Bryan Alfaro and Bart Stegall represented the
24 State. He was found guilty as indicted, and he was sentenced
25 to concurrent terms of life for murder and ten years for the

1 desecration charge.

2 He filed a direct appeal and was represented by Susan
3 Barber Hackett. He did move to withdraw that appeal in
4 February of 2020, and thereafter, the court of appeals did
5 dismiss his appeal. The remittitur was sent February 24,
6 2020.

7 He timely filed this PCR application May 7, 2020,
8 alleging various grounds of ineffective assistance of
9 counsel. It has been amended twice. My understanding today
10 are the grounds that they're moving forward on are failed to
11 investigate; failed to present evidence to establish
12 reasonable doubt; failed to talk with or call key witnesses;
13 failed to effectively cross State witnesses to establish
14 reasonable doubt; failed to discuss cell phone and bank
15 records and use the information to cross witnesses; failed to
16 prepare for trial; "He told me there was not enough evidence
17 to convict me"; failed to investigate alleged victim's
18 background, bad acts, and acts of violence against the victim
19 to provide an alternative theory for her death; failed to
20 object to the State's failure to prove each and every element
21 of the statute, specifically the State could not determine
22 the cause of death; failed to investigate the chain of
23 custody for the cell phone; and failed to object to Officer
24 Ballow's testimony that the phone was seized without a search
25 warrant.

1 This case has been previously continued in April of '22,
2 June of '22, November of '22, February of '23 and April of
3 '23. And just for the record, we have previously handed up
4 to your Honor the records from the clerk of courts for these
5 underlying convictions, the trial transcript, the records
6 from the direct appeal, and his records from the Department
7 of Corrections.

8 THE COURT: That's all in the electronic packet that I
9 received?

10 MS. DIXON: Yes, ma'am. Yes, ma'am. They should all be
11 there.

12 THE COURT: Okay. And Mr. Howard is represented by
13 Ms. Drawdy, is it?

14 MS. DRAWDY: Yes, your Honor. Sarah Ganss Drawdy of
15 Byrholdt Drawdy, and also my law partner here, Bruce A.
16 Byrholdt.

17 THE COURT: I'm sorry. Bruce?

18 MS. DRAWDY: Byrholdt.

19 MR. BYRHOLDT: Byrholdt, B-Y-R-H-O-L-D-T.

20 THE COURT: Thank you.

21 Okay. So normally I go into a discussion with
22 Mr. Howard about the pros and cons of going forward today.
23 In this instance, however, I don't know that there's as much
24 of a discussion that's needed since you did receive a life
25 sentence without the possibility of parole. But you

1 understand, Mr. Howard, in a PCR action, there's only two
2 possible outcomes.

3 I can grant the PCR, in which case it's as though your
4 trial never took place. It goes back as if the trial never
5 -- all the same charges that were against you. I don't know
6 if there were any additional charges that the jury found you
7 not guilty on, etc., but it goes back to square 1. That
8 means you could be sentenced to whatever the new judge
9 decided to sentence you to. It means that a jury could find
10 you guilty or a jury could find you not guilty.

11 If you are not granted the PCR, then you just continue
12 to serve out the remainder of your sentence.

13 So sometimes folks have a lot more to lose if they win a
14 PCR that they don't a hundred percent appreciate. But I
15 don't think in his case there's really a lot of downside to
16 going forward with the PCR today.

17 MR. BYRHOLDT: Correct.

18 THE COURT: Is that your opinion as well, Ms. Drawdy?

19 MS. DRAWDY: That is, your Honor, the opinion of both of
20 us, yes.

21 THE COURT: Okay. So he does want to go forward with
22 the PCR today.

23 Is that correct, Mr. Howard?

24 THE DEFENDANT: Yes, ma'am, your Honor.

25 THE COURT: Okay. Then I'll turn it over to y'all.

1 MR. BYRHOLDT: All right. Your Honor, we'd call the
2 applicant, Jerald Howard, to the stand.

3 CLERK OF THE COURT: Will you please raise your right
4 hand?

5 (Witness sworn.)

6 CLERK OF THE COURT: Please state your full name for the
7 Court and spell your last name.

8 THE WITNESS: Jerald Jermaine Howard, H-O-W-A-R-D.

9 CLERK OF THE COURT: Thank you very much.

10 JERALD HOWARD,
11 called as a witness on his own behalf, being first duly
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BYRHOLDT:

15 Q. Jerald, I'm going to ask you to speak up. They're
16 recording that, but it doesn't amplify. So speak up so the
17 last person in the courtroom, your dad, can hear you.

18 A. Yes, sir.

19 Q. How old are you, Jerald?

20 A. Forty-one.

21 Q. All right. And where are you currently residing?

22 A. Lieber Correctional Facility.

23 Q. All right. Back in 2019, you went to trial. Who was
24 your trial counsel?

25 A. James Smiley.

1 Q. And is he here today in the courtroom? Or he was
2 earlier? There he is.

3 A. He's here, yes.

4 Q. All right. Now, in your application for postconviction
5 relief, you've raised numerous grounds. I'm going to go
6 through those one at a time, and I want you to explain to the
7 Court what you believe Mr. Smiley's deficiencies were. Is
8 that fine with you?

9 A. Yes, sir. I understand.

10 Q. All right. The first one that you raised was that
11 Mr. Smiley failed to investigate your case. Tell the Court
12 what you mean by that, Jerald.

13 A. What I mean by that, sir, the entire time that I was
14 incarcerated in this facility -- Berkeley County facility,
15 for a while at the Charleston County facility, Mr. Smiley
16 came to those facilities on numerous occasions to meet with
17 other clients that he had who were -- he had other cases that
18 he was dealing with. The first time Mr. Smiley met with me
19 at the Berkeley County facility, we discussed my case for
20 maybe an hour.

21 All of the times in between that that he came to see me,
22 he would pull me from -- have someone pull me from the cell
23 and he would bring me into a holding cell with him, a meeting
24 cell. And he would say to me, "I just wanted to get you out
25 of the cell for a little while. I know how hard it is back

1 there for you. I have this case going on" or "that case
2 going on," different cases. And he'd speak to me about
3 Trevor Lawrence and Clemson football and things of that
4 nature, but we would never discuss my case.

5 And I would ask Mr. Smiley over and over again, "When
6 are we going to discuss my case? What's going on with my
7 dealings?" And he would say, "Well, I'm going to try and get
8 you out on bond so that you can raise some money to pay me
9 more money." And each time he came, it was "I'm going to try
10 and get you out on bond, try to get you out on bond."

11 Well, I never got out on bond, so we never discussed my
12 case any further in the year and -- almost two years that I
13 was incarcerated. I wrote numerous letters to him describing
14 my case, just trying to get some kind of correspondence in
15 regards to what was taking place with my situation, my case.
16 But we never discussed my case until he had finished a pretty
17 big trial, a big case that he had going on.

18 Once he finished that case, he came to see me once more,
19 and that was maybe a week before my trial was to take place.
20 We discussed my trial maybe an hour and a half, two hours.
21 But the entire time that I was incarcerated, we spoke about
22 my case solely twice: in our initial meeting and before my
23 trial.

24 Q. And you were incarcerated while your -- pretrial
25 detention for almost two years?

1 A. That's correct, sir.

2 Q. And the total amount of time he spent with you talking
3 about your case was maybe two and a half hours?

4 A. No more than three.

5 Q. All right. Did you provide information to him on people
6 that you wanted him to talk to and theories about what you
7 believed happened to Nicole Goodlett?

8 A. Yes, sir, I did.

9 Q. Did he meet with those people?

10 A. No, sir, he did not.

11 Q. And when you hired Mr. Smiley, how much were you
12 supposed to pay him? What was your agreement?

13 A. I believe it was like 20,000 or \$25,000.

14 Q. And I believe you paid him a total of about 6,000?

15 A. That's correct, sir.

16 Q. And your family couldn't come up with any more money?

17 A. That's correct, sir.

18 Q. In the information that you provided Mr. Smiley to help
19 defend you, were there problems that Nicole had had in her
20 life while you were with her?

21 A. There were, sir. I told Mr. Smiley everything that was
22 taking place in regards to what we were going through. And I
23 told Mr. Smiley that I just wanted the truth to be told in
24 regards to what was taking place.

25 Q. And the things that had taken place, just briefly, what

1 were those?

2 A. Houses being burnt down.

3 Q. Is the house where who lived?

4 A. Where Nicole and I resided.

5 Q. Okay.

6 A. I told him the house was burnt down. I told him about
7 vandalism to vehicles. I told him about investigators coming
8 to speak with her in regards to what was going on. I told
9 him that we were feared for our lives.

10 Q. Did he follow up on any of that information?

11 A. No, sir.

12 Q. At trial did he present any of that information?

13 A. He said nothing of it. He said to me that -- I told
14 him -- I said, "Mr. Smiley, I just want to tell the truth
15 about what took place." He said, "It's not the truth that
16 matters. It's what can be proven." He said, "The State
17 cannot prove a cause of death." And he said, "If you go and
18 testify, you will go to jail. You will go to prison for the
19 rest of your life." He said, "Trust me and you'll go home to
20 your family."

21 Q. All right. Now, during the trial, Judge Dennis
22 questioned you about your right to testify?

23 A. Yes, sir, he did.

24 Q. And at that time you chose not to testify?

25 A. That is correct.

1 Q. Why was that?

2 A. I chose not to testify because before the final ruling
3 or the final jury decision, we went back into a room to
4 ourselves -- myself, Mr. Smiley, and his co-counsel, who I
5 had never met before until the day of trial -- and I said to
6 him, "I think I need to testify," which is when he went on to
7 tell me about if I testified I'd go to prison and if I didn't
8 I'd go home. And he told me what the judge -- the options
9 that the judge would present to me. And I believed him. I
10 trusted him.

11 Q. Did you have any prior record at that time?

12 A. No, sir.

13 Q. So there's nothing they could have impeached you on if
14 you testified as far as a criminal record or anything?

15 A. No, sir.

16 Q. Now, Ms. Hensley, who was sitting in second chair, did
17 she ever discuss your case with you?

18 A. I didn't know who she was.

19 Q. Okay. During the course of the trial, there was phone
20 records that were put into evidence. Did Mr. Smiley ever
21 challenge those phone records?

22 A. No, sir, he did not.

23 Q. Did he ever discuss with you challenging any search
24 warrant or anything like that?

25 A. No, sir, he did not.

1 Q. When you were present at pretrial hearings and during
2 the trial, were any motions to suppress that evidence ever
3 made by Mr. Smiley?

4 A. I don't understand that question.

5 Q. Did he argue to the Court that those records should not
6 come in -- the phone records?

7 A. To my recollection, he did not.

8 Q. I think you testified that shortly before your trial,
9 Mr. Smiley was engaged in another high-profile murder case?

10 A. That's correct. Each time he came to see me, he would
11 say to me, "I'm swamped with this case. I'm busy with this
12 case." He actually wanted to speak to my father about the
13 case because my father owned the trailer -- the property that
14 -- that high-profile case where the murder took place, my
15 father owned that trailer. So he spoke to me more about that
16 case than my own.

17 Q. Did Mr. Smiley do any investigation about Nicole's
18 background or any of those incidents of violence in your
19 lives?

20 A. If he did, he did not tell me about it.

21 Q. Did Mr. Smiley hire any expert witnesses?

22 A. No, sir, he did not.

23 Q. You guys were out of money. Did he ever request from
24 the Court to give you funds so you could hire experts?

25 A. He did not, sir. The entire time his -- what he would

1 say to me was "I'm going to get you out on bond so you can
2 make the money necessary to pay me." From the time we met,
3 that was our initial agreement. He said, "I'll get you out
4 on bond. You can make the money needed where we can hire
5 who's needed to so I can defend you properly."

6 Q. Now, there was a witness that you gave him a name of,
7 Gale Strap (phonetic), that knew about the violence and about
8 the house burning down, the violence to the cars, and all
9 that stuff. Was Mr. Gale Strap called as a witness at your
10 trial?

11 A. He was not called as a witness. I don't believe there
12 were any witnesses called on my behalf.

13 MR. BYRHOLDT: Beg the Court's indulgence for a couple
14 moments.

15 THE COURT: Mm-hmm.

16 BY MR. BYRHOLDT:

17 Q. Now, Jerald, this case was essentially a circumstantial
18 evidence case, correct?

19 A. When the prosecutor came and presented, he said this
20 case is 100 percent circumstantial.

21 Q. Based on the phone records, a bank record. I think
22 there was a check that was cashed. And they say the
23 telephone records put you in a certain area?

24 A. Correct, sir.

25 Q. But they couldn't tell where Nicole was killed, correct?

1 A. That is correct.

2 Q. How she was killed?

3 A. That is correct.

4 Q. When she was killed?

5 A. That is correct.

6 Q. Or where?

7 A. All of that is correct, sir.

8 Q. Without the phone records, there was no evidence of any
9 kind against you, was there?

10 A. That is correct, sir.

11 Q. At any time during your trial with Judge Dennis, did
12 Mr. Smiley ever object to anything with the phone records?

13 A. I honestly don't remember. I can't answer that.

14 Q. The record would speak for that?

15 A. The record would, yes.

16 Q. All right. You filed an appeal and then you withdrew
17 it.

18 A. Correct, sir.

19 Q. Why?

20 A. I withdrew the appeal because Mr. Smiley told me -- I
21 apologize. Looking back on things, it's -- when you're in
22 this type of situation, you have no idea. Like, when you're
23 not a lawyer, you're ignorant to the law.

24 Q. What did Mr. Smiley tell you?

25 A. He told me that -- he said, "Trust me. You're going

1 home. You're going to walk out those doors to your family."

2 And then he said to me --

3 Q. Take your time.

4 MR. BYRHOLDT: May I approach, your Honor?

5 THE COURT: Mm-hmm.

6 BY MR. BYRHOLDT:

7 Q. Jerald, what did Mr. Smiley tell you about withdrawing
8 your appeal?

9 A. Before -- before we went to see the judge, he told me
10 that if things didn't go the way that we wanted, to just file
11 a PCR and he would let them know that he never received
12 enough money -- he never received the money that he needed in
13 order to do a proper investigation, and that is the way that
14 I should go. So I did what he said.

15 MR. BYRHOLDT: Beg the Court for one short indulgence,
16 your Honor.

17 THE COURT: Mm-hmm.

18 BY MR. BYRHOLDT:

19 Q. Jerald --

20 A. Yes, sir.

21 Q. -- the relief you're asking this judge today is to grant
22 you a new trial so you can tell your story?

23 A. I just want to be able to tell the truth about what
24 really was taking place.

25 MR. BYRHOLDT: All right. Jerald, you answer any

1 questions Ms. Dixon or the Court would have for you. Thank
2 you.

3 CROSS-EXAMINATION

4 BY MS. DIXON:

5 Q. Mr. Howard, how are you today?

6 A. I won't complain. How are you?

7 Q. Doing well. Thank you for asking.

8 Just a couple things to clarify.

9 Now, you said you withdrew your appeal because
10 Mr. Smiley told you he would on PCR say that he didn't get
11 enough money, correct?

12 A. That is correct.

13 Q. But you were, in fact, represented by someone different
14 on your appeal, correct?

15 A. I don't know --

16 Q. Susan Barber Hackett? Does that ring a bell?

17 A. I don't know that.

18 Q. That's fine.

19 All right. And then in terms of you said -- when you
20 were asked what he didn't investigate, you talked about he
21 didn't come discuss the case with you as frequently as you
22 would have liked at the detention center; is that correct?

23 A. That's correct, ma'am.

24 Q. But he did speak to you about it for two and a half,
25 three hours?

- 1 A. That's correct, ma'am.
- 2 Q. Okay. Did he review the discovery with you?
- 3 A. No, ma'am.
- 4 Q. He did not review any discovery with you?
- 5 A. No, ma'am.
- 6 Q. Okay. All right. And then you talked about we don't
7 know -- you know, law enforcement never knew when she was
8 killed, how she was killed, how she died, all these things.
9 Correct?
- 10 A. You're saying did I speak about that with who, ma'am?
- 11 Q. On your direct exam, did you say that law enforcement
12 didn't know how Nicole died --
- 13 A. That's correct.
- 14 Q. -- when she died, where she died?
- 15 Let's talk about what we do know.
- 16 So where were y'all living?
- 17 A. Two different locations -- well, three actually.
- 18 Q. Okay.
- 19 A. Which one are you speaking of?
- 20 Q. What county?
- 21 A. Once in Travelers -- Greenville County, Travelers Rest,
22 and Spartanburg County.
- 23 Q. Okay. So we can agree those were the Upstate, correct?
- 24 A. That's correct.
- 25 Q. So y'all were living in the Upstate and not the

1 Lowcountry, correct?

2 A. That's correct.

3 Q. Okay. And at some point she went missing, correct?

4 A. That's correct.

5 Q. And when did you notify law enforcement that she was
6 missing?

7 A. I notified her parents, ma'am.

8 Q. You notified -- okay. When was that?

9 A. That would have been February or the beginning of March
10 of 2014.

11 Q. Okay. And about how long had she been missing at that
12 point?

13 A. One week.

14 Q. One week. So about one week in, you notify her parents.
15 Still don't call law enforcement, though, correct?

16 A. I called her parents.

17 Q. You called her parents? But you did talk to law
18 enforcement, correct?

19 A. Yes.

20 Q. And what was your story for them?

21 A. In regards to?

22 Q. First time you talked to them, what did you tell them?

23 A. The first time I spoke to them, I told them that she was
24 going to make some money.

25 Q. Mm-hmm. Okay. And that was a week prior?

1 A. A week prior to what, ma'am?

2 Q. To you speaking to them that she went missing?

3 A. It wouldn't have been prior to. It would have been
4 after.

5 Q. Okay. Okay. You talked to them a week after she went
6 missing that she was going to make money. All right.

7 Well, let's jump ahead to some other things we know.

8 So you remember the cell phone records, correct?

9 A. What do you mean do I remember them?

10 Q. Do you remember the State presenting cell phone records
11 at your trial? I believe you complained about, on direct
12 appeal, that your lawyer didn't challenge them. Do you
13 remember them being used at your trial?

14 A. Yes, ma'am.

15 Q. And what did they show?

16 A. They showed the ping of the phones.

17 Q. Of whose phones?

18 A. Both phones of mine.

19 Q. Both phones were yours?

20 A. Correct.

21 Q. You didn't tell law enforcement that one of the phones
22 was her phone?

23 A. No. I told law enforcement that both phones were mine
24 through Verizon. They were in my name. They were mine.

25 Q. So your story today is that both phones were your

1 phones?

2 A. Yes.

3 Q. Did she use one of the phones?

4 A. She did, yes.

5 Q. She did. Okay. So the phone that she used that you
6 owned, as well as your phone. And was this before or after
7 she went missing that law enforcement noted them pinging
8 together?

9 A. They would have pinged before and after.

10 Q. Okay. Well, what range were they looking at?

11 A. I don't understand.

12 Q. All right. Can we agree that after she went missing,
13 they caught your phones pinging together in the Lowcountry
14 area?

15 A. Yes.

16 Q. Okay. And can we agree that after she went missing,
17 they also caught your phones pinging together somewhere in
18 North Carolina?

19 A. I don't believe that's correct.

20 Q. You don't recall that? Okay. Well, I think the record
21 will speak to whether or not there was evidence on that fact.

22 And then the last thing that I think let's see if we can
23 agree, where was her body found?

24 A. Her body remains were found in Berkeley County.

25 Q. In Berkeley County. About how far away from Spartanburg

1 is that?

2 A. Three hundred miles maybe.

3 Q. Three hundred miles. And how far away from your
4 parents' house is it -- from your father's house?

5 A. Five maybe.

6 Q. Five miles? So five miles from your parents' house.

7 Okay.

8 And then do you recall the State had some records from
9 your cell phone that had been extracted?

10 A. No, ma'am.

11 Q. You don't recall evidence at trial that around the time
12 she went missing you were Googling "Can they identify a
13 burned body?"

14 A. Yes, ma'am.

15 Q. You do recall that those were found in your cell phone?

16 A. Correct.

17 Q. Okay. And so you would agree with me that she went
18 missing sometime about a week before you notified anyone.

19 Y'all were living in Spartanburg, correct?

20 A. We were.

21 Q. Her body was found 300 miles from Spartanburg, five
22 miles from your father's house?

23 A. Due to the fact that we were meeting with our children.

24 Q. Okay. And -- let's see. Your phones were pinging
25 together in the Lowcountry.

1 A. We were meeting with our children, yes. We had children
2 together.

3 Q. Okay. Okay. I think the record will speak for itself.

4 MS. DIXON: I have no further questions.

5 MR. BYRHOLDT: Just briefly, your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BYRHOLDT:

8 Q. Ms. Dixon asked you about Googling a search.

9 A. Mm-hmm.

10 Q. Do you write books, Jerald?

11 A. I've written seven novels. Maybe more.

12 Q. And before Nicole went missing, had you written any
13 novels?

14 A. At that point in time, I had written four or five
15 mystery novels, crime novels, yes.

16 Q. All right. The phone records that Ms. Dixon asked you
17 about, those are the records that Mr. Smiley never
18 challenged, correct?

19 A. That's correct, sir.

20 Q. Nicole had a child by a Mr. Mangold (phonetic), correct?

21 A. That is correct, sir.

22 Q. Mr. Mangold lived in St. Stephen, correct?

23 A. Berkeley County. Yes, sir.

24 Q. Here in Berkeley County?

25 A. And one other thing that I told Mr. Smiley that was

1 crucial to my trial -- which she just mentioned the Google
2 search -- I gave Mr. Smiley my manuscript of a novel that I
3 was working on. That Google search word for word --

4 Q. Matches your --

5 A. -- matches the manuscript of the novel that I was
6 writing.

7 Q. And none of that was presented at your trial?

8 A. None of it was presented.

9 MR. BYRHOLDT: No further questions.

10 MS. DIXON: Just real briefly.

11 RE CROSS-EXAMINATION

12 BY MS. DIXON:

13 Q. So around the time Nicole went missing, you were
14 Googling "How to identify a burned body" as research for a
15 book you were writing?

16 A. I gave -- I emailed the records to Mr. Smiley. It's
17 word for word.

18 Q. Gotcha. Gotcha. Gotcha.

19 MS. DIXON: Nothing further.

20 THE COURT: Okay.

21 MR. BYRHOLDT: Come down.

22 THE COURT: You can step down, sir.

23 THE WITNESS: Thank you, your Honor.

24 (Witness excused.)

25 MR. BYRHOLDT: I call Jody Black to the stand.

1 (Witness sworn.)

2 CLERK OF THE COURT: Thank you. You may be seated.

3 Please state your full name and spell your last name for
4 the record.

5 THE WITNESS: My name is Jody Black. Last name
6 B-L-A-C-K.

7 JODY BLACK,

8 called as a witness on behalf of the Applicant, being first
9 duly sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BYRHOLDT:

12 Q. Jody, give us a little of your background. What type of
13 work have you done?

14 A. I am retired law enforcement from the State of South
15 Carolina. After retirement, I worked for a criminal defense
16 lawyer in Greenville by the name of James Price, a/k/a Chip
17 Price, for approximately 12 years. After his early
18 retirement and subsequent death, I have been doing basically
19 the same thing that I did with him, but solely for myself as
20 an investigator.

21 Q. And explain to the Court what you do, what your -- what
22 kind of investigations you do. What is your expertise, sir?

23 A. I do a lot of investigations with other lawyers. I have
24 investigated several murders in the Greenville-Spartanburg
25 area. I go back and review the case that's presented to the

1 attorney and give the attorney some form of idea of how law
2 enforcement does certain things. And that's how I do --
3 that's what we do there.

4 I have testified multiple times in state court as in
5 magistrate's court, so general sessions, as an expert in drug
6 cases as well as alcohol cases. When I was on the highway
7 patrol, I testified in federal court on drug-related cases
8 probably six or seven times, if memory serves me correctly.

9 Q. Have you been qualified as an expert witness?

10 A. In the state court of South Carolina, yes. Never in
11 federal court.

12 Q. Okay. Were you retained to assist us in reviewing the
13 records in Jerald Howard's case?

14 A. Yes. Approximately one year ago.

15 Q. Can you tell us what your review consisted of and
16 whether or not you, from a criminal defense standpoint, found
17 any deficiencies in what Mr. Smiley and Ms. Hensley did in
18 representing Jerald in his trial?

19 A. Well, I understand your question, but I want to be clear
20 that as a nonlawyer, I can't find any -- I'm not --

21 Q. Let me rephrase it this way, Jody.

22 A. Okay.

23 Q. Did you find any problems in the investigation that was
24 conducted by law enforcement in the trial of Jerald Howard?

25 MS. DIXON: Objection. He has not been qualified as an

1 expert at this time. I believe he talked about his
2 background, but we're getting into expert --

3 MR. BYRHOLDT: Your Honor, we'd move to have him
4 qualified.

5 Q. [By Mr. Byrholdt] How many years of experience in law
6 enforcement do you have?

7 A. Fourteen years, and 12 years with the law firm of James
8 Price.

9 Q. All right.

10 MS. DIXON: Your Honor, I have no objection to his
11 qualification. I do have an objection to the relevance of an
12 investigator to basically try to attack another law
13 enforcement agency's investigation. I think we're here today
14 about trial counsel and not law enforcement.

15 MR. BYRHOLDT: My concern is whether there's
16 deficiencies in what law enforcement did that were not
17 challenged by trial counsel at trial. That's the limited
18 purpose I'm offering him for.

19 THE COURT: If you can specifically relate it to
20 something that was part of the record.

21 MR. BYRHOLDT: All right.

22 Q. [By Mr. Byrholdt] Did you review the record in this
23 case, Jody?

24 A. I reviewed such records that were presented to me by
25 your office, and I am assuming that you were provided a

1 complete package.

2 Q. Well, did you find any areas of the law enforcement
3 investigation that caused you concern?

4 A. One of the main ones that stood out to me was in the
5 transcript, as well as the law enforcement records. At some
6 point in time, law enforcement had an encounter with
7 Mr. Howard. And during the cursory search of Mr. Howard,
8 they found a phone on his person.

9 In the transcript and in the law enforcement -- their
10 actual report states that there was a -- in my opinion, based
11 on what I was reading, a broad-spectrum search warrant for a
12 house -- I mean a car and certain other items and a phone.
13 There was never -- in my experience as a law enforcement
14 officer having done several search warrants, I have been
15 taught, as well as other law enforcement officers, you do a
16 specific warrant for each item that you are wanting to do.

17 In this case, you would have a certain search warrant to
18 give you permission by the Court to extract any information.
19 If you had a house and a car, if it's all on the same
20 property, in my experience, what's inside the curtilage, that
21 warrant, based on your -- based on law enforcement's
22 affidavit to the Court to get said warrant, you were probably
23 specifying there what you were actually searching for. I did
24 not see any information specific to a cell phone to extract
25 said information.

1 Q. And based on your review of the records, the cell phone
2 information was extremely important in this case -- in this
3 trial? That was what the State relied upon?

4 A. Yes, I would say that it was important. But I am not a
5 cell phone expert, so I can't talk about pinging. I've
6 learned more about cell phones in the last trial of the
7 century here in South Carolina than I ever did before.

8 Q. But you could not find any record where the State had
9 ever requested permission from the Court to extract the
10 information from the cell phone itself?

11 A. Not that I could find. No, sir.

12 MR. BYRHOLDT: That's all the questions I have,
13 Mr. Black. If you'd answer questions Ms. Dixon or the Court
14 would have for you, Jody.

15 CROSS-EXAMINATION

16 BY MS. DIXON:

17 Q. Just to clarify, you were not actually involved in this
18 investigation, correct?

19 A. In the original from the criminal --

20 Q. In the original investigation, correct.

21 A. No, ma'am, I was not.

22 Q. You did not work for Spartanburg County --

23 A. No, ma'am, I did not.

24 Q. -- when they investigated this?

25 A. No, ma'am.

1 Q. Okay. And do you recall they did have a -- let's see.
2 When they arrested him, they found the phone on his person,
3 correct? It was on his body? Like, he had it in his hand?

4 A. Yes.

5 Q. Attempted to hide it?

6 A. I just know that in the paperwork that I saw, that it
7 was in his crotch -- the pocket area, inside his crotch,
8 somewhere like that.

9 Q. Gotcha. Gotcha. All right. And did it indicate who
10 the phone belonged to?

11 A. Not other than what I could read from what was presented
12 to me.

13 Q. Mm-hmm.

14 A. He took possession of the phone -- or he claimed
15 possession of the phone, that it was his, but said that it at
16 some point was Nicole's phone that she used.

17 Q. Okay. So he said it was Nicole's phone?

18 A. If I -- yes.

19 Q. Okay.

20 MS. DIXON: All right. Nothing further.

21 MR. BYRHOLDT: Nothing further, your Honor. We'd ask
22 that Mr. Black be allowed to be excused.

23 THE COURT: I have no problem with that.

24 MS. DIXON: Yeah, I don't either.

25 MR. BYRHOLDT: He's been on the road for a week in

1 Columbia.

2 THE COURT: Sure.

3 THE WITNESS: Thank you, your Honor.

4 (Witness excused.)

5 MR. BYRHOLDT: Your Honor, the applicant would rest at
6 this point.

7 THE COURT: Okay. Ms. Dixon?

8 MS. DIXON: Your Honor, may I have about five minutes
9 just to -- there's some stuff that I wasn't anticipating
10 having to --

11 THE COURT: Sure. Let's just take about five minutes.

12 MS. DIXON: Thank you.

13 MR. BYRHOLDT: May we step out, your Honor?

14 THE COURT: Yes.

15 (Court recessed.)

16 MS. DIXON: Your Honor, the State would call James
17 Smiley.

18 (Witness sworn.)

19 CLERK OF THE COURT: Thank you. You may be seated.

20 Please state your full name for the record and spell
21 your last name.

22 THE WITNESS: My full name is James Watson Smiley IV.
23 Last name spelled S-M-I-L-E-Y.

24

25

1 JAMES SMILEY,
2 called as a witness on behalf of the Respondent, being first
3 duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. DIXON:

6 Q. Mr. Smiley, how are you today?

7 A. I'm okay.

8 Q. Okay. Good. And do you recall how you became involved
9 in Mr. Howard's case?

10 A. I was retained. I was called. I went out and saw
11 Mr. Howard at the Berkeley County jail. He had recently been
12 arrested and met with a couple of people. He and I sat down.
13 We had a rapport, set a fee, and I became his attorney from
14 shortly after he got to Berkeley County.

15 Q. And do you recall the evidence the State had against
16 him?

17 A. Absolutely.

18 Q. And what -- briefly, what was the evidence?

19 A. Well, the evidence -- well, there's two piles of
20 evidence in this case: evidence towards the elements of
21 murder and all kinds of other collateral evidence that wasn't
22 direct. So there's two stacks.

23 Q. Okay.

24 A. On the stack that I thought that mattered, the charge of
25 murder --

1 Q. Mm-hmm.

2 A. -- they absolutely could not tell where, how, when she
3 was killed.

4 Q. Okay.

5 A. That became the focus of my case.

6 When I first got retained by Jerald, my fee had been set
7 plus money for expenses.

8 Q. Mm-hmm.

9 A. When I got retained I got a retainer, and the expense
10 money would come after he made bond. Quite frankly, because
11 this case had gone on for five years and it originated in
12 Greenville, and the fact that he had gotten a conviction up
13 there for obstruction of justice and was on probation and had
14 done that, I believed he would be eligible for bond. He was
15 denied bond on more than one occasion, which I disagreed
16 with, but that's the judges' rulings, of course.

17 Q. Mm-hmm.

18 A. So he was then incarcerated.

19 His mother and father are fine people. They did not, it
20 appeared to me from talking to them, were going to have the
21 assets --

22 Q. Mm-hmm.

23 A. -- to pay me in full and pay for expenses.

24 Q. Mm-hmm.

25 A. I got maybe a quarter of my fee. And that doesn't

1 affect how I work. It just changes our situation.

2 Q. Mm-hmm.

3 A. Jerald had brought up many, many things, from the
4 explanation for the information on Nicole's phone about the
5 search for crematoriums and dead bodies and burned bodies; --

6 Q. Mm-hmm.

7 A. -- about the back-page work -- is that what it's called?
8 -- back pages, where she worked as an escort; and another
9 gentleman that she had had some weird relations with. But
10 with those kind of facts, there comes other stuff that you've
11 got to figure in, such as Jerald had given not just a
12 statement to police, but a long interview to a Spartanburg
13 newspaper -- I mean, not -- news station; --

14 Q. Mm-hmm.

15 A. -- the phone that pinged and the phone was found in his
16 crotch when he was arrested; and the body -- while we don't
17 know where she was killed or by whom still to this day,
18 besides what the jury has said -- was found in a wooded area
19 in Huger that was not far away from Jerald's family's home.
20 When you start putting all that together, and you look at
21 cannot show where, how, when, not even why --

22 Q. Mm-hmm.

23 A. Not that "why" would have been an element, but motive.
24 They didn't provide any of that.

25 Q. Mm-hmm.

1 A. Instead of trying to explain Jerald's actions to a
2 jury --

3 Q. Mm-hmm.

4 A. -- I challenged the State to meet the elements. And I
5 thought we had done very well. When the jury was out and
6 deliberating --

7 Q. Mm-hmm.

8 A. -- the deputy solicitor, Mr. Alfaro, came to me and
9 offered us ten years to desecration of a body and be done.
10 It was a good offer, and we had to sit down and talk about
11 it.

12 And Jerald did trust me. I liked Jerald. We had a very
13 good level of communication, I believe. And I told him I
14 couldn't tell him what to do, but quite frankly, I wouldn't
15 take it. You know? That's what I told him. But I couldn't
16 make that decision because I thought we had won.

17 Q. Mm-hmm.

18 A. And I can explain in more detail. I know I'm doing a
19 narrative, so I'll be quiet and let you ask your next
20 question.

21 But that's sort of that case.

22 Q. Mm-hmm. And so it sounds like your strategy primarily
23 was just to challenge the lack of evidence based on what you
24 said?

25 A. Right. When you started sorting through the five years'

1 worth of stuff that they had collected, none of it was very
2 definitive towards guilt.

3 Q. Mm-hmm.

4 A. But when you start to throw it all together in a pot, it
5 doesn't look clean.

6 Q. Mm-hmm.

7 A. It doesn't look like murder to me, but it doesn't look
8 clean.

9 Q. Mm-hmm.

10 A. It was -- because they could not reach one of the vital
11 elements of murder, I didn't see how they could convict him.
12 And so I -- and Jerald and I spoke about this. I'm not going
13 to say that we spoke on the same level because I'm the
14 attorney and he's the client.

15 Q. Mm-hmm.

16 A. But I explained to him "I can't fight that. I know
17 you" -- and he did want to fight all of the other stuff that
18 was going on in the case. I'm like, "If you gave me all of
19 my expense money plus some for hiring investigators, I could
20 chase it all down and we're pretty sure going to end up in
21 the same spot."

22 Q. Mm-hmm.

23 A. Because she -- this -- your Honor, this murder allegedly
24 took place in Spartanburg. They couldn't find her body.
25 Jerald was not arrested for a while. There was back and

1 forth.

2 He went in for an interview when they were going to do a
3 search warrant on his house. The officer let him go home
4 because they were going to search it. He went in the garage
5 and came out the front door, which cost him the obstruction
6 charge because they told him not to and he had to open the
7 front door. And they took him into custody there, and that's
8 when they found the phone.

9 That happened a good while after the initial event.
10 They didn't arrest him then for murder. And when I had the
11 officer -- the case officer; his name was Lieutenant Gary --
12 on the stand, he had done all the work in Greenville. I
13 asked him, "Why didn't you ever get a warrant?" And he said,
14 "I didn't have probable cause," because he couldn't tell you
15 where she died, how she died.

16 I then called the case -- well, asked; I didn't call
17 him -- the case officer from Berkeley County. He's a captain
18 I believe he is now, Shuler. And I asked him, "What did you
19 do with this case? Because Spartanburg declined to draw a
20 warrant or indict, what was different down here besides the
21 body was found?"

22 He said, "That's it."

23 "Did you do anything else?"

24 "No."

25 And so given that, I've got the case officer who's done

1 all the work from the Spartanburg area telling me "I didn't
2 have probable cause. I thought he killed her, but I can't
3 prove it. I don't have the evidence" -- that's basically it
4 in a nutshell -- and Detective Schuler going "I didn't do
5 anything but find a dead body -- a burned body." And there
6 was nothing more than location. And it was a big deal, but
7 location, that hurt us on that.

8 Given that, you fall back to the basics. Could they
9 prove that he killed her with malice aforethought? They can
10 guess, but they couldn't produce one iota of evidence. None.
11 Zero. And I thought when the jury went out -- they couldn't
12 find probable cause to get a warrant, so I believed it was a
13 directed verdict. I was ruled against. I thought for sure a
14 jury would come back in our favor, not because they wanted to
15 but because the law required them to, I believed at the time.
16 And I was wrong. And so instead of being a hero, I'm wrong.
17 And I agree; I'm wrong.

18 I tried this case. I tried this case well. I tried
19 this case narrowly, kept out the seven-hour interview, kept
20 out his statement to the police. I kept out a lot of the
21 peripheral stuff. I couldn't keep it all out, but I didn't
22 believe that we were in a position to need to address it.
23 That was -- I could have tried the dirty place where we just
24 threw everything against the wall or tried to narrow down and
25 keep them on the issue of who, what, how, why -- you know,

1 those questions, the basics that could not be answered.

2 Q. Mm-hmm.

3 A. The State has not one piece of evidence to show how she
4 was killed, when she was killed, or where she was killed
5 still.

6 Q. And as part of your strategy, did you move for a
7 directed verdict?

8 A. I did move for a directed verdict. In this case I
9 thought there was no way to see malice aforethought. Judge
10 Dennis ruled against me and said that he believed that the
11 malice aforethought could be inferred from the actions that
12 took place afterwards. And I disagreed, and I still disagree
13 with him, respectfully, that it requires aforethought.

14 So I did not tell -- just because I know the question is
15 coming, I didn't tell Jerald not to dismiss his appeal.

16 Q. Mm-hmm.

17 A. As a matter of fact, I don't know that he and I spoke
18 after the verdict. If we did, it was very short. What I
19 told him is "If your appeal does not succeed -- I know I'm
20 out on a limb on this case; I know that there's two ways to
21 try this case -- that if I'm wrong, I will very readily say
22 I'm wrong for trying it the way I did." If we went back and
23 started today, I'd try it the same way. I do not believe
24 that I did anything that was wrong.

25 Q. Mm-hmm.

1 A. I could have done it different, but I don't know if the
2 results would be any different.

3 Q. Mm-hmm.

4 A. I do know that we had a ten-year offer to something
5 other than murder when the jury was out, so the State was not
6 very confident in their position either.

7 Q. Mm-hmm. And did you discuss all of this strategy with
8 Mr. Howard?

9 A. Excuse me?

10 Q. Did you discuss this strategy with Mr. Howard?

11 A. He was well aware of it.

12 Q. Mm-hmm.

13 A. The strategy became apparent as we started in.

14 Q. Mm-hmm.

15 A. And I realized that there's no way I can chase a lot of
16 this down that he's suggesting, that if it was one thing --

17 Q. Mm-hmm.

18 A. -- but we had five or six -- four or five areas that
19 would have taken a good imagination --

20 Q. Mm-hmm.

21 A. -- just to make it work. And I did not -- I'm not
22 saying it's not true.

23 Q. Mm-hmm.

24 A. Please understand me. I just didn't see that we would
25 end up in a different position, because I could have chased

1 all of that down --

2 Q. Mm-hmm.

3 A. -- and we would have come back to, How did she die?

4 Where did she die? When did she die?

5 Q. So you think that that wouldn't have necessarily had any
6 impact on your overall strategy?

7 A. I do not know. All I know is that given our situation,
8 that was the best that we had.

9 Q. Mm-hmm. And did you discuss with Mr. Howard the State's
10 evidence --

11 A. Yeah.

12 Q. -- and the elements that the State needed to prove? Did
13 you discuss all that with him?

14 A. Right. And they didn't -- and that's the thing. They
15 didn't have certain elements, and you can't make them up as
16 you go along.

17 Q. Mm-hmm.

18 A. They're either there or they're not, and the State
19 didn't have it. They --

20 Q. Mm-hmm.

21 A. I sit here today under oath telling you they still don't
22 have it.

23 Q. Mm-hmm.

24 A. They no more can tell me how Nicole Goodlett died, where
25 she died, or how she died, or by whom --

1 Q. Mm-hmm.

2 A. -- based on the facts and the evidence.

3 Q. Gotcha.

4 MS. DIXON: One moment, your Honor.

5 THE COURT: Mm-hmm.

6 BY MS. DIXON:

7 Q. Do you feel like you had sufficient time to --

8 A. Yes.

9 Q. -- discuss with Mr. Howard everything?

10 A. Yes.

11 Q. Your strategy?

12 A. I had sufficient time. Mr. Howard and I met fairly
13 regular. I had become -- usually I'm not, but in Jerald's
14 case, he and I had become very friendly. We had become where
15 we could talk about things other than just his case, which I
16 felt was part of building that bridge of trust with him.

17 Q. Mm-hmm.

18 A. Because I didn't purposely investigate those other
19 things --

20 Q. Mm-hmm.

21 A. -- for a number of reasons: money, where I thought it
22 was going --

23 Q. Mm-hmm.

24 A. -- and otherwise. And I had to express to Jerald how I
25 thought the case could be tried.

1 Q. Mm-hmm.

2 A. He did not tell me no.

3 Q. Mm-hmm.

4 A. I'm not going to tell you he totally agreed.

5 Q. Mm-hmm.

6 A. He wrote me letter after letter --

7 Q. Mm-hmm.

8 A. -- telling me different tidbits of facts, but they
9 didn't go to the murder case other than -- I just couldn't
10 make it -- I felt like going and collecting that evidence was
11 taking a case that was fairly straightforward and just seeing
12 how messy we could get it.

13 Q. Mm-hmm.

14 A. And sometimes for a defendant that works.

15 Q. Mm-hmm.

16 A. In his case, I thought because I wanted the jury to see
17 the major point in their case --

18 Q. Mm-hmm.

19 A. -- that they couldn't prove, that going into the other
20 stuff made it a "Dateline Mystery," kind of. Maybe it was.

21 Q. Mm-hmm.

22 A. And again, I'm not going to tell you that the things
23 that Jerald shared with me and the evidence that was out
24 there was not true. I'm not telling you that --

25 Q. Mm-hmm.

1 A. -- at all. I'm just telling you I did not pursue it
2 because there was a defense that was readily available to us
3 that I did not believe could be beat.

4 Q. Gotcha.

5 MS. DIXON: I have nothing further.

6 MR. BYRHOLDT: May it please the Court?

7 THE COURT: Yes.

8 CROSS-EXAMINATION

9 BY MR. BYRHOLDT:

10 Q. Mr. Smiley, do you have any notes or anything from your
11 numerous meetings with Jerald?

12 A. I -- I --

13 Q. Because when you sent me --

14 A. I'm --

15 Q. When you sent me your file --

16 A. Bruce -- Bruce --

17 Q. -- you said you didn't have any.

18 A. Bruce, if you could --

19 Q. Do you have any contemporaneous notes that you made
20 during these meetings with Mr. Howard?

21 A. Written on a piece of paper from here to there, but
22 nothing extraneous or built up, no. I remember cases fairly
23 well. Today I can pretty much go through Jerald's case and
24 tell you a lot of the stuff you'll ask me, so go ahead.

25 Q. All right. Well, the State's case was based on the

1 phone records, correct?

2 A. It was a part of their case.

3 Q. It wasn't the biggest part of their case? I mean, they
4 had -- you have pinging.

5 A. We can argue about it. The records -- the phone records
6 were difficult. I didn't think they cut for us at all. All
7 right? But at the same time, the pings on the highways,
8 the further we could get away from that -- because you can
9 explain phone calls, but you can't explain him having the
10 phone. But yeah.

11 Q. Did you ever file a motion --

12 A. No.

13 Q. -- to suppress that evidence?

14 A. No.

15 Q. Did you ever review the search warrants in the case?

16 A. No.

17 Q. You said you didn't have assets -- or Mr. Howard's
18 family could not come up with assets you needed to do a large
19 investigation?

20 A. Correct.

21 Q. Did you ever apply to appellate defense for funds?

22 A. No. I was retained privately.

23 Q. But at some point he told you "We're out of money." Did
24 you ever say, "Let's declare" --

25 A. There was an agreement early on that when he couldn't

1 get past about 6,500 to 7,000, that he couldn't pay me. But
2 I wasn't going to lessen my effort. I talked to his family
3 and I couldn't -- they didn't have it. So I went, "Okay.
4 This is what we got. I will do it basically for this. When
5 I win, we'll worry about that later."

6 Q. But you didn't win.

7 A. That's correct.

8 Q. Did you move to quash -- I mean, your theory was they
9 couldn't prove their case.

10 A. That's right.

11 Q. Essential elements missing.

12 A. Right.

13 Q. Did you move to quash the indictment?

14 A. No, I did not because it wasn't till the close of the
15 evidence when we got clear that they hadn't presented it at
16 all.

17 Q. Didn't you have those records? You had the pathology
18 reports, all that. Didn't you have those before the trial
19 started?

20 A. I'm sorry. I didn't hear you.

21 Q. You didn't have the information on the pathology
22 reports?

23 A. Yeah, I certainly did. I questioned the coroner at
24 length because he had "undetermined" as the cause of death.

25 Q. My question, though, is having that in hand before the

1 trial started --

2 A. Right.

3 Q. -- you didn't move to quash the indictment?

4 A. I did not. If I should have, I was wrong.

5 Q. Now, the State brought up the Google search in their
6 trial.

7 A. Yep.

8 Q. When you cross-examined the officer -- now, Mr. Howard
9 sent you a copy of the transcript -- the manuscript, correct?

10 A. I have it, yes.

11 Q. But you didn't -- you didn't even cross-examine them on
12 that?

13 A. No, I did not. That was a choice by me. And if I was
14 wrong for not bringing up the manuscript that went into
15 detail about him researching a crematoria when the body was
16 found a half-mile from his house burned, I was wrong.

17 Q. Well, it wasn't a body that was found. There were
18 parts, right? A skull was found?

19 A. The body was found, sir. They found the skull. They
20 found her spine. They didn't find all of her bones.

21 Q. Right.

22 A. Correct.

23 Q. And where the body was found was in a fairly public area
24 by a running track, right?

25 A. It was about a hundred feet to maybe 75 yards off of

1 that track in the woods in a fairly public place, which I
2 brought up at trial about Why didn't anybody smell it? Why
3 -- you know, that doesn't make it that Jerald put it there.

4 I also went into depth at trial about the night that
5 they said he drove down from Spartanburg to his parents'
6 house, the night that they're guessing that he disposed of
7 the body. I asked his father on the stand, "Did Jerald open
8 the trunk?" Because it could only be the only place that the
9 body could be. And he said yeah, because he had his twins
10 with him that he was bringing to his parents. And the twins
11 got a lot of stuff -- diapers and whatever -- and he was in a
12 smaller car.

13 I was like, "Did he open the trunk?"

14 "Yeah."

15 "Did he hide anything in the trunk? Did he try to keep
16 you from looking in the trunk?"

17 "No."

18 It was "He got his stuff out. He brought the kids in."

19 So I made a point of that. That other, how did the body
20 get there, the State's got to prove that stuff.

21 Q. And the tack the State took was to put these phone
22 records in, all these pings --

23 A. There wasn't "all these pings." There was a few pings.
24 There was one at 5:26 and then there's some in the Upstate,
25 but there's not pings everywhere he went.

1 Q. But there's a whole list through witnesses where they
2 traced these phones from North Carolina down to Berkeley
3 County.

4 A. Correct. And I did not challenge it.

5 Q. Would you agree with me that had those been kept out,
6 that would really take everything out of the State's case,
7 wouldn't it? Because you've got --

8 A. I'm not going to disagree with you. It'd have been
9 certainly helpful. And if I should have moved to keep those
10 out -- and I didn't; I did not -- then I'm wrong. But I did
11 not see that as what I needed to do in this. I was trying to
12 deflect as much of this back onto what happened versus the
13 nonsense that went on forever in this case with phones and
14 the officer, the obstruction. I tried to -- and I tried to
15 keep that as much out of this case. The meeting with the
16 escort afterwards where he supposedly had a conversation in
17 which Nicole directed this woman to come over. I couldn't
18 keep all of that out, but I was able to get it down so that
19 the majority of it was kept out.

20 Q. I think I asked you, you never reviewed the search
21 warrant?

22 A. I didn't do anything with the search warrants, quite
23 frankly. It wasn't the focus of my case.

24 Q. And do you even know if the warrant allowed them to
25 download the contents of this phone?

1 A. I did not challenge the search warrants. I have read
2 the search warrants. I'm not going to say I just ignored
3 them, but I did not see something that threw a big red flag
4 at me. And I also had to understand where we were going in
5 the case, because this case at this point was, How did he --
6 How was she killed? Where was she killed? When was she
7 killed? And lastly, why?

8 Q. Mr. Smiley, had the contents of the cell phone not come
9 into evidence, the State would not have had a case at all
10 then, would they?

11 A. You'd have to ask the State, but it certainly wouldn't
12 have helped their case not to have that.

13 Q. They had a dead body.

14 A. Right. Well, they had her phone that he says she --
15 that he could not -- he had it in his crotch when they
16 arrested him for the obstruction charge. If they had never
17 found that phone, then, you know, you're changing the facts a
18 little bit.

19 And if they had not allowed it to come into evidence, I
20 agree with you. But I didn't see how to do that.

21 Q. All right. But had you moved to suppress that phone,
22 because what they got -- it wasn't the phone that hurt; it's
23 -- was it the contents?

24 A. Well, no, it was the phone that hurt. It was in his
25 crotch.

1 Q. But also the contents?

2 A. Yes, sir. They didn't help.

3 Q. Did you talk to Mr. Howard about appealing, or did you
4 tell him to file a PCR if it didn't work out?

5 A. Quite frankly, I told him that if -- file his appeal.
6 If it was not successful -- and I do believe that was a good
7 issue, because first thing when I spoke to y'all was I wanted
8 to know about what happened to his appeal. But if he did not
9 succeed on appeal, to make sure he filed a PCR and I would
10 come up here and quite frankly tell you just what I'm telling
11 you today. I tried a case this way, and if that's wrong, I'm
12 wrong.

13 Q. Well, anytime you have a body in a murder case, you've
14 got to give the jury something to hang their hat on, right?

15 A. I did.

16 Q. How many years you been doing this, Mr. Smiley?

17 A. Thirty years. I've tried over 40 murder cases, at
18 least. Yeah. And successful on a great majority of them.

19 Q. Jerald, from day one, wanted to tell his story, correct?

20 A. Jerald certainly had a story, and yes, he wanted to tell
21 it. I was very against him telling it.

22 Q. Who made the decision to go with --

23 A. I don't know that we had a decision to make as given our
24 situation. But even if -- given the two, I would have always
25 chosen the defense I chose because it hangs on an essential

1 element that I knew the State wasn't going to be able to
2 meet. And to my -- I'm wrong, but to my belief, they didn't.
3 Where'd she die? When'd she die? How'd she die? I don't
4 know. Nobody today knows.

5 Q. Could you have been more specific in your argument for
6 directed verdict?

7 A. You're going to have to speak up a little bit, sir.

8 Q. Could you have been more specific in your argument for
9 directed verdict and point that out? Did you give Judge --

10 A. Oh, I did.

11 Q. Did you give Judge Dennis any law to support what you
12 were arguing?

13 A. No, sir. I did not produce a case other than it's the
14 definition of "malice aforethought" would be before, not
15 after. And he inferred it after. I did not expect that. I
16 did not have a case to challenge it.

17 Q. Did you ask him to reconsider that after the verdict?

18 A. No, sir, I didn't.

19 Q. But you made the choice early on. I think on direct you
20 said you didn't purposely investigate what Jerald asked.
21 Your tack was to go "They can't prove their case." Fair
22 enough?

23 A. I didn't hear everything, but I -- let me -- Jerald
24 would have had the case investigated and tried in that
25 direction, but the fact that I had no investigation money, it

1 would have taken a whole lot of investigation money. I did
2 not know -- even if we were successful in all of that, we're
3 back to the same set of who, when, why. And I don't know
4 that that would have explained any of it.

5 Q. When you don't explain -- when the State is charging
6 someone with murder and you don't explain his --

7 A. Well, that would have been the whole point for the
8 investigation, to explain all of that. I already knew the
9 State couldn't tell me how, when, or where she was killed
10 because I had already asked. I got the lead detective to
11 tell me he never had probable cause. I mean, and he'll tell
12 you today he didn't have probable cause.

13 Q. Well, like you said, you didn't move to quash the
14 indictment. If you knew that early on -- if you'd talked to
15 the officer and they said, "Look, we can't prove this" --

16 A. You know what? As you brought it up today, quashing the
17 indictment probably would have been a move -- not probably.
18 It's a move in retrospect I certainly should have made.

19 Q. When the State put in about the Google search for burned
20 bodies and the phone records, like I say, that's what the
21 jury heard. The jury -- because, I mean, your question to,
22 like, the coroner would be "Can you tell us where?" And the
23 answer was no. And they spent days of trial going through
24 all this other stuff. And you did ask them on cross "Well,
25 you can't tell us?"

1 A. That's right. So again, I understand completely,
2 Mr. Byrholdt, how you were going -- to go at it that
3 direction, we made -- I -- I won't say "we" -- I made a
4 choice when it appeared that my client would not be able to
5 provide me with expense money. If I had had -- didn't have
6 another viable defense, I don't know what I would have done.

7 Q. Sure.

8 A. All right? As a tack or strategy, I don't know what I
9 would have done at that point. But I did. I did have a very
10 strong, obviously -- well, not strong enough, though.

11 Q. What, if anything, did Ms. Hensley do? She was sitting
12 just as second chair. Was that just to kind of keep you
13 abreast of what's going on? She never met with Jerald, did
14 she?

15 A. Excuse me?

16 Q. Your co-counsel?

17 A. Oh, let me explain my co-counsel, Ms. Hensley.
18 We do not share offices or anything else.

19 Q. Right.

20 A. She has her own practice. I have my own practice. I've
21 been practicing for 30 years. She's been practicing for 20.
22 For the last 15 years, anytime I have a trial, she sits
23 second chair. Anytime she has a trial, I sit second chair
24 for her.

25 Ms. Hensley has got a LLM in library science in law and

1 can look up a case while she is taking down everything that's
2 being said better than any -- I've had court reporters ask
3 her what -- "Did you get that?" as she's looking up a case.
4 So she's very helpful to me. I'm not quite as helpful to
5 her, I don't think, sitting her second. But that's how we do
6 it.

7 As far as her and Jerald having a conversation about the
8 case, beforehand certainly not. During the trial, she was
9 there for support. That is her job is to make sure Jerald
10 has what he needs, answer any questions he has, look at any
11 notes he takes, to type down everything that is happening in
12 the courtroom, to do any research for me, and hand me the
13 right file at the right time. And she does a fantastic job
14 at all of that in helping me.

15 Q. When the State brought out the fact of the Google search
16 for crematoriums and burned bodies and evidence, that was not
17 challenged by you?

18 A. No. I challenge that evidence -- all I do is highlight.
19 I said my words to the jury -- obviously wrong -- "Don't look
20 at what they're trying to put up there. Let's look at what
21 they got: who, when, and where."

22 Q. But why didn't you just ask the witness "Are you aware
23 that he's an author and he's written this book and we've got
24 a manuscript?"

25 A. I'm wrong.

1 Q. And again, you never sought any financial help from
2 indigent defense or had him declared indigent to help you get
3 funds?

4 A. From the State, you mean? Asking for --

5 Q. Sure.

6 A. No. I was privately retained. I never came to the
7 Court and asked. I understand what you're saying, but no, I
8 didn't ask for any funds.

9 Q. But when funds run out, there is an avenue available
10 that you could have used? When his funds ran out, there's an
11 avenue that you could have made available to try and get
12 funds?

13 A. I guess. I've never been able to secure any that way.

14 Q. Have you ever tried --

15 A. No, sir.

16 Q. -- in 30 years?

17 A. No, sir.

18 Q. Okay.

19 A. Nor do I know of any of my cohorts who were privately
20 retained that were successful in doing that. But if it
21 works, I'll ask.

22 MR. BYRHOLDT: Can we have a short break? Two minutes?

23 THE COURT: Sure.

24 MS. DRAWDY: Thank you, your Honor.

25 MR. BYRHOLDT: We'll step outside.

1 (Court recessed.)

2 MR. BYRHOLDT: Back on the record, your Honor?

3 THE COURT: Yes, sir.

4 BY MR. BYRHOLDT:

5 Q. Mr. Smiley, on direct when Ms. Dixon asked, you said the
6 State had two buckets of evidence.

7 A. Okay.

8 Q. Yeah, well, there was their bucket. Your bucket was no
9 elements?

10 A. No elements. And there was a mishmash of stuff they had
11 collected over the last four to five years that individually
12 -- or I'm trying to think of the right word. Individually,
13 their might be a -- none of them were good, but none of them
14 were direct towards the events that led to the death of
15 Nicole Goodlett.

16 They were about pings on a phone. Now, if it was right
17 afterwards and it led us somewhere, but they were random
18 pings. And that's what I tried to say. They got one ping at
19 I-26 -- 526 and I-26. Where are the rest of the pings? Why
20 is there one ping?

21 I asked those questions, of course, and tried to have
22 the jury understand "So what? What does that prove?" And I
23 did that with each area, each time trying to come back and
24 say, "Where was she killed? How was she killed? When was
25 she killed?" I kept trying to pull the case back to that.

1 And obviously I was not successful.

2 Q. Because what the jury heard for the entire trial was all
3 this -- the bucket of junk?

4 A. There was a bucket of junk. That's a good way to --

5 Q. And that's what they heard?

6 A. They heard some of the bucket of junk.

7 Q. Well, the whole testimony was 500 and something pages of
8 trial transcript.

9 A. Yes, sir. You're right. They heard a bucket of junk.

10 Q. And had that junk been kept out, he might not be sitting
11 here today, right?

12 A. If the jury would have followed what I believed to be
13 the law, we wouldn't be here either because I don't believe
14 they presented anything to show the malice aforethought. I
15 was wrong.

16 Q. And you believed that in your heart when you tried this
17 case?

18 A. Yes, sir.

19 Q. But you didn't file a motion for a new trial?

20 A. I -- no, sir.

21 Q. You didn't say, "Judge" --

22 A. I filed a motion for an appeal.

23 Q. You filed notice of appeal?

24 A. Yes, sir.

25 Q. But when the verdict came back, before the end of that

1 term, or ask leave of Court "I want to file a -- Judge, I
2 think you -- I think you missed the boat on this. You made a
3 mistake"?

4 A. No, sir. I did not file that.

5 Q. And the bucket of the -- the big bucket that the State
6 had you made no effort to stop; your theory was going a
7 different way?

8 A. I stopped a lot of the stuff. I mean, the incident with
9 the escort, there's a lot more detail than came out in court.

10 Q. But the jury heard it.

11 A. They heard some. And what I kept asking them, "What
12 does that show about a murder?" They were trying to dirty up
13 Jerald. I get it.

14 Q. That is what they did in this case, isn't it?

15 A. I made a motion -- a 404(b) motion concerning that, and
16 this is where we ended up.

17 Q. The State had a dead body. Did you offer any
18 alternative -- the problem is sometimes juries need an
19 alternative theory, something to focus on other than Jerald
20 Howard. And they didn't have that in this case, did they?

21 A. No, sir. No, sir. Because I was holding the State to
22 their burden.

23 MR. BYRHOLDT: That's all I have.

24 MS. DIXON: Briefly, your Honor.

25

1 REDIRECT EXAMINATION

2 BY MS. DIXON:

3 Q. Now, he's talked about a bucket of junk that the State
4 had, correct? These cell phone extractions were not the only
5 junk in the bucket, were they?

6 A. No, sir -- er, no, ma'am. And like I said, if you take
7 any of those individually, they mean nothing.

8 Q. Mm-hmm.

9 A. You put them all together, I don't know that they mean
10 anything still today. Obviously the jury did.

11 Q. Mm-hmm.

12 A. Because none of that evidence, in my view, was very --
13 well, "convincing" is not the right word. But it's not like
14 they brought up a phone report that showed his track from
15 Spartanburg down, around to his parents' house to the road.
16 They showed a ping.

17 Q. Mm-hmm. And those were from subpoenaed phone records,
18 correct?

19 A. Yes.

20 Q. From the phone company?

21 A. The FBI did their triangulation and then downloaded and
22 found the ping. They found the ping there, and then they
23 also found a string of pings at a different time going up the
24 highway -- and when I say "string," two or three -- in a
25 different direction that they kept bringing up.

1 Q. Mm-hmm.

2 A. And I was like, Why? It didn't come towards the case.
3 Like I said, each one of those things, it doesn't make Jerald
4 look particularly good, but neither of them -- none of them I
5 thought really were very inculpatory by themselves and even
6 when taken together.

7 However, the more I focus on that phone, that phone kept
8 -- it shows up in the wrong place, in his crotch, as I
9 understand the explanation. But if he didn't have the phone
10 and we had the pings, maybe I'd have gone at it a different
11 way. But the less said about certain parts of the case, I
12 believed the better off we were. I did keep a long interview
13 out between Jerald and the police and Jerald and a news
14 station.

15 Q. Mm-hmm.

16 A. Which if they had come in, these other pieces might have
17 started to be needed as -- might have. And I believed -- and
18 if you're trying the case the other way, I'm dead wrong --
19 that the less they heard of Jerald's story, the better I was.
20 If I'm wrong, I'm wrong. But that was my calculation.

21 Q. Gotcha.

22 MS. DIXON: Nothing further.

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

24 THE WITNESS: Thank you, your Honor. May I be excused?

25 THE COURT: Sure.

1 MR. BYRHOLDT: No objection.

2 THE WITNESS: Huh?

3 MR. BYRHOLDT: I said, "No objection."

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 THE COURT: Yes, ma'am.

7 MS. DIXON: Your Honor, the State doesn't have any other
8 witnesses.

9 I don't know if y'all have any rebuttal.

10 MS. DRAWDY: We're just conferring with our client, your
11 Honor.

12 THE COURT: Sure.

13 (Ms. Drawdy and Mr. Byrholdt conferred with their
14 client.)

15 MR. BYRHOLDT: We have no rebuttal, your Honor.

16 THE COURT: Okay. I'll be -- if y'all want to make a
17 closing statement, that would be fine.

18 MS. DRAWDY: Your Honor, and I'm doing this. I was able
19 to -- while testimony was being taken, to, of course, take
20 down the notes to remind -- be able to summarize these for
21 the Court.

22 Your Honor, this is a PCR. My client understands what
23 he has to prove: that counsel was ineffective and because of
24 that ineffectiveness there could have been a different
25 outcome at trial. It would be our position that this was a

1 murder charge and our client was hit with the ultimate --
2 life without the possibility of parole -- so it necessitated
3 being taken care of seriously.

4 You've heard the testimony from Mr. Smiley, and I
5 believe him when he says he was going to challenge the terms
6 of this indictment, the who, how, when, where, and even a
7 why, even though it's not necessary. None of it was there.
8 But that focus -- laser-like focus on that he did by throwing
9 out everything else.

10 So if we believe him, which I do, that he focused on
11 that, there would have been a motion to quash this indictment
12 at the outset. The motion that's in the record, it speaks to
13 specific time -- I believe it's February something to
14 February something else, a two-week window -- when
15 Ms. Goodlett's body -- er, I'm sorry, when Nicole Goodlett's
16 body was found or began to be found.

17 We don't know that. That's when they say she was
18 murdered -- I'm sorry, that's when it was found. But we
19 don't know -- like they all testified -- when, how, what.
20 And so that challenge for an indictment is to be done prior
21 to a trial, not afterwards of a trial.

22 THE COURT: But he did make a motion for a directed
23 verdict on the basis --

24 MS. DRAWDY: He did.

25 THE COURT: -- of the absence of evidence --

1 MS. DRAWDY: He did.

2 THE COURT: -- to establish cause of death, time of
3 death, etc.

4 MS. DRAWDY: I agree. And that, of course, is after a
5 jury has heard and a judge has heard a lot of other
6 testimony. The motion to quash the indictment we believe at
7 the outset, if that's the only theory you're going to defend,
8 it was necessary to take place prior to trial.

9 We would note that I think he may have glanced at some
10 of the search warrants. In a murder case, search warrants
11 are very important.

12 And of course, there's different cell phone testimony
13 here. There was the ping testimony and then there's the
14 contents of his cell phone. The phone was found on my client
15 incident to arrest, where they would take it. But like when
16 Mr. Black testified, there should be a search warrant for the
17 contents of that cell phone. That extraction took place, and
18 there was no challenge to a lack of search warrant for that.
19 We think that --

20 THE COURT: So what would be the grounds for suppression
21 of that evidence? I mean, you said he did not make a motion
22 to suppress. So tell me what -- because you have to show
23 that he should have made the motion and that the motion would
24 have been successful had he made the motion. So what would
25 have been the grounds for the suppression of the cell phone

1 records?

2 MS. DRAWDY: They took it without a search warrant.
3 They took it illegally. And so you have the fruit of the
4 poisonous tree from --

5 THE COURT: But I understand they were there to execute
6 a search warrant, were they not? But I have not been through
7 the entire transcript, so help me understand. They had a
8 search warrant for his home, is what I understood, and told
9 him "Do not go back to the residence because we're getting
10 ready to do a search warrant."

11 What I'm getting at is he did go back to the residence,
12 walked into the garage, came out the front door. They
13 arrested him at that point and found the cell phone on his
14 person. But they had some kind of search warrant at that
15 point to go and search the home.

16 MS. DRAWDY: They found his cell phone -- the cell phone
17 in particular at the jail. At the jail is the one I'm
18 talking about.

19 There were -- I think there are a couple of cell phones.
20 They were two they testified that were on his plan. But the
21 one that they extracted the information from when he is
22 arrested and taken to the jail and a search is done incident
23 to arrest, they had the ability to take that phone like they
24 would take his wallet, his keys, or whatnot, and lock them
25 up.

1 There was no subsequent search warrant for the contents
2 of that cell taken from his person in the jail. And so it's
3 our position that because there was no legal way to get the
4 contents of that cell phone found on his person in the jail,
5 it should have been quashed, not allowed in, not admitted.
6 And then of course, there would be less about the phones in
7 this trial.

8 Why we believe that that was critical and that mattered
9 is because, like Mr. Smiley told you, when they testified at
10 trial about a Google search, well, for our client, if he'd
11 been allowed to testify or if Mr. Smiley had just offered it
12 in cross, there was a reasonable explanation for that search:
13 the manuscripts he was writing. He had already written
14 books. He was in the process of writing others. And so
15 there was a reasonable explanation for that.

16 As he did testify, there were reasonable explanations
17 for the pings. It was one here or one there. So if we'd
18 been able to suppress the contents of the cell phone found on
19 him, that testimony wouldn't have come in about what was
20 extracted from that -- less on the phones.

21 It was also our position that, again, since he was
22 single-theory oriented, not only would he have moved to
23 suppress the indictment prior to, but he would have filed a
24 motion to reconsider with the judge. He says to this day he
25 believes the judge was wrong, but he did not do that.

1 The other issue is that when my client is concerned
2 about there being no case, no investigation, no witnesses
3 called, it's mentioned in there briefly in the trial
4 transcript, and Mr. Smiley did mention it on cross, but
5 Ms. Goodlett's first baby mama (verbatim) was from this area.
6 And so, again, if you were to --

7 THE COURT: Is this Mr. Mangold?

8 MS. DIXON: I'm sorry, but --

9 MS. DRAWDY: It was Mr. --

10 MS. DIXON: -- we're getting into stuff that I don't
11 recall any of this being in evidence.

12 MS. DRAWDY: He did testify to that briefly.

13 MS. DIXON: I --

14 MR. BYRHOLDT: It was St. Stephen.

15 MS. DIXON: Oh.

16 MS. DRAWDY: St. Stephen.

17 MS. DIXON: Okay.

18 MS. DRAWDY: But nevertheless --

19 THE COURT: That's fine.

20 MS. DRAWDY: I apologize, your Honor.

21 It's our position that in murder trials, it would be
22 ineffective to not give the jury an alternative theory of the
23 crime. None was given.

24 THE COURT: But you have to have some evidence of
25 third-party guilt. You can't -- I mean, you have to declare

1 that in advance, and you can't just throw that out midway
2 through the trial, and --

3 MS. DRAWDY: That is correct.

4 THE COURT: -- there would have to be some evidence to
5 support that.

6 MS. DRAWDY: That is correct, which is why it's our
7 position that when you didn't -- you are right. So there has
8 to be some kind of evidence for that. It's always been our
9 client's position that the lifestyle she led brought in other
10 people.

11 THE COURT: Mr. Smiley did bring that up on cross. The
12 little bit I've seen is he did try to get that into evidence.

13 MS. DRAWDY: Not to the extent we thought was important
14 when you have these issues in that bucket of evidence that
15 aren't addressed one by one. And we think each of those
16 needed to be volleyed back.

17 At the end of the day, I think there were a couple other
18 things that he admitted he had not done and he did not
19 investigate. I believe he -- he just said he didn't have any
20 funds to investigate and so he did not. He hunkered down on
21 that one theory of the case.

22 Because of that fact, I think Mr. Smiley's admitted to,
23 A, he was wrong. What we have here is a highly 100 percent
24 circumstantial case. There was nothing that put my client
25 there, which heightens the need to cross-examine or bring up

1 witnesses or answers for that bucket of mishmash, and he says
2 he just didn't do it. He -- not -- he says there were no
3 funds to do that. Our client, he has no possibility of
4 parole. I think every one of those questions needed to be
5 answered.

6 I would just leave it with this, your Honor. You know,
7 this is not a perfect system -- and I believe that -- but it
8 is our best. And I think Mr. Smiley told you he was not able
9 to give it his best. He took what he had and he ran with it.
10 And again, while it's not perfect, it was ineffective by
11 virtue of the outcome because he didn't challenge the other
12 things. And had he given the jury the reasonable explanation
13 or kept contents of the cell phone out, we believe with this
14 case and witnesses about the other baby mama, we believe
15 there would have been a different outcome.

16 THE COURT: Well, let me ask you this. You're talking
17 about the alternative for, you know, the manuscript, etc.

18 MS. DRAWDY: Yes, ma'am.

19 THE COURT: That was not coming in without your client
20 taking the stand.

21 MS. DRAWDY: That's correct.

22 THE COURT: And so I'm not aware of what the, you know,
23 seven-hour interview to the news media and what some of these
24 other things were that were kept out, but I'm guessing that
25 those were not necessarily going to be helpful if he did take

1 the stand. If you've got seven hours of an interview with
2 law enforcement, it's going to be very hard for your client
3 to take the stand now in the face of all of this testimony
4 that he's previously given and now he can be impeached with
5 all of this.

6 MS. DRAWDY: I appreciate what you're saying, and I
7 believe Mr. Smiley alluded to all of that. But again, maybe
8 as a crutch. This is why we're not going this way.

9 Again, he admits his laser-like focus. He didn't give
10 our client, who took the stand today, the opportunity to
11 explain that away. We all know when you're charged and the
12 lights are shining in your face you may say things
13 differently. Again, his testimony was he thought the first
14 week she was just missing and called the parents. So he's in
15 disbelief or shock.

16 There were a lot of things that Mr. Smiley could have
17 exactly with that gone through. I mean, he didn't testify
18 there was no reason for him not to take the stand. He didn't
19 say he didn't take the stand because of this in particular.
20 He just said, "Look, you don't need to take the stand. We
21 have this." I think he felt so confident.

22 And this may be proof of the ineffectiveness: when he
23 was offered ten years on the other charge -- I think it was
24 the destruction of the body -- and Mr. Smiley said, "I
25 wouldn't take it." Unbelievable. "I wouldn't take it."

1 In a hundred percent circumstantial case, Mr. Smiley
2 knew there had been no alternative theory introduced. He
3 knew. He didn't counter searches for how to burn a body, and
4 it was a burned body. If that is not ineffective -- I really
5 believe he had the tunnel vision about "You can't prove these
6 things." And so our client didn't have what he needed.

7 And I think if he'd come in here with a motion, "We have
8 an issue. We need maybe joined with the public defender's
9 office" -- he did file the notice of appeal, but he didn't do
10 the appeal. That was shipped off to the appellate indigency
11 office.

12 He has told you here where he messed up, which we
13 appreciate. And I think he was very clear about the tunnel
14 vision he had with this case. And there's absolutely no
15 reason why he couldn't have proceeded to challenge the
16 indictment. But then also what happened is he got convicted.
17 A thousand cuts, but attack each of those.

18 Your Honor, we would ask that you just take your time,
19 which we know you will and trust you to do. Our client's in
20 prison for life without the possibility of parole. It's a
21 circumstantial case. There were no witnesses that put him
22 there. There are these buckets that his attorney of record
23 admitted to you he did not pursue, he did not challenge, and
24 he did not believe would fix his case.

25 Ineffective assistance of counsel doesn't mean you can't

1 be good in another case. So this is nothing against
2 Mr. Smiley in that way. With this particular case, we
3 believe Mr. Smiley's choice of defense was ineffective by
4 virtue of the outcome. But we also believe it was
5 ineffective because there were so many things more that he
6 could have done in being a circumstantial case, your Honor.
7 We believe that had any of that been done, there definitely
8 would have been a different outcome in this case. And I
9 believe he believes that too.

10 Thank you.

11 THE COURT: Thank you.

12 Yes, ma'am.

13 MS. DIXON: May it please the Court, your Honor.

14 First of all, I just want to touch on there's been a lot
15 made today about him not doing a motion to quash. And under
16 *State v. Gentry*, an indictment is merely a notice document.
17 So I would submit that if you review the indictment in this
18 case, you would see that it was sufficient to put him on
19 notice of the charge he was being tried for. Therefore,
20 there was no basis to move to quash the indictment in and of
21 itself.

22 Now, Mr. Smiley did do the directed verdict, which is
23 the point at which you challenge the lack of evidence to
24 prove the State's case. But the indictment phase in and of
25 itself, under *State v. Gentry* that's only a notice document.

1 We would submit it was sufficient to put him on notice of the
2 charges he was facing.

3 Mr. Smiley testified today about his strategy, and we
4 would submit it was a valid strategy. In fact, he went as
5 far as to say that he would do it again the same way. We
6 think it was a valid strategy. He believed firmly that the
7 State did not have sufficient evidence to prove a murder. He
8 argued that on directed verdict.

9 This was an issue that would have been an appealable
10 issue. I don't know why Mr. Howard chose to withdraw his
11 appeal, but your Honor, that was the procedure for
12 challenging that. Today we're examining Mr. Smiley's
13 conduct. And in that regard, we submit he was very effective
14 under the constitutional standard.

15 They've talked a lot about this bucket of junk. I just
16 want to note -- and your Honor, I'm sure you will take your
17 time and read the transcript, but there was a lot of other
18 things in this bucket besides the cell phone extraction.

19 There were also bank records. I don't think those got
20 discussed today, but he was seen -- photographed at an ATM
21 using her card -- her ATM card. And around that same time,
22 there had been, I think, a couple of prior transactions on
23 her card that had been declined. So there was -- there were
24 bank records showing, you know, him using her stuff. There
25 was a check he had written from her account to his account.

1 And then I think it's also important to differentiate --
2 we talked a lot today about cell phones pinging. That
3 information typically comes from the cell phone records,
4 which are subpoenaed from the cell phone companies. That is
5 a different thing than the cell phone extraction, which comes
6 from the phone itself. So I do think in terms of a Fourth
7 Amendment challenge, it is important to differentiate those
8 things. The pinging, the cell tower was coming from the
9 records from the phone company.

10 And then in terms of this -- they've made a lot about
11 failure to investigate. Your Honor, they brought one expert
12 who basically just said the search warrant wasn't, in his
13 mind, the way he would like it to be. We haven't seen the
14 search warrant. I don't know what the search warrant
15 actually permitted or allowed because it wasn't entered into
16 evidence at this hearing. They have brought forth no other
17 witnesses today to explain all of these other alternative
18 theories that they're saying Mr. Smiley should have presented
19 to the jury. We've only had Mr. Howard's testimony and a law
20 enforcement officer who basically just said he didn't think
21 the warrant was the way he had seen them.

22 And then the final thing I would say, your Honor, is it
23 was ultimately Mr. Howard's decision not to testify. He was
24 advised of his rights by the Court. He was told it was his
25 decision. Ultimately, that decision rested with him. We

1 would submit that they have not met their burden today of
2 showing that counsel was either deficient or that Mr. Howard
3 suffered any prejudice from any alleged deficiency.

4 MS. DRAWDY: Your Honor, one thing I would ask the Court
5 to consider -- you heard our client testify he didn't even
6 know his appellate attorney. Mr. Smiley had filed the
7 appeal. And again, our client -- you cannot file for a PCR
8 until you've done the appeal. We would ask that with
9 whatever the Court decides today, that he be allowed a
10 belated appeal. And I hope the State would be in agreement
11 with that.

12 MS. DIXON: I would object to that. I mean, the
13 standard under *Wyatt* is whether he voluntarily waived his
14 right to an appeal; either he asked someone to file a notice
15 and it didn't get filed or he was never told of his right.
16 In this case, there was a notice of appeal filed and he moved
17 the appellate court, for whatever reason, to withdraw the
18 appeal. So I would just say there's no evidence he
19 voluntarily waived his right to an appeal. He did, in fact,
20 have it. He just withdrew it.

21 THE COURT: It appears maybe there was an affidavit
22 attached in this packet's letter to the court of appeals
23 withdrawing --

24 MS. DRAWDY: It was. I believe there was, your Honor.
25 And again, that was so he could have his PCR. So it was --

1 he was under the impression he wouldn't get a PCR with that
2 appeal pending. So again, I don't know how it would
3 prejudice anybody to allow him to have a belated appeal, and
4 we would ask that the Court please do consider that. I think
5 it's not like he had one and is asking for it to be done
6 again. And it would just be out of spite that the State
7 wouldn't allow him to have one.

8 THE COURT: I think, in all candor, I'm going to have to
9 look at that affidavit to see if it sets out that --

10 It just says, "I'm doing this" -- "I understand I've got
11 the right to it. I've got the right to have the appellate
12 defense representing me. It's been explained to me a full
13 understanding of all the possible consequences."

14 Okay. I'll take it under advisement.

15 MR. BYRHOLDT: Thank you, your Honor.

16 MS. DRAWDY: Thank you, your Honor.

17 THE COURT: I will read this transcript very carefully
18 before I make any decision.

19 MS. DRAWDY: Thank you, your Honor.

20 (End of proceedings.)
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina

County of Berkeley

I, Jamie L. Bickett, an 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 proceedings had and evidence introduced in the hearing of the captioned case in the Ninth Judicial Circuit, the Court of Common Pleas for Berkeley County, South Carolina.



Official Court Reporter

Dated this 30th day
of September, 2024.

Jul 01 2025

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
)
 Jerald Jermaine Howard, #380868,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

SC Court of Appeals

Case No.: 2020-CP08-01034

ORDER OF DISMISSAL

LEAH GUERRY DUPRE
CLERK OF COURT
BERKELEY COUNTY, SC

FILED
2025 JUN -5 AM 11:05

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Jerald Jermaine Howard (Applicant) on May 7, 2020. On June 26, 2023, an evidentiary hearing convened before the Honorable Kristi Curtis. Applicant was present and represented by Sarah G. Drawdy, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, the Court heard testimony from Applicant, investigator Jody Black, and trial counsel James W. Smiley, IV. After reviewing the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections serving a life sentence. In April 2019, the Berkeley County Grand Jury indicted Applicant for murder (2019-GS-08-1040) and destruction, desecration, and/or removal of human remains (2019-GS-8-623). These charges arose from the death of Applicant's live-in girlfriend, who went missing from Spartanburg County around February or March of 2014, and whose remains were later discovered in a wooded area in Berkeley County near the home of Applicant's parents.

On July 15, 2019, Applicant proceeded to a jury trial before the Honorable R. Markley

Dennis. James Smiley and Laree Hensley, Esquires, represented Applicant. Assistant Solicitors Bryan Alfaro and Bart Stegall prosecuted the case. The jury convicted Applicant as indicted, and Judge Dennis sentenced him to concurrent terms of life for murder and ten years for desecration of a human body.

Applicant filed a direct appeal and was represented by Appellate Defender Susan Barber Hackett. However, the Court of Appeals dismissed the appeal on February 6, 2020, after Applicant moved to withdraw his appeal. The remittitur was sent February 24, 2020.

TRIAL TESTIMONY

Victim was Applicant's live-in girlfriend, and they had twins. At trial, Victim's brother Daniel Goodlett testified he last spoke to Victim on February 17, 2014. (Tr. 143). On March 5, Daniel texted Victim. Daniel didn't receive a response until March 6, which was out of character for Victim. Daniel testified "the message was written differently than the way that she would normally text," and he wasn't sure it was Victim responding. (Tr. 144-46). Victim's mother Bozena Goodlet—a native German speaker—testified she messaged Victim on February 28, 2014, in German and received a response "in bad German." She explained that was odd because Victim understood German. (Tr. 172-73).

Victim's father James Goodlett testified Applicant contacted him on March 8, 2014, and told him Victim had been missing for "[m]ore than ten days." (Tr. 152-53). James, who lived in Texas, called law enforcement on March 10 and asked them to check the home; they did not see Victim. James travelled to South Carolina on March 12, 2014, and filed a missing person's report.

Victim's friend Travis Martin testified he had overheard Victim and Applicant argue about Applicant finalizing his divorce.¹ (Tr. 260). Martin testified he last saw Victim on February 20,

¹ Applicant was married to a different woman while living with Victim.

2014. He stated he received a call from her number on February 22nd or 23rd, but nobody was on the line when he answered. Martin tried calling back but no one answered. He testified he received a voice mail from Victim's Yahoo Messenger account on February 23rd or 24th, but it was only background noise. (Tr. 262-63). Martin testified he continued receiving texts from Victim's phone for about two weeks after February 20th. (Tr. 268-69).

Jerald Howard, Sr., Applicant's father, testified he lived in Huger, South Carolina—about two to two-and-a-half miles from Cainhoy Elementary School.² He recalled Applicant and the twins visiting him in “the first part of the year” of 2014—possibly early March—and staying one night. He stated Applicant returned in March 2014 and left the twins with him; about four or five days later (on March 26), law enforcement removed the twins from Jerald's home. (Tr. 279-81). Jerald denied telling Sergeant Tracy Moss that Applicant visited him in February, “dropped the twins off, left, but came back a short time later, got the twins, and went back home.” (Tr. 282).

On March 13, 2014, Sergeant Tracy Moss with the Spartanburg County Sheriff's Office³ spoke to Applicant. Applicant told Sergeant Moss he had not seen Victim in three weeks. He claimed he went to the store, and when he returned Victim was not there. (Tr. 189-90).

On March 20, 2014, Lieutenant William Gary spoke to Applicant. At that time, Applicant said he last saw Victim the weekend of February 21st-23rd, when she left to go to the store. (Tr. 295-96). Lieutenant Gary stated Applicant gave police his cell phone, which he said was one of Victim's old phones. Applicant indicated Victim got an iPhone 5 in March 2013. (Tr. 296-97).

On March 20, 2014, Sergeant David Hogsed executed a search warrant of Applicant and Victim's home. He testified he noticed a reddish substance (a) on a couple of door frames,

² Huger is in Berkeley County. In 2019, Victim's skeleton was found in woods near Cainhoy Elementary.

³ Applicant and Victim lived in Spartanburg county.

including a closet door in the hall; (b) in the carpet at the foot of the bed in the master bedroom; (c) in the doorway to the master bedroom; and (d) on the sink in the master bathroom. He also noticed red spatter on the back of the bathroom door, and a hole in the wall behind the bathroom door. Sergeant Hogsed testified several portions of the red substance tested positive for human blood. (Tr. 204-05). Sergeant Hogsed returned to the home on March 21st with BLUESTAR chemicals to look for cleaned-up blood. He testified the carpet in the hallway from the bedroom to the living fluoresced, indicating blood had been in that area. (Tr. 214-15).

On March 26th, Lieutenant Gary spoke with Applicant again. When Lieutenant Gary asked if Applicant had heard from Victim, Applicant said Victim had sent him text messages. Applicant showed Lieutenant Gary his phone, which contained messages from an iPhone 5 that Victim used. (Tr. 298-99). Applicant maintained the same story—that he had not seen Victim since she left to go to the store. Lieutenant Gary stated Applicant narrowed the time of her leaving to February 22nd around 5:30 p.m. (Tr. 300). Applicant told Lieutenant Gary he did not have Victim's phone, but he believed it was "somewhere in the neighborhood." (Tr. 300).

Sergeant Moss obtained warrants for Victim's and Applicant's bank records, and she testified to the following:

- On February 25, someone made a purchase from Rosetta Stone from Applicant's account;
- On March 4, a \$200 check from Victim's account (dated March 1) was deposited into Applicant's account;
- On March 4, Applicant withdrew \$500 from his account;
- Two transactions on Victim's debit card (one in February and one on March 9) were declined;
- Rentals at Enterprise Rental Car on February 18, 19, and 24.⁴

(Tr. 193-96).

⁴ Sergeant Moss did not clarify which account made those purchases.

Lieutenant Gary testified he obtained records from Enterprise showing Applicant rented a car February 21st-24th and put “a little bit over 500, 520 or 530” miles on the car. Lieutenant Gary testified that based upon MapQuest, the distance from Applicant’s home in Spartanburg to his parents’ home in Berkeley was about “200 and some odd miles” one way. (Tr. 302-03). He testified Applicant told him he remained in Spartanburg February 21st-24th. When asked about the mileage on the car, Applicant told Lieutenant Gary “he used to work and Enterprise; he knows they don’t look at [the odometer]; basically that they lie to do it.” (Tr. 303).

Lieutenant Gary testified Applicant told him he did not have Victim’s debit card; however, the card had been swiped (and declined) at a gas station on March 9th. Lieutenant Gary viewed the video from the gas station and saw Applicant at the pump when the card was declined. He testified immediately after Victim’s card was declined, Applicant used his own card. (Tr. 303-04). Lieutenant Gary testified Applicant admitted to writing a check from Victim’s account on March 1st and signing Victim’s name to the check. (Tr. 304).

Lieutenant Gary testified that cell tower records indicated Victim’s phone connected to a tower in the Charleston area the weekend of February 22nd, and another tower on February 26. He stated he questioned Applicant about the records, but Applicant said, “He didn’t know anything about it, about the phone being down there.” (Tr. 305-06). Lieutenant Gary stated other records showed Applicant’s cell phone “going up [Interstate] 85 North and then coming back down 85 at some point” on March 9th. He testified that while Applicant’s phone was near a Flying J gas station around exit 104 or 105, Victim’s phone” power[ed] up and connect[ed] to a tower and then goes back off.” (Tr. 306-07). When questioned about these records, Applicant told Lieutenant Gary that Victim could be “sneaky” and must have been following him. (Tr. 307). Lieutenant Gary questioned Applicant about an iPhone 4 that records indicated Applicant was using, but Applicant

told him he no longer had it; “the screen was cracked and it must be in the trash.” (Tr. 308).

Lieutenant Gary testified he obtained search warrants for Applicant’s car, Applicant’s wife’s car, the Enterprise rental car, and Applicant’s home. Lieutenant Gary spoke with Applicant on March 26th and told him he had the warrants ready to go, and Applicant agreed to meet investigators at the home to let them in.

Investigator Joseph Guffey followed Applicant home on March 26th. He testified when Applicant pulled into the driveway, he opened the garage door slightly, “got out of the driver’s seat of the car, rolled under the door and shut it behind him.” (Tr. 247). After police began banging on the front door; Applicant opened the door and was arrested. (Tr. 245-48). Police recovered an Android phone from Applicant when he was arrested, and recovered Victim’s Apple iPhone 5 from Applicant at the detention center. (Tr. 219, 254). Officer Ballew testified Applicant initially tried to hide the phone in his boot; when Officer Ballew asked about it, Applicant “acted like he didn’t know what I was talking about at first.” (Tr. 254). Police also recovered cell phones from Applicant’s home; an iPhone 4 in a black case from the center console of the Jeep; and a white iPhone in a pillow case in the trunk of the jeep. (Tr. 352-55).

Lieutenant Gary testified Applicant provided a recorded statement after his arrest. In it, he stated he found Victim’s iPhone 5 at his house the day before or the morning of the arrest. (Tr. 314-15). When asked why he didn’t provide the phone to police earlier that day, Applicant “said he was being accused or a suspect in it.” (Tr. 316). Applicant changed his prior story and told Lieutenant Gary that Victim’s phone was in the Charleston area on February 23rd because “he was taking her to meet someone down there” so she could work to pay off a debt. He also changed his prior story that she was gone when he returned home from the store. (Tr. 316-17).

Investigator Lindsey McGraw performed a digital extraction on the iPhone 4 that was

found in Applicant's Jeep, and the State entered the following web history from the phone:

- Searches for "Cainhoy Elementary Middle" and "Huger, South Carolina" on February 24th;
- Search for "Huger, South Carolina news"; on February 26th;
- Searches for "Berkeley County, South Carolina" and "Huger, South Carolina news" on February 27th;
- Search for "Huger, South Carolina news" on March 1st;
- Search for "Berkeley County news" on March 2nd;
- Searches for "can you identify a burned body?", "how authorities identify a burned body?", and "burned body cases solvable challenge for investigators" on March 3rd.

(Tr. 321-25).

Amanda Hinojos, Victim's friend, testified she last saw Victim on February 8, 2014. She stated she received text messages from Victim's phone on February 28th about meeting with someone named "Leo." On March 4th, Hinojos went to Victim's home to meet Leo. Hinojos contacted police when she later learned Victim was missing. On March 14th, Hinojos identified Applicant from a lineup as "Leo." (Tr. 380-83, 392).

CURRENT APPLICATION

On May 7, 2020, Applicant filed this PCR application alleging:

Defense attorney was incompetent. Defense Attorney provided ineffective assistance of counsel. I am innocent of my charges. Defense attorney failed to present evidence, failed to call key witnesses, and failed to investigate case.

On August 25, 2021, Applicant filed an amended application to allege the following grounds of ineffective assistance of counsel:

- a. Counsel failed to investigate my case.
- b. Counsel failed to present evidence that would have established reasonable doubt as to my guilt.
- c. Counsel failed to talk with or call key witnesses in defense of my case.

d. Counsel failed to effectively cross-examine State's witness to attempt to establish reasonable doubt.

e. Counsel failed to discuss cellphone and bank records with me and to use this information to cross-examine State's witnesses.

f. Counsel failed to prepare for trial as he was involved in another ongoing murder case.

g. Counsel told me there was not enough evidence to convict me.

h. Counsel failed to investigate alleged victim's background, bad acts, and acts of violence against victim and Defendant to provide alternative theory for victim's death by others.

On October 17, 2022, Applicant filed a motion to add the following grounds of ineffective assistance of counsel:

1. Counsel failed to object to the State's failure to prove each and every element of the statute, S.C. Code Ann. § 17-19-30⁵; cause of death;
2. Counsel failed to request chain of custody report for cellphone;
3. Counsel failed to object to the cell phone on the basis it was seized by the detention center without a warrant.

At the hearing, Applicant proceeded on the allegations of his amended applications. Additionally, he alleged counsel was ineffective for not objecting to the extraction of his cell phone. Finally, at the conclusion of the hearing he requested a belated appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Berkeley County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript, the records of Applicant's direct appeal; and the records of this PCR application. This Court has further had the opportunity to observe the

⁵ This statute addresses the sufficiency of a murder indictment.

witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.⁶ After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668 (1984). First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and an applicant must overcome this presumption to receive relief. Id.; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failed to investigate / prepare / present evidence⁷

Applicant first contends counsel was ineffective for failing to investigate and present evidence that would establish reasonable doubt and failing to talk with or call key witnesses. Specifically, he contends counsel failed to investigate Victim's background, bad acts, and acts of

⁶ This Court will reference PCR testimony where relevant below.

⁷ This section combines allegations a, b, c, f, and h of the amended application.

violence against Victim and Applicant to provide an alternate theory for Victim's death. He further contends counsel failed to prepare for trial because he was involved in another murder trial. Applicant did not prove this ground.

At the PCR hearing, Applicant testified he met with counsel on numerous occasions during the two years he was detained, but most of the time counsel discussed other cases or football. He stated they initially discussed his case for about an hour, and they discussed it again about a week before trial for one-and-a-half to two hours. Applicant stated when he asked about his case, counsel told him he was attempting to have him released on bond so Applicant could earn additional money to pay counsel. He averred they did not discuss his case further until counsel finished another trial.

Applicant testified he provided counsel the names of witnesses—specifically Gale Strap—that he wanted counsel to talk to, but counsel did not talk to those people. He also stated he provided counsel alternate theories for Victim's death. Specifically, he testified, "I told him the house was burnt down. I told him about vandalism to vehicles. I told him about investigators coming to speak with her in regards to what was going on. I told him that we feared for our lives." Applicant testified counsel did not follow up on that information or present it at trial. He stated counsel told him, "It's not the truth that matters. It's what can be proven." He further stated counsel told him the State could not prove a cause of death, and counsel advised him not to testify. Applicant stated that if he had testified, he would have informed the jury that he was writing a book, and the web searches law enforcement found were research for his book.

Trial counsel testified his primary strategy was to challenge the lack of evidence. He stated Applicant "brought up many, many things, from the explanation for the information on [Victim's] phone about the search for crematorium and dead bodies and burned bodies—." Applicant also told him Victim worked as an escort. He stated he focused his strategy on the State's burden of

proof and his argument that they could not meet the elements of murder rather than trying to explain Applicant's actions to the jury.

This Court further finds counsel articulated a valid strategy of challenging the State's lack of evidence, and a review of the record indicates he was prepared for trial. In light of this valid strategy and because of the incredulous nature of Applicant's various explanations, this Court finds counsel was not deficient in not further investigating Applicant's dubious claims. Thus, Applicant did not prove deficiency.

Further, Applicant did not call any witnesses⁸ at trial to establish a third-party defense or provide an alternate theory for the murder and thus failed to meet his burden of proving counsel was ineffective for failing to investigate or present evidence. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." (emphasis in original)).

To the extent Applicant contends counsel was ineffective for advising him not to testify, this Court finds Applicant himself made that decision after being advised by the trial court of his right to testify. (Tr. 558-63). This Court further finds counsel articulated a valid strategy of challenging the State's lack of evidence, and based on that strategy (and Applicant's testimony at the PCR hearing), counsel's advice to him to not testify was reasonable under prevailing professional norms and not deficient. Finally, this Court finds it is not reasonably probable the outcome would have been different had Applicant testified at trial. At the PCR hearing, Applicant

⁸ Applicant called a private investigator, Jody Black, who testified he reviewed the law enforcement file. However, Applicant did not call any witnesses who would have established an alternate theory or third-party defense.

testified the web searches law enforcement extracted from his phone were research for a book he was writing. However, based on this Court's observations of Applicant during his testimony, the temporal proximity of the searches to Victim's disappearance, and the similarities between Victim's murder and the web searches, this Court finds this testimony NOT credible. This Court further finds it is not reasonably probable a jury would have concluded he was doing research for a book had he testified. Applicant did not prove deficiency or prejudice, and this claim is denied.

Failed to cross-examine witnesses⁹

Applicant contends counsel failed to effectively cross-examine State's witness to attempt to establish reasonable doubt. Specifically, he asserts counsel failed to discuss cellphone and bank records with Applicant and to use this information to cross examine the State's witnesses. Applicant did not prove this ground.

This Court has reviewed the transcript of the proceedings and finds counsel's cross-examination of the State's witnesses to be reasonable under prevailing professional norms and not deficient. This Court further finds Applicant did not prove with specificity any cross-examination counsel should have done that would have reasonably changed the outcome. At the PCR hearing, Applicant merely questioned counsel about why he did not cross-examine law enforcement about the manuscript of a book Applicant was allegedly writing as a means of explaining his web-search history. Critically, it is speculative as to what law enforcement would have even said had they been questioned about this manuscript.¹⁰ Applicant did not meet his burden of proving deficiency or prejudice, and this allegation is denied.

⁹ This section combines allegations d and e of the amended application.

¹⁰ Applicant likewise did not introduce this manuscript at the PCR hearing, leaving this Court to speculate about what it said and how using it to cross-examine the officers may have impacted Applicant's trial.

*Sufficiency of State's evidence*¹¹

Applicant next contends counsel was ineffective for telling him there was not enough evidence to convict him. He further contends counsel was ineffective for not objecting to the State's failure to prove each and every element of murder, as set forth in section 17-19-30 of the South Carolina Code. Applicant did not prove this ground.

Initially, Applicant questioned counsel extensively about why he did not move to quash the indictment, and counsel credibly responded that he believed the proper time to challenge the lack of evidence was after the State rested. Counsel further credibly testified that he believed the State could not prove its case without knowing where or how Victim died—which he argued at the directed verdict stage. This Court finds counsel's decision to challenge the sufficiency of the State's evidence at the directed verdict stage (rather than moving to quash the indictment) was reasonable under prevailing professional norms and not deficient. This Court further finds the indictment here was sufficient to put Applicant on notice of the charge he faced, and it is not reasonably probable the indictment would have been quashed had counsel moved to quash it. Thus, Applicant did not prove deficiency or prejudice.

Further, counsel's strategy of arguing the State did not meet its burden based upon its failure to show how, where, or when Victim was killed, and counsel's argument in support of the motion for a directed verdict were reasonable under prevailing professional norms and not deficient. (Tr. 550-52). Finally, Applicant has not set forth an additional argument that counsel should have made that had a reasonable probability of changing the outcome and thus did not prove prejudice. This claim is thus denied.

¹¹ This section combines allegation g of the amended application and allegation 1 of the October 2022 application.

*Cell phone- chain of custody*¹²

Applicant next contends counsel was ineffective for not requesting the chain of custody for a cellphone. Applicant did not prove this ground.

Initially, this Court finds a cell phone is a non-fungible item for which a strict chain of custody is not required. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741-42 (2005) (“While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence—that is, evidence that is unique and identifiable—the establishment of a strict chain of custody is not required: If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit merely on the basis of testimony that the item is the one in question and is in a substantially unchanged condition.”); contra State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (“[A] party offering into evidence *fungible* items such as drugs or blood samples must establish a complete chain of custody as far as practicable.” (emphasis added)).

Here, the cell phone that was extracted was an iPhone 4, model A 1349 in a black OtterBox case. Nix testified he found the phone in the center console of Applicant’s Jeep while executing a search warrant. (Tr. 354-55, 361-62, 365). Based on the foregoing, the State presented sufficient evidence to authenticate the phone. See State v. Brockmeyer, 406 S.C. 324, 353, 751 S.E.2d 645, 660 (2013) (“[R]eadily identifiable items must merely be authenticated by a showing of ‘evidence sufficient to support a finding that the matter in question is what its proponent claims.’” (quoting Rule 901, SCRE)). Applicant has not shown a viable challenge to the chain of custody for the cell phones and thus failed to prove this claim.

¹² This section addresses allegation 2 of the October 2022 application.

*Cell phone extraction*¹³

Applicant contends counsel was ineffective for not moving to suppress evidence from a cell phone on the basis it was seized by the detention center without a warrant. During the PCR hearing, he further asserted counsel should have objected to the warrantless extraction of one of the cell phones. Applicant did not prove this ground.

“In cases claiming an unreasonable search and seizure, the burden is on the defendant to prove not only that the search of an item was illegal, but also that he had a legitimate expectation of privacy in the item searched.” State v. Moore, 421 S.C. 167, 174, 805 S.E.2d 585, 589 (Ct. App. 2017), *aff’d as modified*, 429 S.C. 465, 839 S.E.2d 882 (2020).

At the PCR hearing, Applicant testified counsel did not challenge phone records or discuss with Applicant any challenge to the phone records. Investigator Jody Black testified he reviewed the search warrants and “did not see any information specific to a cell phone to extract said information.” Trial counsel testified he reviewed the warrants but “did not see something that threw a big red flag.” He reiterated his strategy of focusing on the State’s lack of evidence.

This Court finds the seizure of Applicant’s phone at the jail did not violate the Fourth Amendment. See State v. Muquit, 381 S.C. 114, 120, 671 S.E.2d 643, 646 (Ct. App. 2009) (“[T]he seizure of an incarcerated defendant’s personal effects in his possession or the possession of the detention center or jail where he is being held is not a violation of the Fourth Amendment of the United States Constitution.”). To the extent Applicant asserts law enforcement violated the Fourth Amendment by performing a warrantless extraction of this phone, this Court finds this is not the phone that was extracted. At trial, Investigator Lindsay McGraw testified she performed an extraction on an iPhone 4, model A 1349. (Tr. 361-62, 365). The iPhone 4, which was entered as

¹³ This section addresses allegation 3 of the October 2022 application.

State's Exhibit 12, was recovered from the console of Applicant's car pursuant to a search warrant. (Tr. 354-55, 361). According to the trial transcript, law enforcement seized an iPhone 5 from Applicant at the detention center, which was entered as State's Exhibit 11. (Tr. 218-19, 254-55). The State did not enter any extracted data from the phone seized at the detention center; thus, Applicant cannot show deficiency or prejudice in his regard.

Finally, the transcript references multiple search warrants obtained in this case, including warrants for phone records. (Tr. 192-93). At the PCR hearing, Applicant did not enter any search warrants—leaving this Court to speculate about whether the warrants were sufficient for extraction. Applicant thus failed to meet the burden of proving a Fourth Amendment violation related to the extraction of the iPhone 4.

Assuming arguendo the warrants did not adequately cover the extraction of the cell phone, this Court finds Applicant did not prove law enforcement violated the Fourth Amendment. At trial, Investigator Lindsey McGraw testified she performed an extraction on an iPhone 4, model A 1349. (Tr. 361-62, 365). Critically, Applicant told police he no longer had the iPhone 4 because “the screen was cracked, and it must be in the trash.” (Tr. 308, 317-19). Thus, Applicant abandoned any reasonable expectation of privacy in the phone. See State v. Brown, 414 S.C. 14, 23, 776 S.E.2d 917, 922 (Ct. App. 2015) (“A warrantless search of abandoned property does not implicate the Fourth Amendment, for any expectation of privacy in the item searched is forfeited upon its abandonment.”); *id.* at 25-26, 776 S.E.2d at 923 (“[A]n individual can abandon an expectation of privacy in the contents of a locked container, including a cell phone, when objective facts support law enforcement's belief the owner of the container has forgone his intent to protect the container or its contents.”). Based on the foregoing, Applicant did not prove a Fourth Amendment violation, and thus did not prove deficiency or prejudice.

Finally, McGraw testified she performed this extraction on March 27, 2014—which was prior to Riley v. California, 573 U.S. 373 (June 25, 2014). When McGraw searched the phone, “the law was far from settled in terms of the necessity of obtaining a warrant to search a cell phone” State v. Moore, 429 S.C. 465, 483, 839 S.E.2d 882, 891 (2020). Like the officer in Moore, *McGraw acted in good faith, and the exclusionary rule would not apply*. See 429 S.C. at 482-83, 839 S.E.2d at 891-92 (finding exclusionary rule did not apply when Riley had not yet been decided and the officer acted in good faith in searching SIM card). Based on the foregoing, Applicant has failed to show a reasonable probability the outcome would be different had counsel challenged the cell phone extraction, and this claim is denied.

Belated Appeal

At the close of the PCR hearing, Applicant requested a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Respondent objected, arguing Applicant filed a notice of appeal that he later withdrew, and Applicant thus voluntarily waived his right to an appeal. This Court finds Applicant is not entitled to a belated appeal.

Trial counsel has a duty to ensure a criminal defendant is fully aware of the right to appeal. White, 263 S.C. at 118, 208 S.E.2d at 39. “[I]n the absence of an intelligent waiver by the defendant, [counsel should have] either pursued an appeal in his behalf or else, if deemed appropriate by counsel, complied with the procedure set forth in Anders v. State of California.” *Id*; Anders v. State of California, 286 S.C. 738 (1967). “To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal.” Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002).

Based on the records before this Court, Applicant filed a notice of appeal, but his appeal was later dismissed at his request. When Applicant withdrew his appeal, he signed an affidavit

attesting (1) he understood he was entitled to an appeal and the assistance of appointed counsel, (2) he had been informed he would be forever waiving issues that could be raised if he dropped his appeal, (3) he wanted to withdraw his appeal “[i]n light of the risks that have been explained” to him; (4) he “made this decision on [his] own, with a full understanding of all the possible consequences of his actions, and (5) he did not wish to appeal. Thus, Applicant knowingly and voluntarily waived his right to appeal and is not entitled to a belated appeal pursuant to White.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel’s assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant’s behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 7th day of May, 2025.

Kristi Curtis
 KRISTI CURTIS
 Presiding Judge
 Ninth Judicial Circuit

Columbia, South Carolina

BJS/0341374
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2015-11070595

ARREST WARRANT NUMBER

DATE OF ARREST

03/27/2018

ACTION OF GRAND JURY
True Bill

[Signature]
Foreperson of Grand Jury

4/24/2019
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2019-GS-08-00623

The State of South Carolina
County of Berkeley

COURT OF GENERAL SESSIONS
APRIL TERM 2019

THE STATE

VS.

JERALD JERMAINE HOWARD A.K.A.
B/M DOB: 07-28-1981

Indictment for

**DESTRUCTION, DESECRATION OR
REMOVAL OF HUMAN REMAINS**

SC Code: § 16-17-0600(A)
CDR Code: 0471

19 APR 24 PM 12:41
LEAH SHERREY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

[Handwritten mark]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened April 2019, the Grand Jurors of Berkeley County present upon their oath:

DESTRUCTION, DESECRATION AND/OR REMOVAL OF HUMAN REMAINS

That on or between February 17, 2014 and February 24, 2014, the defendant, Jerald Jermaine Howard, did willfully and knowingly, and without proper legal authority did destroy, damage and/or desecrate the remains of Nicole Goodlett in violation of §16-17-600 of the South Carolina Code of Laws (1976) as amended.

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



BART J. STEGALL
ASSISTANT SOLICITOR

BJS/0341374
WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2015-11070595

ARREST WARRANT NUMBER

DATE OF ARREST

03/27/2018

ACTION OF GRAND JURY
True Bill

[Signature]
Foreperson of Grand Jury

4/24/2019
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2019-GS-08-01040

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2019

THE STATE

VS.

JERALD JERMAINE HOWARD A.K.A.
B/M DOB: 07-28-1981

Indictment for

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

19 APR 24 PM 12:41
LEAH GIBBERY CLERK
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

[Handwritten initials]

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened April 2019, the Grand Jurors of Berkeley County present upon their oath:

MURDER

That on or between February 17, 2014 and February 24, 2014, the defendant, Jerald Jermaine Howard, with malice aforethought, did kill Nicole Goodlett by means or instrumentality unknown and Nicole Goodlett died as a proximate result thereof with some acts material to the offense and requisite to its commission having occurred in Berkeley County; in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


BART J. STEGALL
ASSISTANT SOLICITOR



ORIGINAL

Division of Appellate Defense
 1330 Lady Street, Suite 401
 Columbia, South Carolina 29201-3332
 Post Office Box 11589
 Columbia, South Carolina 29211-1589
 Telephone: (803) 734-1330
 Facsimile: (803) 734-1387

Robert M. Dudek, Chief Appellate Defender
 Wanda H. Carter, Deputy Chief Appellate Defender

January 24, 2020

The Honorable Jenny Abbott Kitchings
 Clerk, S.C. Court of Appeals
 Post Office Box 11629
 Columbia, South Carolina 29211

RECEIVED

JAN 24 2020

SC Court of Appeals

Re: Jerald Jermaine Howard v. State

Dear Ms. Kitchings:

Mr. Howard has decided to drop his appeal, as evidenced by the enclosed affidavit. I have reviewed with him the consequences of dropping the appeal. He has been informed of the advantages and disadvantages of pursuing this appeal.

I respectfully request that an order be issued dismissing this appeal. Additionally, I respectfully request the timelines for filing be held in abeyance pending the Court's decision on the motion to withdraw.

By copy of this letter, I am informing Melody J. Brown, Esquire of my client's decision. Thank you for your assistance in this matter.

Sincerely,

Susan B. Hackett
 Appellate Defender

SBH/kk

Enclosure

cc: Melody J. Brown, Esquire (w/ enclosure)
 Jerald Jermaine Howard #380868 (w/enclosure)

KK

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE SOUTH CAROLINA COURT OF APPEALS
APPELLATE CASE NO. 2019-001367

STATE OF SOUTH CAROLINA)
Respondent,)

v.)

AFFIDAVIT

RECEIVED

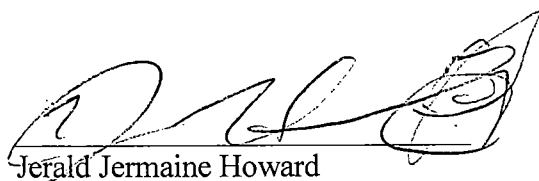
JERALD JEMAINÉ HOWARD,)
Appellant.)

JAN 24 2020

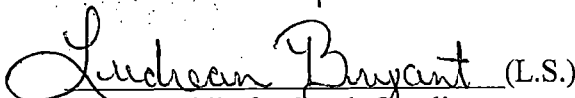
SC Court of Appeals

PERSONALLY appeared before me, Jerald Jermaine Howard, who being duly sworn, deposes and says:

1. I am the appellant in the above captioned case.
2. I understand that I am entitled to an appeal of my convictions and sentences for murder and desecration of human remains, and that, because I am indigent, I am entitled to the assistance of an attorney from the South Carolina Office of Appellate Defense. I have been informed that if I drop my appeal that I forever waive those issues that could be raised.
3. In light of the risks which have been explained to me, it is my desire that the South Carolina Office of Appellate Defense withdraw my appeal.
4. I have made this decision on my own, with a full understanding of all the possible consequences of this action.
5. I do not wish to appeal.


Jerald Jermaine Howard

SWORN TO before me this 17th
day of January, 2020.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 26, 2026

STX

The South Carolina Court of Appeals

The State, Respondent,

v.

Jerald Jermaine Howard, Appellant.

Appellate Case No. 2019-001367

The Honorable R. Markley Dennis, Jr.
Berkeley County
Trial Court Case No. 2019GS0800623, 2019GS0801040

ORDER

It appears that Appellant, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire
Robert Michael Dudek, Esquire
Jerald Jermaine Howard # 00380868

FILED

2/10/20



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
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February 24, 2020

The Honorable Leah Guerry Dupree
PO Box 219
Moncks Corner SC 29461

REMITTITUR

Re: The State v. Jerald J. Howard
Lower Court Case No. 2019GS0800623, 2019GS0801040
Appellate Case No. 2019-001367

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Jerald Jermaine Howard, 00380868
Alan McCrory Wilson, Esquire
William M. Blicht, Jr., Esquire
Robert Michael Dudek, Esquire
Susan Barber Hackett, Esquire